Neutral Citation Number: [2025] EWCA Civ 1321

Case No: CA-2024-001499

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST
Mrs Justice Collins Rice
[2024] EWHC 146 (KB)
[2024] EWHC 956 (KB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/10/2025

Before :

LORD JUSTICE DINGEMANS. Senior President of Tribunals
LADY JUSTICE ELISABETH LAING
and
LORD JUSTICE WARBY

- -

Between :

(1) SIMON BLAKE **(2) COLIN SEYMOUR** **(3) NICOLA THORP**	**Respondents/ Claimants/ Defendants to Counterclaim**
- and –	
LAURENCE FOX	**Appellant/ Defendant/ Counterclaimant**

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Patrick Green KC, Alexandra Marzec and Greg Callus (instructed by **Gateley Legal**) for the **Appellant**
Adrienne Page KC, Godwin Busuttil and Beth Grossman (instructed by **Patron Law)** for the Respondents

Hearing dates: 28 and 29 July 2025

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Approved Judgment

This judgment was handed down remotely at 10.00am on 17 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE WARBY :

Introduction

1. This appeal is about proof of the fact, causation, and seriousness of reputational harm in claims for defamation.

2. At common law a published statement about a person is actionable if it has a defamatory tendency, that is to say it bears a meaning which (a) attributes to that person behaviour or views that are contrary to common shared views of society and (b) would tend to have a substantially adverse effect on the way that people would treat the person. For these purposes the law treats a statement as having only one natural and ordinary meaning: the "single meaning" which the statement would convey to a hypothetical reasonable reader. The threshold for a successful claim was raised by section 1 of the Defamation Act 2013 ("the 2013 Act"). Section 1(1) 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". The meaning and effect of those 23 words ("the serious harm requirement") have been the subject of a good deal of litigation in the High Court, Court of Appeal, and Supreme Court over the past decade. On this appeal we need to look at those questions again.

3. The main issue is whether decisions of the High Court on whether the serious harm requirement was met in this case were wrong in law. A particular focus of attention is the court's approach to the reputational impact of statements other than the ones complained of as libels, including the so-called "rule" in *Dingle v Associated Newspapers Ltd* [1964] AC 371 ("*Dingle"*). The appeal also raises issues about how to assess the extent of reputational harm and the appropriate damages, if the threshold is crossed.

4. The appeal is brought by Laurence Fox against orders made by Mrs Justice Collins Rice after the trial of claims and counterclaims for damages for libel.

5. In posts on Twitter in October 2020 Simon Blake, Colin Seymour, and Nicola Thorp each called Mr Fox racist or a racist. He responded with three tweets of his own which called his accusers paedophiles. They sued him for that. So I shall refer to them collectively as "the claimants". Mr Fox counterclaimed for their use of the word racist. Three points were decided as preliminary issues: the single meaning of each of the various tweets, whether they were statements of fact or expressions of opinion, and whether they were defamatory at common law: see the decision of Nicklin J, [2022] EWHC 3542 (KB), largely upheld on appeal ([2023] EWCA Civ 1000).

6. The claimants' tweets were each held to mean that Mr Fox was a racist. That was identified as an expression of opinion which was defamatory at common law. At the trial, the claimants all denied that their tweets had caused serious harm. In the alternative, Mr Blake and Mr Seymour relied on the defence of honest opinion. Ms Thorp could not rely on the defence of honest opinion because her tweet did not meet the statutory condition that it "indicated ... the basis of the opinion": see s 3(3) of the 2013 Act. Her defence was that the allegation was true. Mr Fox denied that it was true or that it was or could be honest opinion. The judge held it was not necessary to resolve those issues. In her judgment on liability she held that Mr Fox had failed to prove that any of the tweets complained of had caused or were likely to cause serious harm to his

reputation. For that reason she dismissed all his claims. On this appeal Mr Fox says the judge was wrong to reject his case and that on a proper application of the law the only conclusion open to her was that each of the tweets complained of did cause serious harm to his reputation.

7. The term "paedophile" was held to be a statement of fact. Mr Fox's case was that in context it was not defamatory at common law: it was a baseless allegation he had made rhetorically to highlight the baselessness of the attack on him, and this would be obvious to any reasonable reader. This court upheld that argument in respect of the tweet about Ms Thorp, given the obvious use of parody in that tweet. Her claim was dismissed. The tweets about Mr Blake and Mr Seymour were held to be defamatory at common law and their claims went to trial. Mr Fox defended those claims on the basis that his tweets had not caused serious reputational harm or alternatively were privileged as statements in reasonable defence of his own reputation. In her judgment on liability the judge held that the tweets had caused serious reputational harm and rejected the privilege defence. In a separate judgment on damages, she awarded Mr Blake and Mr Seymour damages of £90,000 each. On this appeal Mr Fox argues that the judge was wrong in law to find that his tweets caused serious reputational harm. Alternatively, he argues that the damages awards were excessive.

Factual background

The parties

8. Mr Fox is an actor by profession, best known for his role as DS Hathaway in the long-running ITV series *Lewis* (2006-2015) and his work in the more recent Netflix series *White Lines* (2020). Since 2020 Mr Fox has been active in politics. On 16 January 2020 he appeared as a panellist on BBC TV's Question Time programme and had an exchange with an audience member over allegations of racism which caused controversy. In the Autumn of 2020, prompted at least in part by these events, Mr Fox jointly formed a new political party, Reclaim, of which he became leader. Among the party's viewpoints are that freedom of speech is in grave peril and that the "woke orthodoxy" of "white privilege" and "systemic racism" must be challenged. Mr Fox stood as Reclaim candidate for London Mayor in 2021 and in a Parliamentary by-election in 2023. At the times relevant to this case he had a Twitter account in his own name with the handle @LozzaFox with about 250,000 followers.

9. Mr Blake has been active in the social sector for 30 years, working mostly with children and teenagers. He has held a variety of non-executive positions in health and education. At the material times he was a trustee and deputy chair of Stonewall, the LGBTQ+ charity and Chief Executive Officer of Mental Health First Aid England ("MHFAE"), a social enterprise supporting education, positive attitudes and action in relation to mental health. Mr Blake had a Twitter account in his own name with the handle @simonablake with a substantial number of followers.

10. Mr Seymour is a professional drag and circus-skills artist with the stage name "Crystal". He is from Canada. He first came to prominence here in 2019 as a contestant in the TV series Ru Paul's Drag Race UK. He has since appeared regularly as Crystal on TV and at live events. He is an advocate for the gay community and racial equality, and a podcaster and media commentator focusing on drag, performance, sexuality and gender. At the relevant times Mr Seymour had a Twitter account in the name Crystal |

Black Lives Matter with the handle @crystalwillseeu with a substantial number of followers.

11. Mr Thorp is a current affairs broadcaster, TV presenter and guest, and a columnist for Metro Online. She is well known for having previously been an actor, in particular for her role in ITV's *Coronation Street* between 2017 and 2019. At the relevant times Ms Thorp had a Twitter account in her own name with the handle @nicolathorp_ with a substantial number of followers.

The key events

12. On 1 October 2020, the supermarket chain Sainsbury's Plc ("Sainsbury's") published two tweets on its Twitter account @sainsburys.

    (1) The first tweet, at 10.11, displayed a graphic "*Celebrating Black History Month*" with the words:

    > We are Celebrating Black History Month this October. For more information visit [website link given]. #blackhistorymonth

    The hyperlink included in this tweet linked to a page on Sainsbury's website which was headed: "*Celebrating Black History Month*". Under a sub-heading, "*What we have been doing to support our colleagues*", this included: "*Recently we provided our black colleagues with a safe space to gather in response to the Black Lives Matters movement*" ("the Sainsbury's Website BLM Statement").

    (2) The second tweet, at 15.22, contained a graphic with the words:

    > We are proud to celebrate Black History Month together with our Black colleagues, customers and communities and we will not tolerate racism.
    >
    > We proudly represent and serve our diverse society and anyone who does not want to shop with an inclusive retailer is welcome to shop elsewhere.

13. On 4 October 2020, Mr Fox posted a tweet about this ("Mr Fox's Sainsbury's tweet"). This quote-tweeted the second Sainsbury's tweet and added the following:

    > Dear @sainsburys
    >
    > I won't be shopping in your supermarket ever again whilst you promote racial segregation and discrimination.
    >
    > I sincerely hope others join me. RT.
    >
    > Further reading here [website link to the Sainsbury's Website BLM Statement.]

14. Each of the claimants saw and read Mr Fox's Sainsbury's tweet on the day it was posted. They responded by posting the following tweets ("the racist tweets"):

    (1) At 16.45, Ms Thorp tweeted:

> Any company giving future employment to Laurence Fox, or providing him with a platform, does so with the complete knowledge that he is unequivocally, publicly and undeniably a racist. And they should probably re-read their own statements of 'solidarity' with the black community.

(2) at 17.11, Mr Blake quote-tweeted Mr Fox's Sainsbury's tweet and said:

> What a mess. What a racist twat.

(3) at 17.19, Mr Seymour quote-tweeted Mr Fox's Sainsbury's tweet and said:

> Imagine being this proud of being a racist! So cringe. Total snowflake behaviour.

15. A little later on 4 October 2020, Mr Fox responded to each of these tweets by posting a tweet which quote-tweeted what had been said about him and added the word "paedophile" ("the paedophile tweets"). The words he used were:

(1) at 17.29, in response to Mr Blake's tweet:

> Pretty rich coming from a paedophile.

(2) At 17.30, in response to Mr Seymour's tweet:

> Says the paedophile.

(3) At 17.51, in response to Ms Thorp's tweet:

> Hey @nicolathorp
>
> Any company giving future employment to Nicola Thorpe (sic) or providing her with a platform does so with the complete knowledge that she is unequivocally, publicly and undeniably a paedophile.

16. In the meantime, Mr Blake used his Twitter account to respond to what Mr Fox had said about him. At 17.33, he posted a screenshot of the exchange in which he called Mr Fox a racist and Mr Fox called him a paedophile, with the comment: "Here we go". At 17:37 he posted, in reply to his exchange with Mr Fox, "@LozzaFox just checking whether you are mixing me up with someone else or if this is just a standard retort."

17. At 18.24 on 4 October 2020, Mr Fox posted the following tweet:

> Language is powerful. To accuse someone of racism without any evidence whatsoever to back up that accusation is a deep slander. It carries the same stigma and reputation destroying harm as accusing someone of paedophilia. Here endeth the lesson.

18. Some 35 minutes later, at 19:11, Mr Blake quote-tweeted the tweet in which Mr Fox had called him a paedophile, with the message "Hi @LozzaFox – please would you remove this tweet as you know it to be untrue. Thanks." At some point between then and 09:35 the following day, 5 October 2020, Mr Fox did delete that tweet and his other

paedophile tweets. On the morning of 5 October he posted the following on his Twitter account:

> If the game nowadays is to throw baseless insults and accusations about, then we should all be free to participate.
>
> Having said that, I had deleted the tweets posted yesterday, in response to being repeatedly, continuously and falsely smeared as a racist, as they just serve as a distraction to the important work that needs to be done.

19. Deleting a tweet makes the analytics unavailable. For that reason the precise timing of the deletion is not known. Deletion also removes a tweet from within any quote-tweet, replacing it with a message "This post is unavailable". So, for instance, Mr Blake's quote tweets of what Mr Fox had said about him were unavailable by the morning of 5 October 2020. But deletion has no effect on a tweet that contains a screenshot, such as Mr Blake's "Here we go" tweet. That remained available on Mr Blake's account. What Mr Blake, Mr Seymour and Ms Thorp had tweeted about Mr Fox also remained available on their accounts.

20. The parties' tweets resulted in mainstream media reporting. These included an interview Mr Fox gave to Julia Hartley-Brewer on Talk Radio at about 08:20 on 5 October 2020. She put to him that he had "adopted a new technique" for dealing with people who called him a racist. He replied, "Well … if one is going to throw around a baseless accusation of racism ... then why not, if that's the game ... throw around some baseless accusations in return." Another item was an article published on *MailOnline* at 09:35 on 5 October. This referred to Mr Fox's paedophile tweets as "unsubstantiated slurs" and quoted his tweet of earlier that day announcing their deletion. Numerous other articles about the matter appeared later that day and over the following days.

21. On 13 October 2020, Mr Fox appeared on the Nick Ferrari radio show. Asked if he regretted the paedophile tweets, he made substantially the same point as he had made to Julia Hartley-Brewer: "If you are going to make an allegation against someone as serious as racism … my response is to go: what is the most cruel word I can respond to you with? So you can understand what it is like to feel falsely and baselessly accused of something which is extremely serious." On the same day Mr Fox posted three tweets as follows:

> To that end and not because I've been sued (I haven't) or because anyone has put me under pressure to say something (they haven't), I'd like to apologise for the way I reacted last week in reaction to being constantly (without any evidence whatsoever) labelled a racist ...
>
> I adore our beautiful language. Seeing it corrupted by casually tossing horrible insults around in order to maintain a climate of fear to silence different opinions, saddens me hugely, I was attempting to make the point that words have meanings that are extremely powerful ...

> On reflection, I could have done this in a wiser and more effective way. I abhor discrimination in all its forms, just as I take a principled stance against racism. The end. L.

22. On 1 April 2021, the claimants sued Mr Fox for libel in respect of the paedophile tweets. He counterclaimed for libel in respect of the racist tweets. The outcomes of the claims and the counterclaims turned, as I have said, on the judge's approach to proof of reputational harm.

Reputational harm: the law

23. I start with some well-established rules of English common law.

24. At common law, someone who proves that a written statement about them, such as a tweet, has a defamatory tendency is entitled to recover damages for libel unless the defendant establishes an affirmative defence, such as the substantial truth of the statement. That is because the law treats the publication of such an allegation as something that requires justification by the publisher (sometimes referred to as the presumption of falsity); libel is actionable without proof of material harm; general damages are recoverable for injury to reputation and consequent distress; the claimant is, rebuttably, presumed to have a good reputation; and a statement with a defamatory tendency is, irrebuttably, presumed to cause at least some damage to that reputation.

25. Damages will ordinarily be assessed on the same basis. The key factors will typically be the gravity of the allegation, the scale of publication, the identity of the publishees and the position of the claimant. These factors will often be enough to justify an inference that the statement complained of not only had a defamatory tendency but also caused substantial, perhaps grave, reputational harm deserving of compensation. The claimant may in addition point to specific matters as demonstrating reputational harm, such as being shunned or avoided by friends or business associates or being subjected to abusive taunts. But it is not necessary to adduce evidence of any such matters.

26. The quantification of damages is not a precise science, but the award should be such as is necessary and proportionate to the pursuit of three aims: (1) vindication of the claimant's reputation, (2) compensation for the reputational harm sustained, and (3) compensation for consequential harm to feelings. In deciding what sum is appropriate for those purposes the court will have regard to the level of general damages for pain, suffering and loss of amenity in cases of personal injury, and will treat the maximum award in that context as an effective cap on damages for defamation.

27. I draw these principles from the following decisions, and the cases cited within them: *Barron v Vines* [2016] EWHC 1226 (QB) [24], [44]-[50]; *Lachaux v Independent Print Ltd* [2019] UKSC 27, [2020] 2 AC 612; *Sicri v Associated Newspapers Ltd* [2021] 4 WLR 9, [176]-[178]; *Wright v McCormack* [2023] EWCA Civ 892, [2024] KB 495 [46]-[61] ("*Wright v McCormack* (CA)").

28. A defendant may seek to rebut the presumptions I have mentioned by establishing an affirmative defence or, failing that, by proving in mitigation of damages that the claimant already had a bad reputation. Pursuit of this second course of action is however subject to some rules recently summarised by Aidan Eardley KC, sitting as a Deputy Judge of the High Court, in *Bates v Rubython* [2025] EWHC 2706 (KB) at [10]:

(1) A defendant may adduce evidence that the claimant has a general bad reputation in the sector of his life to which the statement complained of relates: *Scott v Sampson* (1887) 8 QBD 491 at 503 (Cave J) and Gatley on Libel and Slander 13th edn (2022), 34-081 to 34-083. Such evidence about the claimant should come from "those who know him and have had dealings with him" *Plato Films Ltd v Speidel* [1961] AC 1090 at 1139 (Lord Denning), repeated in *Associated Newspapers Ltd v Dingle* … at 412;

(2) Evidence that there are rumours *circulating* to the same effect as the libel is inadmissible: *Scott v Sampson* at 503-504;

(3) Evidence of other publications making the same allegation as the statement complained of is inadmissible as proof of a pre-existing bad reputation: *Associated Newspapers Ltd v Dingle* (and see the useful discussion of the rule in *Dingle* by Warby J in *Lachaux v Independent Print Ltd* [2015] EWHC 2242 (QB), [2016] QB 402 at [69]-[87]);

(4) A defendant may not adduce evidence of particular acts of misconduct by the claimant as tending to show his character and disposition; neither may they be put to him in cross-examination for that purpose: *Scott v Sampson* at 5-4505; Gatley 34-087 & 34-089…

29. To this may be added a point made by Applegarth J in *Peros v Nationwide News Pty Ltd* [2024] QSC 192 [162]-[163], that what may be pleaded and proved is a settled bad reputation in the community at large.

30. These rules do not entirely preclude reliance by the defence on third-party publications. A claimant who relies on a specific event as evidence of reputational harm bears the burden of establishing the fact and causation of the specific event relied on. The claimant does not need to show that the publication complained of was the sole or dominant cause of what happened, but he must show on the balance of probabilities that it was a material cause. This reflects the general law of causation in tort. Where a claimant pursues such a case the defendant is entitled to adduce evidence to rebut it. This may involve identifying alternative candidate causes, and these may include third-party publications about the claimant. The issue is discussed in various modern first instance decisions including *Barron v Vines* (above) [24], [44]-[50], *Napag Trading Ltd v Gedi Gruppo Editoriale S p A* [2020] EWHC 1763 (QB), [2021] EMLR 6 [55]-[57], *Sicri* (above) [178], *Wright v McCormack* [2021] EWHC 2671 (KB), [2022] EMLR 10, [149]-[167] (Julian Knowles J), and *Bates v Rubython* (above) [20]-[21]. In some of these cases there has been reference to a process of "isolating" the harm caused by the publication complained of. I shall need to look at this again later.

31. There are other ways in which a defendant may mitigate damages without offending any of the rules I have mentioned. These include reliance on matters that are directly relevant to the context in which the statement complained of was made (known as "*Burstein* material", after *Burstein v Times Newspapers Ltd* [2001] 1 WLR 479); reliance on admissions by the claimant that he has a bad reputation; showing that the

damage is partly caused by the claimant's own conduct, such as by culpably provoking the libel (see *Wright v McCormack* (CA), [48]); proof that people did not believe or take seriously what was said (see *Lachaux v Independent Print Ltd* [2015] EWHC 2242 (QB), [2016] QB 402, [59]); or reliance on evidence which is properly before the court on some other issue – for instance, as part of an attempt to prove the truth of the statement complained of - and which is relevant when assessing what award of damages would be appropriate (the "rule in *Pamplin*", after *Pamplin v Express Newspapers Ltd* [1988] 1 WLR 116.). The rule in *Pamplin* was explained in *Wright v McCormack* (CA) at [55]:

> The rule … does not depend on the state of the claimant's actual reputation at the time of the libel … The underlying principle is that a claimant in a defamation case should not be awarded damages for injury to a reputation which is not deserved.

32. Section 1(1) of the 2013 Act was intended to and did make the claimant's task harder. The leading authority on its meaning and effect is the decision of the Supreme Court in *Lachaux v Independent Print Ltd* (above). The court rejected the view of the Court of Appeal ([2017] EWCA Civ 1334, [2018] QB 594), that section 1(1) merely required a tendency to cause "serious" as opposed to "substantial" reputational harm. The Supreme Court held that the sub-section did not amend the common law but supplemented it. The statute requires a claimant to go beyond proof of a defamatory tendency and to demonstrate as a fact on the balance of probabilities that the publication complained of caused (or was likely to cause) reputational harm that was serious. It further held that the common law presumption that a statement with a defamatory tendency caused actual harm to reputation has not survived the enactment of s 1.

33. The court agreed, however, that it was possible to prove serious reputational harm by way of an inferential case. It upheld the decision of the High Court that the requirement was met on the facts of *Lachaux* on the basis of "(i) the scale of the publications; (ii) the fact that the statements complained of had come to the attention of at least one identifiable person in the United Kingdom who knew Mr Lachaux and (iii) they were likely to have come to the attention of others who either knew him or would come to know him in future; and (iv) the gravity of the statements themselves" or, putting it another way, "a combination of the meaning of the words, the situation of Mr Lachaux, the circumstances of publication and the inherent probabilities": [21] (Lord Sumption, with whom the other Justices agreed). Subsequent cases have provided further illustrations of this point: see, for instance, *Banks v Cadwalladr* [2023] EWCA Civ 219, [2023] KB 524 [67]-[68].

34. A second important aspect of *Lachaux* is that the Supreme Court affirmed the concurrent decisions of the High Court and Court of Appeal that the rule in *Dingle* applies when assessing whether the serious harm requirement is met. As part of their case on serious harm the appellant newspaper publishers had sought to rely on other publications to the same or similar effect as the libel complained of by Mr Lachaux (see the first instance decision [2015] EWHC 2242 (QB), [2016] QB 402, [69]). The publishers argued that the rule in *Dingle* should not affect the factual enquiry required by s 1(1). At [22], Lord Sumption stated the rule in these terms: "a defendant cannot rely in mitigation of damages on the fact that similar defamatory statements have been published about the same claimant by other persons…" At [24], Lord Sumption rejected the publishers' argument, saying: "Section 1 of the Act is concerned with the threshold

of harm and not with the measure or mitigation of general damage. But both raise a similar question of causation. It would be irrational to apply the *Dingle* rule in one context but not the other ..."

35. The rule in *Dingle* has since been applied in the context of the serious harm requirement in *Banks v Cadwalladr* (see [2023] KB 524 [27], [58]-[60]). In *Mueen-Uddin v Secretary of State for the Home Department* [2024] UKSC 21, [2025] AC 945 the Supreme Court, citing what Lord Sumption had said in *Lachaux,* reaffirmed the continued potency of the rule in *Dingle* as a common law principle.

Mr Fox's claims

36. The tweets complained of by Mr Fox came first in time and it is convenient to look first at the issues relating to his claims. It will be necessary to begin by looking in some detail at the way the parties put their cases on the issue of serious harm.

The rival cases on reputational harm

37. Mr Fox's case, that by calling him a racist the claimants caused or were likely to cause serious harm to his reputation, was set out in paragraph 80 of his Counterclaim. It had several strands. He relied on (1) the inherent gravity of the imputation; (2) the scale or extent of the readership; (3) an inference that, as his tweets had provided no rational basis for an allegation of racism, readers would suppose that the claimants had some extraneous evidence for that allegation; (4) the claimants' failure to take down, correct or apologise for the tweets; (5) an inferential case that in those circumstances these allegations, by individuals with large Twitter followings, "will have stuck"; (6) a factual case, supported by illustrations, that the allegations did in fact "stick", such that "the (false) idea that the Defendant is a racist, and that it is acceptable and justifiable to accuse him of being a racist, has become accepted and mainstream" and Mr Fox had become a hate figure; (7) widespread republication of the claimants' allegations in media reports of the dispute; (8) a contention that the tweets had caused his agent, Sue Latimer, to drop him, and caused serious damage to his prospects of well-remunerated acting work. He initially claimed damages for financial loss but later dropped that part of his case.

38. In support of his case that the allegations had "stuck" as a matter of fact (strand (6) above), Mr Fox relied on four specific events in April 2021 which he attributed to the tweets complained of. A sub-editor called Liz Tray had accused him on Twitter of being a racist; on two occasions faeces had been posted through his door; and he had received a letter offering him guns and grenades from someone styling himself "White Wolf" who "appears to regard the Defendant as someone who wants to take part in a violent race war". Mr Fox also pleaded as follows.

> Although there were instances of people on Twitter calling him racist before the Claimants did so, those were isolated tweets with very little engagement. The Claimants were the first to make these allegations to tens of thousands of people. This has emboldened many more individuals to accuse him publicly of being a racist believing that they are entitled to do so with impunity. The Defendant will rely on all the many occasions that he has been accused of racism since the publication of the words

> complained of and will give disclosure of the same at the appropriate time.

39. The Defence to Counterclaim denied that the publication of any of the tweets complained of had caused serious reputational harm or was likely to do so. It went on to state that "no admissions are made" as to any of the strands of Mr Fox's case that I have identified, "except as set out below". The sub-paragraphs that followed made five main points of relevance. In summary, these were: (1) the expression of an opinion that Mr Fox was a racist was "not of a nature that would cause, or be likely to cause, serious harm" to his reputation; (2) Mr Fox "had been described publicly as a racist before the date of publication" following his Question Time appearance and in response to other things he had said; (3) Mr Fox had "made a number of highly controversial statements about race prior to 4 October 2020 and thereafter" which "tend to attract condemnation and criticism"; (4) it was at best unlikely that any of the four specific events relied on resulted from the claimants' tweets; there were several other plausible explanations; (5) it was for Mr Fox to prove that the claimants' tweets were causative of the end of his relationship with his agent, and his acting career, which was disputed; the claimants suggested that any harm to Mr Fox's acting career had resulted from his own conduct on other occasions and/or his decision to move into politics.

40. No details of "controversial statements about race" were pleaded (point (3) above). In support of their plea that Mr Fox had been "described publicly as a racist" (point (2) above) the claimants did cite 15 specific occasions between February and September 2020 on which identified Twitter users had used that word or similar language to refer to Mr Fox or his views. Mr Fox's pleaded response was that these facts and matters

> ... are legally irrelevant and evidence on such matters is inadmissible as a matter of law. It is not permissible for a defendant in a libel case to rely on publications by other people containing the same or similar defamatory allegations against the claimant in order to mitigate damages, or rebut a case on serious harm: *Dingle v Associated Newspapers Limited* [1964] AC 371; *Wright v McCormack* [2021] EWHC 2671 (QB).

41. The claimants then set out their affirmative defences. Mr Blake and Mr Seymour said that the statutory conditions for the defence of honest opinion were met because, among other things, an honest person could have formed the opinion that Mr Fox was a racist on the basis of the two Sainsbury's tweets, the Sainsbury's BLM statement, and Mr Fox's Sainsbury's tweet (that is, the matters set out at [12]-[13] above). Ms Thorp relied on those same matters in support of her defence that the allegation that Mr Fox was a racist was substantially true. But she went much further. She relied on Mr Fox's *Question Time* appearance in January 2020 and five other things that Mr Fox had said and done between then and 4 October 2020. She also relied on a number of further statements made by Mr Fox on and between 6 December 2020 and 26 September 2023, which were detailed in 26 further sub-paragraphs.

42. In response to Mr Fox's claim for damages the claimants relied on the matters they had pleaded on the issue of serious harm and advanced four further contentions: (a) that Mr Fox's own conduct had provoked the publications complained of; (b) a *Pamplin* argument, that damages should be reduced on account of any facts alleged in support of the defences of truth and honest opinion that were found proved; (c) further and

alternatively, relying on *Burstein*, that the facts relied on to support the truth defence were "directly relevant background context" to the continuing publication of the tweets; (d) in the further alternative, that Mr Fox had a "general reputation as a racist as at the date of publication of their tweets and afterwards". Mr Fox's Reply took issue with all of these matters. He complained that the plea of bad reputation was "legally impermissible" because (among other things) "the claimants are not permitted to rely on other publications under the rule in *Dingle*".

43. The parties' submissions at trial on the issue of reputational harm largely followed the lines set out in their statements of case. The relevant section of the skeleton argument for Mr Fox opened with reference to the gravity of the allegation and the scale of publication. On the latter topic, reliance was placed on a detailed analysis of the evidence conducted by Mr Fox's legal team. This used "impressions" (instances where a tweet is generated on a screen where Twitter is in use) as a proxy for the scale of publication of a tweet and relied on the available Twitter Analytics to identify or estimate the number of impressions. The estimated numbers of impressions for the three tweets complained of were 766,000 for Ms Thorp's, 739,000 for Mr Blake's, and 451,000 for Mr Seymour's. There does not appear to have been any challenge to this analysis at the trial.

44. Mr Fox also maintained reliance on the specific events I have mentioned. Indeed, he placed rather more weight on them, contending that they "left little room for dispute" that his reputation had been seriously harmed. He said the biggest impact had been on his professional life, manifested in the loss of his agent and a significant decline in the quantity and quality of roles and professional appearances offered to him. Mr Fox repeated his objection, based on the rule in *Dingle,* to the claimants' reliance on the 15 third-party tweets. He objected to their inclusion in the trial bundle. The skeleton argument added that *Dingle* also meant that none of the claimants could rely in mitigation of damages on the fact that the other claimants had simultaneously tweeted the same message about Mr Fox. It was submitted that each of the claimants' tweets had made a material causal contribution to a single indivisible injury so that they were all concurrently liable for the entirety of the reputational harm that had occurred.

45. For their part, the claimants maintained their pleaded responses, with one exception. They did not pursue their plea of general bad reputation. The issue was not included in the agreed list of issues, and the claimants called no witness to give evidence of general bad reputation. The claimants did deploy the 15 tweets. On the fourth day of the trial copies were provided to the judge. The tweets were then relied on in cross-examination of Mr Fox. He was presented with the pleaded list, and it was suggested that he had previously had numerous allegations of racism made against him. The claimants expanded on their case about causation. They maintained that "the rule in *Dingle* does not prohibit a defendant from adducing evidence of publication of the same or similar allegations elsewhere as part of the scope of examining causation". They argued that it was legitimate for them to adduce evidence of Mr Fox's own past conduct and the public reaction to it as evidence going to the issue of serious harm. At "the heart of" their case on serious harm was the proposition that "to the extent that" Mr Fox had been harmed in his reputation, it was "[his] own conduct not [the claimants'] comments on it, that caused that harm."

The liability judgment

46. The judge began with an Introduction identifying the parties and the issues. She then set out the Factual Background in three sub-chapters: (i) "the year 2020 in the UK" (ii) "Mr Fox's national profile" and (iii) "the events of October 2020". The second of these sub-chapters contained extensive detail of Mr Fox's appearances on BBC Question Time, the "Delingpod" podcast, ITV's Good Morning Britain on 22 January 2020, some tweets he posted on 23 January 2020, criticism of him by the actor's union Equity, and Mr Fox's response to the Black Lives Matter movement, including an article in *The Spectator* published on 20 June 2020. She said that after this Mr Fox "continued to speak out", that "his public comments continued to attract media attention", and "he continued to divide opinion". She referred to a tweet of 13 August 2020 which used the words "Lewis Hamilton's white half", stating that Mr Fox had explained this as a satirical prod at orthodox thinking on intersectionality but that "it was not universally received in that way."

47. Next, the judge identified the Legal Framework. In this section of her judgment, having referred to s. 1(1) and *Lachaux*, the judge said this:

> 50. … As I, and other judges, have said elsewhere, an inferential case is not an *alternative* to an evidential process; it has to *be* an evidential process.
>
> 51.. …since *Lachaux*, the serious harm test has been given close attention in a series of High Court and Court of Appeal decisions. This jurisprudence was recently summarised fully and clearly by Nicklin J in *Amersi v Leslie* [2023] EWHC 1368 (KB) at [143]-[163], a passage to which I have addressed myself carefully. I do not need to replicate that passage in full here, since there is no real dispute about the applicable law in this case; it turns largely on its facts. I do, however, note two headline points in particular, for present purposes.
>
> 52. First, the jurisprudence has consistently highlighted that section 1(1) is a threshold test, and, in applying it, it is necessary not to lose sight of the basic tort rules of causation (*Amersi* at [157]). The language of causation is prominent in section 1(1). Evidence *contrary* to the imputation of causal responsibility is no less important than evidence tending to favour it (*Miller & Power v Turner* [2023] EWHC 2799 (KB) at [74]). A balanced and fully contextualised approach is needed to the assessment of what *Lachaux* called the *inherent* probabilities arising out of any factual matrix placed before a court.
>
> 53. Second, that factual matrix must itself be clearly established by evidence. Section 1 requires a clear articulation, and an evidential basis, for what difference the publications and imputations complained of made (or were likely in future to make) in real life. Drawing inferences is not a process of speculative guesswork. It is a process whereby a court concludes that the evidence adduced enables a further inference of fact to be drawn (*Amersi* [158]; *Miller & Power* [73]).

The judge made no reference to *Dingle* nor to any of the other rules I have mentioned at [28] above.

48. In the next section of the judgment, entitled Analysis, the judge considered the parties' cases on serious harm. She dealt first with the cases of Mr Blake and Mr Seymour, addressing what she described as "the *Lachaux* factors": (a) the inherent gravity of the allegations (b) the extent of publication (c) the situation of the claimants and (d) the inherent probabilities and the balance of the evidence. Having done so, she concluded that it was "more likely than not that the 'paedophile' tweets have caused, or were likely to cause, serious harm to the respective reputations of Mr Blake and Mr Seymour…". Having examined and rejected Mr Fox's defence of qualified privilege she held that "in these circumstances … Mr Blake's and Mr Seymour's claims must succeed as to liability."

49. The judge turned to Mr Fox's case on serious harm. She began with an assessment of Mr Fox. She described him as "impressively articulate and indeed eloquent" witness, someone who "spoke from the heart, on occasion with disarming candour and self-deprecation" and who "often 'says the wrong things' and makes mistakes". The judge drew from Mr Fox's answers in cross-examination the conclusion that "he does not say what he thinks others want to hear; he gives voice to what he authentically thinks and feels… He appeared to me to have thoroughly and sincerely taken on the role of a conviction politician." She observed that this was relevant to the present case for reasons she would go on to explain.

50. The judge summarised Mr Fox's case, describing it as an "uncompromising" claim that "the three sets of accusations that he was a racist ruined his acting career, in particular." She noted, however that "it is not essential for him to prove any of these particulars, in order to establish that the serious harm test is passed". The judge then examined Mr Fox's case, addressing the same four factors she had considered when dealing with the case against him.

51. Dealing with factor (a), the "gravity of the allegations", the judge agreed (at [114]) that "these were grave allegations to make, in all the circumstances". But she went on to say (at [115]) that "each was, however, an expression of *opinion*". And she took that into account in considering "the inherent potential of the statements complained of to cause serious reputational harm to Mr Fox" ([118]). The judge explained that "we are here in a market-place of ideas, where different perspectives vie for attention, and where a high degree of contestability, not to say subjectivity, is apparent". Mr Fox had himself made free use of the term "racist", including his denunciation of Sainsbury's, in circumstances where " a substantial body of opinion at the time thought" that Sainsbury's safe spaces policy "was positively anti-racist". So these particular allegations of being a racist were "opinions offered in the context of a lively contest of ideas which Mr Fox had himself stimulated, some might think provocatively so, about what constitutes being racist." The accusations of racism "might well be considered by publishees to say as much about the makers and their world view as they did about Mr Fox and his…".

52. Addressing factor (b), the "extent of publication", the judge said (at [119]) that this "must be regarded as a mass-publication case"; it was probable that the claimants' accusations "reached as wide an audience as Mr Fox's about them". But she noted (at [120]) that others had called Mr Fox a racist because of his call to boycott Sainsbury's.

Further, Mr Fox's paedophile tweets had republished the claimants' allegations. That was "apparently what brought their *particular* accusations to national attention" and "to that extent Mr Fox cannot complain of serious harm caused thereby". She said she would consider this further below.

53. Turning to factor (c), the "situation of the counterclaimant", the judge said (at [121]) that this brought up "some important issues of causation". She observed, again, that Mr Fox did not have to prove specific consequences of a publication to establish serious harm: "the serious harm of defamation lies in the changed minds of publishees and not anything they may do as a result". But she said that he had put the impact on his career and his agent forward "as powerful evidence of that change of reputation". At [122]-[140] the judge examined the evidence and arguments as to the causation of Ms Latimer's decision, concluding that Mr Fox had not established on the balance of probabilities that it was caused by the tweets of which he complained.

(1) The judge said, at [132], that there were alternative explanations of Ms Latimer's decision, which she then identified. At [138] she said that even if the decision was "precipitated by the public prominence of allegations of being a racist in connection with the Sainsbury's affair" it was for Mr Fox to show "that it was reading the three tweets complained of, or any of them, that produced that result – and not, for example, the fact that Mr Fox had singled them out to call their authors paedophiles in retaliation. ...." At [139] the judge said, "I do not have a sufficient evidential basis for considering the tweets sued on more probably than not causative of Ms Latimer's decision ... It is not inherently more probable than some or all of the many alternatives."

(2) The judge rejected Mr Fox's case that Ms Latimer had been influenced by the fact that Ms Thorp, a fellow actor, had been a source of the allegation of racism. At [139] the judge said that there was "no persuasive evidence whatever that [Ms Thorp's] intervention had any particular impact just because of her acting past" which she held to be "inherently highly improbable". At [140], the judge referred to Mr Fox's own evidence that "showbusiness was generally hostile" to the sort of views he had been expressing. The judge said she had been given "no reason to think Ms Thorp's tweet changed minds in the acting world at all: it had on his own account long made up its own mind."

54. The judge then addressed factor (d), the "inherent probabilities and the balance of the evidence". She began at [141] by observing that, "standing back from Ms Latimer's motivations …. and considering Mr Fox's reputation and career more generally, the issues of causation only intensify". She proceeded over the following sixteen paragraphs to consider a series of points before concluding at [158] that Mr Fox had "not discharged his burden of establishing that the three tweets of which he complains more probably than not caused, or were likely to cause, serious harm to his reputation."

55. The points which led the judge to that conclusion included the following. *Question Time* had "a major impact on Mr Fox's career" before the tweets complained of; Mr Fox had spoken at that time of being "cancelled" as an actor; he had turned down acting opportunities; the pandemic had a devastating impact on the performing arts; at the time Mr Fox had been giving some attention to his music career; and the "Sainsbury's affair" coincided with the launch of Reclaim and "Mr Fox's stepping on to the national political stage". Further, said the judge, Mr Fox had accepted that at the time of "the

post *Question Time* furore … many took the view that he had exhibited racism." At [145] she said that "a substantial body of people" had responded to Mr Fox's Question Time interventions "by calling him a racist". In the same paragraph she said that between then and the tweets complained of he had been "challenged as a racist on Twitter in response to at least fifteen intervening episodes". This was clearly a reference to the 15 tweets pleaded by the claimants. The judge went on to say that on 5 October 2020 Mr Fox had written of being "repeatedly, continuously" smeared as a racist. On 13 October 2020, he had told Nick Ferrari he had had "several months" of being called a racist.

56. At [146] the judge directed herself that in considering the probable causative impact of the tweets complained of she had to take into account that

> …there are very many *alternative* explanations or sources of causative negative impact on Mr Fox's reputation in general in the matter of racism, and on his career in particular – his own stimulation of controversy, the hostile views of the profession, the pandemic, his diversion into a political career, and the sheer number of *other people* who had joined in the debate he had publicly stimulated and taken public exception to his pronouncements.

57. At [147] the judge added that she also had to take into account "the potentially causative role of Mr Fox's own contributions to the Sainsbury's exchanges". In a case of this kind a distinction had to be made between "the causative role of the calling out" (that is, the tweets complained of) and "the causative role of that which is called out" (that is, Mr Fox's Sainsbury's tweet). Whilst the calling out might "add to the damage" it was incumbent on the libel claimant in such a case to "provide a sound basis for understanding *how*, and that any additional harm merits the description of being serious." The judge concluded (at [148]-[150]) that the odds of the claimants' published opinions being "*themselves* causative of the current state of Mr Fox's acting career, or any other serious reputational harm" were "extremely long". The other factors she had mentioned were "agents of substantial causative power on his acting career which were operative at the time of the tweets sued on" and were likely to have had "a far greater impact".

58. At [151]-[158] the judge considered the "longer view". Accepting that Mr Fox had received some "very unpleasant treatment" between the date of publication and trial, and effectively stopped work as an actor, she found that there were other potentially causative factors at play. There was insufficient evidence that it was "to any material degree" the tweets sued on rather than these other factors, including Mr Fox's own "chosen and sustained presentation as someone who sets out consciously to challenge public opinion on racism in the UK" that "materially account for his current profile and reputation in relation to racism among supporters and critics alike". At [156]-[157], in passages of some importance to the issues on this appeal, the judge said this:

> 156. There are indeed choices to be made about the exercise of free speech, and there are consequences …
>
> 157. Choices about the exercise of your free public speech have reputational consequences in real life, because they *cause* other

> people to form or change an opinion about you. … Mr Fox speaks from the heart …. He knows that will have an effect on what people think of him…. Any passionate and campaigning theorist, commentator and activist challenging contemporary assumptions about racism will inevitably garner equally passionate critics. If he invokes defamation law to challenge their entitlement to express their own opinions on what he says or how he says it, he has to be ready in the first place to show, by reference to evidence and inherent probability, how his reputation - what people think of him - is seriously harmfully impacted in real life by *their* publications, as distinct from *his*, or indeed anyone else, or anything else.

The appeal

59. Mr Fox advanced two main grounds of appeal. The first was that the judge erred in law in her approach to his case on serious harm. It was said that the judge (a) was wrong to treat the tweets complained of as inherently less likely to cause serious harm to his reputation because they were expressions of opinion, (b) failed to apply the law on proving bad reputation and, (c) in particular, failed to apply the rule in *Dingle.* The second ground of appeal was that it was not open to the judge to find that the claimants' tweets were *not* causative of serious harm to Mr Fox's reputation, "with particular regard" to the two specific heads of consequential harm that were relied on.

60. Permission to pursue these and other grounds of appeal was refused by the judge. As to the first ground she said that Mr Fox's argument on the issue of fact or opinion relied on a confused analysis; the rule in *Dingle* "was not cited or argued before me in relation to either liability or damages" and was "a frequent source of error in submissions" of which Mr Fox's proposed grounds were an illustration; and her judgment did not involve a finding of bad reputation but was an "orthodox evidential exercise in the isolation of the reputation harm caused by the publications complained of …". The second ground of appeal was said to involve a "sweeping assertion of perversity" which disregarded "fatal defects in the substructure of causation apparent in the counterclaims". I granted Mr Fox's renewed application in respect of these two grounds.

61. Patrick Green KC, leading Alexandra Marzec and Greg Callus, submitted in support of ground 1(a) that the judge's conclusion that the claimants' tweets were less harmful on account of being expressions of opinion was contrary to authority and unsustainable on the facts. In this connection he referred us to the discussion in *Morgan v Associated Newspapers Ltd* [2018] EWHC 1725 (QB), [2018] EMLR 25 at [17]-[31] (Nicklin J). In support of ground 1(b), it was submitted that the judge had wrongly relied on specific incidents to conclude that Mr Fox had acquired a bad reputation as a racist, and implicitly that he deserved such a reputation, so that his claim failed on causation. The claimants had abandoned their plea that Mr Fox had a general bad reputation, and in any event specific incidents are not admissible for this purpose. Reliance on such incidents was wrong for other reasons too. The incidents cited were taken from Ms Thorp's defence of truth. That defence had not been adopted by Mr Blake or Mr Seymour. It had not been adjudicated upon. It included many post-publication incidents which could not logically go to show prior bad reputation. And even if the evidence as to truth had shown that Mr Fox *deserved* a bad reputation this court's decision in *Wright*

v McCormack showed that would not logically bear on the threshold factual issue of whether the tweets caused serious harm to his actual reputation. On ground 1(c), the submission was that it was clear from the judgment, and in particular paragraphs [145] and [148], that the judge had treated previous third-party publications, including the 15 contested tweets, as evidence that Mr Fox had a general bad reputation as a racist, in violation of the rule in *Dingle.*

62. As to ground 2, it was submitted that the judge's decisions as to the lack of serious harm were vitiated by a series of errors. She had approached the issues speculatively, by "inventing" alternative reasons for the decision of Mr Fox's agent to drop him; she had asked herself whether the tweets complained of were more probably causative of that decision than these other alternatives, when she should have applied the principle of material contribution; and her findings were contrary to the evidence before the court.

63. The claimants' case was presented by Adrienne Page KC, leading Godwin Busuttil and Beth Grossman. Their overall submission was that the judge had made no error of law or principle let alone one that was critical to the outcome and that the judge's factual conclusions were ones that were reasonably open to her on the evidence. We were reminded of the caution an appellate court must show when confronted with challenges to factual findings or evaluative decisions reached by a court of first instance, or complaints of insufficient evidence or reasoning. We were referred to well-known authorities such as *Henderson v Foxworth* [2014] UKSC 41, [2014] 1 WLR 2600; *Fage UK Ltd v Chobani Ltd* [2014] EWCA Civ 4, [2014] FSR 29 [114]-117]; *Re Sprintroom Ltd* [2019] EWCA Civ 932, [2019] BCC 1031; and *Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48 [2].

64. In relation to ground 1(a), it was submitted on behalf of the claimants that the judge had not applied any rule that an expression of opinion is less reputationally harmful than a statement of fact. She had properly applied her mind to the question of whether these particular expressions, in their context, were seriously harmful. On grounds 1(b) and (c) the claimants identified the judge's "key findings" as follows: "that insofar as Mr Fox possessed a particular profile and reputation in relation to racism… in the days, weeks and months after ... publication of the [claimants'] tweets" this was amenable to the range of possible alternative causal explanations identified by the judge. There was nothing inherently objectionable about the judge taking account of the possible causative factors she mentioned. She was entitled to find that Mr Fox had failed to establish that the tweets were causative. Mr Fox's team had not applied to strike out the pleaded reference to the 15 third-party tweets, nor objected to his being cross-examined about them, nor had the written closing submissions on his behalf raised objection. In any event the judge had "made no finding that Mr Fox had … at any time, acquired a reputation as a racist" as a matter of fact. The rule in *Dingle* was therefore irrelevant.

65. As to ground 2, Mr Fox's criticism of the judge's approach to causation was said to be unfair to the point of being abusive. The argument was that the case which Mr Fox ran at trial was not that the tweets had made a "material contribution" to the career damage and other harm complained of; he focused "conventionally" on the supposed causal relationship between the tweets and the specific harm alleged "to the exclusion of any other possible cause". The judge could not properly be criticised for evaluating his case against that standard. In any event, the judge had adopted the material contribution test when dealing with general reputational harm. So far as the two specific matters are

concerned, if there was a legal error it was immaterial: it was clear that the judge would have reached the same conclusion whatever test she applied.

66. This is no more than a summary of the main submissions on both sides, which were skilfully and attractively presented.

Assessment

67. I am acutely aware of the need for this court to respect the function of the trial judge, and show due restraint. Having reflected on the arguments and revisited the written materials presented to us I have however concluded that the judge's approach was in some respects wrong in law in ways that are material to the outcome.

68. I would reject ground of appeal 1(a). It was open to the judge to conclude that the reputational impact of the claimants' tweets was mitigated to some extent by the fact that they were manifestly expressions of opinion. In my judgment, however, Mr Fox's appeal should be allowed on grounds 1(b) and (c). The judge inferred from third-party publications and specific incidents that Mr Fox had acquired a bad reputation for being a racist. That was contrary to long-established common law principles, which apply equally when assessing serious harm. In addition it was in part unsound for procedural and evidential reasons. I would also allow the appeal on ground 2. In my judgment the evidence compelled a finding that each of the claimants' tweets caused serious harm to Mr Fox's general reputation. The judge's findings that the tweets did not cause harm to his agency relationship or career are vitiated by legal error: the judge applied, in material parts, the wrong legal test on causation. I would therefore set aside the judge's order dismissing Mr Fox's claim and remit the claim to the High Court for retrial on the remaining issues. My detailed reasons follow.

Ground 1(a): Opinion and fact

69. The judge's reasoning on this issue is elaborate and sophisticated. Not all of it is entirely easy to follow at first sight. I confess that the relevance of some of the points made (such as Mr Fox's standpoint on the right to express views on what is racist) continues to elude me. But at the core of the relevant passages are, I think, two main points.

70. The first is that an expression of opinion may, depending on the context, have a less harmful impact on a person's reputation than a simple statement of fact to the same effect. As a general point of principle I do not think this is open to sensible dispute. True, as Nicklin J pointed out in *Morgan* (above) at [18], an expression of opinion can cause reputational harm, or there would be no need for the defence of honest opinion. That is axiomatic. But it does not follow that comments are necessarily as reputationally damaging as assertions of fact. This is a point implicit in the reasoning of the Court of Appeal in *Singh v British Chiropractic Association* [2010] EWCA Civ 350, [2011] 1 WLR 133, in particular at [32]. In *Sube v News Group Newspapers Ltd* [2018] EWHC 1234 (QB) I reflected further on the issue, concluding that on the particular facts of that case the expressions of opinion complained of did not have a tendency to cause serious reputational harm. In *Morgan* (above) Nicklin J reviewed these cases and at [31] extracted some general principles as to the court's approach to serious harm in opinion cases, including these:

> (iii) the significance of an imputation and its capacity (or tendency) to cause serious harm to reputation may be affected by its context and presentation …;
>
> (iv) the fact that the opinion is clearly presented to the reader as such may well mitigate its defamatory impact;
>
> (v) if the source of the criticism is identified, does s/he appear authoritative? Is his/her view likely to carry weight and be accepted by the reader? Or is the critic someone whose view the reader is likely to discount in favour of making his/her own assessment?

The language here, as in *Sube*, reflects the interpretation of s 1(1) adopted by the Court of Appeal in *Lachaux,* which was authoritative at the time. Point (iii) should now be read as referring to the likelihood that the imputation will cause serious harm rather than its tendency to do so. With that qualification I would endorse this summary.

71. The second main point implicit in the judge's reasoning is that the present case is one of those in which the nature of the statements, their context, and their sources did mitigate the harmful impact of what was said. Her thinking was, as I read it, that Mr Fox's Sainsbury's tweet was part of the context in which the claimants' tweets were published such that many readers will have seen their use of the damaging term "racist" as (a) an expression of opinion by a celebrity using social media to take a position on a topic of current interest, prompted if not provoked by some outspoken remarks of another public figure in the form of Mr Fox, as opposed to, for instance, (b) an authoritative and considered finding of fact arrived at by an academic or other professional on the basis of months of diligent and rigorous research. This analysis explains, in my view, why the judge deemed it relevant, in this connection, to mention Mr Fox's political stance, that he had stimulated a debate about racism, and that "some might think" he had done so provocatively. It also explains the judge's reference to what the tweets might tell readers about the claimants.

72. Some criticisms can be made of the judge's reasoning. Among them is that, unlike Mr Blake and Mr Seymour, Ms Thorp did not indicate to her readers the basis for the opinion she expressed. Looked at in the round, however, my judgement is that the judge's approach was in conformity with principle and her assessment was one she was entitled to make. This aspect of the judgment reveals no error that satisfies the *Re Sprintroom* test. I do not think the same can be said of the judge's approach to the reputational impact of third-party publications and Mr Fox's own conduct. It shall take these points together, in that order.

Grounds 1(b) and (c): proof of bad reputation, *Dingle* and *Plato Films*

73. The relevant passages in the judgment are in the section on the "inherent probabilities and the balance of the evidence" (the judge's factor (d)). I have summarised this at [54]-[58] above. The key features for present purposes are these. Having disposed of the issue of whether Ms Latimer dropped Mr Fox because of the tweets complained of, the judge went on to deal with the two other limbs of his case on serious harm: "Mr Fox's career and reputation more generally". She addressed those two limbs of the case together, compendiously, without drawing any clear distinction between them. The judge began her analysis of this part of the case by identifying it as one involving "issues

of causation". It was in that context that she made a series of points about Mr Fox's career path, "views" that other people had taken about him, his admissions about such views, things that other people had said about him, and things that he had said. There was nothing wrong in principle with reliance on admissions by Mr Fox. It is well-established that these are admissible. But the judge's approach was flawed in other respects.

74. It was a mistake to conflate these two strands of Mr Fox's case. His contention that the claimants' tweets had destroyed or damaged his career had a connection with his claim that he had suffered general reputational harm; it was relied on to illustrate and support that claim. But it was a separate, distinct and narrower strand of his case, and it raised different issues which needed to be analysed separately.

(1) First, it was an allegation of harm to Mr Fox's reputation among a particular segment of the total readership: those in the entertainment business, and specifically those who would or might otherwise have engaged Mr Fox professionally. This self-evidently must have been a relatively limited proportion of the total. For that reason, the outcome of this strand of the claim would by no means dictate the fate of the wider claim.

(2) Secondly, to support this strand of his case, Mr Fox relied on specific events, that is, being shunned or avoided by people in the category I have mentioned. To that extent the claimants were entitled to respond as they did, by raising the question of causation and maintaining that any downturn in Mr Fox's career flowed from other causes, such as damaging third-party publications and Mr Fox's own controversial behaviour. It was legitimate for the judge to take account of such factors when considering whether Mr Fox had proved that the tweets complained of damaged his career. But the same is not true when it comes to the claim for general reputational harm. Some of the factors mentioned by the judge, such as the Covid pandemic and Mr Fox's music career, have no bearing on that claim. Likewise, admissions he made about what people in the entertainment world thought of his politics. Other factors on which the judge relied engaged the rules I have mentioned at [28] above so that they could provide no proper answer to the assertion of general reputational harm.

75. I shall deal with the *Dingle* issue first. There was evidence before the judge that other people had referred to Mr Fox as a racist before the tweets complained of. It was, indeed, his own case that some people had done this. He pleaded it, and he admitted it in his evidence at trial. But it was emphatically not Mr Fox's case that he had a general reputation as a racist before that allegation was made against him by the claimants on 4 October 2020. On the contrary, Mr Fox maintained that he acquired a general bad reputation of that kind after and as a result of the claimants' tweets. In their defence to his claims, the claimants partly admitted Mr Fox's case that there had been some third-party allegations against him before the tweets. It was in that context that they identified the 15 tweets. That was, in substance, all that was put to Mr Fox in cross-examination. Mr Fox complained at the time that this part of the claimants' case contravened the rule in *Dingle*. I do not think it did. The claimants did not plead the 15 tweets as evidence of a pre-publication general bad reputation as a racist, nor was that the way they put the case at trial. That would clearly have contravened the rule in *Dingle*. The claimants did plead that Mr Fox had such a general bad reputation. But they did that separately and without reference to the 15 tweets or any other specifics. Presumably, it was at that time

the claimants' intention to prove bad reputation in the manner permitted by the authorities: by calling witnesses who could say from their own knowledge that Mr Fox had a settled general reputation of that kind. But they served no statement from any such witness. And by the time of trial they had abandoned that allegation. No issue of existing bad reputation was before the judge for adjudication.

76. The judge's reasoning assumes that a distinction is to be drawn between reliance on third-party publications as evidence of an existing bad reputation and reliance on the same material as going to the issue of causation of general reputational harm. This judge has made similar observations in other first-instance decisions: see for instance *Sivananthan v Vasikaran* [2022] EWHC 2938 (KB), [2023] EMLR 7. In *Peros* (above) Applegarth J reviewed the Australian and English authorities, including *Sivananthan* and the first instance judgment in this case, and concluded that this distinction was legitimate and consistent with *Dingle*. He said (at [245]) that there was no reason in principle why a defendant contesting an allegation of serious harm should not be able to tender third-party publications "and submit that in the circumstances they affected the reputation of the claimant among readers, including readers of the subject publication". Applegarth J recognised that this was a subtle distinction but considered it a valid one. He observed (at [246]) that it is "no different in principle from an injured worker, who claims that his bad back was caused by a certain incident, being asked about other incidents that may have caused that injury, and the defendant calling evidence about those other incidents."

77. I think this is a fair description of how Collins Rice J approached the present case. But I think it is wrong. Mr Fox sought to show that on and after 4 October 2020 he had a general bad reputation as a racist which was caused by the tweets complained of. One strand of his case relied on specific events to illustrate the reputational harm alleged. To that extent the analogy identified by Applegarth J is sound and reliance on third-party publications is unobjectionable. But Mr Fox also, separately, invited the court to infer that the widespread publication of a seriously damaging allegation caused serious harm to his reputation generally. In this context, the analogy with a claim for personal injury is not apt. In evidential terms, an injured reputation is not like a broken leg. It consists of the esteem in which a person is held by others. As I commented in *Wright v McCormack* (CA) at [50]-[52], that "is not so easily observed or demonstrated" as a physical condition; but the law presumes that claimant's reputation before publication was good; it is rare that the claimant can adduce affirmative evidence on the issue of reputational harm; and "the assessment of harm is often a matter of inference from …. the gravity of the imputation and the nature and extent of publication …".

78. When it came to this part of the case the first step for the judge, logically, was to assess whether the publication of the offending statements had probably caused some reputational harm that was serious. This does not have to be a complex exercise. As the judge observed at [64], when addressing the claimants' case on serious harm, "this is a threshold test ... not an exercise in definitively quantifying harm caused". I would agree with the way the claimants put it in their trial skeleton argument, when laying out their own case on serious harm: "In any case as to mass publication, there is a likely prospect that some individuals who read the publication will have thought less of the claimant in consequence, whereas others will have been indifferent or otherwise as to the publication. Serious harm is not a 'numbers game' … reputational harm in the eyes of

some of the readership is sufficient - the issue is one of threshold liability: thereafter the extent of harm becomes relevant in terms of damage."

79. The judge took a different approach. She made no finding as to the state of Mr Fox's post-publication reputation generally. Instead she asked herself whether, *if* Mr Fox had a reputation for being a racist, that reputation had been shown to result from the tweets of which he complained. She then identified and considered a range of other factors that might have caused or contributed to reputational harm of that kind and concluded that Mr Fox had not proved that any harm was *not* caused by these other factors (or not to a degree that was serious). Among the factors the judge relied on were the inferred reputational consequences of previous third-party publications to the same effect as the alleged libels. I find this an unsatisfactory reasoning process. And I am unable to see how it can be reconciled with the authorities. The proposition that s 1 of the 2013 Act authorises reliance on third-party publications to assess the causation of general reputational harm, assuming some was caused, seems to me to be no more than a recast version of the argument rejected at all levels in *Lachaux.*

80. I do not believe the process undertaken by the judge can be justified as an exercise in "isolating" the damage caused by the alleged libels. That term is to be found in various passages in *Dingle,* most famously in these words of Lord Denning:

> If the judge *isolated* the damage for which the 'Daily Mail' were responsible from the damage for which they were not responsible, he would have been quite right, see *Harrison v Pearce* [(1858) 1 F & F 567]. But it is said that he did not *isolate* the damage. He reduced the damages because the plaintiff's reputation had already been *tarnished* by reason of the publication of the report of the select committee and of the privileged extracts of it in the 'Daily Mail' and other newspapers. I think he did do this and I think he was wrong in doing so.

Over the years the notion of isolation has proved somewhat elusive. The speeches in *Dingle* indicate that it denotes a process of ensuring that a claimant is not compensated for reputational harm caused by others. For that purpose it may be legitimate to have regard to the fact that there were other publications to the same effect. The more recent cases I have mentioned at [30] above treat "isolation" as including reliance on third-party publications to rebut a claim that specific consequences have flowed from the publication complained of. That is surely correct. There may be more to isolation than this. But one thing is clear: the House of Lords were not using the concept of "isolation" to embrace a process of identifying earlier third-party publications as candidate causes of reputational harm, inferring that they did indeed operate in that way, and moving from that finding to the conclusion that the claimant had an existing bad reputation so that the publication complained of was less reputationally harmful. That is not something covered by the notion of "isolation". It is, in my opinion, a line of reasoning unequivocally prohibited by *Dingle, Lachaux* and *Mueen-Uddin.* Yet it is one that the judge adopted here. I can see nothing in the claimants' suggestion that Mr Fox somehow waived his right to rely on this rule.

81. I find the judge's approach to the evidence of the 15 tweets problematic, quite apart from *Dingle*. In a case of limited publication, or one where the claimant points to some

specific event as probative of reputational harm, evidence of this kind might be important. In such a case statements by the publishees can go to show that little or no harm was done: cf *Amersi v Leslie* (above) at [197]-[219]. But that is not how the judge put the matter here. She was right not to do so. Reasoning of that kind cannot work in a case like this, where a few tweets are relied on in the context of a complaint of publication to hundreds of thousands of individuals. The inescapable conclusion is that the judge treated the 15 tweets as a basis for inferring that before October 2020 Mr Fox had acquired a bad reputation among those to whom the claimants' tweets were published. That, however, presupposes at a minimum that the 15 tweets or some of them were widely published and read by people who later read the tweets complained of. Nothing was pleaded on that score, and the judgment contains no analysis of the scale of publication of the 15 tweets or the extent to which their readership overlapped with that of the tweets complained of. The same goes for the judge's broader references to what people had made of Mr Fox's *Question Time* appearance.

82. The judge's reliance on things previously said by Mr Fox himself raises different issues. The statements referred to by the judge were relied on by the defendants as previous (racist) misconduct of Mr Fox. As such, they were subject to the exclusionary rules mentioned at paragraphs [28(1) and (4)] above. They were properly in evidence at the trial nonetheless because they were (a) matters relied on by Ms Thorp in support of her defence of truth and (b) matters which all three defendants said should operate in mitigation of damages pursuant to *Burstein* or *Pamplin*. But the judge never got to the issue of truth, or the question of damages. She considered these matters only in connection with the issue of serious harm. In doing so, the judge did not rely on the *Burstein* principle (and it has not been suggested that she could or should have done so on the facts). Nor did she refer to or rely on *Pamplin* (and she would have been wrong to do that, for the reasons explained in *Wright v McCormack* (CA)).

83. Instead, the judge took an approach similar to the one she followed in respect of third-party publications. In substance, she accepted the argument for the claimants. Boiled down to its essence, that argument was that Mr Fox's case on serious harm should be rejected because he had made some statements that were controversial; and even if these were not instances of racist behaviour, as alleged by Ms Thorp, a lot of people will have thought they were, and it is this that will have caused any reputational harm. This summary may be crude, but I think it is fair. In my judgement this approach is not only unattractive but wrong in principle.

84. There are several difficulties with it. The first is that it adopts the same unsatisfactory approach of assuming or hypothesising harm as a prelude to examining causation. The second problem is that the submission fails to observe the well-established distinction between the approach to allegations of general harm and specific instances. It is, as I have said, clear law that a defendant may point to alternative factors as explaining specific harm or a specific event which the claimant says was caused by the alleged libel. It is however impermissible to rely on specific acts of the claimant to show that he already had a general bad reputation at the time the alleged libel was published. This is not something prohibited by the rule in *Dingle*, which is about other publications to the same effect as the alleged libel. The claimants were right about that. But the approach cannot stand with the earlier decision of the House of Lords in *Plato Films Ltd v Speidel* (above).

85. The plaintiff in that case was the former Joint Allied Commander, Europe. He sued for libel in respect of some specific accusations of war crimes. The issue before the Lords was whether the defendants could plead in mitigation of damages (A) that the plaintiff had a general bad reputation for having committed those crimes and/or (B) that he had committed other specific wrongs of a similar kind. Affirming the decision of the Court of Appeal on these points the House held that plea (A) was permissible, but that only general evidence of reputation could be given to support it; plea (B) was impermissible, as evidence of specific acts may not be called to prove that the plaintiff is of bad character or disposition. The House considered these points to have been established by *Scott v Sampson* (1882, above). I do not think it was the claimants' case on serious harm that Mr Fox had a "bad character" as a racist or that the judge made a finding to that effect. The issue they addressed was his reputation. But in my opinion the claimants' argument and the judge's decision on that issue were contrary to the reasoning of the majority in *Plato* in respect of plea (A). Lord Radcliffe thought that the "general evidence" of bad reputation which a defendant could call might include specific instances, provided they were sufficiently notorious. But he was alone in taking that view. The established law was summarised by Lord Denning at p.1140, having reviewed the authorities: "When general evidence of bad character is given, the witness cannot in chief give particular instances".

86. This rule has stood for well over a century. Its validity has not been challenged on this appeal. Nor has it been suggested that it is inapplicable when considering the issue of serious harm. I think it must apply. I see nothing in the language of s 1 to cast doubt on that. Nor am I aware of anything in the legislative history that might do so. And the point Lord Sumption made in *Lachaux* applies equally here: it would be irrational to apply such a rule in the context of damages but ignore it when addressing the related issue of serious harm. Yet it was not addressed in the judgment. It does not appear to have been confronted by the claimants at the trial.

87. I think there is an additional problem here. The judge's discussion of the causative role of "that which is called out" ([57] above) involved an implicit finding that Mr Fox's Sainsbury's tweet led readers other than the claimants to think he was a racist. It was however a central part of Mr Fox's reply to the honest opinion defence that this was a reasoning process that no honest person could follow, and the judge did not address that issue. I reach no conclusion on this specific point, on which we did not hear argument. The other flaws in the judge's reasoning are enough to vitiate her conclusion that Mr Fox's case on serious harm should be rejected.

Ground 2: a finding of serious harm was inevitable

88. In my opinion, the only conclusion reasonably available to the judge was that the publication of each of the claimants' tweets did cause serious harm to Mr Fox's reputation generally.

89. I do not think we are concerned here with a single indivisible head of injury, as suggested on behalf of Mr Fox. Each claimant published separately from each of the others. Each had their own group of readers. It may be that there was a degree of overlap between the groups, but the judge made no finding that there was. I have not detected that there was any evidence on that issue. In these circumstances, each claimant is responsible for the harm caused by the publication of their tweet to the readers of that tweet, but none can be held responsible for any harm caused by another's publication

of a different tweet to other readers. Put another way, each claimant is entitled to have the harm caused by their tweet assessed in "isolation".

90. That said, each claimant was on the judge's findings responsible for the "mass publication" of the allegation that Mr Fox is a racist. That allegation had a defamatory tendency. The judge held it was a serious allegation, though its impact was reduced to some degree by its status as an expression of opinion which Mr Fox had to some extent provoked. Mr Fox was presumed to have had a good reputation at the time of publication. He had made some admissions against interest about his pre-publication reputation, but these were plainly not admissions of a settled general bad reputation as a racist. The claimants did not pursue their pleaded allegation that Mr Fox already had a general bad reputation as a racist and there was no basis for a finding that he did. Applying the approach identified by the claimants ([78] above) these considerations provide compelling support for an inference that the publication of each tweet harmed Mr Fox's reputation to an extent that is serious.

91. The remaining mitigating factor identified by the judge is the contribution which Mr Fox's replies – the paedophile tweets - made to the circulation of the claimants' defamatory statements about him. I do not see how this can materially undermine Mr Fox's case on this issue.

(1) I am not convinced, first of all, that the judge was right to discount these republications when assessing serious harm. Mr Fox's aim in sending these replies was to reach those who had already seen the claimants' accusation that he was a racist and to undermine or mitigate its effect on readers' attitudes to him. The judge was in no position to find that this, in itself, was an illegitimate or unreasonable thing to do. She had reached no conclusion on whether the allegation of being a racist was true. If it is not, then Mr Fox's response to Ms Thorp may have been a legitimate reply to an unjust attack; and it may also be arguable that he was entitled to reply to the other claimants' tweets, albeit not in the terms he did. The agreed facts about the way Twitter worked at the time meant that republication of the claimants' tweets was an inescapable part of the reply process.

(2) In any event, on the same agreed facts, Mr Fox's reply to each claimant will have appeared in the timelines of that claimant's followers and in the timelines of followers of Mr Fox. So the most that can be said is that Mr Fox's tweets repeated the allegation of racism to some and brought it to the attention of others for the first time. The scale of the additional publication may have been substantial. But it remains the position that it was the claimants who first made the allegation, and that each of them communicated it to a huge readership of their own followers.

92. For these reasons, I consider that the serious harm requirement was plainly satisfied in each case. It follows that the appeal should be allowed on ground 2. The case should be remitted for re-trial on the issues of honest opinion, truth and, if it arises, damages. I shall, however, address Mr Fox's challenge to the judge's conclusions in respect of his claim that the tweets were causative of Ms Latimer's decision to end her agency relationship with him and the effective end of his acting career.

93. Those are two specific harmful events that were admitted or proved by direct evidence to have taken place after 4 October 2020. The issue in each respect was causation. The judge considered Mr Fox's case that the claimants' tweets caused each of these heads

of harm and addressed a range of possible alternative explanations. After careful examination of the evidence she reached the conclusions I have quoted above and rejected Mr Fox's case. I have looked closely at the language she used when explaining those conclusions. It is fair to say that her terminology was variable and inconsistent. At some points she considered whether the tweets complained of were "causative" of or had made a "material contribution" to the harm complained of. In these passages she was citing the appropriate test. But elsewhere she used different language, asking herself whether the claimants' allegations were "themselves" causative of harm, or whether the harm was caused by those allegations "as distinct from" or "rather than" some other factor (such as other people's allegations of racism, Mr Fox's "chosen and sustained presentation" of himself as someone challenging public opinion on the issue, or other aspects of his own conduct). Some of this language suggests a test of whether the claimants' tweets were the dominant cause of the harm in question. Some of it supports the interpretation adopted by the claimants: the judge was asking herself whether Mr Fox had shown that the claimants' tweets were the sole and exclusive cause of the harm.

94. I have reminded myself that we should focus on the substance of a judgment and should not be derailed by purely formal or semantic criticisms. But I am satisfied this is a matter of substance not form. The judge's conclusions on causation are flawed because they did not turn, as they should have done, on whether the offending statements made a material contribution to the specific heads of harm under consideration. That was an error of law.

95. I am not persuaded by the claimants' objection that Mr Fox was not entitled to take this point on this appeal because he did not raise it at trial. The proposition of law is well-established. It was relied on in Mr Fox's Reply which asserted that each tweet complained of was "a significant causative factor" in the harm alleged. It was clearly identified in Mr Fox's trial skeleton argument as the test for identifying the reputational harm caused by the claimants' tweets. The liability judgment stated (at [57]) that "the basic tort rules of causation" applied. And the claimants' own trial skeleton argument asserted that "the court must consider … whether the publication materially contributed to harm". In these circumstances I do not consider it is unfair to the claimants for us to consider and act on this ground of appeal.

96. I am not persuaded, either, that on a proper application of the law to the facts Mr Fox's case on these points was bound to fail, as argued by the claimants. Nor am I convinced that it was bound to succeed, as Mr Fox contends. The error was plainly material. I would therefore uphold ground 2 for these further reasons and remit these issues for fresh consideration at the re-trial.

The claims of Mr Blake and Mr Seymour

The liability judgment

97. The judge reached the following conclusions on the first three "*Lachaux* factors".

    (a) The allegation was "intrinsically ... exceptionally grave and cruel". Mr Fox's tweets had been held to mean that the claimants had or were likely to have engaged in sexual acts involving children, such acts amounting to serious crimes. It was hard to think of a more grave allegation. As Bean J observed in *Cooke v MGN Ltd* [2015]

1 WLR 895 [43], "being ... a paedophile" is the sort of allegation where "the likelihood of serious harm is plain ..."

(b) This was a mass publication case. Mr Fox had a very large Twitter following of something like a quarter of a million. The allegation had also been "picked up and discussed" in the national print/online and broadcast media and widely discussed on social media. Although the tweets had been deleted within the day it was improbable in the circumstances that this did much to lessen their reach or impact. The claimants had retweeted Mr Fox's accusation and "cannot complain of reputational harm caused by their own republication of the material they complain of". But the evidence showed that independently of that, the accusations had been disseminated and become a national news story in their own right.

(c) The situation of these two claimants made them particularly vulnerable to an accusation of this kind for three reasons. First, both were gay men with a public profile as such. The "persistent homophobic trope of equivalence, or at least connection, between being a gay man and being a likely paedophile" was "the petrol-sodden reputational rag onto which Mr Fox's incendiary tweets landed." Second, both had worked with children and had roles which depended on trust. Third, each claimant shared a name with a convicted child sex offender such that online searches would have turned up records of those convictions. The judge added that there was "no suggestion whatever that either claimant had himself previously done or said anything remotely capable of justifiably casting the shadow of paedophilia on himself."

98. Summarising these features of the case the judge said that they were, in combination, "capable of laying the sort of evidential groundwork for an inference of the probable causation of serious reputational harm". But she cautioned herself to take "a contextualised and balanced approach". The judge then devoted 24 paragraphs to discussion of "*Lachaux* factor" (d), the "inherent probabilities and the balance of the evidence". She began this process by recording that "a root and branch attack" had been mounted on the claimants' case on serious harm. She said that she had considered each point in full and with care but did not need to address each and every point in the judgment. She proceeded to deal with some specific points as follows.

i) The judge rejected Mr Fox's submission that the post-publication responses of third parties showed that "the seriously harmful potential" of his tweets was not in fact realised because many readers did not take the allegation seriously or did not believe it. There were tweets hostile to the claimants which evidenced "an underlying fire" which Mr Fox had lit or contributed to. She had "not been given sufficient reason ... to find enough apparent or likely scepticism" among the readership. There were some supportive tweets, and a statement by the CEO of Stonewall expressing solidarity with Mr Blake and denouncing Mr Fox. This showed that "in these quarters at least, the calumny was clearly *not* believed". But the fact that Stonewall made this statement "does say something about the probable reputational impact they considered it necessary to counteract."

ii) The judge rejected Mr Fox's submission that little weight should be given to "the happenstance" that each claimant turned out to have a paedophile namesake. A quick online search would have produced an "ostensibly

corroborative result" and this was "indicative of a degree of probable seriously harmful impact".

iii) The judge accepted that in addition to deleting his tweets Mr Fox had taken "a number of steps to limit the impact of his allegations". But she said he had not withdrawn the allegations or made "unambiguous clarification of their complete baselessness". Instead, his tweets had "foregrounded" his own grievance at having been called a racist and falsely suggested that all the allegations were "equally baseless". The allegations were not in fact equivalent and, in context, readers were not likely to have seen them as such. The claimants had expressed opinions about Mr Fox. He, a person with a reputation for saying "attention-grabbing and controversial things with a view to being taken entirely seriously", had singled out three individuals for the imputation of paedophilia.

iv) The judge gave little weight, also, to Mr Fox's argument that a "settled narrative" had swiftly developed in the mainstream media that the claimants were innocent of the charge against them. She accepted that national media reports had, almost without exception, "looked askance" on the parties' exchanges. But the press had reported the paedophile allegations neutrally; they had not reported them as untrue. "To the extent that the public was being encouraged by the edited (and lawyered) media to think Mr Fox had made an error of judgment, or even a poor joke, in his response, that is not inconsistent with a conclusion that he had made a regrettable, and effectively damaging, smear."

v) The judge concluded that the Lachaux factors raised a "strong prima facie case". There was an "absence of evidence for any alternative sources" of reputational harm. There was "evidence of actual harm by way of igniting online abuse and prompting counter-measures". These matters weighed heavily on one side of the balance and were not outweighed or neutralised by the limiting factors on the other side.

99. The judge went on to address "some final points on causation". At [102] she addressed the fact that "a couple of years subsequently" Mr Seymour had become embroiled in wider public debates about the suitability of drag entertainment for children in general, and about his own 'family friendly' performances in particular. This was a topic that had been raised in evidence by Mr Seymour, albeit not pleaded. The judge's conclusion was that "To the extent that this caused additional harm to his reputation, then that does not of course establish that serious harm was *not* caused by the original tweets". Any question about whether the later controversy was "a flaring up" of the original harm was a matter going to quantum rather than the serious harm threshold test.

The remedies judgment

100. This was handed down following submissions made some three months after the judgment on liability. In addressing damages the judge identified the relevant legal principles by reference to *Barron v Vines* (above) and other authorities. She recognised that she was now evaluating the extent of the reputational harm caused by Mr Fox's tweets ("calibrating quantum", as she put it) but also had to compensate for distress and must award a sum sufficient to achieve appropriate vindication. The need for

vindication required an award that would "convince a fair-minded bystander of the utter baselessness of these libels."

101. The judge considered the gravity of the libel. She repeated her earlier findings and added that the allegation was "a particularly powerful reputational pollutant" with an "exceptionally adhesive and 'non-incredible' quality". She considered the extent of publication, describing this as "a mass publication case" not just because of Mr Fox's large Twitter following, and the evidence of substantial percolation on social media, but also because the paedophile allegations were "picked up and discussed in the national edited media". The claimants' republication of Mr Fox's tweets "did not materially add to or detract from the *impact* by scale of publication".

102. The judge considered the claimants' vulnerability to reputational harm caused by this libel. She found this was "exacerbated by their national profile on LGBTQ+ issues and the safeguarding matters engaged by their respective livelihoods" . Although Mr Fox's tweet had not caused the later drag queen controversy involving Mr Seymour it had "enhanced his vulnerability to reputational harm of that nature". The evidence did not point to quantifiable career damage; the claimants had received workplace and media support so that their worst fears about direct professional impact were not realised. But the judge took into account that they had encountered "jeopardy" and the need to take mitigation action.

103. The judge considered whether "the calumny itself was widely accepted as true fact". She found that the evidence fell short of establishing that this was so. But, she said, "something a long way short of absolute conviction in the minds of third parties is entirely capable of creating deep reputational stain" as well as acute personal distress about what people might be thinking.

104. The judge considered whether steps taken by Mr Fox after publication of the libels had a bearing on quantum. She said – reflecting her previous findings - that his public statements of 2020 were focused on airing his grievance at having been called a racist and justifying his own behaviour. They did not amount to an unqualified retraction of the libel, or an apology. She made similar findings about the apology Mr Fox made from the witness box on day 5 of the trial. There remained a need for vindication through an award of damages. But the judge took into account in Mr Fox's favour that he "took down and did not repeat the libel, and went at least some way to distancing himself from it". She also acknowledged that he had not asserted the truth of the allegations or a belief in their truth.

105. The judge found that the claimants' subjective experience of being libelled was of a "shocking and humiliating public ordeal". They had faced the twin terrors of "blaring public and publicised controversy" (including "vicious hate speech") and fear of what people might be thinking. The judge rejected Mr Green KC's submission that the claimants had brushed off, or even relished and capitalised on, the experience. She rejected his further submission that "the claimants brought this ordeal upon themselves" in any material way. They had not on any fair analysis invited the response Mr Fox visited upon them. They had been forced to fight a libel claim all the way to trial "with every single conceivable point being taken against them". They had also been "forced to deal with counterclaims of precisely the kind that Parliament intended, in passing section 1 of the Defamation Act 2013, to deter". They had done so amid a "sustained hailstorm of Mr Fox's exercise of his rights of amplified free speech".

106. The judge held that in all the circumstances a substantial award of damages was "inevitable" to achieve the purposes she had identified. In arriving at a figure she had regard to "the broad pattern of awards" revealed by cases that had been cited to her as comparators. The sum of £90,000 each was broadly in line with the pattern of awards. It was necessary and sufficient "to supply the balance of the full reputational vindication" to which the claimants were entitled and to compensate them for the damage and distress unlawfully inflicted upon them.

The appeal

107. Mr Fox advanced two main grounds of appeal against the judge's findings that the publication of his tweets caused serious reputational harm.

108. The first was that the judge erred in law by "elevating" the single meaning of the tweets as determined by the court into a major factor in the assessment of serious harm. The argument was that a claimant cannot simply invite an inference of serious harm from the gravity of the single meaning on the basis that readers understood the statement in that meaning. The claimant must prove as a fact that reputational harm was caused because readers took that meaning from the statement and believed that meaning to be true. I shall call this "the single meaning point". Mr Fox maintained that the single meaning point was important on the facts of this case for two main reasons. Unusually, the actual context in which readers encountered Mr Fox's tweets was wholly different from the context deemed admissible for the purposes of assessing their single meaning. To most if not all readers it will have been obvious immediately or soon after first reading that Mr Fox was using a baseless allegation to make a rhetorical point. Further, there was "no evidence that a single individual, who was not a party to the case, ever believed in any way that [Mr Blake or Mr Seymour] were paedophiles."

109. At the hearing, this ground of appeal was presented by Mr Callus. He submitted that in practice the determination of reputational harm commonly rests on two assumptions: (a) that the single meaning of a published statement can be treated as a proxy for the "actual meaning" and (b) that, to some extent, that meaning is believed. But in some cases, of which this is an example, neither assumption can safely be made. This is because, when the court identifies the single meaning of a statement the only contextual material which it takes into account is that which all readers saw (see *Riley v Murray* [2020] EWHC 977 (QB), [2020] EMLR [15]-[17] (Nicklin J)). By contrast, in practice, those who read a statement on a social media platform such as Twitter will receive it in a fuller and different context which may have a significant impact on the meaning it conveys to that reader and whether they believe that meaning to be true. Mr Callus submitted that the judge had failed to take any or any adequate account of these points.

110. The second main ground of appeal was that the judge's conclusion on serious harm was plainly wrong, or the product of serious irregularities. It was submitted that the judge failed properly to account for Mr Fox's mitigating conduct and apology; to analyse the pleaded cases of Mr Blake and Mr Seymour and the evidence adduced in support of them; or to account for Mr Seymour's litigation misconduct; and that she engaged in illogical reasoning. The submissions advanced included the following.

    (1) Both claimants relied on the scale of publication, but the judge "made no proper assessment" of the scale of Mr Fox's own readership. The claimants' republication of screenshots of Mr Fox's tweets could not count towards reputational harm.

Reports in the mainstream press could not count either, as none of them bore the single meaning and anyway their narrative quickly settled very favourably to the claimants. It was wrong in principle to treat homophobic reactions as relevant reputational harm. The judge's findings in relation to harm caused by third-party internet searches about paedophile namesakes were untenable. The "unpleasant trolling" which both claimants had experienced on the day in question and for a day or two thereafter was not a proper basis for inferring that the allegation had been believed.

(2) Mr Blake had pleaded that the paedophile allegation had several specific professional consequences involving Stonewall and MHFAE and an application for a post with an NHS trust. The evidence showed, to the contrary, that his position had not been jeopardised in any of these ways. His application for the NHS Trust role had succeeded. MHFAE had expressed support for Mr Blake. Stonewall's statement about him was similarly positive. Yet paradoxically the judge used that statement "to found an inference as to Stonewall's opinion, in order then to reach a finding that other people would have thought badly of him".

(3) Mr Seymour had not pleaded any professional consequences. He had brought up the subsequent drag queen controversy in a belated attempt to bolster his case on serious harm. This was case that relied on inadmissible evidence and "came crashing down" in cross-examination. The judge's treatment of the issue was unfair and inadequate. She should have taken it into account against Mr Seymour, as had been urged on behalf of Mr Fox.

111. As for the appeal on damages, Mr Fox made no criticism of the judge's analysis of the relevant legal principles. The single ground of appeal was that her assessment was perverse. A range of specific criticisms was advanced. Unsurprisingly, these overlapped substantially with Mr Fox's criticisms of the judge's approach to serious harm. It was submitted that her awards failed to account for the claimants' provocation of Mr Fox's tweets; for the claimants' own contribution to the scale of publication; for the likelihood that many readers will not have taken them seriously; for the steps taken by Mr Fox to mitigate any harm, and the evidence of a lack of malice on his part; or for the claimants' misconduct after the publication complained of, including during the litigation. It was argued that the awards were in any event so far out of step with awards for personal injury as to be "an outcome not available ... on the evidence".

Assessment

112. My conclusions on this part of the case can be summarised as follows. Many of Mr Fox's criticisms of the judge's approach are ill-founded. But three of them have merit. Those three criticisms are not sufficient to undermine the judge's overall conclusion on the threshold issue of serious harm, which I think was correct. But they do have resonance and weight when it comes to the judge's assessment of the extent of the reputational harm that was caused and the scale of her award. Her judgment on damages was careful and thorough, but in my view it was flawed. And although this court is slow to interfere with assessments of damages in this field, the awards in this case go beyond the range properly available to the trial judge. For these reasons, on which I shall now expand, I would dismiss the appeal on liability but allow the appeal on damages, reducing each award by half to £45,000.

The single meaning point

113. In any defamation case the single meaning of the statement complained of plays an important role. The single meaning identifies the "charges" or imputations against the claimant which the statement would convey to the ordinary reasonable reader. The claimant must always satisfy the court that each such imputation has a defamatory tendency according to the common law tests identified at the start of this judgment. The claimant must also show, in relation to each imputation, that "its publication caused, or is likely to cause, serious harm to the reputation of the claimant". That is one effect of s 1 of the 2013 Act (see *Sube v News Group Newspapers Ltd* [2018] EWHC 1961 (QB), [2018] 1 WLR 5767; *Amersi v Leslie* [2023] EWCA Civ 1468 [55]). The single meaning identifies the target for any defence of truth. It is relevant, albeit not decisive, when assessing a defence of reasonable belief that publication was in the public interest (see *Economou v de Freitas* [2018] EWCA Civ 2591, [2019] EMLR 7 [92]-[95]) or issues of malice (see *Loveless v Earl* [1999] EMLR 530, 538). In logic and in fairness the single meaning must also govern the nature and scope of the remedies to which the claimant is entitled if liability is established. Damages should be assessed on the basis that the claimant is entitled to be compensated for the consequences of the publication of the defamatory single meaning, no more and no less. Any other approach would lack coherence and risk injustice.

114. So the court will not assume, nor will it necessarily find, that the publication of the single meaning caused reputational harm commensurate with the gravity of that meaning and the extent of its publication. If the evidence showed that in fact many people interpreted the statement complained of in a sense that was not injurious, or less injurious than the single meaning, that could have a significant bearing on serious harm or on damages. Nicklin J recognised this when giving directions for the preliminary issue trial in this case ([2022] EWHC 2726 (QB) [21], [24]) and I agree. To this extent I accept the submissions on behalf of Mr Fox. I do not, however, agree that the application of these principles to this case has the consequences that have been suggested.

115. Although Mr Fox was trying to make a rhetorical point the High Court held that this was not clear to the reader from the words he chose or the context in which all readers viewed his posts. The claimants established that, to the ordinary reasonable reader, Mr Fox's tweets about them bore the same single meaning. Each tweet conveyed a single factual imputation: that the claimant in question was a paedophile. This court affirmed those conclusions. The appropriate starting point for an enquiry into the reputational harm caused by the tweets was that the imputation of paedophilia was an exceptionally damaging thing to say, and its mass publication was highly likely in the ordinary course of things to cause serious reputational injury. It was not incumbent on the claimants to adduce additional evidence to establish that such injury was probably caused. It was, in principle, for Mr Fox to identify reasons and supporting evidence for reaching a different conclusion. That is the established practice in the rare case where a defendant seeks to establish a "reverse innuendo" meaning. I think the same must apply in the present situation, where the defence does not rely on innuendo facts but on additional context which is said to affect the meaning which the statement would convey to the reader. Mr Fox sought to make an inferential case to that effect. Although the judge did not address that aspect of his case expressly, she plainly did not consider that it had any

material bearing on the issue of serious harm. I have not been persuaded that she was wrong in that assessment.

116. The judge expressly rejected the secondary submission for Mr Fox, that the claimants bore the additional burden of proving that people took the single meaning to be true. In my opinion she was right to do so. A claimant might, perhaps, bear an evidential burden of this kind in the exceptional case where the allegation is inherently likely to be discounted because it was plainly outlandish and its source lacked any credibility (as in *Riches v News Group Newspapers Ltd* [1986] QB 256 and *Oriental Daily Publisher Ltd v Ming Pao Holdings Ltd* [2013] EMLR 7). But this was not such a case. As the judge put it, this was a "not incredible" allegation. And I agree with the approach taken by the judge in her remedies judgment. To prove that a serious allegation caused serious reputational harm it is not necessary to persuade the court that it was believed to be true. A reader of the statement who takes from it the single meaning may, for instance, think "I am not sure that is true but it may be, and I am going to avoid the claimant in case it is". That would be evidence of serious harm.

117. There was some direct evidence before the judge that some readers had not taken the allegation of paedophilia literally, or seriously, and that some did not believe it. The Stonewall statement, referred to by the judge, is evidence that the allegation was taken literally and seriously but rejected by that organisation. There was some other, similar evidence. This evidence was admissible and relevant. But I think Mr Fox overstates his case very considerably when he maintains that the evidence as a whole showed that all or the majority of readers fell into one or other of the categories I have mentioned, so that no serious harm was caused. The judge took Mr Fox's points into account and, in my opinion, her treatment of this aspect of the evidence was legitimate.

Other points on the approach to reputational harm

118. I can deal quite shortly with some of the other points made by Mr Fox.

(1) I do not accept that the judge erred in her approach to the extent of publication of Mr Fox's tweets. The judge was consistent on this issue when dealing with the claims and the counterclaims. In both contexts she took account of the primary publication but expressly disregarded republication by the complaining party. Quite rightly, she recognised that the need to ignore republication by the claimants did not alter the fact that Mr Fox had made the allegation and tweeted it to all his followers. She identified the size of that constituency as "something like a quarter of a million". That was entirely consistent with Mr Fox's own case and provided ample support for the judge's conclusion that the case was one of "mass publication".

(2) Mr Fox's contention that the claimants culpably provoked his tweets about them, and were therefore not entitled to rely on some of the consequent reputational harm, is entirely unconvincing. I do think that the judge's discussion of the lack of "equivalence" between the allegation of racism and that of paedophilia was something of a blind alley. The short point is that, as the judge said, the claimants' tweets about Mr Fox "did not on any fair analysis invite the response Mr Fox visited upon them. Mr Blake and Mr Seymour were absolutely entitled not to have Mr Fox publicly call them paedophiles."

(3) There was, for the reasons given by the judge, some obvious merit in the claimants' contention that their public profiles and personal circumstances were liable to lend credence to the allegation in the minds of some. I would not second-guess the judge's approach to this issue. I certainly do not think that her conclusion that the serious harm requirement was met turned on these points.

(4) The judge was entitled to find that some readers would probably have carried out internet searches and linked the claimants with the criminality reported there. Again, I see no reason to believe she placed more weight on this point than it can reasonably bear.

(5) It was not wrong for the judge to treat homophobic reactions or internet trolling as evidence of serious reputational harm. These were reasonably foreseeable consequences of Mr Fox's actions. It was permissible to treat them as evidence that others had been led to form an adverse view of the claimants. So long as the assessment of reputational harm is based on the impact of the single meaning, I see no reason why a libel claimant should not rely on (and recover damages for) proven real-world effects of publication, even if this includes some extravagant and unreasonable reactions.

(6) The fact that the claimants failed to prove that the tweets had any specific professional consequences does not undermine their strong inferential case that the mass publication of the allegation of paedophilia caused serious harm to their general reputations. There is a symmetry here with the position in respect of Mr Fox's own claim, discussed above.

(7) There is no merit in the argument that the claimants' "litigation misconduct" should have counted against them on the issue of serious harm, or in relation to damages. It is not necessary to address the question of whether the claimants did misconduct themselves during the case. The submission fails for reasons of principle which were fully explored in *Wright v McCormack* (CA). If the claimants did misconduct themselves that would have no logical bearing on the question of what reputational harm was caused by the publication complained of. Such misconduct could go to damages, but only if it went to show that the claimant did not deserve full vindication in respect of the defamatory imputation complained of. In *Wright v McCormack* there was a direct link between the misconduct and the defamatory imputation. Here, there is no link whatever.

119. The three criticisms with which I agree are these. First, it was wrong effectively to discount all the mitigating steps taken by Mr Fox after publication. The judge should have made a substantial allowance for their cumulative impact. Mr Fox's "language is powerful" tweet of 4 October 2020, his prompt deletion of the offending tweets, and his "baseless insults" tweet of 5 October were all steps taken shortly after the tweets complained of. All were aimed directly at the relevant constituency: Mr Fox's own followers. They were not unequivocal retractions, and they did not contain an apology. But these steps were inherently likely to result in significant mitigation of the harm initially caused. It will have been clear to any reasonable reader that Mr Fox was saying that his earlier paedophile tweets were "baseless insults". That message was repeated in Mr Fox's tweet of 13 October 2020. Listeners to the interviews with Julia Hartley-Brewer on 5 October and Nick Ferrari on 13 October 2020 received the same message.

Although there is no evidence as to the overlap between the audiences for those radio shows and Mr Fox's followers, the existence of some overlap can be inferred.

120. Secondly, it was wrong to treat mainstream media reporting of the parties' exchanges as evidence of additional reputational harm. A person who publishes a defamatory statement is responsible for any republication that is foreseeable as a natural and probable consequence of what they do. But republication of a statement cannot count towards reputational harm if the republication takes place in a context that draws the defamatory sting of the original statement; in such a case "the claimant must take the meaning as it emerges from the entire publication": *Economou v de Freitas* [2016] EWHC 1852 (QB), [2017] EMLR 4, [17]. Here, there was no question of media reports adopting or endorsing the allegation of paedophilia. As the judge said more than once, what happened was that the media "discussed" the allegation. They did so in a way that "looked askance" at it and encouraged the public to think that Mr Fox had made an error of judgment or a poor joke. To these points can be added that the media reported what Mr Fox had said in his mitigating tweets of 4 and 5 October. On that basis, so far from counting towards reputational harm, mainstream media reporting should have been assessed as a mitigating factor, to the extent it came to the attention of those who read the tweet complained of.

121. Thirdly, and less importantly, it was wrong in principle for the judge to treat the Stonewall statement as evidence of reputational harm. It cannot be legitimate to reason, as she did, from the proposition that the statement showed that in Stonewall's opinion a defence to the charge was necessary, to a finding of fact that its publication had caused serious reputational harm.

122. These three points do not, individually or collectively, lead me to conclude that serious harm was not made out. On the contrary, my conclusions on this part of the case reflect much of what I have said about Mr Fox's claim. This was an imputation of criminal misconduct of a kind that revolts ordinary people. On Mr Fox's own case he published the allegation to some 250,000 followers of his. That in itself was mass publication. Mr Fox failed to show that his tweets were not in fact understood in the way complained of, or that they were disbelieved. Mr Blake and Mr Seymour enjoyed a presumption that their pre-publication reputation in this sector of their lives was good. No attempt was made to rebut that presumption. For these reasons, each claimant had a strong inferential case that Mr Fox's own publication of the allegation of paedophilia probably caused serious harm to the reputation of that claimant. Most of the factors relied on by Mr Fox as mitigating harm are ill-founded. The three that I have identified as well-founded are not sufficient to displace the inference of serious harm. The judge's ultimate conclusion on the threshold is unaffected. But the three points are important when it comes to damages.

Damages

123. None of the three errors I have identified has any major bearing on the judge's evaluation of the compensable distress suffered by the claimants. For the most part that stands. It does however follow from my earlier conclusions that the award should not have compensated the claimants for the emotional consequences of having to face Mr Fox's claims. And the three points, and especially the first two, have a direct and obviously material impact on the key issue, namely the extent of the reputational harm for which the claimants are entitled to compensation.

124. For the reasons I have given, damages should have been assessed in respect of Mr Fox's publication to his own followers and not any media republication. The assessment should have been carried out on the footing that upon first reading his tweets Mr Fox's followers generally understood them to bear the single meaning identified by the court; that many took them seriously; and that they therefore caused serious harm at the time of publication. But that initial harm was substantially reduced by the steps that Mr Fox himself took on 4, 5 and 13 October 2020, as well as by the way the matter was reported in the media over that same period. These conclusions, critically, reduce the size of the award required to achieve full and adequate vindication of the claimants' reputations.

125. Reputational injury and emotional harm are not easily measured in money. As the judge observed, there are no comparable defamation cases to assist in identifying the appropriate award. We do however have the conventional figures for personal injury damages. These cannot be read across directly, but they do provide relevant context. Awards for libel should not be, or appear to be, wholly out of kilter. The conventional or "tariff" awards for pain, suffering and loss of amenity are set out in the Judicial College Guidelines (17th ed). The maximum is £493,000. For moderate brain injury, with permanent effects on concentration, memory, and the ability to work, the range is £52,550 to £110,720. For total loss of sight in one eye with reduced vision in the other the range is £78,040 to £129,330. Viewed in this light, awards of £90,000 are considerably in excess of what was necessary in this case. Substantial sums were appropriate. But awards of £45,000 each would be sufficient to achieve proper compensation and to show the world that there was nothing in the allegations.

LADY JUSTICE ELISABETH LAING:

126. I agree with both judgments.

LORD JUSTICE DINGEMANS, Senior President of Tribunals:

127. I agree that, for the reasons given by Warby LJ, the judge was wrong to find that the tweets published by Mr Blake, Mr Seymour and Ms Thorp did not cause serious harm to Mr Fox. I give this short judgment because we are allowing an appeal against the judgment of the judge below on the issue of serious harm, so far as Mr Fox's counterclaims are concerned, and against the judge's assessment of damage suffered by Mr Blake and Mr Seymour.

128. As Lord Sumption made clear when giving the judgment in the Supreme Court in *Lachaux v Independent Print Ltd* [2019] UKSC 27; [2020] AC 612 (with which Lords Kerr, Wilson, Hodge and Briggs agreed) it is permissible to make findings of serious harm based on: (1) the scale of the publications; (2) the fact that the statements complained of had come to the attention of at least one identifiable person in the United Kingdom who knew Mr Lachaux; (3) that there were likely to have come to the attention of others who either knew him or would come to know him in the future; and (4) the gravity of the allegations themselves. This appears from paragraph 21 of *Lachaux* and this did not involve taking the impermissible approach taken by the Court of Appeal in the same case whose interpretation of section 1(1) (considering whether a statement had a tendency to cause serious harm) had not given effect to the statutory language used.

129. In *Lachaux* the Supreme Court confirmed that the repetition rule continued to apply after the coming into force of the Defamation Act 2013. The repetition rule is to the effect that a statement that someone else had made a defamatory statement, which is then repeated, is treated as making a direct statement to the same effect as the reported defamatory statement, see paragraphs 22 and 23 of *Lachaux*.

130. In *Lachaux* the Supreme Court also confirmed what is known as the *Dingle* rule, taken from *Dingle v Associated Newspapers Ltd* [1964] AC 371. This rule is that a defendant cannot rely in mitigation of damages on the fact that similar defamatory statements have been published about the same claimant by other persons. Evidence of damage to the claimant's reputation done by earlier publications of the same matter is legally irrelevant to the question of what damage was done by the particular publication which is the subject of the proceedings. Lord Sumption noted that the rule had been criticised, but he confirmed that it continued after the Defamation Act 2013, see paragraphs 22 and 24 of *Lachaux*. Lord Sumption also pointed out that the practical impact of the *Dingle* rule had been mitigated by section 12 of the Defamation Act 1952, which permitted a defendant to rely in mitigation of damage on certain recoveries from other parties and by the Civil Liability (Contribution) Act 1978, but those statutes did not affect the operation of *Dingle* on the "serious harm" test. The continuing application of the rule in *Dingle* has been confirmed by the Supreme Court in *Mueen-Uddin v Secretary of State for the Home Department* [2024] UKSC 21; [2025] AC 945, see in particular paragraphs 109 and 112.

131. What can be said for the *Dingle* rule is that it means that a claimant about whom a defamatory statement has been published will not be prevented from vindicating their reputation because earlier defamatory statements to the same effect had been made. It is apparent that the judge's approach to the issue of causation of serious harm failed to respect this rule, for the reasons given by Warby LJ in paragraph 79 above.

132. I also agree that the judge made legal errors in finding that the tweets did not cause harm to Mr Fox's relationship with his agent or cause harm to his acting career, because the judge did not apply the correct test of causation at all material parts of the assessment. It is not possible to be confident that if the judge had applied the correct test the finding of fact would have been the same. The issue of whether the tweets did cause that harm either to his relationship with his agent or cause harm to his acting career must be remitted to be determined in the High Court on the facts. This also means that the defences of honest opinion, on the part of Mr Blake and Mr Seymour, and the defence of truth on the part of Ms Thorp, will all need to be determined by the High Court.

133. I agree that the judge was right to find that Mr Fox's tweets about Mr Blake and Mr Seymour caused serious harm for the reasons given by Warby LJ. I agree, however, with Warby LJ that the awards of damages of £90,000 to each of Mr Blake and Mr Seymour were manifestly excessive. The judge was right to find that Mr Fox's tweets justified a substantial award of damages to both Mr Blake and Mr Seymour. The judge, however, could not have had proper regard to the effect of the steps taken by Mr Fox after his publication of the original defamatory tweet, as identified by Warby LJ in paragraph 119 above, which must have resulted in significant mitigation of the harm. The judge also made the errors of approach identified in paragraphs 120 and 121.