



Neutral Citation Number: [2026] EWCA Civ 991

Case No: CA-2025-001579

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Mrs Justice Collins Rice
[2025] EWHC 926 (KB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/07/2026

Before :

LADY JUSTICE KING
LORD JUSTICE WARBY
and
LADY JUSTICE WHIPPLE

Between :

ANDREW BRIDGEN

**Claimant/
Respondent**

- and -

MATT HANCOCK

**Defendant/
Appellant**

Aidan Eardley KC (instructed by **Reynolds Porter Chamberlain LLP**) for the **Appellant**
Christopher Newman (instructed by **direct access**) for the **Respondent**

Hearing date: 20 May 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 29 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

LORD JUSTICE WARBY :

I. Introduction

1. This appeal raises issues about how to decide whether a defamatory statement of opinion qualifies as “honest” opinion within the meaning of section 3 of the Defamation Act 2013. The focus is on sub-sections (4) and (5) of section 3.
2. The appellant is Matt Hancock, the former Health Secretary. He is the defendant to this libel action brought by the respondent, Andrew Bridgen, another former Conservative MP. The claim related to a defamatory statement of opinion which Mr Hancock posted on Twitter on 11 January 2023. Mr Hancock relied on the defence of honest opinion and applied for judgment in his favour without a trial, arguing that his defence was bound to prevail. He now appeals against the decision of Collins Rice J (the Judge) that the merits of his defence were not clear and needed to be tested at a trial.

II. Events on Twitter, 11 January 2023

3. At 08:42, Mr Bridgen posted a tweet (the Bridgen Tweet), comprising (a) a link to an article by Dr Joshua Guetzkow, an academic (the Guetzkow Article), about adverse events reported by people who had received Covid vaccinations; (b) a snapshot of part of the Guetzkow Article; and (c) this observation:

As one consultant cardiologist said to me this is the biggest crime against humanity since the Holocaust.

4. Between about 10:35 and 12:16 there was a series of responses on Twitter (the Response Tweets). Two Conservative MPs, one Labour MP, and the Government’s independent adviser on antisemitism expressed adverse views about the Bridgen Tweet, using the terms “disgraceful”, “despicable”, “incredibly offensive”, “wholly irresponsible”, and “appalling”. One of these referred to the Holocaust and deplored its invocation by Mr Bridgen. Another suggested “A lot of Jewish people ... would find this incredibly offensive.” A tweet by the CEO of the Holocaust Educational Trust (HET) stated “For these horrors to be co-opted by anti-vaxxers once again is appalling. Andrew Bridgen’s words were highly irresponsible, wholly inappropriate and an elected politician should know better.”
5. At about 12:30, Mr Hancock responded to the Bridgen Tweet by asking a question in the House of Commons at Prime Minister’s Questions (PMQs). Half an hour later, under the heading “*My question to @RishiSunak in PMQs*”, Mr Hancock posted a Tweet (the Hancock Tweet) comprising an embedded video of the exchange at PMQs and a statement in which, without naming Mr Bridgen, he denounced the Bridgen Tweet, writing as follows:

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

6. Mr Bridgen sued for libel in respect of the term antisemitic.

III. The core legal principles

7. For present purposes, the ingredients of a cause of action in libel can be summarised in this way. The claimant must prove (a) the publication by the defendant of a statement (b) which readers would understand to be about the claimant and (c) which bore a meaning which would tend to lower the claimant in the estimation of right-thinking people generally and (d) that the publication of the statement did in fact cause serious harm to the reputation of the claimant, or was likely to do so. The first three requirements are those of the common law. The fourth, the serious harm requirement, was added by section 1(1) of the Defamation Act 2013 (the 2013 Act).
8. If the claimant establishes these four ingredients the onus is on the defendant to prove a defence. Section 2 of the 2013 Act provides that truth is a defence. Section 3 of the 2013 Act provides, relevantly, as follows:

Honest opinion

- (1) It is a defence to an action for defamation for the defendant to show that the following conditions are met.
 - (2) The first condition is that the statement complained of was a statement of opinion.
 - (3) The second condition is that the statement complained of indicated ... the basis of the opinion.
 - (4) The third condition is that an honest person could have held the opinion on the basis of (a) any fact which existed at the time the statement complained of was published; (b) anything asserted to be a fact in a privileged statement published before the statement complained of.
9. If the defendant shows that these three conditions are satisfied the defence of honest opinion is made out unless the claimant proves that section 3(5) applies. This provides that:
 - (5) The defence is defeated if the claimant shows that the defendant did not hold the opinion.

IV. These proceedings

10. Mr Bridgen, represented by Mr Newman of Counsel, complained that the ordinary reader of the Hancock Tweet would have understood it to mean that he was, as a matter of fact, an antisemite. He made no other complaint about the content of the tweet.
11. Mr Bridgen's first attempt to plead a case that readers of the Hancock Tweet would have identified him as the unnamed "sitting MP" referred to was struck out by Steyn J pursuant to CPR 3.4(2)(a), as disclosing no reasonable basis for a claim: [2024] EWHC 623 (KB). The case on identification was then repleaded. The amended version alleged that readers of the Hancock Tweet would have identified Mr Bridgen as its subject or target because they had already seen the Bridgen Tweet, or press coverage which named him, or the Response Tweets, which also named him. Mr Bridgen's case about the Response Tweets was that by the time of the Hancock Tweet "much public attention"

had already been drawn to the Bridgen Tweet “as a result of criticism from some of the Claimant’s Parliamentary colleagues and others, who found it distasteful”.

12. There was a short trial of preliminary issues. In her judgment after that trial, [2024] EWHC 1603 (KB), the Judge agreed that, as is common ground, the statement complained of was defamatory at common law. But she did not accept Mr Bridgen’s case as to its meaning and nature. She held that the meaning was as follows:

An unnamed MP had said something that morning related to vaccination which was baseless, unscientific, dangerous and offensive, including because its character was antisemitic.

The Judge held the underlined words were a statement of fact, but the remainder was a statement of opinion which (as was common ground) indicated the basis of the opinion. In other words, the Judge found that the first and second conditions of the honest opinion defence were met.

13. Mr Hancock then served a Defence, settled by his Counsel, Mr Eardley KC. This took issue with Mr Bridgen’s case on serious harm, and relied on the defence of honest opinion, asserting that the condition in section 3(4)(a) was satisfied. The Defence also contained a paragraph headed “Truth”, but that paragraph stated that Mr Hancock did not need to rely on the defence of truth. This was because the factual ingredient of the meaning found by the Judge was not itself defamatory and was in any event true because Mr Bridgen had “said something on the morning of 11 January 2023 that related to vaccination”. Mr Bridgen served a Reply, disputing that the section 3(4)(a) condition was met, and in the alternative relying on section 3(5).
14. At the close of the pleadings there were, accordingly, four main issues between the parties: (i) whether Mr Bridgen was identifiable to readers as the unnamed MP referred to in the Hancock Tweet; if so (ii) whether the publication of that tweet had caused serious harm to Mr Bridgen’s reputation; if so (iii) whether an honest person could hold the opinion that the Bridgen Tweet was antisemitic in character; and if so (iv) whether that was an opinion which Mr Hancock did in fact hold.
15. In the next round of interim applications, the issue of identifiability was left to one side. But Mr Hancock mounted a three-pronged attack on Mr Bridgen’s case. First, he sought summary judgment in his favour pursuant to CPR 24.2 on the whole claim, on the basis that Mr Bridgen had no real prospect of showing that the serious harm requirement was satisfied. Mr Hancock argued that, on Mr Bridgen’s own case, the only readers to whom he was identifiable as the “sitting MP” were people who had already read the Bridgen Tweet, or what others had said about it in the Response Tweets, or the press. These readers would have formed their own views about the Bridgen Tweet, rather than relying on what Mr Hancock said about it some while later. Mr Eardley KC referred to what the CEO of the HET had said, observing that it was very similar to the content of the Hancock Tweet. The Judge dismissed this first aspect of Mr Hancock’s application, and there is no appeal against that decision.
16. Secondly, and in the alternative, Mr Hancock sought summary judgment on the whole claim on the basis that Mr Bridgen had no real prospect of resisting a finding that the defence of honest opinion applied. Thirdly, and in the further alternative, Mr Hancock sought summary judgment on Mr Bridgen’s case under s 3(5) of the 2013 Act, or an

order striking out that plea pursuant to CPR 3.4(2)(a) and/or 3.4(2)(b). Mr Hancock argued that the s 3(5) case had no real prospect of success, that the Reply disclosed no reasonable grounds for advancing that case, and/or that it was an abuse of the court's process or otherwise likely to obstruct the just disposal of the proceedings. The Judge dismissed Mr Hancock's second and third applications. He challenges her conclusions on each.

17. I shall consider in turn the issues arising under section 3(4) and section 3(5).

V. Section 3(4): The Objective Honesty Condition

The right approach

18. The Objective Honesty Condition is a shorthand label that I have previously used for the requirement set out in s 3(4) of the 2013 Act: see *Riley v Murray* [2022] EWCA Civ 1146, [2023] EMLR 3 [39]. The label serves to emphasise that the question at this stage is purely objective; it has nothing to do with the actual state of mind of the defendant. Typically, the question will be whether an honest person could hold the opinion on the basis of facts indicated by the statement itself. That is the position here. As I shall explain, the issue is whether an honest person who knew some facts about the Holocaust and the Covid pandemic and read the Bridgen Tweet could hold the opinion that the Bridgen Tweet was antisemitic in character.
19. It is for the defendant to satisfy the court that this condition is met. In deciding whether that has been done, the court needs to keep in mind the nature and broad scope of the section 3 defence of "honest opinion". This statutory defence replaced the common law defence known as "fair comment on a matter of public interest", which was abolished by s 3(8). The new defence has similarities to the old. The Explanatory Notes make clear that the statute was intended to draw on the common law. But the statutory defence has a different name, for three good reasons.
20. First, "opinion" is a better description of the kind of statement that is protected than the term "comment". Secondly, Parliament liberalised the law so that an honest statement of opinion which meets the statutory conditions is now defensible, whether or not the subject matter is one of public interest. That common law restriction has gone. Thirdly, the deletion of the word "fair" and its replacement by the word "honest" better reflects the true nature of the defence. A defendant has never been called upon to prove that his comment or opinion was "fair" in any ordinary sense of that word. There has to be a sufficient identification of the factual basis for the opinion. There must be a link between the facts relied on and the opinion expressed. But the opinion does not have to be justified, or a fair or reasonable opinion to hold on the basis of the facts. The objective standard of honesty which the opinion has to meet is substantially lower than that.
21. The older authorities make that last point trenchantly, in colourful language. The hypothetical commentator is someone who may be "irrational, stupid or obstinate": *Turner v MGM Pictures Ltd* [1950] 1 All ER 449, 461 (Lord Porter). So, "... the crank, the enthusiast, may say what he honestly thinks as much as the reasonable man or woman who sits on a jury": *Silkin v Beaverbrook Newspapers Ltd* [1958] 1 WLR 743, 747 (Diplock LJ). The opinion may be protected even if the speaker is "prejudiced": *Telnikoff v Matusevich* [1992] 2 AC 343, 354 (Lord Keith).

22. In *Tse Wai Chun Paul v Cheng* [2001] EMLR 777 the Hong Kong Court of Final Appeal reviewed the requirements of the common law defence. At [20], Lord Nicholls put it this way: -

Finally, the comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views ... It must be germane to the subject-matter criticised. Dislike of an artist's style would not justify an attack upon his morals or manners. But a critic need not be mealy-mouthed in denouncing what he disagrees with. He is entitled to dip his pen in gall for the purposes of legitimate criticism

The final sentence is drawn from *Gardiner v John Fairfax & Sons Pty Ltd* (1942) 42 SR (NSW) 171, 174 (Jordan CJ, with whom Davidson J agreed). The metaphor is older than that. It is, however, vivid, conjuring up the image of a 19th century writer equipped with a quill pen and an inkwell containing a poisonous substance.

23. In *Branson v Bower* [2002] QB 737 at [7], Eady J noted that *Cheng* had re-emphasised that the touchstone of this defence is always honesty “and should not be watered down by considering issues such as fairness or moderation.” At [26], he said

It is well settled that a defendant does not have to persuade the court ... to agree with his opinions....; nor should he have to demonstrate that honestly expressed opinions fall within some elusive and nebulous margin of what is ‘reasonable’ or ‘fair’.

24. In *Joseph v Spiller* [2010] UKSC 53, [2011] 1 AC 842, the Supreme Court of the United Kingdom reviewed the law of fair comment, taking as its starting point Lord Nicholls’ analysis in *Cheng*. At [6], Lord Phillips JSC observed that Lord Nicholls’ final criterion of objective honesty was “elusive” but described it as a requirement of “pertinence”. Lord Phillips said he was unaware of any case in which this requirement had actually been in issue. That is certainly rare, in my experience. But *Branson v Bower* was such a case.

25. The claim in *Branson v Bower* related to defamatory remarks about Sir Richard Branson’s motives for bidding to run the National Lottery, which Mr Bower made in an article for the Evening Standard. The court determined as a preliminary issue that the statements complained of were comment not fact. Mr Bower relied on the fair comment defence and applied for summary judgment. There were some disputes about the relevant facts. But Eady J found that on the undisputed facts the defendant was bound to succeed on the objective honesty issue, even though the ultimate fact-finder would be a jury. Applying the test of the hypothetical observer, Eady J said this:

51. I have no doubt that the uncontroversial facts ... are such that a hypothetical observer could honestly express the opinions contained in the Evening Standard article ...

55. The right to comment freely and honestly is not to be whittled away by detailed and subtle arguments as to how a different commentator might have viewed the facts or given them a different emphasis. ... I am also able to hold, without difficulty,

that any decision to the opposite effect would be perverse. That is to say, no jury properly directed *could* hold that Mr Bower's opinions were such that they could *not* honestly be held or expressed on the pleaded (and uncontroversial) facts. There is thus no reason for this issue to be left for resolution at a trial.

The objective honesty issue in this case

26. Mr Hancock's Defence set out the facts relied on as supporting the opinion and the lines of reasoning in which, it was alleged, an honest person could engage. The facts relied on were some essential facts about the Holocaust, the Covid pandemic and the vaccine programme; some facts about the Guetzkow Article; and the content of the Bridgen Tweet. The key assertion in Mr Hancock's case, for present purposes, was that on the basis of these facts:

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

27. Mr Bridgen's Reply admitted the terms of the Bridgen Tweet, and some essential facts about the Holocaust. As to the Covid pandemic, he denied that the virus itself had killed or threatened the lives of millions. He denied that lockdowns were necessary or justified or that the government was primarily motivated to save lives. He asserted that the measures taken were motivated by profit and disputed that the vaccines were safe and effective. He relied on the Guetzkow Article as evidence, among other things, that representations to the public about safety testing of vaccines were "hogwash". But he accepted some basic facts about the Covid pandemic and the official response. He did not dispute that governments around the world supported research and development of vaccines as a response, and supported mass vaccine programmes once these became available. He accepted that the government was at least partly driven by the need to save lives, prevent the spread of disease and alleviate lockdowns.
28. The argument at the heart of Mr Bridgen's case was that, even if all the facts relied on by Mr Hancock were correct, the defence would fail. To say that a comparison with the Holocaust "belittled the historic experience of the Jewish people" was "misconceived". To make such a comparison was "merely to place something the speaker is asserting is very serious with something else they are asserting is even more serious." The use of the word "since" implied the Holocaust was a bigger crime against humanity.
29. As part of his response to the defence of honest opinion Mr Bridgen relied on a letter dated 30 January 2023 from 26 Jewish doctors and scientists to Mr Sunak (the Doctors' Letter). The Doctors' Letter said, among other things, that

Aside from the fact that Mr Bridgen was clearly reporting the words of someone else, the word "since" does not in any case

imply equivalence to the events of the Holocaust; for that and other reasons the tweet is not antisemitic.

The hearing and judgment

30. At the hearing of Mr Hancock’s application, Mr Eardley submitted that it was plain that an honest reader of the Bridgen Tweet who knew the essential uncontroversial facts about the Holocaust and the pandemic could form the view that the Bridgen Tweet was antisemitic in character. Mr Newman submitted that the Judge should not only find that Mr Bridgen had every prospect of defeating the honest opinion defence, his prospects were so strong that she should also consider striking out the defence.
31. The Judge identified the essential legal principles, drawing on a summary in the judgment of Nicklin J in *Sussex v Associated Newspapers Ltd* [2023] EWHC 3120 (KB) [38]-[40]. Applying those principles, she declined Mr Newman’s invitation to strike out the defence and rejected several strands of his argument. A submission that Mr Hancock was, in essence, pleading a defence of truth was held to flow from a misreading of the Defence: [69]. The absence of an express defence of truth was held to be irrelevant: “Mr Hancock does not have to plead to the truth of his opinion. The whole point of the honest opinion defence is that he does not have to”: [70]. The honest opinion defence was not, as submitted, “a fallback position for defending mistakes, factual or otherwise”: [72]. To satisfy the third condition, the Judge said, an opinion did not have to be true, nor did it need to be “careful, or researched as to truth, or fair, or reasonable, or rational”: [73].
32. The Judge went on, however, to hold that this was all consistent with “the possible *factual* or *evidential* relevance of a range of considerations going to the question of whether an honest person could hold the opinion expressed”: [76]. The Judge referred to Mr Eardley’s submissions, stating that he had pointed to evidence of “spontaneous opinions independently expressed” by others in the Response Tweets: [79]-[80]. At [81], the Judge held that whilst a decision on whether Mr Bridgen had a real prospect of success on the section 3(4) issue turned “in part” on evaluation of the content of the Bridgen Tweet in its own terms and context, it was also

... in part, at least potentially, a matter of the evidence that could be expected to be produced to demonstrate that other respected commentators *did* consider it antisemitic in character, or that similar utterances have been so regarded on other occasions.

That was evidence not presently before the court.

33. At [83] the Judge said again that Mr Hancock’s defence relied, potentially, on evidential matters. At [84], she observed that evidence that honest people shared Mr Hancock’s opinion, though unnecessary, “might be compelling evidence in his favour”. At [85]-[86], the Judge observed that Mr Bridgen “wants to argue” that there was a relevant line that an honest person must recognise between “fact-tethered opinion and gratuitous smear”; that the line had been crossed when Mr Hancock “unwarrantedly weaponized” the “very special language of antisemitic” for “quite collateral purposes”; and that Mr Bridgen had “at least some evidence (the Jewish doctors’ letter) to support that.”
34. At [87]-[88] the Judge set out her conclusions on this aspect of the application:

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

88. And beyond the bare fact of the exchange, such evidence as I have before me at present is not in my judgment capable of settling this argument definitively in Mr Hancock's favour here and now, because none of the commentators I was shown condemns Mr Bridgen in precisely the way Mr Hancock did, and it is arguable, with a prospect of success carrying what is in my judgment a sufficient degree of conviction, that that *may* be significant. And even if a trial court were ultimately to find it was not materially assisted by further evidence either way on this matter, nevertheless it remains evaluative and context-sensitive to a degree which would usually be capable of being sufficiently ventilated only on a full argument basis at trial. In my judgment, in the circumstances of this particular contest of political free speech, that is a further, and indeed compelling, reason for this issue to go to trial.

35. The Judge went on to say that there was a further compelling reason for not entering summary judgment on the issue of objective honesty. This was, in short, that Mr Bridgen had a realistic prospect of showing that Mr Hancock did not hold the opinion he had expressed, so that s 3(5) came into play; and there was a link between this and the question under s 3(4). As the Judge put it at [97], "the evidence which is relevant to one is capable of being relevant to the other".

Issues on the appeal

36. In the passages I have quoted the Judge gave, in substance, four reasons for refusing to enter summary judgment in favour of Mr Hancock on the objective honesty issue. On this appeal, Mr Eardley has criticised each of those reasons. Mr Newman has defended them all, and has put forward four additional or alternative reasons for reaching the same conclusion.

Discussion

37. I shall consider each of these eight reasons, starting with those of the Judge.

(1) “*It may be important to review the responses of other commentators*”.

38. The first and decisive consideration for the Judge was that the issue of whether an honest person could view the Bridgen Tweet as antisemitic in character might turn on evidence, not before the court, about how other commentators had responded to the Bridgen Tweet, or to similar statements by other people on other occasions. The Judge clearly believed the legitimacy of this approach to be common ground between the parties. In that, she was mistaken.
39. It was Mr Bridgen’s case that comparison with third-party opinions was relevant, indeed potentially decisive. But that approach finds no support in any of the authorities on this topic. It is, I believe, unprecedented. In my experience, when dealing with this issue the parties and the court have never explored what views other people have expressed or held about the relevant subject-matter. The issue has invariably been approached as a matter requiring argument not evidence, and on the footing that the fact-finding tribunal must inhabit the mind of the hypothetical commentator and reach its own conclusion. That is how Eady J dealt with the issue in *Branson v Bower*.
40. On this appeal Mr Eardley has explained that this was the position he adopted below on behalf of Mr Hancock. He invited the court to consider the opinion expressed in the light of the undisputed facts, to conclude that it was “pertinent” and satisfied the statutory requirement, and to find that Mr Bridgen had no real prospect of securing any different finding at a trial. Mr Eardley did not submit that the court should use the Response Tweets, or any other opinions expressed by third parties, as a yardstick of what the hypothetical honest commentator might think. True, it was Mr Hancock who put the Response Tweets before the court, but he did not do so in connection with the issue of honesty. The Response Tweets were relied on only in relation to serious harm, in support of the first limb of the summary judgment application. Mr Eardley has candidly accepted that he was at fault for not making this sufficiently clear to the Judge. Before us, he maintains that the objective honesty question falls for decision without regard to what anybody else in fact thought about the Bridgen Tweet or any other statement of similar nature. It is not partly but entirely an exercise in evaluating the Hancock Tweet in context. Mr Newman supports the Judge’s approach and stands by his argument below.
41. In my judgment, Mr Eardley is entitled to succeed on this point on the narrow basis that he was not and is not running an evidential case on the objective honesty issue. I would however go further. In my opinion we should uphold the established approach and rule that when determining whether an honest person could hold the opinion expressed by the defendant the views expressed by others about the same matter are not admissible. This is not only because an approach that takes account of the views expressed by others is unsupported by authority. It is also for reasons of both principle and pragmatism.
42. At the level of principle, questions about how an ordinary person could or would or should think or behave in given circumstances are generally answered by the court without resort to evidence of what has actually happened in those or similar circumstances, or to evidence about the subjective beliefs of others about the subject-matter in question. The abstract notion of the reasonable, fair-minded or honest individual is used as a decision-making tool, drawing on the circumstances of the particular case and, where necessary, on facts that are common knowledge. A criterion for liability for misuse of private information is how the person of ordinary sensibilities

would feel if faced with the same publicity as the claimant. In defamation, the natural and ordinary meaning of a statement is determined by identifying the single meaning it would convey to the hypothetical ordinary reasonable reader, without evidence other than the statement and its relevant context. In neither of these contexts does the court admit evidence of what people other than the defendant actually did or thought.

43. In some contexts, such as professional negligence, or the interpretation of specialist contracts, the court may not be able to determine, on the basis of common knowledge, whether a given act or omission is consistent with reasonable care, or what a particular form of words would convey to a market participant. In such a case it makes sense to admit evidence of professional conduct or market practice. But the present case is not one in which expert evidence is required or relevant.
44. In defamation, it has historically been accepted that where a true innuendo meaning is relied on (a meaning that would only be conveyed to readers with special knowledge) the court may receive evidence not only of the special facts but also of what those who knew those facts understood the statement to mean. Today, however, this practice is controversial. Its propriety has been doubted in the Court of Appeal: see *Baturina v Times Newspapers Ltd* [2011] EWCA Civ 308, [2011] 1 WLR 1526 [56] (Sedley LJ, with whom Hooper LJ agreed). The current edition of *Gatley on Libel and Slander* pronounces the practice to be “plainly not” proper: para 34-025. It has not been argued that this approach should be extended into the context we are considering here, and in my opinion that would be a mistake.
45. The pragmatic considerations, to which I now turn, are a further reason for that. The admission of evidence about the actual opinions of others, for the purpose of testing and deciding what a hypothetical person could honestly think, would risk complex and expensive satellite litigation for little or no useful purpose. I need only point out a few problems. First, it would be necessary to identify the opinions to be relied on. It might sometimes be easy to find people who have expressed a view on a given topic. It might be possible to survey the range of opinions expressed. But quite often, a topic yields an enormous amount of comment. Processing the data could be a major exercise. In any event, the statutory test is whether a person could honestly *hold* the opinion. A survey based only on what people had actually said would not capture the whole relevant field. Evidence that a person held but did not express a given opinion would be open to some obvious lines of attack.
46. Secondly, the basis on which third-party opinions were expressed might well need exploration. Such opinions could only be relevant if based on the same facts as those relied on in support of the honest opinion defence. Any variation between the actual knowledge possessed by the third party and the knowledge imputed to the hypothetical commentator would tend to undermine, and could destroy, the utility of the evidence. Thirdly, there would of course be room for challenges to the honesty of the third-party opinions. This case provides an illustration: the attitude of Mr Sunak is the subject of attack by Mr Bridgen. Fourthly, it is hard to see how evidence of this kind could ever be decisive, at least in favour of the claimant. As the defence of honest opinion protects the crank, or lone voice, proof that nobody else agreed with the defendant would not suffice. All these problems would only be exacerbated if the court were to take account of third-party opinions about similar but different statements, as contemplated by the Judge.

47. It follows that a decision on whether the Objective Honesty Condition was satisfied in this case could not turn on the presence or absence of evidence that others expressed the same or similar opinion.
- (2) *“There needs to be fuller evidential exploration of the limits of what views can be held”*.
48. The Judge’s second reason for refusing summary judgment was that the outer limits of what an honest person could think required “full exploration” which could not properly be carried out on an interlocutory basis. The Judge considered Mr Bridgen to have a legitimate case to advance on the issue of where the limits lay, and some evidence to support his case, in the form of the Doctors’ Letter. In my judgment, this was an unsound approach. The outer limits of the opinions an honest person could hold on a given factual basis are to be identified by the court objectively, as a matter of judgment, based on argument. They are not to be decided by reference to the defendant’s alleged “purposes”. Mr Bridgen’s allegation that his own comment had been “weaponised” by Mr Hancock for political reasons was not relevant to the issue for decision. And the Doctors’ Letter had no role to play in reaching a decision on the issue. This is for the reasons given above, and the following further reasons.
49. Properly understood, the Doctors’ Letter is not a comparator of the kind I have been considering so far. It is not a spontaneous response but considered argument, formulated and agreed by a group of individuals some weeks after the event, expressing reasoned disagreement with something Mr Sunak had said in Parliament about the Bridgen Tweet. But the issue of whether an honest person could have held the opinion expressed in this case is a question of fact on which evidence of this kind is not admissible. As I have said, this is not a matter for expert evidence. Nor are the signatories to the letter put forward as subject-matter experts. They do not qualify as such by virtue of their professional eminence, ethnicity, or religion. This is, in substance, lay opinion evidence about the right answer to the question raised for decision by the court. For these additional reasons, in my judgment, the Judge erred in having regard to the Doctors’ Letter.
- (3) *“There needs to be fuller argument”*.
50. The Judge’s third reason for reserving the issue to a trial was that even if the court would not be assisted by further evidence it still required further argument on the point. I do not consider that to be a sufficient reason for declining to form a concluded judgment on this issue. The court heard full argument on the application of the law. The circumstance that the case involves freedom of expression is a reason for addressing the issue promptly, rather than putting off a decision and requiring the parties to incur further expense. As I mentioned in *Iqbal v Geo TV Ltd* [2024] EWCA Civ 1566, [2025] KB 357 [30], summary determination of defamation claims reduces the risk that the rights of the claimant or defendant will be chilled by the costs of litigation.
- (4) *“There is an overlap with a triable issue under s 3(5)”*.
51. The Judge held that the evidence relevant to the objective honesty condition overlapped with the evidence going to whether Mr Hancock held the opinion he expressed. That reflects what I have already held to be a legally erroneous view, that a defendant’s purposes can play a part in deciding the objective question of whether an honest person

could hold the opinion which the defendant expressed. I also disagree with the Judge's conclusion that there is a triable issue under s 3(5). I shall explain my reasons for that in part VI of this judgment below.

(5) *"Mr Hancock is not entitled to rely on facts about the Holocaust or the pandemic".*

52. This is the first of the four further and alternative reasons Mr Newman has advanced for upholding the Judge's decision. It is not a point raised in the Respondent's Notice, but in his skeleton argument for this appeal Mr Newman submitted that "the only facts Mr Hancock can rely upon" to support the opinion he expressed are facts contained "within" the Bridgen Tweet. The argument is that the opinion expressed was about the "character" of the Bridgen Tweet and the basis indicated was "only Mr Bridgen's tweet"; other facts are not relevant to the "character" of the Bridgen Tweet. In a footnote Mr Newman described this as an "obvious shortcut" which "the Judge seems to have missed".
 53. This was a point which Mr Newman advanced to the Judge. Her reasons did not address it. But I do not think this is by any means an "obvious shortcut". Quite the contrary. The statutory language sets no limit on the scope or range of the facts on which a defendant can rely as a basis for the opinion. The relevant test is whether "an honest person could have held the opinion on the basis of any fact which existed at the time the statement ... was published". The facts relied on by Mr Hancock satisfy that criterion. They are, moreover, facts that are common knowledge.
 54. The facts relied on do have to be relevant to, and capable of supporting, the opinion in question. The issue is discussed in *Riley v Murray* at [57]-[62]. The present case is, however, distinguishable on its facts. Applying the principles identified in *Riley v Murray*, I do not think the facts relied on by Mr Hancock can be ruled out of consideration on the basis that they have no bearing on the question of whether the "character" of the Bridgen Tweet was "antisemitic". That would be an impossibly narrow view. In my judgment, the uncontroversial facts are plainly relevant and admissible as facts which an honest person could take into account in forming that opinion. The Bridgen Tweet, which is identified as the basis for the opinion, refers to the Holocaust and to the pandemic and vaccine rollout.
- (6) *"Authoritative definitions of antisemitism show, or may show, that the opinion is untenable".*
55. Before the Judge, Mr Bridgen relied on a definition of antisemitism prepared by the International Holocaust Remembrance Alliance (IHRA). This was said to be conclusive of the s 3(4) issue in this case, because the conduct imputed to Mr Bridgen (belittling the experience of the Jewish people by comparing the vaccine programme to the Holocaust) falls outside the scope of the IHRA definition. The definition was adopted by the College of Policing, or so it seems from an article put before us, entitled "A definition of antisemitism", written by the Rt Hon Lord Pickles in 2016. In paragraph (1) of the Respondent's Notice complaint is made that the Judge did not refer to this material. Mr Newman has described it as "important evidence" to which the Judge should have had regard, and which should have led her to conclude "that the claim was almost certain to succeed on this point."

56. The Judge did not refer to these materials, but I do not agree that this was an error. In my view, she was right to leave these materials out of account. Antisemitism is not a technical or scientific term requiring expert evidence. It is a component of ordinary language. Its import is much contested. There is no generally agreed definition. This is reflected in the documents relied on. The IHRA document contains a “non-legally binding working definition of antisemitism”, accompanied by illustrations “to guide the IHRA in its work”. Lord Pickles’ article made the point that an issue identified by Britain’s international partners is “the absence of an agreed international definition of antisemitism”. Lord Pickles pointed “those seeking a definition” to the IHRA document and referred to its adoption by the College of Policing. He did not suggest that the government of the time had adopted the IHRA definition. He explained the UK government’s overall policy, that “it is up to the victim to determine whether a crime against them was motivated by any particular characteristics”. More fundamentally, as I have already explained, the boundaries of the opinions which an ordinary honest person can hold on the basis of given facts are generally to be identified by the court. They are not to be set by, or by reference to, the opinions of others about the topic in general, whether those others are eminent international bodies, or the College of Policing.

(7) *“The presumption of falsity is a reason the case should go to trial”.*

57. This is my encapsulation of Mr Newman’s third additional reason for upholding the Judge, which is pleaded at some length in paragraph (2) of the Respondent’s Notice. Mr Newman begins with the proposition that the common law presumes a statement to be false unless the defendant asserts its truth. He notes that in this case there is a plea of honest opinion but no plea of truth. He then submits that the plea of honest opinion “amounts to an assertion of truth” but one that is “pleaded in breach of a fundamental principle of the law of defamation” and he complains that this is “procedurally unfair”. This is put forward as “another reason not to strike out the claim”.
58. This is a reiteration of arguments which the Judge rejected, for the reasons I have outlined, at paragraphs [69]-[70] of her judgment. In my opinion, the Judge was plainly right on this point. The common law presumption of falsity has no part to play in this case. It applies to a defamatory statement of fact. The statement complained of here was a defamatory statement of opinion. Mr Hancock has no need to plead the truth of that statement. It would be enough for him to establish the honest opinion defence. He has pleaded that defence. There has been no application to strike out his pleading, nor is there any ground for doing so. Nor is there any application to strike out the claim. The issue is whether the honest opinion defence would be bound to succeed if there was a trial.

(8) *“Mr Bridgen’s use of the word ‘since’ is or may be fatal to the defence”.*

59. Before the Judge, Mr Newman submitted that no honest person could hold the opinion complained of because, so far from belittling the Holocaust, the Bridgen Tweet emphasised its seriousness, by using the word “since”. This is not a reason the Judge gave for refusing summary judgment in favour of Mr Hancock. She rejected Mr Newman’s invitation to enter summary judgment in favour of Mr Bridgen and did not address this line of argument. In his skeleton argument for this appeal, though not in the Respondent’s Notice, Mr Newman revived this submission. He submitted that the character of the Bridgen Tweet was not even arguably antisemitic. On the contrary, it

recognised just how serious and horrifying the Holocaust was. Mr Newman prayed in aid the reasoning in the Doctors' Letter and the absence of any allegation of antisemitism in the Response Tweets. He maintained that the court could at least be satisfied that Mr Bridgen was likely to win on the s 3(4) issue.

60. I have explained why I consider what third parties have or have not said about the matter to be irrelevant and inadmissible on the present issue: the question of what an honest person could think is one for the judgment of the court. As to that, I readily accept that Mr Bridgen, in his tweet, was presenting the Holocaust as something horrifying; he described it as "a crime against humanity". But the issue is not whether the Bridgen Tweet was antisemitic but whether an honest person could (however unreasonably or even irrationally) have held the opinion that it was. That issue turns on the significance that can be attached to the comparison between the Holocaust and the Covid vaccine rollout. On that question, there is room for different responses.
61. The Holocaust was a deliberate genocidal campaign to eradicate an entire people for motives of ethnic or religious prejudice. The Covid vaccine rollout was not. On the undisputed facts it was, at least in part, a benevolent public health programme with the aim of saving lives. The Bridgen Tweet did not suggest that the vaccine rollout was worse than the Holocaust, but it did expressly suggest some form of comparability. It suggested that the vaccine programme was a crime against humanity worse than any other in the intervening 75 years. In submissions, Mr Eardley identified a possible thought process. He suggested that an honest person could think that by comparing the two events – mentioning them in the same breath - Mr Bridgen was minimising or trivialising the Holocaust, and that this was not only deeply offensive to Jewish people but also antisemitic. I do not accept that reasoning of that kind can be dismissed as impossible for any honest person. Nor do I accept that a trial is required to determine whether this is a line of thinking in which an honest person could engage. That is for reasons I have already indicated.

Decision on the Objective Honesty Condition

62. For the reasons I have given, the Judge's reasoning was legally flawed, and the additional points relied on by Mr Bridgen do not provide grounds to uphold her decision. I would therefore set the judgment aside and remake the decision. My conclusion is that the court should, as the saying goes, "grasp the nettle" and find in favour of Mr Hancock on this issue.
63. The statements of case raise what comes down to a short point about what the hypothetical honest person could think about the Bridgen Tweet, in the context of a few uncontroversial facts. The court is required to form a judgment on that question. That could, in principle, be dealt with at a trial. But in my judgment there is no need for a trial of the issue. We are in a position to resolve it now on a summary basis. We have all the evidence required, and we have read and heard sufficient argument.
64. Mr Eardley stressed the enormous latitude which the law allows to the honest commentator, protecting opinions even if they are irrational. He submitted that on a proper application of the law it is plain, for the reasons I have given, that the objective honesty condition is met in this case. I agree. In my judgment, whatever else might be said about it, the opinion expressed in Mr Hancock's Tweet falls within the parameters set by the law. The opinion is pertinent, and one that an honest person could hold on

the basis of the uncontroversial facts relied on by Mr Hancock. No other conclusion could reasonably be reached at a trial of the issue, and there is no other compelling reason for such a trial.

VI. Section 3(5): The Dishonesty Disqualification

The legal principles

65. At common law, the defence of fair comment on a matter of public interest was defeated by proof of “malice”. That was also the position in relation to the common law defence of qualified privilege. The concept of malice for the purposes of qualified privilege was authoritatively expounded by the House of Lords in *Horrocks v Lowe* [1975] AC 135. Lord Diplock explained that it consists of abusing a privileged occasion for a dominant improper motive, meaning one unconnected with the purpose for which the law confers the privilege. Until the decision in *Cheng*, it was widely thought that this was also true of the “malice” that could defeat the fair comment defence. *Cheng* identified that as a misconception. Lord Nicholls explained that the rationales behind the two defences were different. The basis of the fair comment defence was “the high importance of protecting and promoting the freedom of comment by everyone at all times on matters of public interest, irrespective of their particular motives”: [57]. At [79] Lord Nicholls summarised his conclusions:

... a comment which falls within the objective limits of the defence of fair comment can lose its immunity only by proof that the defendant did not genuinely hold the view he expressed. Honesty of belief is the touchstone. Actuation by spite, animosity, intent to injure, intent to arouse controversy or other motivation, whatever it may be, even if it is the dominant or sole motive, does not *of itself* defeat the defence. However, proof of such motivation may be evidence, sometimes compelling evidence, from which lack of genuine belief in the view expressed may be inferred. ...

(emphasis in original).

66. Lord Nicholls’ approach was endorsed by the Supreme Court in *Joseph v Spiller* (see Lord Phillips at [66]-[70]). Section 3(5) carried this approach into the modern statutory regime, adopting Lord Nicholls’ recommendation in *Cheng*, at [80], that the better course would be to avoid the use of the word “malice” altogether.
67. The Judge referred to s 3(5) as a “counter-defence”. I prefer the label I coined for section 3(5) in *Riley v Murray*, namely “The Dishonesty Disqualification”. To my mind, this has the virtue of emphasising two things. The first is that where s 3(5) operates, its effect is to disqualify a defendant from relying on a defence of honest opinion that would otherwise be available. The court will only get to s 3(5) if it has first been proved, admitted, or assumed that all the statutory conditions for the honest opinion defence are met: that the statement is one of opinion, which sufficiently indicates its basis, and the opinion expressed is one that could be held by an honest person, on the basis of one or more facts which have themselves been established, admitted or assumed to be true. If all of that is made out, the claimant will lose unless he proves that the opinion expressed was one that was not actually held by the defendant. The second point emphasised by

the label I have given to this part of the statute is the need to prove a dishonest state of mind. There may be exceptions to this proposition but, at least in general, a person who expresses an opinion which they do not hold is acting dishonestly.

68. There are many authorities on the right approach to the pleading and proof of “malice”. They show that the law takes a particularly strict approach, treating such an allegation as akin to fraud. That being so, a heightened standard applies. The pleaded facts must go beyond that which is equivocal or merely neutral; they must “raise a probability of malice, and be more consistent with its existence than its non-existence”: *Somerville v Hawkins* (1851) 10 CB 583 (Maule J), approved by the House of Lords in *Turner v Metro-Goldwyn-Mayer Pictures Ltd* [1950] 1 All ER 449, 455 (Lord Porter). Lord Porter made clear in this same passage that the matter is not to be approached as an exercise in weighing up the bulk of the evidence or points for and against a finding of malice; on the contrary “each piece of evidence must be regarded separately”. One piece of evidence that shows a probability is enough; but “each particular instance of alleged malice must be separately analysed, and, if the result is to leave the mind in doubt, that piece of evidence is valueless.” At the pleading stage, the court may strike out the plea of malice if the facts alleged are incapable of supporting an inference of dishonesty on the part of the defendant: *Branson v Bower* [15].
69. Many of the statements of principle to which I have referred were made in the context of the qualified privilege defence but, although we now recognise that “malice” is a different concept in that context, I do not believe the pleading principles diverge. The modern cases apply the same approach to pleading and proof in a case where the Dishonesty Disqualification is raised: see, for instance, *Riley v Murray* [2021] EWHC 3437 (QB), [2022] EMLR 8 [101] (Nicklin J). I think that is correct given that, in the present context, the touchstone is whether the defendant acted dishonestly. And the statements I have cited reflect a principle of wider application in the law. As Lord Hobhouse put it in *Three Rivers District Council v Bank of England (No 3)* [2003] 2 AC 1, [161]:

Dishonesty is not to be inferred from evidence which is equally consistent with mere negligence. At the pleading stage the party making the allegation has to be prepared to particularise it and, if he is unable to do so, his allegation will be struck out.

The dishonesty issue in this case

70. The case pleaded in Mr Bridgen’s Reply is that Mr Hancock “did not hold the opinion ... or he was recklessly indifferent to whether it was true”. In support of these assertions, Mr Bridgen made four main points. First, he said that there was no factual basis for the imputation of antisemitism. He relied on the Doctors’ Letter and the IHRA definition. Secondly, Mr Bridgen relied on the absence of a plea of truth, combined with continued publication of the Hancock Tweet. This was said to show that Mr Hancock knew what he said was untrue, so he cannot have believed it to be true at the date of publication. Thirdly, the opinion was said to be so unreasonable that Mr Hancock cannot have held it. Fourthly, it was said that Mr Hancock had a motive to harm Mr Bridgen and that this (quoting Lord Nicholls in *Cheng*) was compelling evidence from which to infer a lack of genuine belief in the view expressed. The Reply sought to buttress the case on motive by reference to “a much wider animus against the claimant showing that people who the claimant has never met have set out to cause him harm over a long timescale”.

The hearing and judgment

71. Before the Judge, Mr Newman submitted that it was sufficient for him to present an arguable case, with a realistic prospect of success, that Mr Hancock was guilty of the “malice” that defeats a defence of qualified privilege. The Judge rejected that as legally mistaken. She also rejected Mr Newman’s arguments that the honest opinion defence was “defeated by demonstrable untruth, subjective recklessness as to truth or falsity”. The Judge further ruled that Mr Bridgen’s allegation of a “wider animus” against him was incapable of supporting his case under s 3(5), because it articulated no connection between the wider animus and the Hancock Tweet.
72. The Judge held, however, that a case under s 3(5), that the defendant did not hold the opinion expressed, could be based on evidence as to (a) “the objective unreasonableness of that belief” and (b) spite or other motivation. The Judge held that Mr Bridgen had an adequately pleaded inferential case on each of those points; that the outcome would turn on a judicial assessment of the parties’ competing cases; and that this was an issue of fact on which not all the relevant evidence was available. As she put it:
94. ... In the end, the robustness of Mr Hancock’s own evidential case on the one hand, and Mr Bridgen’s accusatory case on the other, will have to be tested and adjudicated by a trial judge one way or the other...
- ...
96. ... Whether or not Mr Hancock genuinely espoused the opinion he expressed in the tweet complained of is in the end a matter of fact. What is certain is that all the relevant evidence on which that question would usually fall to be determined is not available at this stage. Mr Hancock has not chosen to put forward any of his own evidence yet. That is entirely a matter for him, of course. But whether Mr Bridgen will ultimately succeed on his pleaded case in establishing the fact he alleges is likely to depend on a full examination of the evidence both ways, including how Mr Hancock explains his opinion in due course if he chooses to do so (or the inferences to be drawn if he does not). That is a matter for a trial judge, not for a mini-trial in advance of the evidential situation even being known. I cannot say on the present state of the evidence that Mr Bridgen’s case is *unreal*. It indicates the outlines of a case which it would not be unfair to ask Mr Hancock to defend on its merits. So I do not have a proper basis for giving summary judgment for Mr Hancock on the counter-defence without his having either pleaded to or explained in evidence the genuine nature of his own belief.
73. The Judge went on to address the adequacy of Mr Bridgen’s pleaded case. She identified the test, stating that the burden was on Mr Bridgen to plead his Reply in a manner that was “coherent and discloses only *reasonable* grounds for Mr Hancock to respond to it and a court to entertain it” ([100], emphasis in original). She said there was much in the pleading that was “inapt or irrelevant”, and repeated that the “wider animus” case was not sustainable. But she held that the Reply contained “the essence of a proposition that ‘*antisemitic in character*’ was an opinion so unreasonable, and Mr

Hancock's motivation to harm and discredit Mr Bridgen so salient, as to lay the groundwork for an inference that it should be regarded as a smear rather than a genuinely held opinion" ([101]). She decided to give Mr Bridgen an opportunity to amend his pleadings. Mr Newman has since produced several iterations of a draft amended Reply.

Grounds of appeal, submissions and issues

74. Mr Hancock appeals against the Judge's decision not to give summary judgment on the s 3(5) issue, or to strike out the Reply, on what come down to three main grounds. First, it is said that the Judge was wrong to consider that a case under s 3(5) can be founded on the objective unreasonableness of the opinion expressed. Secondly, and more generally, it is said that the Judge failed to apply the heightened standard that applies to a plea of this kind and that had she done so she would have been bound to conclude that Mr Bridgen's case did not meet that standard. Thirdly, it is argued that the Judge was wrong to regard Mr Hancock as bearing an evidential burden to explain his own state of mind when, for the reasons just given, he had no case to answer.
75. In his skeleton argument for Mr Bridgen, Mr Newman accepted that the heightened standard relied on by Mr Hancock applies. He maintained that the Judge applied that test, that she found that it was met, and that she was right to do so. In support of the contention that the heightened standard was met, Mr Newman relied on a range of matters. He went beyond endorsing the Judge's reasons, putting forward points on which she did not rely, including some that she expressly rejected, and others which she did not address (because they were not advanced to her but only emerged in the draft Amended Reply). Few of these points were even arguably covered by the two-paragraph Respondent's Notice. However, no objection was taken on that ground. In my judgment, in all the circumstances, it is in the interests of justice for us to address them all.
76. The parties' contentions give rise to four main issues, which I shall identify and consider in the next section of this judgment.

Discussion

(1) Is objective unreasonableness relevant?

77. Gatley on Libel and Slander states, at para 18-018 of the 13th edition, that the unreasonableness of a belief may lead the court to reject the contention that the defendant in fact holds it. That however is said in the context of statements made on an occasion of qualified privilege. And the authority cited is the famous case of *Derry v Peek* (1889) 14 App Cas 337, in which the House of Lords addressed the ingredients of the tort of deceit. But here we are concerned with the defence of honest opinion. It has been clear since *Cheng* that the state of mind that defeats that defence (or its common law precursor) is not the same as the state of mind that defeats a defence of qualified privilege. Nobody has been able to identify an authority that supports the proposition that the objective unreasonableness of the opinion expressed by a defendant can prove, or contribute to proof, that the defendant did not honestly hold that opinion. It is therefore necessary to address the question from first principles.

78. Approached in that way, it seems to me clear that the objective unreasonableness of an opinion could never be enough of itself to show a probability that the defendant did not hold the opinion. As I have mentioned, the court will only reach the issue under s 3(5) if it has first concluded that the Objective Honesty Condition is met. At that stage the court proceeds on the basis that the opinion may be highly unreasonable, and even irrational, and yet one that an honest person could hold. It would be incoherent to find that this test was satisfied and yet go on to find that the opinion was so unreasonable that, by inference, the defendant probably did not hold it. For the reasons that follow, however, I do not think it necessary to decide this appeal on this point alone.

(2) Did the Judge apply the heightened standard?

79. I have concluded that she did not. The judgment makes no reference to the authorities I have cited. It is not clear to me that they were the subject of submissions to the Judge. I strongly suspect that they were not. I have reviewed the skeleton arguments for the hearing below and they do not set out the points on which reliance is now placed by Mr Eardley. The language used by the Judge in [96], [100] and [101], which I have quoted above, clearly indicates that a considerably lower standard was applied by her, as indeed is usual where allegations of dishonesty are not under consideration. These and other passages make clear that the Judge considered the position to be equivocal, requiring a full evidential investigation.

(3) Does Mr Bridgen's case meet the heightened standard?

80. This is a question that arises for the first time in this court. For that reason, and because of the breadth and multi-faceted nature of the case advanced by Mr Newman on the appeal, it calls for a more extended discussion than the two issues which I have just addressed. But I do not consider any of the points raised to be complex or difficult. I shall nonetheless state my conclusions at the outset: in my judgment Mr Bridgen has not stated, in his existing Reply, or in his draft amendments to that document, a reasonable basis for concluding that Mr Hancock probably did not hold the opinion he expressed, and Mr Bridgen would have no real prospect of establishing that proposition at a trial.
81. Mr Newman advanced 10 main points, which can be fairly summarised as follows. The court can and should infer that Mr Hancock knew the imputation of antisemitism to be wrong because (i) he was aware of the IHRA definition and "the government definition" of the term and that this did not extend to belittling the Jewish people; (ii) he could see the word "since" in the Bridgen Tweet, which made the opinion an impossible one to hold; (iii) he left the Hancock tweet up, even though he chose not to plead a defence of truth; and (iv) he is a highly educated, intellectually capable person, who understands the consequences of his actions. Further and alternatively, an inference of bad faith can be drawn from (v) the repetition outside Parliament of a statement first made in Parliament, (vi) the language of the Hancock Tweet, and (vii) Mr Hancock's motive to discredit someone who challenges the vaccine programme on the basis of safety. Further and alternatively, inferences can be drawn from what others did or did not do: (viii) Mr Bridgen's Parliamentary assistant approved and posted the Bridgen Tweet on social media, "which tends to show that the Conservative Party led by Mr Sunak did not consider it to be ... genuinely objectionable ... and that [Mr Hancock] did not either"; and (ix) no other commentator condemned Mr Bridgen in precisely the way that Mr Hancock did. Further and alternatively, (x) contrary to the Judge's finding, the s 3(5)

test can be satisfied by proof of recklessness and Mr Bridgen has a tenable case that Mr Hancock was recklessly indifferent.

82. As a preliminary observation, the bulk of this reasoning rests on false premises. As the Judge rightly said, a statement of opinion cannot be shown to be false or “wrong”, nor can a person be proved to “know” that their opinion is false or wrong. The test is whether the defendant held a genuine belief in the opinion expressed. Mr Newman’s points (i) to (iii) reflect the first of these misconceptions. They are all versions of arguments which I have addressed and rejected when considering the Objective Honesty Condition. The reasons I have given for holding them untenable in that context apply equally to reliance upon them in support of a case under s 3(5). None of them can raise a probability that Mr Hancock did not believe what he said. Point (iv) is designed to support the inference that Mr Hancock had actual knowledge of the IHRA and so-called “government” definitions. I do not think it helps. Assuming the proposition relied on to be true, I can still see no sufficient basis for an inference that Mr Hancock was probably aware of the definitions. Even if he was, the point remains that the definitions do not set the boundaries of what a person could honestly think. It follows from these points that the pleaded basis for Mr Bridgen’s factual case of unreasonableness fails.
83. Point (v) is illogical. MPs enjoy absolute immunity from suit for what they say in Parliament but not if they repeat it outside Parliament. Hence Mr Hancock’s need to rely on the s 3 defence in the present case. The repetition of a Parliamentary statement in a context that attracts less legal protection tends to show that the later statement was made in good faith rather than the contrary. Mr Newman’s argument is based on a fundamental misreading of the passages on which he relies, namely *Jennings v Buchanan* [2004] UKPC 36, [2005] 1 AC 115 [13] (Lord Bingham) and *R v Chaytor* [2010] UKSC 52 [43] (Lord Phillips). Both passages were concerned with the wholly distinct question of whether a challenge in court to the honesty of an extra-Parliamentary statement which affirms a statement made earlier in Parliament might be precluded by Article 9 of the Bill of Rights (concluding that it would not).
84. As to point (vi), the language chosen by Mr Hancock is strong but not outlandishly so. It is not capable of showing a probability that he did not believe what he said. It is entirely consistent with a strongly held belief. Points (viii) and (ix) both involve a version of the fallacies I have identified above. Each assumes that the dishonesty of a statement by X can be established by proof that Y and Z did not express the same opinion. Point (viii) is particularly egregious. The conduct of a single individual, and one who worked for Mr Bridgen, is plainly incapable of founding an inference about the collective state of mind of the Conservative Party. Still less could it justify an inference that Mr Hancock acted dishonestly in expressing the opinion which he did.
85. Point (x), recklessness, was pleaded but rejected by the Judge. It was not revived in the Respondent’s Notice or the skeleton argument for this appeal. But in oral argument, Mr Newman relied on a passage in *Derry v Peek* at 375-6 where Lord Herschell identified the ingredients of fraudulent misrepresentation. However, the passage in question is about “a false statement”, that is to say a statement of fact. A statement of opinion cannot be “false”, at least not in the sense used in this passage. Section 3(5) identifies a single factual test. That test can be satisfied by proof that the defendant did not hold an honest belief in the opinion they expressed. But that is not the same thing as, nor does it encompass, recklessness. As Mr Eardley has put it, one cannot be recklessly

indifferent to whether one holds an opinion. One either holds it or one does not. The Judge was right on this point.

86. The leaves point (vii), Mr Bridgen's case on motive. The Judge considered this aspect of the case to be sufficiently pleaded, and to have a real prospect of success. However, I have concluded that she applied too lax a test. Moreover, the Judge did not address the question of whether proof of hostile motive would be sufficient, even if established. *Cheng* makes clear that proof of hostile motive can be relevant but also suggests that it cannot *of itself* establish that the defendant did not believe what he said. I have nonetheless reviewed the specifics of this case, asking myself whether the facts alleged, if proved, could amount to "compelling evidence" raising a probability that Mr Hancock did not hold the opinion he expressed. I do not see that they could.
87. I have already dealt with most of the points made in support of the case on motive. I now address what remains. Paragraph 42 of the Reply asserts that "[Mr Bridgen] believes that [Mr Hancock] knows or suspects" that data when released will show that the vaccines were not safe or effective and that Mr Hancock wished to discredit Mr Bridgen for that reason. Paragraph 44 focuses on the speed with which Mr Hancock put out his Tweet. Paragraph 51 relies on the use of the word "grievance" in a solicitor's letter of 16 February 2024. This is a mixture of speculative assertion about beliefs and possibilities, timing points, and a quibble about the choice of language by an agent many months after the event. None of it could support an inference that in denouncing the Bridgen Tweet as antisemitic in character Mr Hancock was expressing an opinion which he did not hold. Paragraph 43 of the Reply asserts that Mr Hancock, who encouraged the public to take the vaccine, has an obvious motive to prevent challenge to its safety. That may be so, but again is not sufficient to make it probable that his attack on the Bridgen Tweet was dishonest. I have considered the draft amendments to the Reply, and see nothing that could improve Mr Bridgen's position.

(4) What of the absence of evidence from Mr Hancock?

88. Gatley contains, at paragraph 34-043, the proposition that "if the claimant seeks to show that the defendant did not in fact hold the opinion, it will of course be essential for the defendant's evidence to address it." That is a pragmatic observation, not a proposition of law. In this case there was not a complete absence of evidence before the Judge. A statement from Mr Hancock's solicitor explained that he believed and continued to believe what he had said. But the short point is that the onus of proof lies on the claimant. In the absence of a sufficiently cogent case to answer, Mr Hancock came under no burden to explain himself. It has not been suggested that this is a case in which his silence could make good any deficiency in the pleaded case against him.

Decision on the Dishonesty Disqualification

89. For the reasons I have given, I consider that the Judge erred in law in concluding that a case under s 3(5) can be founded upon the objective unreasonableness of the opinion expressed by the defendant; whether or not I am right about that, I am satisfied that the Judge did not apply the heightened standard to which I have referred, and that the application of that standard leads to the conclusion that Mr Bridgen's existing case under s 3(5) discloses no reasonable basis and he has no real prospect of success on that issue. Mr Hancock bears no evidential burden of proof on the point. There is no other compelling reason for the resolution of that issue to await a trial.

VII. Disposal of the appeal

90. It follows that in my opinion this appeal should be allowed, the Reply should be struck out, and summary judgment should be entered for Mr Hancock.

LADY JUSTICE WHIPPLE

91. I agree.

LADY JUSTICE KING

92. I also agree.