Neutral Citation Number: [2026] EWCA Civ 844

Case No: CA-2025-000751

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST
Mr Justice Pepperall
[2025] EWHC 412 (KB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/07/2026

Before :

LORD JUSTICE LEWISON
LORD JUSTICE COULSON
and
LORD JUSTICE WARBY

- -

Between :

DALE VINCE	**Claimant/ Appellant**
- and –	
RICHARD TICE	**Defendant/ Respondent**

- -
- -

William Bennett KC and **Ben Hamer** (instructed by **Brett Wilson LLP**) for the **Appellant**
David Price KC and **Richard Munden** (instructed by **Patron Law LLP**) for the **Respondent**

Hearing date: 14 May 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 1 July 2026 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 :

I. Introduction

1. Dale Vince brings this libel action over a social media post by Richard Tice. At a trial of preliminary issues (TPI) Pepperall J (the Judge) determined that the statement complained of meant that Mr Vince "supports the murderous and antisemitic terrorist organisation Hamas", that it was a statement of opinion rather than a statement of fact, and that it indicated the basis for the opinion. Mr Vince appeals against the finding that the statement was one of opinion and, in the alternative, against the ruling on meaning.

2. Appeals of this kind are rare. Such decisions are findings of fact. An appeal can succeed if the court is persuaded that the Judge's approach was vitiated by a material error of law, but that very seldom happens. Judges of the Media and Communications List are very familiar with deciding these issues, which are frequently tried as preliminary issues in defamation claims. The applicable law is well-established, and clearly encapsulated in the decision of Nicklin J in *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB), [2020] 4 WLR 25 [11]-[17], the case which is usually cited to the trial Judge, as it was here. The decision-making process is comparatively simple. The key question for the Judge is how the statement would strike the ordinary reasonable reader. Ordinarily, no evidence is admissible other than the statement itself. The answer is very much a matter of impression. Over-elaborate analysis is to be avoided. On this appeal it is not suggested that the Judge's approach to the issue of meaning or to whether the statement was one of fact or opinion was wrong in law.

3. Mr Vince's case on appeal is that the Judge's decisions were wrong in the sense that they were outside the range of decisions at which a reasonable decision-maker could arrive. That is, in principle, a valid ground of appeal. But again, it will rarely prevail. The appellate court's approach to appeals against decisions of this kind is to exercise "disciplined restraint", not "second-guessing" decisions which involve the application of accepted principles to the undisputed facts of the case; in the absence of legal error an appeal against a decision on the meaning of a statement or whether it is one of fact or opinion will only succeed if the court is satisfied that, allowing for the advantages available to the first instance court, the finding was wrong: *Stocker v Stocker* [2019] UKSC 17, [2020] AC 593 [58]-[59]; *Blake v Fox* [2023] EWCA Civ 1000, [2024] EMLR 2 [49]-[50]. For the reasons I have given, these issues are usually relatively straightforward ones for the court of first instance to decide. They often turn on the impression the statement makes on the Judge. The scope for an appeal court to find that it was not open to a trial Judge to form the impression they did is limited.

4. Mr Vince has two grounds of appeal. Ground one does not challenge the Judge's ruling on meaning but asserts that the post was a statement of fact and that the Judge was wrong – in the sense I have explained – to hold that it was to any extent a statement of opinion. Ground two is advanced in the alternative, and asserts that if the statement was to any extent one of opinion it nonetheless included discrete defamatory allegations of fact (on which the opinion was based) which ought to have been incorporated into the meaning found by the court. Ground two therefore includes a challenge to the Judge's determination of meaning.

5. In my judgment, the key to this appeal lies in gaining a full understanding of the way the case was presented to, and understood by, the Judge at the TPI. Once that is

achieved, it becomes clear that the Judge was entitled to reach the decisions he did about the meaning of what Mr Tice posted, and about its status as a statement of opinion rather than one of fact. Ground one amounts in substance to nothing more than disagreement with the Judge, whose decision was in all the circumstances well within the bounds of reasonableness. Ground two is an attempt to run a new case on appeal, relying on arguments that were not advanced below. That is sometimes permitted, but this is not a case in which it should be allowed. I would therefore dismiss the appeal.

II. The factual background

6. Mr Vince is a well-known green energy industrialist and environmental campaigner, and a donor to the Labour Party. Mr Tice is Deputy Leader of the Reform UK party. He was its leader from 2021-2024. The case involves posts on the social media platform X, formerly known as Twitter. I shall refer to the platform as X, but adopt the parties' practice of using terms such as tweet and quote-tweet which date from the Twitter era.

7. The factual background is not complex, but it does involve a series of inter-related publications on X and in other media, and there has been some inconsistency in describing these. Different defined terms have been used by the parties, and by the Judge, with some risk of confusion. As clarity of analysis is of the first importance, I shall adopt my own set of defined terms for the relevant elements of the publications with which we are concerned and, where appropriate, substitute them for the terms used in passages I quote from other documents.

8. On 9 October 2023, Mr Vince gave an interview on Times Radio (the Interview), in the course of which he answered questions from the interviewer, Stig Abell, about the situation of the Palestinians and the events of 7 October 2023. The following exchange (the Exchange) took place as part of that interview:

> SA: I'm not saying that. I'm saying: is a terrorist attack from Hamas, Palestine defending itself?
>
> DV: I think one man's freedom fighter is another man's terrorist right, that's how it works.
>
> SA: So that is not the Labour position interestingly, they are not saying that, they are saying the opposite of that.
>
> DV: No I know, yeah I understand.
>
> SA: But you are happy to, this is pragmatism.
>
> DV: But this is my view.
>
> SA: This is your view.
>
> DV: This is how I feel.

9. On 13 March 2024, the news and politics website "Guido Fawkes" published an article (the Fawkes Article) and posted a tweet (the Fawkes Tweet) on its X account, each of which incorporated and made observations about the Exchange; and Mr Tice posted a tweet (the Tice Tweet) on his X account in which he quote-tweeted the Fawkes Tweet and added a statement of his own (the Tice Statement).

10. The Fawkes Article was headed "*Multi-Million Pound Donor to Labour Party says Hamas are 'Freedom Fighters*'". It incorporated an embedded video and audio recording of the Exchange (the Recording) with sub-titles and the following text:

> Labour have spent the week saying the Tories should pay back the £10 million they received from someone who they say said something racist. Similarly long time Labour Party donor Dale Vince has given Starmer's party at least £2.5 million to date, including a £1 million cheque late last year. He's recently launched an initiative calling for the youth of Britain to vote Labour. *Well and truly in the fold of Labour's funding class ...*
>
> If Labour thinks donors' cash donations should be returned when they say extreme things, what do they make of Vince's views? Late last year on Times Radio, after saying that Hamas should be able to defend itself, Vince stated that "one man's terrorist is another man's freedom fighter". When challenged on the fact that saying Hamas are freedom fighters isn't the official Labour position, Vince said: "This is my view, this is how I feel." *When can we expect Starmer to announce that the £2.5 million will be returned?*

11. The body of the Fawkes Tweet contained the words, "While we're on the subject of extremist donors and returning their donations ..." followed by a hyperlink to the Fawkes Article. Below this appeared the headline of the Fawkes Article and, to its right, the Recording, which played automatically when the Fawkes Tweet appeared on screen.

12. The Tice Statement was "So major Labour donor is pro the murderous antisemitic Hamas ... Mmmm". Below this was the quoted Fawkes Tweet, which had the format, content and characteristics described at [11] above.

13. On 14 March 2024, the Guido Fawkes website published a further article, headed "*Jewish MP blasts Labour for taking millions from 'Hamas freedom fighters' donor"* (the Second Article).

14. Also on 14 March 2024, Lord (Shaun) Bailey appeared as a guest on the Patrick Christys Tonight programme on GB News. In the course of an exchange with another guest, a former Labour Party adviser, Lord Bailey made statements about Mr Vince (the Bailey Statements). Lord Bailey stated that Mr Vince had said "one man's terrorist is another man's freedom fighter" and, when it was put to him that Mr Vince had not said he thought Hamas were freedom fighters, Lord Bailey replied "that's how people read that statement".

III. Mr Vince's claims

15. Mr Vince brought three relevant actions for libel. He sued Paul Staines, the alter ego of Guido Fawkes, in respect of the Fawkes Article and the Second Article (the Staines Claim). He sued Mr Tice in respect of the Tice Tweet. And he sued Lord Bailey in respect of the broadcast of the Bailey Statements (the Bailey Claim). There was some overlap between the Staines Claim and the claim in the present case, and the TPIs in each were heard at the same time. It will be necessary to look at those two claims

together. The Bailey Claim did not involve anything published by Guido Fawkes, but some features of it do need to be mentioned.

16. In the Staines Claim, Mr Vince asserted that the Fawkes Article bore the natural and ordinary meaning that he "had supported the terrorist acts of Hamas which included the mass murder, kidnapping and rape which took place on 7 October, *by stating that its members are freedom fighters*" (the emphasis here is mine). Alternatively, Mr Vince said that the Fawkes Article bore that meaning by way of true innuendo. His case was that the reasonable reader would have known that members of Hamas had carried out mass murder, kidnapping and rape on 7 October 2023, or alternatively a substantial number of readers would have known this. Mr Vince pleaded a similar case in respect of the Second Article. He did not sue Mr Staines in respect of the Fawkes Tweet.

17. In the present case, Mr Vince's claim form sought damages and other remedies "in relation to a post published ... by [Mr Tice] ... on ... Twitter on 13 March 2024", that is to say the Tice Tweet. A section of the Amended Particulars of Claim headed "Words complained of" set out the Tice Statement and the whole of the Fawkes Tweet, before going on to assert that "those readers ... who followed the links to the Fawkes Article also read" the words I have quoted at [10] above. On a natural reading, therefore, the pleaded claim related to the whole of the Tice Tweet: that is to say, not only the Tice Statement but also the quoted Fawkes Tweet. It also related, to some extent, to the words contained in the body of the Fawkes Article.

18. The next section of the Amended Particulars of Claim, headed "Case on Publication", explained Mr Vince's reliance on the Fawkes Article. His case was, and is, that there were "two categories of publishees", or two groups of readers: (1) those who read only the Tice Tweet, and (2) those who read the Tice Tweet "and then, as the Defendant intended and/or was reasonably foreseeable, followed the links to the Fawkes Article, which they also read." This way of putting the case, which is legally novel, raised what has been referred to as the "two publications issue" on which I shall comment later.

19. This approach had implications for Mr Vince's case on reference. He was not named in either the Fawkes Tweet or the Tice Statement. He was named in the Fawkes Article. Reflecting this, the Amended Particulars of Claim contained an elaborate twin-track case on why the statement complained of referred and was understood to refer to Mr Vince. In relation to publishees in the second category, the case on reference was simple: Mr Vince was named. In relation to publishees who did not read the Fawkes Article, Mr Vince maintained that he would have been recognised by his image, or for various other reasons.

20. This "two publications" approach did not, however, affect Mr Vince's case on meaning. The meaning he attributed to the Tice Tweet, whether in isolation or in conjunction with the Fawkes Article, was the same. The meaning was that

> [Dale Vince] (a) supports antisemitism and is therefore antisemitic; (b) supports the racist murder of Jews because they are Jews; and (c) supports Hamas, an antisemitic proscribed/outlawed terrorist organisation which murders Jews because they are Jews.

21. This was advanced as a natural and ordinary meaning or alternatively as a true innuendo meaning, on the basis that the reasonable reader would know Hamas to be a terrorist organisation that was proscribed or outlawed, or alternatively a substantial proportion of readers would have known those facts. So the structure of the pleaded case was similar to the one advanced by Mr Vince in the Staines Claim. But the meanings differ. I note in particular that the meaning complained of does not include any words such as those that I highlighted when setting out the meaning attributed to the Fawkes Article in the Staines Claim ([16] above). It is not alleged that the meaning of the Tice Tweet was that Mr Vince supported Hamas *because he had stated that its members are freedom fighters.*

22. In the Bailey Claim the meaning complained of by Mr Vince was that he "had, or it was reasonably suspected that he had, endorsed the terrorist acts of Hamas *by stating words to the effect that its members are freedom fighters*" (my emphasis).

IV. The preliminary issues

23. In defamation claims, it is common for the parties to seek and for the court to order a TPI. Frequently, the court will try the issue of meaning and whether that meaning was defamatory at common law. Where there is a dispute over the matter, the court will often order a trial of whether the statement complained of was one of fact or opinion and, if it was one of opinion, whether it indicated the basis on which it was made (that being the second condition for the statutory defence of honest opinion). Applications were made for all these issues to be tried in the Staines Claim and in the present case.

24. There were two potential obstacles to such a trial. The "two publications" approach in the present case meant that the claims involved a reference innuendo (that is, a case that some readers would have identified the claimant as the subject of the offending statement because of facts extraneous to the statement but known to those readers). This claim and the Staines Claim also involved true innuendo meanings (dependent on proof that some readers knew about what had happened on 7 October 2023). Issues about reference innuendos and innuendo meanings typically require an evidential investigation going well beyond the parameters of the published statement itself. For that and other reasons, the authorities warn against deciding such issues at a TPI: see *Dyson v Channel Four Television Corp* [2023] EWCA Civ 884, [2023] 4 WLR 67 [57]-[59]; *Hemming v Poulton* [2025] EWCA Civ 1494, [2026] EMLR 4 [10].

25. Here, there were additional reasons for caution. The "two publications" approach is, as Mr Bennett KC accepted, unorthodox. The conventional approach, where extraneous material is relied on in support of a case on reference, is to identify the scope of the publication of which complaint can be made, and the context in which it appeared, by deploying the concept of the ordinary reasonable reader. If that reader would have looked at the extraneous material, then it forms part of the statement complained of, or its context; if the notional reader would not have seen the extraneous material it must be left out of account. Accordingly, information found at the end of hyperlinks may or may not be part of a publication, or part of its context. The issues arising are discussed in *Falter v Atzmon* [2018] EWHC 1728 (QB) [11]-[13], *Poulter v Times Newspapers Ltd* [2018] EWHC 3900 (QB) [24], and other cases cited in paragraphs 3-033 and 3-034 of Gatley on Libel and Slander 13th ed (2022) and its first supplement. On this approach, Mr Vince could only complain of a single publication, which either included or did not include the terms of the Fawkes Article. The approach advocated on behalf

of Mr Vince would, by contrast, allow for multiple claims in respect of different publications of the same core material to different groups of readers who read different extraneous material.

26. Mr Tice's position is that the two publications approach is wrong and contrary to established principle. It is certainly a novel approach, and one that does not seem easy to square with other established principles of defamation law, such as the principle that the question of whether a publication is defamatory has to be answered by reference to the response of the ordinary reasonable reader to the entire publication, not just parts of it: *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65. The two publications approach could have significant implications in other cases. It could have a bearing, for instance, on whether and to what extent the statement complained of referred to the claimant and, if so, what (if any) defamatory meaning(s) it bore about the claimant. The answers could differ according to the nature and extent of the extraneous material relied on. The approach could complicate assessment of whether the claim satisfies the serious harm requirement in s 1 of the Defamation Act 2013. So the two publications point raises issues of real importance.

27. Happily, these complications do not arise for consideration on this appeal. The Master's Order for a TPI allowed the trial Judge to decide whether to resolve the two publications issue. The Judge did not consider it necessary to decide the question of principle and declined to do so. The issue of reference had fallen away when Mr Tice accepted at the Case Management Conference that "the hypothetical reasonable reader of [the Tice Tweet], reasonably acquainted with [Mr Vince] would understand it to refer to [Mr Vince]." For good measure, reference was expressly conceded by Counsel for Mr Tice in his written and oral argument at the TPI. As for meaning, nobody argued at the TPI that the meaning of the Tice Tweet was affected by whether the hypothetical reader clicked on the link in the Fawkes Tweet and read the Fawkes Article. The Judge agreed that the meaning was the same whichever approach was taken. And he found as a fact that it was common knowledge that Hamas is a terrorist organisation that was responsible for the murder, rape and kidnap of Israeli citizens in October 2023. That made it unnecessary to resolve any issue as to true innuendo meaning. There is no appeal against the Judge's decisions on any of these points.

V. The judgment below

(a) The Staines Claim

28. The Judge made findings about the meaning of the Fawkes Article and the Second Article, whether each was a statement of fact or opinion, and whether it was defamatory at common law. Only the Fawkes Article is relevant to the present case.

29. At [35]-[44] the Judge summarised the arguments of the parties on the meaning of the Fawkes Article. Mr Bennett, representing Mr Vince, had argued that the article "clearly indicated that it was being alleged that Mr Vince was 'out and out' supporting Hamas". Mr Bennett submitted that the video clip (which did not include Mr Vince saying Hamas had a right to defend itself) made no difference either way. It would have been obvious to the reader that the clip was just part of a longer interview, and that Mr Vince "must have made comments about his support for Hamas and its right to defend itself elsewhere in the interview".

30. At [45], the Judge rejected the meanings contended for by both parties. At [48] he found the natural and ordinary meaning of the Fawkes Article, so far as it concerned Mr Vince, was that:

> "... Mr Vince has said of the terrorist organisation Hamas that 'one man's terrorist is another man's freedom fighter'.
>
> ... Mr Vince believes, and has said on Times Radio, that the terrorist organisation Hamas that carried out mass murder, kidnapping and rape in October 2023 are freedom fighters who should have the right to defend themselves."

31. At [56] the Judge found that the statement that Mr Vince had asserted that Hamas was entitled to defend itself was "presented as fact." At [58] the Judge set out his conclusions on the remaining parts of the statement. He said,

> "Ultimately this is a matter of impression. In my judgment, the reasonable reader would form the impression that Guido Fawkes was making a statement of fact that Mr Vince had said, and that it was his view, that Hamas are freedom fighters." At [62], the Judge found that "the imputations about Mr Vince's statements and beliefs were plainly defamatory at common law."

(b) This case

32. At [63], the Judge identified "The Tweet". He recorded that on 13 March 2024 "Mr Tice retweeted the [Fawkes Tweet][1] and added the following comment: 'So major Labour donor is pro the murderous antisemitic Hamas ... Mmmm.'"

33. At [83], the Judge set out the meaning pleaded by Mr Vince (paragraph [20] above). He then summarised the submissions of Mr Bennett on meaning as follows:

> 85. Mr Bennett argues that Mr Tice could not have been more emphatic in alleging that Mr Vince was 'pro the murderous antisemitic Hamas' and that the prominent headline to the embedded tweet declared with considerable emphasis that 'Hamas are freedom fighters'. He asserts that there are no curative words that can neutralise such strident allegations in either the embedded video clip or the hyperlinked article.
>
> 86. Mr Bennett does not seek any extended meaning from the [Fawkes Tweet] the video clip or the hyperlink to the full [Fawkes Article]. As he puts it in argument, Mr Tice had 'done the damage' with his tweet.

34. At [87]-[88] the Judge recorded these submissions made by Mr Munden, on behalf of Mr Tice:

> the natural and ordinary meaning of [Mr Tice's] tweet was

[1] The judgment refers to "the Guido Fawkes article" but this is clearly a typographical error.

> 'By his words in the interview shown in the video, the claimant had been shown to hold a favourable view of Hamas, which is a murderous and antisemitic organisation; and this was potentially significant because the claimant was a major donor to the Labour Party'.
>
> .... the reasonable reader will have understood 'pro Hamas' to be a commentary on the statements made in the video. The words 'murderous' and 'antisemitic' were clearly attached to Hamas.

35. The Judge then set out his conclusions on meaning:

> 91. In my judgment, the impression created by the tweet was more than simply that Mr Vince held a favourable view of Hamas but that he supported the group. ...
>
> 92 ... in my judgment, the natural and ordinary meaning of Mr Tice's retweet is that Mr Vince supports the murderous and antisemitic terrorist organisation Hamas.

36. The Judge addressed the issue of fact or opinion at [94]-[100]. The following passages are of particular relevance. I have omitted some case citations.

> 94. Mr Bennett argues that Mr Tice's tweet purported to report matters of fact. Further he relies again on the emphatic tone that asserted that Mr Vince 'is' pro Hamas, that he 'is' an extremist donor, and that he had said that Hamas 'are' freedom fighters.
>
> 95. Mr Munden argues that Mr Tice's quote tweet was a textbook expression of opinion in respect of the tweet that was being quoted. He particularly stresses the opening word 'so' which, he argues, clearly indicated that what followed was a conclusion drawn from extraneous material; here the [Fawkes Tweet]... Further, he argues that the word 'mmmm' at the end of the tweet suggested that Mr Tice was reacting to the retweeted material that he had found to be interesting.
>
> ...
>
> 97. Mr Tice's retweet might more accurately be described as a quote tweet, namely a retweet in which the sender adds his or her own commentary on the subject matter of the original tweet ...
>
> 98. ... the more clearly a publication indicates that it is based on some extraneous material, the more likely it is to strike the reader as an expression of opinion ...
>
> ...
>
> 100. In my judgment, the statement complained of is a statement of opinion:
>
> > 100.1 Quote tweets are often used to express an opinion on the subject-matter of the original tweet....

> 100.2 Here, the impression created by Mr Tice's words is that he was offering an opinion on the issue raised in the [Fawkes Tweet]
>
> 100.3 Such impression is fortified by Mr Tice's opening word 'so', which implies that what follows is a conclusion drawn from the retweeted material.
>
> 100.4 ... this tweet was robust and opinionated reactive political commentary.

37. At [101]-[103], the Judge set out and explained his decision on the issue of whether the statement indicated the basis of the opinion, stating at [103] that "the very essence of this statement of opinion was that it was drawn from the material that was retweeted." At [104], he found there could be no doubt that the meaning he had found was defamatory at common law.

VI. The Order on this claim

38. The Judge's decision in the present claim was translated into an order, the precise wording of which is important for the outcome of this appeal. I therefore set out its material parts exactly as written, without substituting any of my own defined terms:

> UPON the Claimant bringing a claim in libel in respect of a tweet published at 15:47 on 13 March 2024 ("the Tweet") ...
>
> ... the Preliminary Issues are determined as follows
>
> (1) The natural and ordinary..... meaning of the Tweet is that the Claimant supports the murderous and antisemitic terrorist organisation Hamas.
>
> (2) The Tweet is a statement of opinion.
>
> (3) The Tweet indicated the basis of the opinion, namely the tweet quote tweeted (reproduced) by the Tweet: the tweet by @GuidoFawkes at 14:15 on 13 March and the 16-second video clip included within it.
>
> (4) The Tweet is defamatory at common law.
>
> (5) The Court declines to determine the disputed issue of the true extent of the single publication in this case.

VII. Other outcomes: the Staines Claim and the Bailey Claim

39. Following the judgment on the TPI the Staines Claim was concluded by settlement. Mr Staines accepted a Part 36 offer made by Mr Vince, removed the offending content from his website, and paid Mr Vince damages of £9,995 and costs. An approved statement in open court was made on behalf of Mr Vince, stating that the allegation that he had expressed support for Hamas was false. At a separate TPI in the Bailey Claim, Pepperall J ruled that the Bailey Statements meant there were reasonable grounds to suspect that in the Interview Mr Vince had called Hamas freedom fighters, and that this was not true, but that it was an opinion which an honest person could have held: [2025] EWHC 287 (KB) [71], [134]-[135]. This court refused Mr Vince's application for

permission to appeal. The Judge refused an application by Lord Bailey for summary judgment on the claim, but this court granted Mr Bailey permission to appeal against that decision (and against the findings as to truth). Mr Vince then discontinued the Bailey Claim.

VIII. The first issue: was the Judge entitled to find the statement(s) to be opinion?

40. The first ground of appeal assumes, as I have said, that the Judge's ruling on meaning was right. The contention is that "the Judge was plainly wrong to conclude that each of the statements complained of constituted opinion." The reference here to "each of the statements complained of" reflects the claimant's "two publications" approach. The argument in support of this ground further reflects that approach by using the defined terms First Statement and Second Statement. The term First Statement refers to "what appeared on screen when a reader read the D's tweet". This means the entirety of the Tice Tweet, including the whole of the Tice Statement and the whole of the Fawkes Tweet, as described at [11] and [12] above, but not including the Fawkes Article. The Second Statement "concerns those readers/viewers who, as well as reading/viewing the First Statement also followed the hyperlink to the [Fawkes Article] and read that as well."

41. Addressing the First Statement, Mr Bennett submits that in order to determine whether the Judge's decision on fact or opinion was wrong "the court must look to the First Statement as a whole", taking account of all its "constituent parts." Mr Bennett repeats arguments advanced to the Judge, that Mr Tice's message was that Mr Vince "is pro the murderous antisemitic Hamas"; that this was obviously a statement of fact, to the effect that he supports Hamas; and that the reader would attach no weight to the words "so" and "hmm" which do no more than draw attention to the revelation that Mr Vince is a supporter of Hamas and indicate that this is interesting. Mr Bennett's argument goes further. He invites us to consider some "additional information provided" namely "that Guido Fawkes has made the additional factual allegation that [Mr Vince] has said that Hamas are freedom fighters". Further, Mr Bennett refers to the video, showing Mr Vince "saying that one man's freedom fighter is another man's terrorist." His submission is that the reasonable reader, taking in all this information in one viewing, would conclude that the First Statement was one of fact not opinion.

42. Rehearsing the legal principles, Mr Bennett highlights a point from *Stocker v Stocker* at [41]-[46], that judicial decisions about statements on social media platforms such as Twitter, now X, must take account of the fact that this is a fast-moving medium to which people react impressionistically, rather than analytically. Mr Bennett adds two submissions about "recognising opinion": first, that "it must be obvious on a single read that the author is not making a statement of fact but is expressing an opinion about something factual"; and secondly, that "it should be obvious to the reader that others might reach a different opinion from the one expressed by the writer".

43. Mr Bennett argues that Mr Tice's own words did not state or suggest that they were an expression of opinion based on the Fawkes Tweet. The inclusion of the Fawkes Tweet did not indicate that an opinion was being expressed, either. On the contrary, this amounted to nothing more than republication and repetition of a defamatory factual allegation made by Guido Fawkes, to which Mr Tice then added his own defamatory factual allegation. The fact that the statement complained of was made in the context

of political discussion can make it more likely that the reader will interpret it as one of opinion, but it did not do so on the facts here.

44. The argument is essentially the same in relation to the Second Statement. The only relevant additional information to be found in the Fawkes Article was that Mr Vince had (reportedly) said that "Hamas had a right to defend itself".

45. In my judgment, the essential starting point for consideration of these submissions is a recognition that the issue decided by the Judge was not whether the Tice Tweet as a whole was a statement of fact or opinion; rather, the issue the Judge decided was whether the Tice Statement, read in its context within the Tice Tweet, was one of fact or opinion. This important point may not be something that jumps out at the reader of the judgment, but it does become clear from careful scrutiny of the Judge's reasoning (in particular at paragraphs [97], [100.2], [100.3] and [103]) coupled with the language of the Judge's order (in particular paragraph (3)).

46. This was recognised by Mr Vince's legal team when they formulated their initial grounds of appeal, presented to the Judge. The first ground advanced at that time was that in determining whether the statements were fact or opinion the Judge had erred in law by "only considering the words directly attributable to D" rather than all the words in the publication. That complaint has not been persisted in, and rightly so. The Judge was right, or at least entitled, to approach the matter on the basis he did.

47. As Mr Price KC has pointed out in argument, the meaning pleaded by Mr Vince (paragraph [20] above) appears to be drawn from the Tice Statement alone. The Judge, in substance, rejected the first two limbs of that meaning but adopted a version of the third. The Judge's account of the arguments advanced to him on this issue (in particular at paragraphs [85], [86], [94] and [95]) seems consistent with his approach. We have been able to read the skeleton arguments submitted below, and a transcript of the TPI, which seem to me to support this interpretation. One passage of Mr Bennett's oral submissions is especially helpful. In answer to questions from the Judge, he said "A lot of the meaning really comes from Mr Tice's opening words ...". The Judge then asked whether Mr Bennett sought to "get anything further from the article and the video?". Mr Bennett replied "No ... Frankly, Mr Tice has done the damage with his Tweet." This was an exchange about meaning, but nothing different was said when it came to the issue of fact or opinion. This bears out paragraph [86] of the judgment, and the Judge's observation when refusing permission to appeal on the ground I have mentioned, that whilst he had taken into account the Fawkes Tweet and the video, "it was the claimant's case that the displayed tweet added nothing to the defendant's own words." In summary, the claimant's pleaded case was clarified at the TPI so as to focus on the words of which Mr Tice was the author, treating the other elements of the Tice Tweet as context only.

48. Once this key point is recognised, the appeal on this ground can be seen to lack merit. Mr Vince relies in part on some legal submissions which I do not accept. The law does not require that a statement should be "obviously" one of opinion before that defence is available. To apply a test of obviousness would be to set the bar too high. No such principle is to be found in the authorities. It is unnecessary to rehearse the principles that do apply. The important points, for present purposes, are the first three identified in paragraph [16] of *Koutsogiannis*: (i) the statement must be recognisable as comment, as distinct from an imputation of fact; (ii) opinion is something which is or can

reasonably be inferred to be deduction, inference, conclusion, criticism, remark, observation, etc..; and (iii) the ultimate question is how the words would strike the ordinary reasonable reader; the subject matter and context of the words may be an important indicator of whether they are fact or opinion. The Judge identified these, and other principles, applied them to the statement complained of, and reached a conclusion that is clearly legitimate in the light of the arguments advanced to him.

49. I would add only this. At [97] the Judge made the point that a quote tweet may be in a two-part format saying, in substance, "see what [the claimant] has said [fact]; here's what I think about it [opinion]." Examples of this format are provided by the tweets that were the subject of the counterclaim in *Blake v Fox*: see my analysis at [2023] EWCA Civ 1000, [2024] EMLR 2 [54]-[55]. The Judge was entitled to conclude for the reasons he gave that the Tice Tweet was another instance of this genre.

IX. The second issue: was the Judge wrong not to include defamatory factual imputations in his meaning?

50. This ground of appeal is advanced on the assumption that the Judge was entitled to find (as in my judgment he was) that the statements complained of were at least partly statements of opinion. Mr Vince's case is put in this way: "The Judge erred in law and was plainly wrong to fail to take into account that each of the Statements included discrete defamatory allegations of fact (on which the opinion was based). The discrete defamatory allegations of fact ought to have been incorporated into the meaning found by the Court for each Statement."

51. The "discrete defamatory allegations of fact" referred to here are (1) that Mr Vince had stated that Hamas "are" freedom fighters (something contained in the Fawkes Tweet) and (2) that Mr Vince "believes, and has said on Times Radio, that the terrorist organisation Hamas that carried out mass murder, kidnapping and rape in October 2023 are freedom fighters who should have the right to defend themselves" (the additional defamatory factual meaning which the Judge found the Fawkes Article to bear, in his judgment on the Staines Claim: paragraph [30] above).

52. The argument relies on the so-called "repetition rule", that a statement which repeats someone else's defamatory statement about a person will, other things being equal, convey the same meaning as the original statement. This is a firmly established element of the interpretative toolkit. It is not so much a rule of law as a descriptive rule about how people generally respond to communications which repeat the defamatory statements of others: see *Hemming v Poulton* at [42]-[47]. Here, the submission is straightforward: by repeating without qualification in his Tweet the "discrete defamatory allegations of fact" which Mr Staines had earlier published in the Fawkes Tweet and Fawkes Article, Mr Tice became responsible for conveying those same defamatory factual allegations to his own readers. He cannot escape responsibility for defaming Mr Vince in this way, even if the Tice Statement was a statement of opinion.

53. Claimants often advance submissions of this kind in respect of publications that, like the Tice Tweet, contain a mixture of statements from third parties and from the author. Looked at in isolation, this is certainly a tenable argument on the facts of this case. But, as I have shown, it is not how Mr Vince's case was argued before the Judge. So this is a new case advanced for the first time on appeal. More than that, this line of argument is positively inconsistent with the position adopted by Mr Bennett before the Judge. At

that stage, he submitted that neither the Fawkes Tweet nor the Fawkes Article made any difference on the issue of meaning or, implicitly, on the issue of whether the statement complained of was factual or an expression of opinion. Now he submits that both the Fawkes publications do make a difference on both issues, and a significant one.

54. Further still, this ground of appeal is at odds with, or at best goes beyond, Mr Vince's case as stated in the Particulars of Claim. I have set out the meanings of which he complained. I have noted that they seem to have been derived from the Tice Statement. At any rate, they contain nothing about Mr Vince stating that Hamas are freedom fighters, or that Hamas should have the right to defend themselves. So, as Mr Price has pointed out, Mr Vince needs the court's permission to amend his statement of case on the issue of meaning, but he has not applied for such permission.

55. This new way of putting the case also brings back into focus the "two publications" issue. That is because the second "discrete defamatory allegation of fact" would only be conveyed to a reader who clicked on the link to the Fawkes Article and read it. So this ground of appeal either involves an implicit challenge to the Judge's decision not to resolve the two publications issue, and to paragraph (5) of his order, there being no such challenge in the Appellant's Notice; or alternatively, this ground of appeal invites us to uphold an as-yet unpleaded defamatory factual meaning that takes account of the Fawkes Article, on a provisional or hypothetical basis, leaving the two publications issue for resolution at a later stage.

56. Should all this be allowed, indeed can it be allowed? Mr Tice has formally objected by way of a Respondent's Notice and Mr Price on his behalf has submitted that we cannot allow it, or if we can we should not. As to the law, Mr Price acknowledges that the court has a discretion to permit a party to advance a new case on appeal, if that is the just thing to do having regard to "an analysis of all the relevant factors": *Notting Hill Finance Ltd v Sheikh* [2019] EWCA Civ 1337, [2019] 4 WLR 146 [26] (Snowden J, as he then was). Mr Price submits, however, that this power does not extend to a case of the present kind. The effect of CPR 52.21(3) is that an appellant who does not assert any procedural or other irregularity must persuade the court that the decision below was "wrong", meaning "not the decision that should have been made": *Notting Hill Finance* [38]. That cannot be said here, when the appellant seeks to raise a new issue that is "discrete" from any raised at first instance, and which requires permission for an amendment that was not sought below. Alternatively, Mr Price submits that an analysis of all the relevant factors leads to the conclusion that this ground of appeal must be dismissed.

57. On the facts, in addition to the points I have mentioned, Mr Price has submitted that the new case on meaning raises a further complication. He does not accept that the Fawkes Tweet contains a defamatory statement of fact. He would wish to argue that it was itself a statement of opinion. Mr Price points out that his client is not bound by the Judge's findings in the Staines Claim about the Fawkes Article. Mr Price points to the absence of any explanation of the change of tack. He submits that this is in itself fatal to this ground of appeal. Any application to amend should be supported by evidence, including an explanation of why the new case was not raised before. He has invited us to conclude that the position adopted by Mr Vince in the court below was a deliberate and considered choice, motivated by political considerations, and that the change of tack is a tactical move prompted by the outcome before the Judge. In support of these

submissions, he contrasts the meanings pleaded in the Staines Claim and the Bailey Claim, both of which included complaint of the "freedom fighters meaning". He relies, also, on some public statements by Mr Vince which are said to indicate a wider, political motivation, and points to the outcome of the Staines and Bailey Claims as affording Mr Vince a measure of vindication anyway.

58. I can see some force in Mr Price's submissions about the ambit of CPR 52.21(3)(a), but the points he raises have potentially far-reaching implications. It is better not to decide them unless that is necessary to dispose of this ground of appeal. I do not think it is necessary. It is clear beyond argument that the new case which Mr Vince seeks to advance on appeal is one that requires an amendment of his Particulars of Claim. Assuming, without deciding, that we have the jurisdiction to entertain and grant an application for permission to amend so as to raise this new case at this stage, and to decide whether the new case is a good one, my view is that we should decline to do either.

59. In *Notting Hill Finance* at [26], the court observed that "an appellate court will always be cautious before allowing a new point to be taken". Among the factors to be considered are the nature of the proceedings which have taken place in the lower court, the nature of the new point, and any prejudice that would be caused to the opposing party if the new point is allowed to be taken. The court will rarely allow a new point to be taken where it would require further findings of fact, and will in any event expect "a cogent explanation of the omission to take the point below": *Prudential Assurance Co Ltd v Revenue and Customs Commrs.* [2016] EWCA Civ 376, [2017] 1 WLR 4031, [25].

60. There are points that can be made in favour of Mr Vince. The order for a trial of preliminary issues provided for the determination of "the natural, ordinary and innuendo meaning" of the publications complained of. The trial Judge has a degree of freedom in ruling on such an issue. The Judge may find a different meaning from those advanced by the parties, as happened here. As Mr Bennett observes, the advocates can put forward alternative arguments to cater for this possibility, but may not be able to canvass every possible permutation. The new case presented in support of this ground of appeal is an arguable one. The meaning of a statement and whether it is one of fact or opinion are both issues of fact, but for the reasons I have given at the start of this judgment they are factual issues of an unusual kind and typically quite simple to try. For that reason, the advantages the trial Judge has over the appellate court are less than in other kinds of case.

61. Against Mr Vince's position are the following points. The rules require the claimant in a defamation claim to plead "the imputation(s) which the claimant alleges that the statement complained of conveyed": PD 53B para 4.2(4). The court's freedom to find a different meaning is constrained by certain parameters. Propositions to be found in the authorities include the following: (1) the pleaded meaning sets the ceiling of gravity: *Slim v Daily Telegraph* [1968] 2 QB 157, 175 (Diplock LJ); (2) if an alternative defamatory meaning is obvious but the claimant chooses not to advance it "the court should respect that choice, but not permit her to advance another meaning, at least without a satisfactory explanation for her taking that course": *Dell'Olio v Associated Newspapers Ltd* [2011] EWHC 3472 (QB) [31] (Tugendhat J); (3) the Judge "should not normally make a finding of any meaning which is not either advanced to some extent in the statement of case or submissions of one or other party, or within the same

class or range as a meaning so advanced": my judgment in *Yeo v Times Newspapers Ltd* [2014] EWHC 2853 (QB), [2015] 1 WLR 971 [82]. In *Allen v Times Newspapers Ltd* [2019] EWHC 1235 (QB), the claimant advanced a different meaning at trial, without seeking to amend. Refusing to consider the new case, I reviewed the authorities and set out my conclusions in this way, which has not been challenged on this appeal:

> 51. ... Trials on meaning are not meant to be provisional or preliminary; they are meant to provide a final determination of one or more of the issues in a claim.
>
> 52. The authorities on late amendment show that, as a general rule, a party should not be allowed to advance at trial a case which significantly departs from the pleaded case, and which that party has had ample opportunity to formulate beforehand. ... this principle should apply equally to issues about the meaning of allegedly defamatory words ... Any modification of substance to a claimant's case ought to be formulated in writing and made the subject of a formal application in good time, well in advance of the trial skeleton arguments. It is not good enough to do this "on the hoof" at the hearing ...

62. The task of formulating and presenting a case on the issues of meaning and fact or opinion is not usually a difficult one. As a rule, the court is entitled to expect a party to do that fully and clearly in one go, at the trial. If there are clear and distinct alternative approaches, these should usually be pleaded or at any rate put forward in writing for consideration. It may well be contrary to the overriding objective to allow a party two bites of the cherry by permitting a change of case after the entry of judgment. The fact that libel claims involve an interference with the fundamental freedom to impart information and ideas is relevant here. The court must, to the extent it can, control the scale and expense of the proceedings so as to keep the interference within proportionate limits. I would accept that the outcome of related claims may be a relevant factor for consideration in the exercise of the court's discretion.

63. Here, Mr Vince advances for the first time in this court a new case which involves a substantial and significant change of position. That is inherently prejudicial to Mr Tice. On one view, the new case advances a more serious meaning than the one that is currently pleaded. Although the new case does not require fresh evidence it does require fresh pleading and fresh argument, and it raises complexities as I have indicated. All of that inevitably increases the costs of the proceedings and causes delay. It is a case that Mr Vince could easily have raised before the court of first instance. It is a different analytical approach and not, for instance, a case that turns on some newly discovered fact. In my judgment the new case is, to a defamation practitioner, an obvious alternative to the way the case was actually run.

64. The new case has not been formulated in writing with precision. There is no formal application for permission to amend. No evidence has been filed to explain the change of position. Nor has any satisfactory explanation been provided in another way. I would make no finding as to the motives behind the change of position, but in all the circumstances I do think it fair to infer that a deliberate and considered decision was taken to advance the claim in the way it was pleaded and argued in the High Court, and not to assert a "freedom fighters" meaning in this case, as compared with the Staines

and Bailey Claims. The outcomes of the Staines and Bailey Claims do afford Mr Vince a degree of vindication that carries some weight in the present case. For all these reasons I do not consider it just to permit the new case to be advanced.

65. I would therefore dismiss the appeal on this ground as well.

LORD JUSTICE COULSON:-

66. I agree.

LORD JUSTICE LEWISON:-

67. I also agree.