IN THE COURT OF APPEAL (CIVIL DIVISION) **CA-2025-003218**

ON APPEAL FROM THE HIGH COURT OF JUSTICE **KB-2025-002764**

KING'S BENCH DIVISION

MEDIA & COMMUNICATIONS LIST

Deputy High Court Judge Guy Vassall-Adams KC

[2025] EWHC 3004 (KB)

B E T W E E N

ANDY NGO

Respondent/Claimant

and

GUARDIAN NEWS & MEDIA LIMITED

Appellant/Defendant

RESPONDENT'S REPLACEMENT SKELETON ARGUMENT
20 October 2026

The cases referred to have been hyperlinked to the relevant pages on Westlaw.

All underlining has been added by the authors.

References to the Core Bundle are in the form **[CB/Tab/Page]** and to the Supplemental Bundle in the form **[SB/Tab/Page]**.

Paragraphs in the judgment appealed ("the Judgment") **[CB/7/92–103]** are referred to as e.g. [J 1] for the first paragraph.

Where a Lord or Lady Justice is quoted they are giving the judgment of the court unless stated otherwise.

The law in regard to the various issues is set out in the Judgment **[CB/7/94–100]** and is as far as possible not repeated in this skeleton.

Pre-reading: the information necessary to understand this appeal is included in the Judgment **[CB/7/92–103]**.

Index to skeleton

Ground 3: §§10 - 53
Ground 4: §§54 - 65
Ground 5: §66 to end

The basis on which the preliminary issues trial ("the trial") was conducted

1. The C has pleaded natural and ordinary and innuendo meanings **[CB/12/120].** Whilst the determination of the former merely depended upon a reading of the words as published, the determination of the innuendo meaning depended upon how the reasonable person with the pleaded extraneous knowledge would have read the Statement (relevant law set out at [J 17 – 20] **[CB/7/95–96]**).

2. The pleaded knowledge relevant to the innuendo meaning is set out at §6.1 of the Particulars of Claim **[CB/12/120]**:

> The alt-right is a descriptive term for an amalgam of racists and white supremacists.

3. The parties agreed the bases upon which the trial would take place and they were set out in an order made by Collins Rice J ("the order") **[SB/3/6–8]**.

4. In regard to the innuendo meaning, §1b of the order **[SB/3/6]** stipulated that the court should determine whether an innuendo meaning arose and what it was by assuming that at least one reader read the Statement with the requisite knowledge (leaving the issue as to whether one or more did so to the full trial).

5. §5 of the order **[SB/3/7]** provided that the only admissible evidence at the trial would be the Statement (i.e. the print and online versions of the article complained of) **[SB/2/5] [SB/1/2–3]**.

Questions of law or fact

6. Lord Leggatt explained in *Alexander v Gabriel* [2026] UKPC 7 that the issue concerning whether a statement is defamatory at common law (ground 5) is a matter of fact. As a rule of thumb, issues traditionally reserved to a jury (even since the curtailment of the use of jury trials in defamation claims) have been regarded as issues of fact.

> 14. When defamation cases were tried by a judge sitting with a jury, the question whether words bore a defamatory meaning was for the jury to decide. The role of the judge (and of an appeal court) was limited to deciding whether the words were reasonably capable of bearing such a meaning. In a trial by a judge alone, this distinction still applies. What the words complained of would be understood to mean by an ordinary, reasonable person and whether this meaning is defamatory of the claimant are treated as matters of fact.

7. Similarly, the issue as to whether a statement is one of fact or opinion is one of fact (third ground). "Such decisions are findings of fact." (*Dale Vince v Richard Tice* [2026] EWCA Civ 844 at [2], full quotation in §15 below.)

8. In *Hemming v Poulton* [2025] EWCA Civ 1494; [2026] EMLR 4 at [8] it was held that a J's conclusions concerning (a) the meaning of a statement; (b) whether the imputation is defamatory at common law; and (c) whether it was a statement of fact or opinion are each a "question of fact".

9. In regard to whether the basis of the opinion was indicated in the Statement (fourth ground), this principle was introduced at the same time as the curtailment of the right to jury trial brought about by s.11 of the Defamation Act 2013 therefore the "rule of thumb" concerning whether an issue was to be determined by a jury does not apply. However, given that the resolution of this issue concerns a consideration of the impression made upon the reasonable reader of the Statement, it should be treated as a question of fact, particularly because there will often be an evaluation of whether the basis is indicated in the statement complained of when the court is assessing whether the statement constitutes fact or opinion.

Ground 3

The J erred (in law and fact) and was wrong in holding that the statement was a statement of fact [CB/1/15]

10. S.3(2) of the 2013 Act provides that:

> (2) The first condition (*of the honest opinion defence*) is that the statement complained of was a statement of opinion.

11. In *Blake v Fox* [2023] EWCA Civ 1000; [2024] EMLR 2 Warby LJ considered an appeal concerning, among other things, whether the statement constituted fact or opinion and its meaning. At [20] he dealt with how a J should approach the determination of meaning. At [23] he continued: "As with meaning, the court deciding whether a statement is one of fact or opinion looks only at the words complained of and their immediate context, and the ultimate question for the court is the objective question of 'how the words would strike the ordinary reasonable reader.'" To this latter principle the C would add that where there is an innuendo meaning, the court should take account of the reasonable reader's knowledge of the relevant extraneous knowledge in determining whether the impression created by the statement in the mind of such a reader was that it was a statement of opinion or fact.

12. At [49] – [50] of *Blake* Warby LJ concluded that the test on appeal in regard to the fact/opinion issue was the same as that concerning meaning: "in the absence of legal error an appeal will only succeed if the court is satisfied that, allowing for the advantages available to the first instance court, the finding was wrong." [50]

13. A major criticism made by the D is the J's failure to set out his reasons for concluding that the statement was one of fact rather than opinion. **[CB/3/56–57]** However, as Warby LJ explained in *Blake*:

> 63. Mr Callus's [*Counsel for Mr Fox*] complaint of lack of reasons lacks substance. The principles and practice in this area mean that judges are, quite rightly, not so much reasoning their way to a conclusion as gaining an impression of the meaning of a statement, then seeking to analyse and explain why they have responded as they have. It is well-established that the judge should avoid over-elaborate analysis and unduly detailed reasons: *Koutsogiannis* [12(iv), (v)][1]. In this case the judge made clear that he had that in mind. He referred to the undisputed facts, identified the applicable legal principles, summarised the essential features of the competing arguments and spelled out the precise meaning which he had drawn from each of the statements complained of. I would infer that he accepted at least some of the argument for Mr Fox on the issue of meaning. But in any event, his reasoning was sufficient.

14. Also see the Privy Council decision *Alexander v Gabriel* [2026] UKPC 7 concerning, among other things, whether a statement was defamatory or not, in which Lord Leggatt explained at [22]:

> [22] . . . In reviewing a judgment given at first instance, an appeal court should adopt what might be called a principle of charity: that is, the appeal court should approach the judgment on the assumption that the judge carried out her task proficiently and understood the facts and the law correctly, unless and until the contrary is shown. It would be unrealistic, would place an unreasonable burden on judges and would hinder the efficient administration of justice to expect judges to record everything relevant to their decisions in the reasons they give for them, including matters which are not salient or not disputed. Thus, it cannot reasonably be inferred that, just because a matter is not mentioned in a judgment, the judge ignored it. An appeal court should assume that a trial judge took into account all the evidence presented at the trial, unless there are clear indications to the contrary: see eg *Volpi v Volpi [2022] EWCA Civ 464; [2022] 4 WLR 48, para 2* (iii); *Gift v Rowley [2025] UKPC*

[1] The relevant passages of *Koutsogiannis* state: "(iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.
(v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties."

37, para 3 ; *Evans v Barclays Bank Plc [2025] UKSC 48, para 135* . Equally, where there was no dispute about the correct legal test, again unless the contrary is shown, the judge may be assumed to have applied that test.

15. In *Dale Vince v Richard Tice* [2026] EWCA Civ 844 Warby LJ considered the approach to be taken by an appellate court to a first decision on whether a statement is one of fact or opinion (and to the meaning of the statement in issue).

> 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.

16. The same principles apply to whether a statement is one of fact or opinion. The Court of Appeal explained in *Hemming v Poulton* [2025] EWCA Civ 1494; [2026] EMLR 4 that a J's conclusions concerning (a) the meaning of a statement; (b) whether the imputation is defamatory at common law; and (c) whether it was a

statement of fact or opinion are decisions to which the appeal court should afford "*appropriate respect to the decisions of the trial Judge*" [57].

17. In regard to a reader with the requisite external knowledge concerning the C's pleaded case on the definition of alt-right **[CB/12/120]**, the impression made on them by reading the Statement will be informed by this knowledge.

The Judgment

18. The J accurately summarised the law in regard to determining whether a statement is one of fact or opinion [J 21 – 25] **[CB/7/96–97]**.

19. From [J 34] **[CB/7/100]** the J proceeded to give, in his words, "a summary of the key arguments made by the parties, not a blow-by-blow account." He was entitled not to deal with every point raised for the reasons given in *Alexander*, *Blake* and *Vince*, as set out above.

20. At [J 38 and 42] **[CB/7/100–101]** he summarised the parties' respective positions. At [J 44 – 54] **[CB/7/101–102]** he set out his conclusions on meaning and whether the Statement was one of fact or opinion.

21. The J's stated reasons for concluding that the Statement was one of fact are unimpeachable:

21.1. He was at pains to ensure that he placed himself in the same position as the ordinary reasonable reader who read the Statement once "without stopping and without engaging in any in-depth analysis of the words." [J 44] **[CB/7/101]**

21.2. At [J 52] **[CB/7/102]** he explained why the impression created by the Statement was one of fact rather than opinion. He concluded that the reasonable reader would be struck by the fact that the key words, ""alt-right" agitator", focused on the message concerning the C's <u>actions</u> as an agitator rather than his beliefs.

21.3. At [J 53] **[CB/7/102]** he carefully considered in what circumstances "alt-right agitator" might have caused a reasonable reader to conclude that the Statement was an expression of opinion. However, he concluded those circumstances did not apply to the facts in issue.

21.4. At [J 54] **[CB/7/102]** he concluded that even if he had been wrong and that the Statement was one of opinion, nevertheless it would be treated as a statement of fact because it was a "bare opinion". He set out the relevant law in this regard at [J 24 – 25] **[CB/7/97]**.

22. Turning to the D's criticisms of the J.

23. The D contends that the J failed to take into account "properly or at all numerous critical features of the content and context of the Statement." (D Skeleton §6(a)) **[CB/3/43–44]** This argument is flawed because one cannot assume that the J did not take these matters into account because they are not mentioned in the Judgment. Furthermore, as explained in the authorities cited above, the J was not required to deal with every point taken because his task was to assess the impression made by the words on the reasonable reader.

24. In any event, the J did consider the matters cited in §6(a) of the D's skeleton **[CB/3/43–44]**:

24.1. Contrary to what is said at §6(a)(i) **[CB/3/43–44]**, at [J 40] **[CB/7/101]** the J recorded that the D had contended that the Statement was a "humorous, opinionated and pithy music review" which only made a "fleeting reference" to the C (although this was part of the D's submission on meaning, it was also relevant to its case on fact/opinion).

24.2. Contrary to §6(a)(ii) **[CB/3/44]**, the issue of the quotation marks was dealt with at [J 42] **[CB/7/101]**.

24.3. §6(a)(iii) **[CB/3/44]** asserts that the J failed to take account of the fact that the term alt-right is "by its nature imprecise and evaluative." However, it was implicit in the J's task and the conclusions that he reached that he must have considered this argument before concluding that by reason of the context in which this expression was used that it constituted a statement of fact. Note also that at [J 53] **[CB/7/102]** he considered counter-arguments concerning why the relevant term might have been an expression of opinion.

25. The D's argument at §6(b) **[CB/3/44]** is not compatible with the task allotted to the Judge of evaluating the impression made on the reasonable reader. He cannot consider whether or not an unpleaded defence of truth would be difficult to prove and, if it is difficult, conclude that therefore, contrary to the impression that the statement in issue is a statement of fact, find that it is a statement of opinion. In any event, if the D pleads a truth defence the particulars of truth will have to plead acts committed by and statements made by the C which prove the substantial truth of the meaning found by the J ("the C actively promotes far right beliefs" [J 49] **[CB/7/102]**). Part of the purpose of establishing meaning is to assist the defining of issues for the purpose of a truth defence. The court will be well able to define what is far right or not, being at the far end of the political spectrum (see further below concerning the fifth ground), and, importantly, it is the promotion of such beliefs that will be in issue i.e. acts carried out, including what the C has written, which evidence such promotion.

Article 10

26. The D contends at §6(c) of its skeleton **[CB/3/44–45]** that the Judgment is impeachable because it "lacks any mention of GNM's right to freedom of expression, whether at common law or under Article 10." This is not a valid criticism. What mattered was that the statute and common law applied by the J was Article 10 compliant. The D does not contend that it was not.

27. Furthermore, the D advances the case that its Article 10 right to freedom of speech is of such magnitude that the court should, as a matter of policy, lean towards concluding that a statement is opinion rather than fact. **[CB/3/58]** This is untenable. The J's task was to determine the impression that the Statement made on the reasonable person. There is no authority to the effect that a statement will be assumed to make a different impression upon a reader because, in the circumstances, a defendant's Article 10 right was particularly strong. It must also be borne in mind that in certain circumstances the Claimant will have an Article 8 right to reputation[2]. If the parties possess Article 8 and Article 10 rights respectively, the starting point will be that they are of equal value subject to the conduct of an "intense focus" on the comparative importance of those rights based on the facts[3]. The logical corollary of the D's argument is that as part of the process of determining fact or opinion, the court will have to determine the relative strengths of the parties' Convention rights in order to determine how to interpret the relevant words. This is nonsensical and unworkable. The reasonable reader will not have had the benefit of a lawyer looking over his or her shoulder pointing out they should take account of the relevant part of the Convention and that they ought to adjust the impression made by the Statement bearing in mind the D's Article 10 right (and the C's Article 8 right)[4].

---

[2] *ZXC v Bloomberg* [2022] UKSC 5; [2022] AC 1158 at [121]: "article 8 applies provided the attack on reputation attains a certain level of seriousness and causes prejudice to personal enjoyment of the right to respect for private life".

[3] Decision of Tugendhat J in *Flood v Times Newspapers Limited* [2009] EWHC 2375 (QB); [2010] E.M.L.R. 8 pointing out that the "intense focus" exercise was relevant to defamation claims (in regard to assessing a *Reynolds* public interest defence), approved by the Court of Appeal and the Supreme Court in the ensuing appeals (by the Court of Appeal at [2] of [2010] EWCA Civ 804; [2011] 1 W.L.R. 153, and by the Supreme Court at [44] of [2012] UKSC 11; [2012] 2 A.C. 273).

[4] *Stocker v Stocker* [2019] UKSC 17; [2020] AC 593 at [45]: "And Nicklin J made an equally important point at para 92 (in *Monir v Wood* [2018] EWHC 3525 (QB)) where he said (about arguments made by the defendant as to meaning), "these points only emerge as a result of close analysis, or someone pointing them out. An ordinary reasonable reader will not have someone by his/her side making points like this."

28. The Court of Appeal dealt with a similar argument in *Thompson v James* [2014] EWCA Civ 600 in which the defendant contended that the normal rules of construction concerning the discernment of the meaning of a statement ought to alter in favour of the defendant so that a defamatory meaning would somehow be found to be a non-defamatory meaning instead because the publication was concerned with a political matter as the claimant was a local authority officer who had been defamed in that capacity. Longmore LJ concluded at [28]:

> Article 10 has already been taken into account in the formulation of the principles in *Jeynes* [*concerning how to interpret a defamatory statement*] and need not be taken into account in some separate or different way when government officials are defamed.

29. Similarly, in *Barron v Collins* [2015] EWHC 1125 (QB) at [54] Warby J (as he then was) stated:

> The law must accommodate trenchant expression on political issues, but it would be wrong to achieve this by distorting the ordinary meaning of words, or treating as opinion what the ordinary person would understand as an allegation of fact. To do so would unduly restrict the rights of those targeted by defamatory political speech.

30. The D points out in §18 of its skeleton **[CB/3/47–48]** that in *Yeo v TNL* [2014] EWHC 2853; [2015] 1 WLR 971 at [15] that Warby J (as he then was) stated that "the common law has always been fiercely protective of comment and opinion". That is correct but the point is the relevant words have to constitute opinion as a precondition for these protections to come into play.

31. As Warby LJ put it in *Corbyn v Millett* [2021] EWCA Civ 567; [2021] EMLR 19 at [19] in a claim concerning words spoken by Jeremy Corbyn during a current affairs programme: "Nor can the political role and status of Mr Corbyn, or the political nature of the Programme and its subject-matter, alter the approach required as a matter of law, still less dictate the answer to the question of whether the Statement was one of fact or opinion. These are all important features of the context to which the court should be alive when deciding how Mr Corbyn's words would have struck the ordinary viewer. But they are no more than that."

32. It is in the second and third conditions of the 2013 Act (set out in s.3(3) and (4)) that the protection of the expression of opinion is manifest. The second condition is

---

Lord Sheikh v Associated Newspapers Ltd [2019] EWHC 2947 (QB) at [36]: "The ordinary reader of the Mail Online does not have the benefit of Leading Counsel at his shoulder, eloquently urging him or her to take one or the other view of the message conveyed by an article, and whether it is an opinion or a factual statement."

quoted at §54 below. It concerns the requirement for the basis of the opinion to be indicated specifically or generally in the statement complained of. This is not onerous. The third and final condition is particularly favourable towards a defendant because it provides that a defendant must merely prove 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."[5]

33. The criticism at §6(d) of the D's skeleton **[CB/3/45]** of the J's conclusion that if the Statement was one of opinion it was bare opinion and therefore to be treated as a statement of fact is misplaced. The J summarised and applied the law correctly [J 24 – 25 and 54] **[CB/7/97] [CB/7/102]**.

34. In regard to the criticism at §6(d) **[CB/3/45]** that the J made "impermissible factual findings that the C is not a well-known public figure" and that "most people would never have heard of" him (which is elaborated on in §67 of the D's skeleton **[CB/3/62]**), the J was entitled to reach these conclusions. **[CB/7/103]**

34.1. The Statement does not state that the C is well-known, it merely states that there was an outcry of unspecified dimension and renown (if any) because Winston Marshall had praised him. **[SB/1/2] [SB/2/5]**

34.2. The D's pleaded case **[SB/4/9]** did not assert that the C was well-known or why it was to be inferred that that was the case. Given that the order held that no evidence other than the Statement itself was admissible **[SB/3/7]** (save for the pleaded extraneous knowledge relevant to the case on innuendo) and the D had not pleaded any case to the effect that the C was well-known, it simply could not advance the contention that the C was well-known with any credibility at the trial save on the basis that the fact was so well-known that it was a matter of ordinary general knowledge.

34.3. §1 of the PoC **[CB/12/118–119]** set out biographical information about the C. This included the fact that he is the author of a book and that his activities have engendered hostility towards him because he writes critically about the US movement known as *Antifa*. §6(d) of the D's skeleton argument **[CB/3/45]** asserts that the PoC "stated that the C is a high-profile and well-known public figure" and the fact that the J did not take account of this was "a serious procedural irregularity". In fact, the PoC merely pleads that the C has

[5] Although there must be some connection between the fact relied upon and the basis of the opinion as set out in the statement (*Riley v Murray* [2021] EWHC 3437 (QB); [2022] E.M.L.R. 8 at [93] – [99]).

published a book and that a number of attacks have been made on him in the United States and Ireland; nothing was said which could be construed to state that he was "a high-profile and well-known public figure". It is therefore manifest that the factual premise for this criticism of the J (that he ignored the C's supposedly admitted notoriety amongst the public) is unfounded.

35. The D asserted at the trial that the C was a well-known public figure. **[CB/7/103] [CB/9/107]** The J could have disregarded this issue altogether because it had not been pleaded. The D did not advance any evidence to the effect that the C was a public figure (and the C had never had an opportunity to submit evidence in rebuttal given the assertion was not pleaded and the court had ordered, by consent, that such evidence was not admissible **[SB/3/6–7]**). However, the J adjudicated upon the factual issue put before him concerning the alleged notoriety of the C. He found, hardly surprisingly given the absence of a pleaded case or evidence to support the D's case, that he was not a well-known public figure and that in fact "most people would never have heard of him." **[CB/7/103]**

36. All the J could do was to decide, in the absence of evidence, whether the C's identity/nature (it is not entirely clear what the relevant knowledge of the C was said to be) was a matter of general knowledge. The J pointed this out when he gave reasons for refusing permission to appeal **[CB/9/107]**:

> . . . the Defendant now seeks to argue that I made "impermissible findings of fact" about the Claimant and his views not being matters of common knowledge . . . But those findings arose from the Defendant's case that the position of the Claimant in this case was directly analogous with that of Viscount Kemsley in *Kemsley v Foot*. I rejected that argument: judgment at [59]-[60]. It is now said that I could not make that assessment without receiving evidence from the Defendant. That was not the Defendant's case before me and in my view it can't be right – a court can judge whether something is or is not a matter of ordinary general knowledge for the ordinary, reasonable reader without receiving evidence on the point (as the court did in *Kemsley v Foot* itself). The Defendant then seeks at [24] [*of its appeal skeleton*] to bring in what amounts to new evidence – not before me – in support of its argument that I went wrong. Save for the pleaded facts that the Claimant is a journalist and author of a book on Antifa these matters were not relied upon before me and this new evidence is inadmissible at the trial of a preliminary issue on meaning: *Monroe v Hopkins* [2017] 4 WLR 68, Warby J at [37] - [38]. **[CB/9/107]**[6]

[6] [35] . . . That context (*which is relevant to meaning*) includes (a) matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter. . . .
[37] There has been some debate about another issue: what are the limits of categories (a) and (b) at para 35 above? How much should be regarded as known to a reader via Twitter, or as general knowledge held by such a reader? I am not sure that the answers matter a

37. By submitting to the J that the C was well-known the D asked him to adjudicate on the matter. He found that the C was not well-known. **[CB/7/103]** The D now complains that he should not have made this finding because this finding was "impermissible" **[CB/3/45] [CB/3/62]** but, in the circumstances, all the J could do was decide the issue based on either the fact that the D did not make out this case (hardly surprising given the wholesale lack of evidence to this effect) or because, taking judicial notice in relation to the contention advanced by the D at trial, that the C was not well-known.

38. In any event, the fact that someone is well-known will not convert a statement of fact into one of opinion.

39. Turning to what might be described as the D's micro points made in its skeleton at §§25 to 31 **[CB/3/49–51]** setting out the reasons why impression made on the reasonable reader is that the Statement was one of opinion rather than fact. The C's overarching point is that none of these points, bearing in mind the strictures outlined at the beginning of this skeleton concerning why it will be rare to interfere with a J's decision, even taken together, are such as to show that the J was wrong in reaching the conclusion he did.

§25(a) of the D's skeleton [CB/3/49]

40. In regard to §25(a) **[CB/3/49]**, all other things being equal, one might expect a review to contain subjective commentary by a critic. That is certainly the case in regard to the criticisms made of the Mumford & Sons album ("utterly insipid balladry") **[SB/1/2] [SB/2/5]** but that does not mean that the insertion of discrete factual allegations will also be converted into statements of opinion. This is particularly the case because the accusation that the C is an alt-right agitator has nothing to do with review of the band's latest album.

---

great deal for the resolution of the question that I am now addressing, or for the outcome of this case overall. But in principle the main dividing lines seem reasonably clear. A matter can be treated as known to the reader if the court accepts that it was so well known that, for practical purposes, everybody knew it. An example would be the fact that the Conservatives formed a government after the 2015 general election. A matter can be treated as known to the ordinary reader of a tweet if it is clearly part of the statement made by the offending tweet itself, such as an item to which a hyperlink is provided. The external material forms part of the tweet as a whole, which the hypothetical reader is assumed to read. . . .

§25(b) of the D's skeleton [CB/3/49]

41. As stated in §25(b) of the D's skeleton **[CB/3/49]**, some terms may, in some contexts, suggest that an opinion is being offered. But ultimately everything depends on context. The J set out a perfectly valid reason as to why in this particular context the inclusion of the word agitator caused the impression conveyed by the Statement to constitute one of fact rather than opinion. See [J 52] **[CB/7/102]** as to his explanation for this and [J 53] **[CB/7/102]** as to how he checked his conclusion by considering counter-arguments but ultimately concluded that his decision was correct.

§26 of the D's skeleton [CB/3/49–50]

42. §26 **[CB/3/49–50]** returns to the argument that because the C had apparently "sought publicity" and published a book ("submitted words for public consumption") that this militated in favour of concluding that the Statement was one of opinion. This is dealt with at §§33 to 34.3 above. Furthermore:

42.1. There is no logical reason why a reasonable person would be likely to conclude that the Statement, with its key allegation that the C is an alt-right agitator, was a statement of opinion because the C had written the book in question. Nothing in the Statement referred to or hinted at the fact that the C had written a book. **[SB/1/2] [SB/2/5]** In any event, a reasonable reader would not conclude that the writing of a book was the basis for concluding that the C was an alt-right agitator.

42.2. The D has not pleaded a case as to why or how the reasonable reader would have known that the C had written a book. **[SB/4/9]**

42.3. The reliance on the first instance decision *Keays v Guardian Newspapers Ltd* [2003] EWHC 1565 (QB) is misplaced. The claimant was Sara Keays. She had an affair with the senior Conservative politician Cecil Parkinson which resulted in the birth of a daughter, Flora. From 1993 Flora was protected by an injunction which restricted what could be published about her. It expired on her 18th birthday. Towards the end of 2001 Flora turned 18. Following this Sara Keays went to great lengths to publicise the affair and to reveal information about Flora, who was placed to the forefront of a number of articles which included information which had been provided by the mother – see [6] to [13] of the judgment.

42.4. Information provided by the mother (including photographs of Flora) was published in early January 2002 in the *Daily Mail* and the *News of the World*. Sara

Keays also provided information which was included in a documentary broadcast by Channel 4 at the same time.

42.5. Very shortly after these publications, on 13 January 2002, the *Observer* published an article which was highly critical of the mother. Notably:

42.5.1. "barely had the candles blown out on the cake than both she and mummy were polished and preened and posing for newspapers left and right, while on Thursday night a television show gained prime time for its intrusion into a damaged young girl's life"; and

42.5.2. that the mother's behaviour was particularly objectionable because Flora had a number of medical problems including "brain damage", meaning that she could not exercise meaningful consent.

42.6. Sara Keays issued a defamation claim against the publisher of the *Observer*.

42.7. The *Observer* pleaded a fair comment defence (the common law forerunner of the statutory honest opinion defence). The *Observer* article explicitly referred to the mother's behaviour in exhibiting her daughter before the public via the media. Neither side relied upon extraneous material.[7]

42.8. The *Observer* article was so obviously comment that Eady J concluded that it was only capable of constituting comment ([18] and [51]).

42.9. It is in the above context that the quotes from *Keays* relied upon in §26 of the D's skeleton **[CB/3/49–50]** must be viewed. As pointed out in [48] of *Keays*, the mother's publicity seeking was set out "on the face of the article" i.e. reliance on knowledge of external matters was not required in order to deduce that the article constituted comment. [50] is not about Sara Keays entering the public arena *per se*, it is about the fact that she had specifically done so in the manner described in the *Observer* article. This is a world away from the D's case: that somehow because the C had written a book (with no case pleaded or advanced by the D as to why the reasonable reader would even be aware of this fact), which is neither mentioned nor alluded to in the Statement **[SB/1/2] [SB/2/5]**, that therefore this somehow militates in favour of concluding that the Statement is one of opinion rather than fact.

[7] [20] ". . . It is, I believe, also acknowledged by both sides that I should come to a decision on "fact or comment" purely by reference to the Observer article itself, and not taking into account any of the earlier coverage to which I have referred as background".

§27 of the D's skeleton [CB/3/50]

43. If an allegation cannot be verified but only established by inference, that might militate, depending on the circumstances, in favour of concluding that the allegation was opinion rather than fact. However, the J was entitled to conclude that this was not the case (or not sufficiently the case) to make the Statement one of opinion rather than fact. This was particularly because he explained that the Statement did more than simply describe the C as holding alt-right beliefs; rather it described him as committing acts (agitating) in support of the alt-right cause. **[CB/7/102]** Furthermore, see §25 of this skeleton as to why a truth defence would hinge on proving that the C committed acts which constituted the active promotion of far right beliefs. If the C has committed such acts, they will be verifiable; they either occurred or they did not.

44. In regard to the argument that the expression "alt-right" is of itself a statement of opinion because it suggests something about the C's state of mind, the reasonable reader would not carry out an analysis by which the words alt-right were split from the word agitator and separately analysed. As explained in §27 above, the reasonable reader will not have a lawyer at his or her shoulder explaining the niceties of such a distinction. The J was not wrong to conclude that the inclusion of the word agitator militated in favour of a conclusion that the Statement was one of fact. **[CB/7/102]**

§§28 to 31 of the D's skeleton [CB/3/50–51]

45. §§28 to 31 **[CB/3/50–51]** concern the situation where an expression by itself is one of fact but is rendered as one of opinion because it is stated to be a conclusion/deduction based upon another fact. This is a correct statement of the law. However, the thesis advanced at §31 **[CB/3/51]** that the bare comment principle arises from this advisory rule of construction is wrong. The bare comment principle is free-standing. In any event, it is not clear how this thesis could support the appeal.

§§32 - 35 of the D's skeleton [CB/3/51–52]

46. §§32 to 35 **[CB/3/51–52]** concern the bare opinion principle. It is correct that it is not an absolute rule. The Judge did not treat it as such. It is rather the acceptance that, as a matter of interpretation, this principle will usually apply where the purported opinion does not indicate what it is about, leading the reader to assume that the opinion is based on facts which support the opinion. The important point is that the Judge was entitled to conclude that the rule applied on the facts of the case, as he explained at [J 54] **[CB/7/102]**.

47. §35 of the D's skeleton **[CB/3/52]** sets out examples where a statement of opinion which is not referenced to a supporting fact has nevertheless been found to be an expression of opinion (despite the fact that it is *prima facie* a bare opinion). These examples merely show, as stated above, that the bare opinion principle is not an absolute rule, it is a rule of construction which will apply depending on the circumstances. However, it is worth dealing with the D's reliance on the Court of Appeal decision in *Blake* at [54] and [55]. Three tweets were in issue. The first two accused Mr Fox of being a racist but set out what he had said which caused each of the respective defendants to reach the conclusion that he was a racist. The Court of Appeal upheld the decision that on these facts the conclusion that racist was an expression of opinion was "clearly right" [54]. It is apparent that this decision was very much informed by the inclusion of the basis of the opinion in the tweet complained of. In regard to the third tweet, that published by Ms Thorp, Warby LJ found that "the answer is not so obvious" [55]. It could have been interpreted to be a statement of fact because (reading the judgment generally) it did not indicate the basis for the opinion because Ms Thorp did not set out the tweet made by Mr Fox or any fact on which the opinion might be said to be based. However, "this was not the judge's impression. One of the reasons for appellate restraint in this field, as in others, is that the appeal court lacks the advantages enjoyed by the court of first instance. In this context one advantage is the ability to approach these issues with a mind relatively free of the baggage of argument and previous decisions. In the judge's position I might have reached the same conclusion." Again, a judge is granted a wide latitude in regard to assessing the impression conveyed by words.

48. Due to the absence of any fact upon which the opinion could have been derived in the Statement, if it had been one of opinion, the J was entitled to conclude that it was one of bare opinion and therefore that it was to be treated as a statement of fact **[CB/7/102]**.

§§49 – 56 of the D's skeleton [CB/3/56–59]

49. At §49 **[CB/3/56]** the D's skeleton returns to the third ground of appeal.

50. §§52 – 56 **[CB/3/57–59]** set out why the J's decision on fact/opinion was wrong. Some of the arguments were set out earlier in the D's skeleton. The C relies on the above submissions in response to them. Furthermore:

50.1. The use of the quotation marks attached to Alt-right could be read in a variety of ways. They could be read as indicating that the words are a term of art, as having a specific definition. The J was entitled to conclude, taking everything else into account, that they did not make a difference to the impression he formed of the Statement (although he might have concluded that their use in

fact militated in favour of concluding that a statement of fact was being expressed). **[CB/7/101–102]**

50.2. If there is a joke of the type posited at §52(e) of the D's skeleton **[CB/3/58]**, it is obscure and the J (and the reasonable reader) would have been entitled not to have noticed it in evaluating the impression made by the Statement. Subject to clarification from the D, it does not appear that it was submitted to the J that it was common knowledge that Jordan Peterson "is a well-known right-wing academic whose views are influential among large numbers of conservative commentators and activists." His name is not mentioned in the D's trial skeleton and the only mention of him in the Judgment is in the quotation of the words complained of. **[CB/7/93]**

51. In regard to the D's citation of ECtHR case law concerning value judgements **[CB/3/48–49] [CB/3/57–58]**, the SC's qualification of the value of such material in *Abbasi v Newcastle upon Tyne Hospitals NHS Foundation Trust* [2025] UKSC 15; [2026] AC 63 is apposite:

> 92. Although articles 8 and 10 of the Convention are of unquestionable importance, their function is different, as we have explained. Inevitably, since the European court decides specific complaints that domestic authorities have exceeded what is permissible under the Convention, rather than determining the content of domestic law within those limits, its judgments have not established a body of rules or principles which is as rich or detailed as that existing or emerging in our domestic law. Rather, the judgments in cases where articles 8 and 10 are involved are based on an assessment of the facts of individual cases, drawn from a wide variety of legal contexts across the jurisdictions of the Council of Europe, and considered after the domestic proceedings have been completed. The focus of the judgments, in cases concerned with articles 8 and 10, is usually on whether the national margin of appreciation has been exceeded. It can be difficult to derive from them rules more specific than the broad statements of principle which have been repeated over decades. Accordingly, as Lord Mance JSC said in *Kennedy v Information Comr [2015] AC 455, para 46* , "the natural starting point in any dispute is to start with domestic law, and it is certainly not to focus exclusively on the Convention rights, without surveying the wider common law scene".

52. Put bluntly, the Statement either constitutes opinion (as understood by the ordinary reasonable reader) or it does not and the Strasbourg case law will offer no assistance in making that assessment.

The extraneous knowledge

53. The J did not differentiate between the reader without the extraneous knowledge and the reader with it. If necessary, this court should consider the position of the

reader with the extraneous knowledge separately. That reader will know that "alt-right is a descriptive term for an amalgam of racists and white supremacists." **[CB/12/120] [SB/3/6]** He will therefore be more likely to conclude that the Statement is one of fact because there is no room for doubt about what alt-right means because it is clearly defined not only as racist (for which no basis is set out in the Statement) but more specifically as a discrete form of racism which regards the white "race" as superior to all others.

Ground 4

The J erred (in law and fact) and was wrong, and engaged in a serious procedural irregularity, in holding that, in the event that the Statement was a statement of opinion, it did not indicate, whether in general or specific terms, the basis of the opinion. [CB/1/15]

54. S.3(3) of the 2013 Act provides that:

> (3) The second condition (*of the honest opinion defence*) is that the statement complained of indicated, whether in general or specific terms, the basis of the opinion.

55. Whilst the absence of the basis of the opinion in the statement complained of may or may not establish that it is one of fact rather than opinion as a matter of interpretation, the effect of the second condition is that a failure to include the basis will mean that the defence cannot succeed (see [55] of *Blake*).

56. §3 of the order **[SB/3/7]** stipulated that the D was required to set out its case on the relevant issues prior to the trial ("the Defendant's Case") **[SB/4/9]**. It duly did so. In regard to the second condition it pleaded at §5 that:

> The basis of the opinion, being ideas or beliefs expressed by the Claimant, was indicated <u>in</u> the statement complained of in general terms. **[SB/4/9]**

57. It is submitted that the court ought to approach the question as to whether the Statement "indicated, whether in general or specific terms, the basis of the opinion" in the same way in which it deals with the fact/opinion issue, that is to focus on the impression created in the mind of the reader and to give the J considerable latitude in his decision-making.

58. If the Statement, contrary to the J's finding, does express an opinion concerning the C, it is obvious that the basis for the opinion was not set out in the Statement. Nothing is said about the C's "ideas or beliefs" save that he is an alt-right agitator. **[SB/1/2] [SB/2/5]** The basis for the opinion that the C is an alt-right agitator cannot be the same as the opinion itself, that he is an alt-right agitator. The basis must be

separate from the opinion (this is another manifestation of the bare opinion rule of construction: an opinion must be about something which is indicated in the words complained of).

59. The J's findings regarding the second condition are set out at [J 56 – 61] **[CB/7/103]**. Given the obvious absence of anything in the Statement which indicated the basis of the opinion, the J was not wrong to reach the conclusion that the second condition was not satisfied.

60. Having explicitly pleaded that the basis for the opinion was actually set out "in" the Statement "in general terms" **[SB/4/9]** (which it was obviously not), at the trial the D resorted to contending for the first time that the basis for the opinion was set out elsewhere by reason of the fact that the C was a well-known public figure and material published by him in his capacity as a journalist was a matter of common knowledge [J 60] **[CB/7/103]**. For the reasons set out above, these contentions rightly failed.

§§36 – 44 of the D's skeleton [CB/3/52–55]

61. The scenario referred to in §38 of the D's skeleton **[CB/3/53]** which is referred to in [99] of *Joseph v Spiller* [2010] UKSC 53; [2011] 1 A.C. 852 does not remove the need for the basis to be indicated specifically or generally in the statement complained of ([100] – [105] of *Joseph*).

62. In regard to the D's reliance **[CB/3/53–55]** on the House of Lords decision in *Kemsley v Foot* [1952] AC 345 the relevant points are:

62.1. Lord Kemsley was well-known to the public as a newspaper proprietor (owning the Kemsley Press and its newspapers) and his name operated metonymically;

62.2. the "subject matter upon which criticism is made (*the nature of his newspapers*) has been submitted to the public" and the public will have "at least the opportunity of ascertaining for themselves the subject-matter upon which the comment is founded" (pp 355–356, quoted at [50] of *Joseph*); and

62.3. "it was at least arguable that the words directly complained of imply as a matter of fact that Lord Kemsley is in control of a number of known newspapers and that the conduct of those newspapers is in question" (p.357). As stated in *Joseph* at [131], it might be the case that the law should allow "a passing reference to the previous night's celebrity show . . . as a sufficient factual basis." Hence the

reference in the second condition to the possibility that the basis may be "indicated . . . general or specific terms".

63. Applying the above principles:

63.1. no case was made out (nor could be made out) that the C was well-known by reason of having written a book. The mere pleading in the PoC that he had written a book **[CB/12/118]** could not suffice;

63.2. nothing in the Statement indicated at all that the Claimant had written a book **[SB/1/2] [SB/2/5]** (and therefore there was nothing to suggest that this was the basis for concluding that he was an alt-right agitator); and

63.3. there was no bridge from the Statement to the facts that the D sought to rely on, therefore these facts could not form the basis of any opinion expressed. Unlike in *Kemsley* (where Kemsley's newspapers were identified) there is no specific corpus identified in the Statement. **[SB/1/2] [SB/2/5]**

§§57 – 68 of the D's skeleton [CB/3/59–62]

64. At §57 **[CB/3/59]** the D's skeleton returns to the fourth ground of appeal.

65. At §61 **[CB/3/60]** it is said that the subject-matter of the opinion was identified in the Statement as "the C, his conduct and activities (in the capacity as "agitator") and his alt-right views." It is also asserted that what "led" the writer to call the C an alt-right agitator was the fact that Winston Marshall had "praised "alt-right" agitator Andy Ngo." The conduct and activities are therefore said to arise from the allegation that the C is an alt-right agitator. In other words, the opinion (if that is what it is) is based on the facts implied by the opinion. This is circular and illogical. The basis for an opinion cannot be the opinion, it must be something external to the opinion. Mr Marshall's praise for the C and the consequence for Mr Marshall cannot be the basis for concluding that the C is an alt-right agitator.

Ground 5

The J erred (in law and fact) and was wrong in holding that the Statement was defamatory at common law. [CB/1/15]

66. Lord Leggatt stated in *Alexander v Gabriel* [2026] UKPC 7:

> [14] . . . An appeal court is justified in disturbing the judge's findings (*as to meaning and whether the words are defamatory*) only if the judge applied the wrong legal test or reached an unreasonable conclusion.

67. The D's ground of appeal is that the Statement is not defamatory at common law. **[CB/1/15]** Generally, this issue is determined by reference to the meaning or imputation found to be borne by the statement complained of, which is a synthesis of the message conveyed by the statement. Stripping a statement down to its meaning is an important step in the litigation. As explained by the Court of Appeal in Blake v Fox [2025] EWCA Civ 1321; [2026] EMLR 3 at [113] (a later judgment in the *Blake v Fox* litigation than that cited above) the assessment of whether a statement is defamatory at common law is decided by reference to the meaning/imputation conveyed by the statement complained of:

> In any defamation case the single meaning of the statement complained of plays an important role. The single meaning identifies the "charges" or imputations against the claimant which the statement would convey to the ordinary reasonable reader. The claimant must always satisfy the court that each such imputation has a defamatory tendency according to the common law tests identified at the start of this judgment.

68. The D's skeleton only asserts that the natural and ordinary meaning found by the J was not defamatory at common law (see generally and specifically §74 of the D's skeleton **[CB/3/64]**). The D's skeleton seeking permission to appeal also confined this ground of the appeal to the natural and ordinary meaning. **[CB/2/40–41]** Nothing is said which intimates that the J's finding that the innuendo meaning was defamatory is challenged on appeal. §7 of Warby LJ's reasons for granting permission to appeal **[CB/10/109]** assumes that the innuendo meaning is challenged but this might have been because the grounds refer to the Statement being defamatory rather than dealing specifically with the meanings found by the J. **[CB/1/15]**

69. The C's position is that the finding that the innuendo meaning was defamatory at common law is not challenged on this appeal. Alternatively, argument is set out below as to why the J was entitled to conclude that the innuendo meaning is defamatory at common law.

Natural and ordinary meaning

70. The natural and ordinary meaning found by the J was that: the C actively promotes far right beliefs [J 49] **[CB/7/102]**.

71. At [J 51] **[CB/7/102]** the J explained why he concluded that the natural and ordinary and innuendo meanings that he found the Statement to bear were defamatory at common law. He was entitled to do so because:

71.1. There is no challenge to the meanings found by the J **[CB/10/108]** therefore the evaluation of whether they were defamatory must be referenced to them.

71.2. The reference to "far right" suggests a political view which is at the extreme and which is beyond the pale, outside the boundaries of normal decency, that it is as right wing as it is possible to be, that it is at the furthest end of the political spectrum. Nazism, fascism, racist ideologies, xenophobia and the support of repatriation for non-white citizens fall to be described as far right.

71.3. It was open to the J to conclude that far right, given the above, describes beliefs which are contrary to society's common shared values and involve a serious breach of a settled and important societal norm and would harm the C's reputation in the eyes of reasonable members of society in a way or to an extent that is serious (see the quotation from *Sube v NGN* [2018] EWHC 1234 (QB) at [31] quoted at §46 of the D's skeleton **[CB/3/56]**).

71.4. In regard to the C's active promotion of far right beliefs, the imputation becomes all the more defamatory because the C is not someone sitting in an armchair ruminating, he is out there proclaiming beliefs inimical to the common shared values of society.

71.5. If this court concludes that the meaning in issue was an expression of opinion, the position is not altered because the imputation remains the same. This is particularly so because the view being expressed is that of a major credible newspaper, the *Observer*.

***Redfearn v UK* (47335/06) [2013] 3 Costs LO 402**

72. §71 of the D's skeleton **[CB/3/63]** relies on the ECtHR decision in *Redfearn v UK* (47335/06) [2013] 3 Costs LO 402. It concerned an application against the government by a member of the British National Party. The application was in relation to the adequacy of protection from dismissal for political association under the Article 11 right to freedom of association with others. He complained that he had been dismissed from his employment with Serco because of his membership of the BNP and that this interfered with his Article 11 right (quoted at [29] of that judgment) concerning the right to freedom of association, which encompasses the freedom to join political parties. It is notable that the view and position of the Government and the Equality and Human Rights Commission (*qua* Third Party Intervener) was that there had not been a breach of Article 11 because restrictions on the freedom of association could be imposed where it was necessary to do so in a democratic society. Broadly, it was the stated view of the Government and the EHRC that the applicant's beliefs were so beyond the pale that it would

make it difficult for others to interact with him in the performance of his job (his membership of the BNP had achieved a certain notoriety following his election as a councillor on a BNP platform). The ECtHR's decision in favour of the applicant (4 votes to 3) was on the basis that someone should not be dismissed from their employment because of their membership of a political party [55] despite the nature of their views (not because their views were themselves somehow acceptable). Furthermore:

> 56. Even if the court were to acknowledge the legitimacy of Serco's interest in dismissing the applicant from its workforce having regard to the nature of his political beliefs, the policies pursued by the BNP and his public identification with those policies through his election as a councillor, the fact remains that Article 11 is applicable not only to persons or associations whose views are favourably received or regarded as inoffensive or as a matter of indifference, but also those whose views offend, shock or disturb (see, *mutatis mutandis* , Handyside v the United Kingdom, 7 December 1976 , § 49, Series A no. 24, and Jersild v Denmark, 23 September 1994 , § 37, Series A no. 298).

73. Mr Redfearn's views clearly fell into that category which might "offend, shock or disturb" but would be tolerated because of the greater right accorded to the freedom to join a political party.

74. Mr Redfearn's case previously came before the Court of Appeal (*Redfearn v Serco Ltd (trading as West Yorkshire Transport Service)* [2006] EWCA Civ 659, [2006] I.C.R. 1367), however, whilst Article 11 was briefly mentioned, the central issue in Mr Redfearn's case was that he had been dismissed as a result of racial discrimination against him.

75. It is therefore apparent that the ECtHR decision relied upon by the D does not assist it.

The D's evidence

76. In regard to the evidence relied upon in §71 of the D's skeleton (including footnotes 7 and 8) **[CB/3/63]** concerning the policies of the political parties Reform and Restore **[SB/6/15] [SB/5/10–13]**, by the order the parties were not permitted to submit evidence at the trial **[SB/3/7]**[8]. As the J pointed out in one of his reasons for refusing permission to appeal **[CB/9/107]**, such evidence is not admissible as a matter of principle (see §36 above and the associated footnote quoting *Monroe v*

[8] Furthermore, as the Court of Appeal said in *BPP Holdings Ltd v HMRC* [2016] EWCA Civ 121; [2016] 1 WLR 1915 at [13] "*it is elementary*" that assertions in a skeleton argument unless accepted by the parties or the court are "*not evidence*" and so cannot be relied upon. In the instant case, D has made no application to adduce further evidence under CPR 52.21(2)(b).

Hopkins [2017] EWHC 433 (QB); [2017] 4 WLR 68). In any event, the fact that Reform and Restore are permitted to operate as political parties does not mean that their policies are not against acceptable societal norms; it just means that individuals have the right to freedom of assembly within such parties. Furthermore, simply because, for instance, the government has not banned the BNP or other far right organisations it does not follow that therefore it is not defamatory at common law to accuse someone of supporting such organisations. It is not necessary for an allegation to impute illegal or criminal activity for the imputation to be defamatory.

Innuendo meaning

77. If in fact the D's appeal also contends that the innuendo meaning found by the J cannot stand, the C makes the following submissions.

78. As rehearsed above, the innuendo fact is that: "The alt-right is a descriptive term for an amalgam of racists and white supremacists" **[CB/12/120]**. The J concluded at [J 50] **[CB/7/102]** that the innuendo meaning is that: "the C actively promotes far right, racist and white supremacist beliefs."

79. The C's active promotion of such beliefs must be against societal norms because they discriminate against significant sections of society based on their race or skin colour, placing the white race at the apex of some sort of race hierarchy.

Lateness

80. Further to the timetable set out at Section V of PD 52C, this skeleton argument was due to be filed on 15 September 2026 (35 days after notification of the trial listing window). Counsel's instructing solicitors agreed with the D to an earlier date for filing of 29 July 2026. Unfortunately, counsel was not in a position to comply with this earlier date. They therefore offer their apologies for the late provision of this skeleton. On 11 August 2026 the D informally agreed to an extension to 28 August 2026, however, this agreement was not incorporated into an order. Given that ordinarily the skeleton would not have been due to be filed for another two weeks and the delay occurred over August, it is hoped that this will not cause any inconvenience to the court.

WILLIAM BENNETT KC
BEN HAMER

Lodged as Appeal Skeleton Argument: 28 August 2026

Lodged as Replacement Skeleton Argument: 20 October 2026