



Neutral Citation Number: [2019] EWHC 2947 (QB)

Case No: QB-2019-002376

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 November 2019

Before:

THE HON. MR JUSTICE WARBY

Between:

Lord Mohamed Sheikh
- and -
Associated Newspapers Limited

Claimant

Defendant

Adrienne Page QC and Sara Mansoori (instructed by Hamlins LLP) for the Claimant
Andrew Caldecott QC and Ben Gallop (instructed by RPC LLP) for the Defendant

Hearing date: 24 October 2019

Approved Judgment

Mr Justice Warby:

Introduction

1. The claimant, Lord Sheikh, is a Conservative Member of the House of Lords. He sues the defendant for libel in respect of an article published by it on the Mail Online website on and after 15 August 2018 (“the Article”), under this headline:

“EXCLUSIVE: Top Tory peer's appearance at Corbyn's 'hate conference' in Tunisia comes after YEARS of rubbing shoulders with Islamists, hate preachers and Holocaust deniers”

2. The claim form was issued on 1 July 2019, and Particulars of Claim were served on 2 July 2019, a little under a year after the initial publication. The claim is for damages, including aggravated damages for libel; an order for the removal of the words complained of from the website; an injunction to restrain repetition; an order pursuant to s 12 of the Defamation Act 2013, that the defendant publish a summary of the Court’s judgment; and orders pursuant to s 13 of that Act, including an order that the operator of any website on which the words complained of are posted must remove them. The defendant has indicated in correspondence that it would defend the claim “on grounds of truth, honest opinion and public interest”.
3. I am not now concerned with any of those issues, because on 3 September 2019, by consent, Senior Master Fontaine extended time for service of a Defence, and directed a trial of two preliminary issues: the meaning(s) borne by the words and photographs complained of, and whether such meaning(s) are statements of fact or expressions of opinion. This judgment follows the trial of those preliminary issues, which took half a day of court time on 24 October 2019.

The words and photographs complained of

4. Below the headline I have quoted, the following words appeared (the numbers in square brackets have been added for ease of reference):
 - Lord Sheikh gave a speech at the Tunisian conference which was attended by a delegation of anti-Semitic Hamas leaders and other extremists
 - He and Corbyn are fellow travellers on the extremist circuit, rubbing shoulders with jihadis, Holocaust deniers and anti-Semites
 - Two Tory backbenchers have demanded an investigation
 - Robert Halfon MP said: It can't be one rule for Jeremy Corbyn and one rule for Lord Sheikh

[1] A Conservative peer who gave a speech at the 'conference of hate' with Jeremy Corbyn in Tunisia in 2014 has been rubbing shoulders with Islamists, hate preachers and Holocaust deniers for years, MailOnline can reveal.

[2] Lord Mohammed Sheikh was the loudest Tory voice to demand that Boris Johnson have the whip withdrawn after he compared women wearing burkas to letter-boxes.

[3] Today we disclosed that Tory backbenchers Rob Halfon and Zac Goldsmith have demanded an investigation into the peer's presence at the hate-filled event, where the most anti-Semitic and bloodthirsty members of Hamas were invited.

[4] When questioned by MailOnline, Lord Sheikh said: 'I only attended the morning session as I left the conference to rest as I was very tired,' adding: 'I did not meet with any members of Hamas'. He did not know about the wreath ceremony, he said.

[5] But the Tunisian event was not a one-off for Lord Sheikh. He and Jeremy Corbyn are fellow travellers on the extremist circuit, rubbing shoulders with jihadis and anti-Semites who appear to hold views inimical to Western values.

[6] The vast majority of British parliamentarians who move in these shadowy circles are from Labour and the Liberal Democrats. Lord Sheikh, 77, is one of a small number of Tories who also appear to be committed to the cause.

[7] One example is the Exhibition and Forum on Palestine, held in Mayfair in 2009, where certain British parliamentarians, Islamists and conspiracy theorists came together. Lord Sheikh and Jeremy Corbyn were both in attendance.

[8] The event featured a keynote address by Mahathir Mohamad, prime minister of Malaysia, who is responsible for choice quotes like: 'Jews rule this world by proxy' and 'the Jews are not merely hook-nosed, but understand money instinctively'.

[9] 'I am glad to be labeled anti-Semitic', he once said. Lord Sheikh told MailOnline that he attended the event because 'Mahathir Mohamad is a highly respected figure internationally.'

[10] But pictures taken of guests at the event show the Holocaust denier Michèle Renouf, who was quizzed by police after she gave a speech questioning the Holocaust at a neo-Nazi rally in Germany.

[11] Other attendees pictured were Cynthia Kinney, a former congresswoman who has blamed Israel for the ISIS attacks in Europe, and David Pidcock, a Muslim convert who wrote a book of conspiracy theories about Zionists, Freemasons and others.

[12] Robert Halfon MP said: 'I am shocked by MailOnline's alleged revelations. This shows a pattern of behaviour that is all too disturbing and it is vital that the Conservative Chairman

investigates. It can't be one rule for Jeremy Corbyn and one rule for Lord Sheikh.'

[13] But this is just the tip of the iceberg where Lord Sheikh, Corbyn and their colleagues are concerned.

[14] In 2009, Lord Sheikh and Corbyn visited dictator Bashar Al-Assad in Syria. Also present was Baroness Tonge, another regular on the circuit, who was suspended from the Liberal Democrats for anti-Semitism.

[15] The Syria trip was paid for by the Palestinian Return Centre (PRC), a London-based group that held a meeting in the House of Lords where the view was expressed that Hitler tried to wipe out the Jews because he had been 'antagonised' by a rabbi.

[16] Lord Sheikh told MailOnline that when the meeting took place, 'President Assad was still a welcome figure in the United Kingdom'.

[17] The list goes on. The Tory peer is a supporter of Interpal, Jeremy Corbyn's pet charity which has been designated a 'specially designated global terrorist organisation' by the United States.

[18] In 2016, MailOnline revealed that it funded a 'hate festival' in Gaza, where children acted out the kidnap and murder of Jews, to baying applause from the crowd.

[19] Lord Sheikh travelled to Gaza in a delegation organised by Interpal. The group also funded a trip to Gaza for Jeremy Corbyn in 2013.

[20] It doesn't stop there. In 2010, Lord Sheikh held a reception in Parliament for the notorious East London Mosque in Tower Hamlets, and was pictured with its leaders.

[21] At the time, the East London Mosque was hosting a range of notorious hate preachers including Al Qaeda mastermind Anwar Al-Awlaki and the leaders of Cage, whose director called Jihadi John a 'beautiful young man'.

[22] Lord Sheikh told MailOnline that he supported the mosque because it was 'serving the Muslim community in one of the most deprived parts of Britain'.

[23] Furthermore, the peer is a supporter of a controversial Muslim charity known as the Al-Muntada Trust, welcoming them for a visit to the House of Lords in 2011.

[24] The Trust also has a long history of hosting hate preachers, including Saudi Cleric Muhammad Al-Arifi who was banned

from Britain for radicalising Britons fighting in Syria. He spoke of 'the desire to smash skulls and sever limbs for the sake of Allah'.

[25] Other extremists hosted by the Trust were Haitham Al-Haddad, one of Britain's most prominent Islamists, who has called Jews 'descendants of apes and pigs', and said, 'I believe strongly in jihad'.

[26] The Trust also gave a platform to Ali al Timimi, a preacher jailed in the United States for recruiting fighters for the Taliban, and Assim al-Hakeem, who said female genital mutilation was 'permissible' and was barred from Sheffield University.

[27] The peer claimed that he did not know about 'any connections of Al-Muntada to terrorism or... hate preachers'.

[28] Lord Sheikh has also been pictured supporting the Pakistani preacher Muhammad Hassan Haseeb ur-Rehman, and has appeared alongside him at a number of events.

[29] The extremist preacher praised a man who assassinated a Pakistani politician in 2011 for criticising the country's blasphemy laws. He called the killer a 'martyr of Islam' and a 'lover of the prophet'.

[30] Once again, the peer claimed that he 'was not aware of his opinions' at the time.

[31] Lord Sheikh is also a friend of the Islam Channel, which Ofcom has found guilty of extremism in the past. He appeared at an Eid Gala fundraising dinner for the channel in July this year, and said he was unaware of its connection to extremism.

[32] Lord Sheikh, the founder and president of the Conservative Muslim Forum, was made a life peer in 2006 after joining the Tories just two years earlier.

[33] He is Chairman of the Conservative Ethnic Diversity Council, responsible for promoting ethnic minorities and creating harmony between groups of different heritages within the party.

[34] In addition, he pointed out to MailOnline, he is a member of the All-Party Parliamentary Group Against Antisemitism.

[35] 'At school, my best friend was a Jewish boy and I have connections with Jewish families,' he said. 'My views on Palestine are very balanced and I have always felt that there needs to be a solution which is acceptable to both parties.'

[36] 'I am against any form of terrorism and I have said this at a dinner organised by His Excellency Mark Regev, the Israeli Ambassador. This dinner was organised at the Ambassador's residence.

[37] 'I am actively involved in promoting Interfaith Dialogue and the strengthening of relations between various religions and races.'

5. The Article included the following quotes which are complained of:

[38] "It can't be one rule for Jeremy Corbyn and one rule for Lord Sheikh" Robert Halfon MP

[39] "Lord Sheikh and Jeremy Corbyn are fellow travellers on the extremist circuit".

6. The article included 15 photographs, with captions. The following 13 are complained of:

- (1) A photograph of the Claimant with the caption

"Lord Sheikh delivering a speech at the 'conference of hate' in Tunisia in 2014".

- (2) A photograph of Jeremy Corbyn at the Tunisian conference with the caption

"Jeremy Corbyn, circled right, attending the conference before a wreath-laying ceremony".

- (3) A photograph of Jeremy Corbyn with the caption

"The Labour leader taking part in a wreath-laying ceremony by the graves of the Munich killers".

- (4) A photograph of the Claimant with the caption

"Lord Sheik praising al-Muntada Trust a charity that has hosted numerous extremist preachers".

- (5) A photograph of Oussama Hamden with the caption

"Top Hamas leader, Oussama Hamden, left who praised violence as 'magnificent' at the Tunisian conference".

- (6) A photograph of Muhammad Hassan Haseeb ur-Rehman with the caption

"Pakistani preacher Muhammad Hassan Haseeb ur-Rehman who was supported by Lord Sheikh".

- (7) A photograph of an event with the caption

“Lord Sheikh at an event with the extremist preacher Hassan Haseeb ur-Rehman, in green hat”.

(8) A photograph of Lord Sheikh with a group in Parliament with the caption

“Lord Sheikh poses with members of the al-Muntada Trust which has hosted many extremists”.

(9) A photograph of Jihadi John in a black balaclava holding a knife towards the camera with the caption

“Jihadi John, who was praised by the Cage director as a ‘beautiful young man’”.

(10) A photograph of Michele Renouf with the caption

“Holocaust denier Michele Renouf”.

(11) A photograph of David Pidcock, Cynthia Kinney and Michele Renouf with the caption

“Posing at an event attended by Lord Sheikh and Jeremy Corbyn: conspiracy theorist David Pidcock, left, Cynthia Kinney, a former Congresswoman who has blamed Israel for the ISIS attacks in Europe, centre, and Holocaust denier Michele Renouf, right”.

(12) A photograph taken at The Forum on Palestine with the caption,

“The Forum on Palestine in London in 2009 at which a sign called Israel’s actions ‘genocide’”.

(13) A photograph of Assim al-Hakeem with the caption,

“Assim al-Hakeem, who said female genital mutilation was 'permissible' and was barred from Sheffield University”.

7. The claimant also complains of the publication of what is said to be a “pre-moderated comment” on the Article by someone calling himself Alain1965 from Hampshire, UK, in the following terms:

“He’s as fit to be a peer as Corbyn is to be an MP, two hate filled idiots not fit to walk the halls in Westminster”.

8. On 23 November 2018, or thereabouts, the defendant amended the Article by removing paragraphs [17-19], but the rest of the Article has remained online to date.

The rival contentions

9. Lord Sheikh complains of the entire text of the Article, and all the photographs and captions to which I have referred. His case is that the Article, in its original and its amended form, bore the following meaning: that he “is a supporter of anti-Semitism,

holocaust denial, violent Islamist jihad, terrorism and hate preaching”. This meaning is put forward as a “natural and ordinary and/or inferential and/or ... innuendo” meaning.

10. In support of his case on innuendo, Lord Sheikh asserts (in paragraph 5.1 of the Particulars of Claim) that

“All or a substantial number of readers of the Article and Amended Article would be familiar with the term fellow traveller, as the Article and Amended Article assumed. The term is commonly used to impute sympathetic support for and agreement with the cause or ideology of a group, short of actual formal membership of the group. Historically it has been used mainly to denote Communist sympathisers.”

11. It is common ground that the amendments of November 2018 make no difference to the overall meaning of the Article. The defendant has stated its case in correspondence. Its position is that, “at its highest” the Article meant

“that the Claimant has irresponsibly and/or uncritically rubbed shoulders with organisations and individuals who have variously espoused and/or expressed some or all of the anti-Semitic views and support for violence against Jewish and/or Israeli and/or Western interests which are mentioned in the Article and in some cases supported them in circumstances that found a reasonable suspicion that the Claimant has tacitly condoned at least some of these views [in the sense of not condemning those repugnant views or at least some of them when he should] and/or positions such as to merit an investigation into the matter by the Chairman of his party.”

The words in parenthesis are a clarification of the defendant’s position, included in the skeleton argument for this trial.

Legal principles

Natural and ordinary meanings

12. Ordinarily, the court’s task at a trial such as this is to identify the natural and ordinary meaning of the words complained of. This is a single meaning which the words complained of would convey to the hypothetical ordinary, reasonable reader of those words. The claimant contends for an “inferential” meaning, something that is sometimes described as an implied meaning (see, for instance, *Grubb v Bristol United Press* [1963] 1 QB 309, 327 (Pearce LJ)). Both are to be contrasted with a literal meaning; but they are varieties of natural and ordinary meaning: imputations which the ordinary reasonable reader would derive from the words. The ordinary reasonable reader obviously brings to bear some knowledge of the world. He or she is assumed to know anything that is common knowledge among the population generally.
13. The characteristics to be attributed to the ordinary reasonable reader, and the way in which he or she is assumed to consume published matter, are identified in a number of well-known authorities setting out general principles to be applied when deciding upon

the natural and ordinary meaning of allegedly defamatory words. The principles are well-established and uncontroversial. The key points were set out by Eady J in *Jeynes v News Magazines Ltd* and endorsed by Sir Anthony Clarke MR on appeal in that case: [2008] EWCA Civ 130 [14]. The principles have since been re-stated by Nicklin J in *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB) in a passage at [11-12] to which both Leading Counsel have referred me. And they have been reaffirmed in *Stocker v Stocker* [2019] UKSC 17 [2019] 2 WLR 1033 [34-38]. It is unnecessary to rehearse them here.

14. Importantly, however, when deciding on the ordinary meaning of words the court does not admit evidence of what readers actually took the offending words to mean. Its task is to make an objective assessment of meaning, applying these principles to the words, or other statement, that is alleged to defame the claimant, without resort to extraneous materials.

Innuendo meanings

15. An innuendo meaning is something different. It is now defined in PD53B 4.2(4)(b) as “a meaning alleged to be conveyed to some person by reason of knowing facts extraneous to the statement complained of”. That is a reference to knowledge that the ordinary reasonable reader would not possess. The special knowledge relied on by Lord Sheikh in this case is interpretative knowledge: awareness that certain words have, or can have, a particular meaning. Whether or not this is strictly “knowledge” of an “extraneous fact” is perhaps interesting, but it is unimportant. Cases of this kind, for instance involving slang, have long been treated as falling under the rules relating to innuendo meanings.
16. Typically, innuendo meanings are advanced by claimants; but a defendant may advance an innuendo so as, for instance, to attach an innocent meaning to words which would otherwise be defamatory, or to reduce the number of publishees who would draw a particular defamatory meaning from the words. Where an innuendo meaning is alleged, the party advancing it must plead, and prove (1) some “special” extraneous fact; (2) that at least one publishee knew that fact; and (3) that a reader with such knowledge would derive an innuendo meaning from the words complained of: see PD53 2.3(2) and *McAlpine v Bercow* [2013] EWHC 1342 (QB) [49-50] (Tugendhat J). Accordingly, a claim reliant on an innuendo meaning asserts a separate and different cause of action from one that relies only on the natural and ordinary meaning of words: *Grubb v Bristol United Press* loc cit. That said, the court’s assessment of meaning remains an objective one. Assuming the knowledge is proved, the question for the Court is what meaning would have been conveyed to a reasonable person having that special knowledge: *Baturina v Times Newspapers Ltd* [2011] 1 WLR 1526 [56] (Sedley LJ).
17. It has become common to decide meaning as a preliminary issue. Such trials are an effective means of resolving swiftly and economically an issue which almost always matters a great deal to both parties. The objective nature of the determination means the court rarely has to make any findings about any facts other than meaning itself. Cases where the claim or defence relies on an innuendo meaning call for care. The need to plead and prove the “special” extraneous knowledge may sometimes lead to complexities, meaning that innuendo claims are unsuitable for swift determination by way of preliminary issue. There are other issues which might complicate the process. For instance, the authorities reveal some tension over the question of whether, in an

innuendo case, witnesses who had the special knowledge may give evidence of what they took the words to mean. This is a time-honoured practice (see *Gatley on Libel and Slander*, 12th ed para 32.29 and cases cited at nn116-121) but its propriety was doubted by Sedley LJ in *Baturina* at [56].

18. In this case, however, there is no dispute that the term “fellow traveller” has, to some people, the special meaning or connotations ascribed to it in paragraph 5.1 of the Particulars of Claim. The defendant does not admit that any reader of the words complained of had that interpretative knowledge; but I am invited to assume that at least one reader would have it, and to determine whether a reasonable reader with that knowledge would arrive at the true innuendo meaning contended for. Again, one must be wary of invitations to reach decisions based on assumptions or hypothetical facts. But Ms Page agrees that this is an appropriate way to proceed in this case, and I also agree.

Levels of gravity

19. One of the issues between the parties is the level of gravity at which the meaning, whatever it is, is pitched. Reference has been made to “Chase Levels”. As Nicklin J explained in *Brown v Bower* [2017] 4 WLR 197 [17], these levels

“... come from the decision of Brooke LJ in *Chase v News Group Newspapers Ltd* [2003] EMLR 11 [45] in which he identified three types of defamatory allegation: broadly, (1) the claimant is guilty of the act; (2) reasonable grounds to suspect that the claimant is guilty of the act; and (3) grounds to investigate whether the claimant has committed the act. In the lexicon of defamation, these have come to be known as the Chase levels.”

20. The claimant contends for a Chase Level One imputation, of guilt of support for the disreputable causes and practices listed in the claimant’s meaning. The defendant’s meaning is at or around Chase Level Two. *Chase v News Group* provides us with a useful classification of imputations that are commonly encountered in practice, and a convenient shorthand. It is however clear law that the Chase levels are not a “straitjacket”. Neither the parties nor the court are forced to select one of the three levels. Nor is the court bound by the meanings contended for by the parties. It can, indeed must, recognise and give effect to the almost infinite capacity of words to convey subtle shades of meaning, which may fall between the Chase levels. Thus, nobody suggests that Gray J was wrong, when in *Charman v Orion Publishing Group Ltd* he found a meaning of “cogent grounds to suspect”: [2005] EWHC 2187 (QB) [58]. In *Feyziyev v The Journalism Development Network Association*, I found that one of the two articles complained of bore a Chase Level Two meaning, but the second bore a meaning of “strong grounds to suspect”: [2019] EWHC 957 (QB) [25], [36].

Fact and opinion

21. The principles to be applied in deciding whether words are statements of fact or opinion are well-settled. A convenient summary is to be found in *Koutsogiannis* at [16]:

“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 a deduction, inference, conclusion, criticism, remark, observation, etc.

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.

iv) Some statements which are, by their nature and appearance opinion, are nevertheless treated as statements of fact where, for instance, the opinion implies that a claimant has done something but does not indicate what that something is, i.e. the statement is a bare comment.

v) Whether an allegation that someone has acted “dishonestly” or “criminally” is an allegation of fact or expression of opinion will very much depend upon context. There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact.”

22. In this case, the defendant’s meaning is an inferential rather than an express statement; it is said to be an opinion implicit in the wording used. In the light of that, two points can be made about principle (ii) above. The first concerns whether an opinion has to be expressed or can be implied. The notion of “inferred opinion” has been described as “conceptually difficult”: see *Tinkler v Ferguson* [2018] EWHC 3563 (QB) [37] (Nicklin J), repeated in *Koutsogiannis* at [17]. Nicklin J warned against the danger that a process which seeks to identify comment which is implicit in the words used may stray into one which adds to the natural and ordinary meaning a moral judgment that is not part of the published statement, because it is, in reality, supplied by the reader. I agree that one must be careful before reading an opinion or value judgment into words that do not express it. But the defence of honest opinion under s 3 of the Defamation Act 2013 applies to a “statement of opinion”; it is not limited to an express statement. There is force in Mr Caldecott’s submission that the process of “reading between the lines”, by which the ordinary reader can identify implied or inferential meanings, is applicable to comment or opinion as well as to fact. These considerations, coupled with the inherent flexibility of the ever-evolving methods of conveying meaning, suggest to me that it would be unwise to rule out the possibility of an implied statement of opinion.
23. The second point is that not every statement that “is or can be inferred to be ... [an] inference” is necessarily to be treated as an expression of opinion. The Explanatory Notes to the Defamation Act 2013 say that “an inference of fact is a form of opinion”. But as Sharp LJ observed in *Butt v Secretary of State for the Home Department* [2019] EWCA Civ 933 [37], the matter is “perhaps expressed too broadly” in that passage, as “this is often, but not invariably the case.”

24. The overriding rule when dealing with both meaning and the question whether a statement is factual or opinion is encapsulated in principle (iii) above. It is always a question of how the reasonable reader would respond to the words.

Reasons

25. One important principle that follows from that overriding rule is the need to avoid unduly elaborate analysis. This is a constant theme of the jurisprudence. It applies to the arguments of Counsel, to the reasoning process undertaken by the Judge, and to the reasons to be given by the judge when explaining his or her conclusions on meaning. Gray J put it well in *Charman v Orion* at [11]

“It appears to me to be particularly important where, as here, a judge is providing written reasons for his conclusion as to the meaning to be attributed to the words sued on, that he should not fall into the trap of conducting an over-elaborate analysis of the various passages relied on by the respective protagonists. The parties are entitled to a reasoned judgment but that does not mean that the court should overlook the fact that it is ultimately a question of the meaning which would be put upon the words ... by the ordinary reasonable reader. Such a hypothetical reader is assumed not to be a lawyer. He or she is very unlikely to read the whole book in a single sitting or to compare one passage with another or to focus on particular phrases. The exercise is essentially one of ascertaining the broad impression made on the hypothetical reader by the [words complained of] taken as a whole.”

26. It is all too easy to fall into the trap described in this passage. I have sought to guard against it by keeping in mind that last sentence, and in a number of other specific ways. The first is to place myself as best I can in the position of the hypothetical ordinary reasonable reader: reading the article to myself once, in its original format, and reaching some provisional conclusions, before reading or hearing any of the parties’ arguments, and without paying any detailed attention to the rival meanings contended for. I shall also be circumspect in my summary of the parties’ arguments and in giving my reasons for the conclusions I have arrived at on the preliminary issues.

Submissions

(1) Meaning

27. In her argument for the claimant, Ms Page QC has helpfully put forward the shorthand “ideologies” as a collective label for the anti-Semitism, Holocaust denial, Islamist jihad, terrorism, and hate-preaching to which reference is made in the Article. She suggests “extremists” as a label for the groups said to espouse these ideologies.
28. Ms Page’s argument is that in all of its aspects, that is to say, its structure, content, language, tone and imagery, the Article is orientated towards impressing upon the reader that the claimant actively supports these ideologies and extremists. She points to a number of features of the Article which, she submits, operate to elevate, in the reader’s mind, the supposed relationship between the claimant and these ideologies to one of

positive/active support, rather than, as the defendant suggests, tacit condonation or some form of ill-considered association. Her points of detail about the Article are grouped under seven main headings:

- (1) “The Article’s cumulative structure”. The Article purports to reveal one by one a string of misdeeds on the part of the claimant, going back many years, painting a picture of recurrent and persistent conduct. Reliance is placed in particular on aspects of paragraphs [1], [5], [7], [13-14], [17], [20], [23], [28] and [31]. The cumulative effect, it is said, is to convey an active and enthusiastic association on the claimant’s part with extremists and their ideologies.
- (2) “The claimant as a ‘fellow traveller on the extremist circuit’”. The Article is said to employ an array of phrases, verbs and nouns which insinuate that the claimant is far more than a mere attendee at controversial events or a simple interlocutor with controversial individuals. He is placed in a ‘rogues gallery’ of supposed anti-Semites and extremists. Particular reliance is placed on passages in paragraphs [1], [5-7], [10-13] and [31], along with the use of the term “poses with” in photo caption 8.
- (3) “The claimant as a ‘supporter’ of extremists”. Ms Page points to words in the Article which expressly describe the claimant as a “supporter” of, or as “supporting” certain organisations or individuals. Reliance is placed on variants of the verb or noun “support” in paragraphs [17], [19], [22] and [23-25], which are said in context to convey the impression that by supporting the organisations or individuals he was supporting the ideologies and extremists who espouse them.
- (4) “The claimant’s role at behest of and/or hosting and promoting extremists”. It is argued that some of the episodes described involve the claimant in conducting activities at the behest of, on behalf of, or by way of promoting extremist groups, and not just being in attendance or rubbing shoulders at events where the extremists are also present. Ms Page points in particular to paragraphs [1], [14], [19], [20], [23], [28] and [31].
- (5) “Language conveying extremism”. It is submitted that the Article contains abundant examples of such language. The word “hate” appears 8 times. The word “extremist” 9 times, and in paragraph [18] there are “lurid and gruesome” references to children “acting out the kidnap and murder of Jews, to baying applause from the crowd”.
- (6) “Photographs depicting active engagement in extremist circles”. The photographs and their captions are said to provide “powerful reinforcement of the text of the Article”, providing the photograph evidence that the Claimant supports extreme ideologies. Particular reliance is placed on photo and caption 1, and numbers 2, 3, 4, 7, 8, 11 and 12. The majority of these depict gatherings where “the images reinforce the picture of an international network of espousers of extremist ideologies”, which is frequented by the claimant, who is not a mere passive participant.
- (7) “Absence of antidote”. The Article contains “very little by way of balance”, submits Ms Page. The passages which purport to quote Lord Sheikh’s responses to the newspaper, as set out in [4], [16], [22], [27], [30] and [35 – 37] are said to contain only “the barest semblance of an attempt at balance”. They do not contain a single

relevant ‘denial’ as such. They consist, rather, of “a series of increasingly feeble-looking explanations attributed to the claimant which barely engage with the substance of the allegations and from which the force of the Article’s beginning has sapped all impact.”

29. For the defendant, Mr Caldecott QC makes the preliminary point that the claimant’s meaning is “extreme” in several respects. It is, he says “an outright allegation of guilt in relation to holding every extremist position referred to in the article”. To impute Holocaust denial, for instance, is to attribute to a person “extreme historical ignorance”, as well as being deeply offensive. There is no suggestion in the Article that the claimant has ever voiced any of the extremist views himself. Thus, submits Mr Caldecott, the core of the dispute between the parties is whether the Article alleges that the claimant holds these extreme views himself, or that he uncritically “rubs shoulders” with those who do (an imputation which the defendant would say amounts to a critical opinion).
30. The main points advanced on behalf of the defendant can be summarised as follows:-
 - (1) Context. As emphasised in *Stocker*, context is crucial. The article appears on Mail Online, “not a title known for equivocation in its political coverage”. Mr Caldecott argues that readers would not expect Mail Online to shy away from making serious allegations expressly.
 - (2) The Article cannot be read as suggesting that everyone who supports the organisations mentioned, or attends one of the events referred to, is an extremist. On the contrary, if it is said that a conference has a “delegation” of extremists, the implication is that others were present, who are not extremists. Suggestions that Mr Corbyn, other Labour MPs, and Liberal Democrat parliamentarians move in the same circles implies that a range of opinions is represented, not limited to those committed to the ideologies. No reasonable reader would infer from the article that they are being accused of being *supporters of* all (or indeed any) of the ideologies.
 - (3) The phrase “rub shoulders with” appears in the first headline and early on in the introductory text, denoting a secondary criticism about the company kept by the claimant, rather than a primary accusation of holding particular views.
 - (4) That approach is fortified by what is said in the closing passages about the claimant’s past career (at [32-34]), which identify roles held by the claimant that would require him actively to promulgate moderate opinions on topics of diversity and anti-Semitism.
 - (5) The claimant is repeatedly quoted, denying that he was aware that the relevant individuals or organisations had supported or expressed the extremist views, or explaining his reasons for attending the event in question: [4], [9], [15], [16], [22], [27], [30] and [31]. Although, with the exception of [4], these passages do not treat these denials or explanations as conclusive, they are not rejected as untrue.
 - (6) It is clear that the author has devoted some time to investigating the events and groups. Had there been any evidence that the claimant was an extremist who espoused the ideologies, it would have been set out.

(7) The photographs and captions do no more and no less than illustrate the text, and the extreme nature of the claimant's case is apparent from some of the arguments advanced in reliance on this aspect of the Article. Of caption 9 (which relates to a statement attributed to a director of CAGE defending Jihadi John), it is said that "there is no possible basis for inferring that the claimant shares that view privately or publicly".

31. These submissions are supplemented by 7 points of detail. As Mr Caldecott notes in his skeleton argument, "to a degree detailed analysis, rather than general impression, should be treated with caution". The main themes of the points of detail can I think be fairly put this way. The Article cites a number of occasions on which the ideologies are said to have been advocated, promoted, or espoused by persons other than the claimant, when the most that is expressly said of him is that he was in attendance. On other occasions he is said to have had an association with an organisation or individual which, or who, on some other occasion, has promoted or espoused extremism, or associated with those who have done so. It is not said that any of the identified individuals expressed their extreme views in the claimant's presence or that he ever engaged with them directly.
32. In relation to the term "fellow traveller" it is argued that, albeit some readers might be aware of its particular connotations in the context of Soviet-era Communism, even such a reader would not import that special meaning into the wholly different context of the Palestinian conflict. In context, the term has a perfectly sensible literal meaning, namely attendance at the same events. Properly and reasonably understood, says Mr Caldecott, it is "a convenient shorthand for the striking overlap between the claimant and Mr Corbyn in attendance terms."

(2) *Fact or comment*

33. Ms Page submits that the Article, labelled as an "Exclusive", purports to set out a series of facts that are being "revealed", as a result of research. The Article contains no expressions of opinion other than the "shock" attributed to Mr Halfon MP. There is nothing about the Article that would suggest to readers that it was being published as an opinion piece, or that the author was writing in the capacity of a columnist. A person does not "reveal" an opinion.
34. Mr Caldecott accepts that the Article makes factual allegations: that the claimant repeatedly attended events and associated with the people and groups referred to, and that those people and groups held or expressed the extreme views attributed to them. But, he submits, the Article was obviously conveying criticism of Lord Sheikh for his behaviour. Besides the factual narrative it also contained (a) "the inferential view that the claimant's attendance and other conduct merits investigation", which is a statement of opinion; (b) "the inferential opinion" that the claimant has been uncritical or lacked vigilance, which Mr Caldecott characterises as a "deduction, conclusion or inference" which the reader is invited to draw; and (c) the express third-party opinion of Mr Halfon, that the facts presented are shocking and disturbing. He further accepts, indeed contends, that the Article expressed the opinion that there have been so many instances of support and association that Lord Sheikh's disclaimers are open to question.
35. Ms Page criticises this approach for using words ("uncritical", "lacking vigilance") that nowhere appear in the Article itself. If an opinion can be conveyed by implication or

deduced by inference (something she would suggest is rarely if ever possible), then one must be able to point to something in the published words, as a pointer or hook. Here, there is nothing of that kind.

Assessment

36. The above is no more than a summary, and it is necessarily selective and incomplete. Deliberately so. The Article, including the captions and comment, runs to some 1,600 words. The claimant's skeleton argument contains some 5,300 words, of which the argument on the facts runs to nearly 3,000 words. The defendant's skeleton argument is 4,450 words in length, of which about 2,500 represent argument on the facts. I have also heard oral argument on the facts, over more than an hour. I do not make these observations in a spirit of criticism. On the contrary, the arguments have been concise, clear, and helpful. But these figures do underline the importance of the warning sounded by Gray J in *Charman v Orion*. 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.
37. Reading the Article without that benefit, my response to it was that it was essentially factual reporting of the claimant's conduct, coupled with some express and implied conclusions about its significance. The natural and ordinary meaning of the words and photographs complained of, in their context, is that the claimant has a long history of support for, or close association with, people and organisations that express or hold anti-Semitic and other extremist views and attitudes which, despite his attempts to explain it,
 - i) provides strong grounds for suspecting that he is secretly an anti-Semite who approves of and sympathises with Holocaust denial, Islamist jihad and hate-preaching, which he is prepared knowingly and actively to support;
 - ii) is shocking and disturbing.The reader comment adds the imputation that the claimant is a hate-filled idiot, unfit to be a Member of Parliament.
38. Applying the principles discussed above, the bulk of these meanings consists of statements of fact, and not comment or opinion. The conclusion in paragraph (i) is one of fact. Paragraph (ii) is an expression of opinion on the matters presented as fact. The reader comment is also an expression of opinion on those matters.
39. I find that the use of the term "fellow traveller" in the context of this Article would not affect the reader's reaction to its content, even if the reader was familiar with the special meaning of that term. There is no further or different true innuendo meaning.
40. The Article depicts the claimant as comparable to Jeremy Corbyn, in that he has a long history of close association ("rubbing shoulders") with extremists. Initially it is suggested, by reference to the reported "demands" of Messrs Halfon and Goldsmith, that there are grounds for investigating the reasons for the claimant's attendance at the so-called 'hate conference' in Tunisia and (implicitly) whether he was there because he supported extremist ideologies. The Article then proceeds to suggest that there is a good

deal more to the matter than that. The Tunisian event was “not a one-off” ([5]). Details of other incidents are recounted, and the reader is informed that Mr Halfon, having been presented with this further information, has been “shocked”, and expressed the view that it was “disturbing” ([12]). Still, however, it is presented as a matter worthy of investigation ([12]). However, the article goes on to suggest that Mr Halfon has only been made aware of a fraction of the evidence (“But this is just the tip of the iceberg” [13]). Further evidence of the claimant’s conduct is then presented (“the list goes on” [17], “It doesn’t stop there” [19]). As Ms Page has submitted, there is a steady accumulation of examples of the claimant’s behaviour. The claimant’s denials and explanations are quoted, but doubt is cast upon them (“The peer claimed ...” [27], “Once again, the peer claimed ...” [30]).

41. Some readers might conclude, on the basis of the facts presented, that the claimant is indeed an anti-Semitic sympathiser with and supporter of extremist and violent Islamist causes. But that would be their own conclusion. As Ms Page has pointed out in her argument on the “fact or opinion” issue, a meaning can be inferential, rather than spelled out, but still it must derive from what is actually said by the publisher. Ms Page has submitted that the Article presents those with whom the claimant has associated, or supported, as unequivocally evil. There is no nuance and no balance, she says. But she is unable to point to any passage in the article which expressly or clearly depicts the claimant as a sympathiser with or supporter of anti-Semitism, Holocaust denial or the other extremist positions. Her case is, as it has to be, that this is implicit.
42. There are instances of the word “support” or “supporter” in paragraphs [17], [22], [23] and [28]; these link the claimant closely with organisations to which, and people to whom, highly reprehensible conduct or beliefs are attributed. But there is force in the point that nowhere does this Article directly attribute to this claimant the expression of any anti-Semitic views, or any explicit support for any of the ideologies. Overall, the picture presented by the defendant is one of association. The Article clearly suggests that the claimant is guilty *of* association with others; but guilt *by* association does not follow. It is necessary to go further and assess what is implicit in the associations, as presented to the reader. It is of course possible, by presenting a person as an associate of someone or somebody accused of criminality, to imply that the person is himself guilty of the same wrongdoing, or at least that he approves of, or condones it. But association with someone who is portrayed as accused or suspected of wrongdoing, or who is himself said to be an associate of wrongdoers is (or may be) different. There is a wide range of possible implications.
43. The ordinary reasonable reader is not naïve, and is readier than a lawyer to read in an implication; but nor is the reader avid for scandal. Much depends on the context in which the offending statements are presented, and the reader’s expectations about information presented in that context. Context includes the publishing platform. That is clear from *Stocker*, which was concerned with Facebook, but the point has been recognised for many years. In *Sir Elton John v Guardian News and Media Ltd* [2008] EWHC 3066 (QB) the words complained of were said to portray the claimant’s professed commitment to charity as insincere, and driven by selfish motives: [9]. Tugendhat J placed weight on the context in which the words complained of appeared: a transparently fictitious first-person diary piece, representing an attempt at humour, in the Weekend section of *The Guardian*: [22-25]. The meaning complained of was not sustainable, as a reasonable reader “would expect so serious an allegation to be made

without humour, and explicitly, in a part of the newspaper devoted to news”: [32]. In this case, Mr Caldecott’s point is rather different, but he is right to focus attention on the platform on which this Article is published.

44. A court needs to be wary of drawing on its own knowledge of, let alone its subjective opinions about, particular publications, in the absence of evidence (*Simpson v MGN Ltd* [2015] EWHC 77 (QB) [10]). It is however enough to view this Article in its context online, to gain a sufficient appreciation of the style and manner in which information is presented by the Mail Online. In my judgment, the reasonable reader would expect the Mail Online to make an allegation of support for terrorism directly, if not bluntly, and not by insinuation. The term “rubbing shoulders” suggests association without necessarily going so far as active, knowing support. The fact that term is used repeatedly would strike the ordinary reader as significant; a clear indication of the thrust of the Article, falling short of an allegation of knowing support.
45. The repeated reference to the call by Mr Halfon and Mr Goldsmith for an investigation is significant. By itself, that suggests that the matter is not clear-cut; that the reasons for the claimant’s close associations with terrorists need further examination. In addition, in my judgment, the closing section of the Article is important. The reader is told, via quotations from Lord Sheikh, that he holds a number of positions which would be inconsistent with support for the ideologies or extremists. No doubt is cast on those factual assertions. Lord Sheikh is also quoted expressly denying any anti-Semitic views, and putting flesh on the bones of that denial by his reference to a Jewish childhood friend.
46. The express comparison with Mr Corbyn does not help the claimant get home with his meaning. The two are certainly portrayed as being similar in their approach to the ideologies and the extremists, and as “fellow travellers” on the “extremist circuit”. But as in every “rogue’s gallery” case, in which a claimant is aligned with or compared with one or more others, the key question is what the words complained of suggest about the other(s). I do not believe this article imputes to Mr Corbyn guilt of anti-Semitism, or portrays him as someone guilty of endorsing the ideologies and the extremists, or lending them support, in the sense the word “support” is used in the claimant’s meaning. I do not believe the term “fellow traveller” would affect this, even in the mind of the reader familiar with its special meaning. No doubt such a reader would notice and acknowledge the use of language; but the context is so wholly different from that of the Communist era that little impression would be left. At most, the words would reinforce the suggestion, already present, that these are men whom there are grounds to suspect of willingly going along with anti-Semitism and other extreme positions.
47. That said, the accumulation of items of evidence means that the Article goes well beyond merely suggesting that there are grounds for an investigation. The implication is of a much stronger case than that.
48. I did not, when reading the Article, identify any implied expression of opinion. Nor has Mr Caldecott been able to persuade me that such expressions lie within the words used. The reader would see that the Mail Online adopts robust language. Mr Halfon is quoted making comments about the claimant. The reader would take it that, if the Mail Online wished to convey its own criticism of Lord Sheikh, for being uncritical in his choice of associations, or lacking vigilance, or otherwise, that would be done expressly – whether in the Article or elsewhere, in editorial comment. There is nothing in the wording of the

Article which implies any such opinion. The bulk of the Article (apart from the attributed opinions) is presented as factual reporting. Mr Caldecott has argued that the words “rubbing shoulders” imply the criticisms contained in the defendant’s meaning. I do not think that is realistic. “Rubbing shoulders with” is metaphorical rather than literal language, but it implies conduct, not evaluation; the sense conveyed is one of close association.

49. There is an implied meaning, but it is not an implied statement of opinion. It is an implied statement that the associations listed and described in the Article, taken together, strongly suggest that the claimant holds anti-Semitic views, and approves and supports the ideologies and the extremists. More precisely, it is an implied statement of the meaning I have specified above.