



Neutral Citation Number: [2023] EWHC 3024 (KB)

QB-2022-003018

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 November 2023

Before :

His Honour Judge Lewis
(sitting as a Judge of the High Court)

Between :

SALMAN IQBAL

Claimant

and

GEO TV LIMITED

Defendant

Jonathan Barnes KC (instructed by **Gresham Legal**) for the Claimant
Richard Munden (instructed by **Carter-Ruck**) for the Defendant

Hearing date: 21 July 2023

JUDGMENT

HIS HONOUR JUDGE LEWIS

1. This is an application by the defendant for summary judgment.
2. The claimant is the founder and president of ARY Digital Network, one of the leading news broadcasters in Pakistan, responsible for the Urdu language TV channels ARY Digital and ARY News.

3. GEO News is also a leading Urdu language news channel in Pakistan. It is produced in Pakistan by the Jang Group, which is run by Mir Shakil-ur-Rahman. The defendant is part of the Jang Group and is the legal entity that broadcasts GEO News in the UK.
4. There has been prior litigation in this court between the two media groups. In 2016, Mir Shakil-ur-Rahman was awarded £185,000 at the trial of his libel claim against ARY News, see *Shakil-Ur-Rahman v ARY Network Limited and another* [2016] EWHC 3110 (QB).
5. On 14 September 2022, the claimant issued libel proceedings in respect of a series of broadcasts by the defendant on GEO News on 19 and 20 May 2022. The claimant seeks damages, including aggravated damages, an injunction and an order under s.12 of the Defamation Act 2013 requiring the defendant to publish a summary of any judgment of the court.
6. The defendant has served five witness statements in support of its application: one from the partner at Carter-Ruck with conduct of the matter (Antonia Foster), two from the Business Unit Head of the Defendant (Baseem Baig Chagtai) and two from the Director of News International at GEO News, Pakistan (Jawad Naeem Rana). The claimant has served two witness statements in response, one from a Solicitor from Gresham Legal (Smeetesh Kakkad) and one from the head of news at ARY News in Pakistan (Ammad Yousaf), which has 386 pages of exhibits.
7. The broadcasts complained of were about a political rally held by the Pakistan Muslim League (Nawaz) (“PML-N”) in Sargodha, Pakistan, on 19 May 2022. There are twelve publications complained of, comprising live coverage of the rally between 17.15 and 18.00, and eleven news reports broadcast at 20.03, 21.03, 21.19, 22.01 and 23.01 on 19 May 2022, and at 00.03, 01.01, 02.01, 03.02, 04.05 and 05.05 on 20 May 2021 (all UK times).
8. PML-N is one of the main political parties in Pakistan, led by Shehbaz Sharif. One of its main rivals is Pakistan Tehreek-e-Insaf (“PTI”), led by its founder, Imran Khan.
9. Mr Khan was the prime minister of Pakistan from 18 August 2018 until 10 April 2022, when he was removed from office following a vote of no confidence. His successor as prime minister was Shehbaz Sharif, leading a coalition government.
10. Mr Yousaf confirms in his evidence that after Mr Khan was ousted from office, he and his supporters took to the streets, with mass protests attended by hundreds of thousands, calling for an early general election. In response, PML-N launched its own series of rallies, aimed at countering Mr Khan’s narrative and his calls for an early election. PML-N’s rally in Sargodha on 19 May 2022 took place against this background. At that time, political campaigning was also underway for regional elections in Punjab on 9 June 2022.
11. The main speaker at the rally on 19 May 2022 was Maryam Nawaz Sharif, who was vice president of PML-N, the daughter of former prime minister Nawaz Sharif, and the niece of the then current prime minister, Shehbaz Sharif. Whilst at the time she was banned from holding political office, it is apparent from the evidence that she was

a very popular figure in her party, and it is said by Mr Chagtai in evidence that many consider her to be heir apparent and a potential future prime minister. The rally was also addressed by Ms Sharif's cousin, Hamza Shahbaz, who was elected as the Chief Minister of Punjab on 16 April 2022.

12. The rally was publicised in advance. A flyer was produced in early May setting out the dates of various rallies, which were described as a "jalsa", which is a public gathering. The date of the rally in Sargodha was changed close to the day itself, in response to weather conditions. The rally was to be held in a football stadium, and work was undertaken to remove seating so that the event could take place safely. Both parties have confirmed in evidence that the press was invited to attend the rally.
13. Both parties agree that political rallies are very common in Pakistan. Mr Yousaf says that PML-N's rallies are "notoriously charged and partisan affairs", and that Ms Sharif is known for her fiery rhetoric, confrontational delivery and strong condemnation of Imran Khan and ARY News. Similarly, Mr Rana has confirmed that the rallies of many parties are "often quite volatile and accusatory events with politicians of all sides levelling strong criticisms against one another, and their opponents' supporters, as part of rallying their own supporters."
14. In the build up to elections, the defendant says it is usual for GEO News to broadcast live addresses from political rallies held by the main parties. At the time, GEO News was broadcasting addresses given by Imran Khan every day, sometimes twice a day, including when Mr Khan made serious allegations against his political opponents. The rallies of other parties were also covered, and on 19 May 2022, during the live broadcast complained of, GEO News reported at 17.04, 17.49 and 17.53 on a large rally being held by another political party, JUI-F, in Karachi.

The live coverage of the rally

15. Ofcom has prepared a full transcript of GEO News' news coverage between 17.00 and 18.00 on 19 May 2022, including details of words displayed in captions or tickers at the top and bottom of the screen.
16. The format of GEO News is that of a traditional news channel. There are studio-based presenters, and each hour they present headline news, other scripted stories and live coverage of breaking news events.
17. GEO News appears to make very extensive use of the ticker at the bottom of the screen. Instead of highlighting a few key stories, as is the case with many UK based news channels, the ticker is used to provide a very detailed summary of what is being said during the live broadcast. Where the ticker is reporting what someone has said, GEO News includes the name of that person at the end of the sentence, for example: "Today, terrorism has risen again, Maryam Nawaz" and "No one should tamper with the justice system, Chief Justice".
18. On 19 May 2022, during a summary of news stories at the top of the hour, GEO News included coverage of the PML-N rally at 17.03: "PML-N decorated the ground in

Sargodha, a large number of people were present in the meeting place, and Maryam Nawaz and Punjab's Chief Minister Hamza Shahbaz have addressed the gathering". At the same time, the ticker said "PML-N decorated the ground in Sargodha" and then "Maryam Nawaz and Hamza Shahbaz will address". At 17.07, GEO News then reported calls by Imran Khan for a general election at a meeting in Islamabad, noting that his last meeting or rally would be held in Multan before his march on Islamabad.

19. Live coverage of the rally started at 17.17 (9.17pm in Pakistan). GEO News returned after a commercial break, and the presenter cut straight to the rally, simply saying "Welcome to GEO Pakistan". Throughout the rally, the blue ticker at the top of the screen confirmed what was being shown, namely "PML-N meeting in Sargodha, speech by Maryam Nawaz". The red ticker at the bottom of the screen provided an extensive running report of what was being said, following the usual house style.
20. Ms Sharif spoke for around half an hour. She outlined the achievements of Nawaz Sharif when prime minister, but the focus of her address was Imran Khan. She was highly critical of Mr Khan, accusing him of being incompetent, destroying the economy, allowing terrorism to re-surface and ruining her father's work as prime minister. Ms Sharif was also critical of Mr Khan for questioning what Shahbaz Sharif had achieved in four weeks as prime minister. It was a wide ranging and intense attack on Mr Khan's integrity and ability.
21. Ms Sharif then accused Mr Khan of criticising those who do not agree with him, be this courts, election commission or the media. She then said the following:

"And, finally, listen to me, I'm just about to end my speech, this tribulation, also abuses the media which made him Imran Khan, the media which showed empty seats in the Jalsa day and night, this media which gave him one-sided coverage. Today, except for one media channel named ARY. Except for one media channel, he has gone after all of the media channels, calls them traitors, calls them agents, calls them sell-outs, do you know why he doesn't say anything to ARY? Just listen!

"ARY, who is attacking state institutions in collaboration with him [Khan]. ARY who is abusing state institutions from their anchor's tweets. They and Imran Khan are like this [showing both her fingers side by side]. Do you know why? Because Imran Khan's close friend, the owner of ARY Salman Iqbal, a gold smuggler, Imran Khan gave him the benefit of Rs 40 billion. Imran Khan waived his 10 to 12 billion rupees of taxes. Imran Khan gave him 4 billion rupees World Call without any due process. They are protecting each other because they are equal partners in the theft.

"I want to give a very important message to the people of Sargodha, I want to give a very important message to the mothers of Sargodha, to the sisters of Sargodha, to the sons of Pakistan, to the elders, I want to say that Imran Khan is a name of chaos, this chaos must be stopped, it should not be nurtured. Because I am saying, making the people of Sargodha and people of Pakistan a witness; as long as a chaos like Imran Khan is present in Pakistan, I write with my blood, Pakistan can never develop. Imran Khan is a chaos; an incurable disease whose other name is "destruction, the destruction of Pakistan".

22. GEO News did not seek to summarise any of this in the ticker at the bottom of the screen, despite doing so for the rest of the address.
23. At the end of Ms Sharif's address, the news presenter wraps up with a summary of what had been said but did not refer to the allegations made about the claimant and ARY. After a commercial break, and a brief update on what was happening at the JUI-F rally in Karachi, GEO News started to cover the address of Hamza Shahbaz, cutting away at the top of the hour for the GEO News headlines.

The bulletins

24. For the hourly summaries, the claimant has only taken issue with parts of what was broadcast, focussing on what was said about the claimant and ARY. It is, however, necessary to consider the passages complained of within the context of the wider bulletins:
 - a. Within the 18.00 headlines, the broadcaster included a clip from the address focussing on Ms Sharif's general attack on Imran Khan, and his need to step down from politics. The claimant and ARY were not mentioned.
 - b. For the 19.00 headlines, the broadcaster did the same.
 - c. For the 20.00 bulletin, the broadcaster included a fuller report. The headlines started with a clip from Ms Sharif attacking Mr Khan, followed by narration from the presenter summarising some of those criticisms. Within the main bulletin, at 20.03, the broadcaster also included a clip of what was said by Ms Sharif about ARY and the claimant, which the news presenter then summarised. By way of example, the relevant words broadcast within the 20.00 broadcast are set out in the schedule to this judgment.
 - d. The 21.00 bulletin started off in the same way as the broadcast at 20.00, including the headlines, and a report at 21.03. In addition, the broadcaster returned to the rally address at 21.16, with some further narrative and a clip of Ms Sharif making further criticism of Mr Khan. This was followed at 21.19 with a summary of what Ms Sharif had said about the claimant and ARY, together with a clip from the rally.
 - e. The 22.00 bulletin started off with the newscaster introducing some of Ms Sharif's general criticisms of Mr Khan. At 22.01, the presenter then summarised what she said about ARY and the claimant.
 - f. For the 23.00 bulletin, the broadcaster did the same as it did at 22.00.
 - g. For the 00.00 bulletin, the broadcaster did the same as it did at 20.00, with a clip and summary at the start of the programme, and a clip and summary about ARY and the claimant at 00.03. However, at 00.26, the broadcaster returned to what Ms Sharif said about Mr Khan in more detail, including a further lengthy clip from the address and further commentary.
 - h. For the 01.00 bulletin, the broadcaster did the same as it did at 22.00.
 - i. For the 02.00 bulletin, the broadcaster did the same as it did at 00.00, with a clip and summary at the start, a further clip and summary about ARY and the claimant at 02.01, and a longer clip and commentary at 02.26 on the wider criticisms of Mr Khan.
 - j. For the 03.00 bulletin, the broadcaster did the same as it did at 22.00.

- k. For the 04.00 bulletin, the broadcaster did the same as it did at 20.00 with a clip and summary at the start of the programme, and a clip and summary about ARY and the claimant at 04.05.
 - l. For the 05.00 bulletin, the broadcaster did the same as it did at 20.00, with a clip and summary at the start of the programme, and a clip and summary about ARY and the claimant at 05.05. However, at 05.25 the broadcaster returned to Ms Sharif's wider criticisms of Mr Khan, including a further clip and narrative.
 - m. For the 07.00 bulletin, the broadcaster referred to the address at the rally, but not the allegations about ARY and the claimant.
 - n. For the midday bulletin, the broadcaster did the same.
25. GEO News referred to the allegations made about the claimant and ARY in the ticker at the same times that it was reporting on this part of Ms Sharif's address, namely at 20.03, 21.03, 21.19, 22.01, 23.01, 00.03, 01.01, 02.01, 03.02, 04.05 and 05.05.

The claim

26. The claimant has pleaded a single meaning in respect of each of the broadcasts, namely that it meant that the claimant: "(a) illegally smuggles gold; and (b) participated in a corrupt relationship with Imran Khan while Mr Khan was Prime Minister of Pakistan, which resulted in the Claimant, in return for his political support through ARY for Mr Khan's efforts to undermine the Pakistani state, dishonestly gaining enormous financial advantages which he would not otherwise have properly and lawfully obtained, including illicit gifts and tax rebates of 10s of billions of Rupees, and to acquire World Call, a company worth 4 billion Rupees, at a complete undervalue without any due process, thereby stealing massive funds from the Pakistani state."
27. The defendant has not yet served a defence. It has said, however, that it has two substantive defences. The first is that the publications complained of were protected by the reporting privilege provided by s.15 of the Defamation Act 1996. The second is that the publication was on a matter of public interest and protected by s.4 of the Defamation Act 2013. The defendant has not said that it will run a defence of truth.

Summary Judgment

28. The summary judgment application is made solely in respect of the proposed defence of statutory qualified privilege under s.15 of the 1996 Act. The defendant says the claimant would have no real prospect of succeeding on his claim because of the strength of such a defence, once pleaded.
29. CPR rule 24.2 provides that the court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if (a) it considers that (i) the claimant has no real prospect of succeeding on the claim or issue; or (ii) the defendant has no real prospect of successfully defending the claim or issue; and (b) there is no other compelling reason why the case or issue should be disposed of at a trial.

30. The approach to be taken when considering a defendant's application for summary judgment was summarised by Lewison J (as he then was) in *Easyair Limited (Trading As Openair) v Opal Telecom Limited* [2009] EWHC 339 (Ch) at [15] (citations removed):

- “i) The court must consider whether the claimant has a “realistic” as opposed to a “fanciful” prospect of success.
- ii) A “realistic” claim is one that carries some degree of conviction. This means a claim that is more than merely arguable.
- iii) In reaching its conclusion the court must not conduct a “mini-trial”.
- iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents.
- v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial.
- vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case.
- vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction.”

Statutory qualified privilege

31. The statutory protection relied upon by the defendant is set out in s.15 of the Defamation Act 1996 (as amended). This provides that:

- “(1) The publication of any report or other statement mentioned in Schedule 1 to this Act is privileged unless the publication is shown to be made with malice, subject as follows.”

(2) In defamation proceedings in respect of the publication of a report or other statement mentioned in Part II of that Schedule, there is no defence under this section if the plaintiff shows that the defendant –

- (a) was requested by him to publish in a suitable manner a reasonable letter or statement by way of explanation or contradiction, and
- (b) refused or neglected to do so.

For this purpose, “in a suitable manner” means in the same manner as the publication complained of or in a manner that is adequate and reasonable in the circumstances.

(3) This section does not apply to the publication to the public, or a section of the public, of matter which is not of public interest and the publication of which is not for the public benefit”

32. Part II of Schedule 1 to the 1996 Act (as amended) includes:

“11A A fair and accurate report of proceedings at a press conference held anywhere in the world for the discussion of a matter of public interest.

12(1) A fair and accurate report of proceedings at any public meeting held anywhere in the world.

12(2) In this paragraph a “public meeting” means a meeting bona fide and lawfully held for a lawful process and for the furtherance or discussion of a matter of public interest, whether admission to the meeting is general or restricted”.

33. Section 15(2) is not engaged in this case as the claimant has not requested the publication of a statement by way of explanation or contradiction. Indeed, the defendant has offered twice to publish the claimant’s response to the broadcast allegations by way of a right of reply, but this offer has not been taken up.

Issues before the court

34. The issues between the parties in respect of any qualified privilege defence are as follows:

- a. whether Ms Sharif’s address falls within 11A or 12(1) of Part II of Schedule 1 to the 1996 Act, namely whether it was given at a public meeting or alternatively a press conference held for the discussion of a matter of public interest;
- b. whether the live broadcast can be said to be a “report” of the proceedings;
- c. whether the broadcasts complained of constitute fair and accurate reports;
- d. whether the broadcasts complained of satisfy s.15(3) and were about a matter that was of public interest and were published for public benefit; and
- e. whether the broadcasts were published maliciously.

35. The defendant says that to the extent any of these issues raise points of law or construction, there is no suggestion by the claimant that further relevant evidence would be available at trial, and so the court should deal with the issues now. It is said

that the claimant does not have a realistic prospect of success in respect of any of the issues, and so summary judgment should be granted to the defendant.

36. The claimant says this application is premature, having been made before the defendant has even pleaded a defence, or the claimant has set out its pleaded case on malice. It is also said that the case needs to await disclosure, especially of any documents generated during the programme making processes. The claimant also says that the issues before the court are not such that can be resolved by a short point of law or construction. It is said that the court will need to decide a number of issues of fact, including whether the rally was a press conference or other public meeting; whether any report was fair and accurate; malice; and whether publication was in the public interest and for public benefit.

Issue 1 – public meeting/press conference

37. The defendant says that the address was clearly made at a public meeting, as defined in the statute, noting that the claimant has himself referred to it as a public gathering in his letter of claim, and his complaint to Ofcom. The defendant says the event was advertised in advance, televised (including by the claimant's ARY News) and attended by thousands of people. The event was for the discussion of political matters relating to the governance of the Punjab and of the country of Pakistan, and the furtherance of the PML-N's political aims and proposals. It is said that the event was also a press conference given the invited presence of the media at the event for the purposes of reporting.
38. The claimant says the evidence does not suggest that the rally was bona fide and lawfully held for a lawful purpose, with Ms Sharif banned from holding political office and with violence anticipated. It is said that proceedings at a public meeting would typically follow a press handout or release, follow a pre-ordained programme and running order, and be scheduled carefully. It is said that decorum would be maintained. The claimant says that this case comes nowhere near to this standard. The meeting was not for the furtherance or discussion of matters of public interest, but was a charged and partisan affair, primarily attended by persons strongly supportive of the PML-N. There was no opportunity for the press to ask questions, and the event was arranged at the last minute.
39. In *McCartan Turkington Breen (A Firm) v Times Newspapers Ltd [2001] 2 A.C. 277*, the court considered a press conference held by an "informal committee formed to secure the release and vindication of Private Lee Clegg, who had been convicted of serious criminal offences allegedly committed while he had been serving as a private soldier in... Northern Ireland". The meeting was held in a member's private home "to drum up support for Mr Clegg". Invitations were only sent to representatives of the press. Many of the attendees were journalists, but there were also people present who were not, and who had not been invited. Entry was in no way restricted and no check was made on the identity or credentials of those who attended.
40. The House of Lords was unanimous in finding that the press conference had been a public meeting for the purposes of statutory qualified privilege. Whilst the case considered the terms of the Defamation Act (Northern Ireland) 1955, these were indistinguishable from the relevant provisions of the Defamation Act 1996. The

leading judgment was given by Lord Bingham of Cornhill who explained the rationale for the defence, whilst setting out the five reasons for his decision [at 290G]:

“1. In a modern, developed society it is only a small minority of citizens who can participate directly in the discussions and decisions which shape the public life of that society. The majority can participate only indirectly, by exercising their rights as citizens to vote, express their opinions, make representations to the authorities, form pressure groups and so on. But the majority cannot participate in the public life of their society in these ways if they are not alerted to and informed about matters which call or may call for consideration and action. It is very largely through the media, including of course the press, that they will be so alerted and informed. The proper functioning of a modern participatory democracy requires that the media be free, active, professional and enquiring. For this reason the courts, here and elsewhere, have recognised the cardinal importance of press freedom and the need for any restriction on that freedom to be proportionate and no more than is necessary to promote the legitimate object of the restriction.

2. Sometimes the press takes the initiative in exploring factual situations and reporting the outcome of such investigations. In doing so it may, if certain conditions are met, enjoy qualified privilege at common law, as recently explained by this House in *Reynolds v. Times Newspapers Limited* [1999] 3 W.L.R. 1010. In the present case the role of the press is different. It is that of reporter. The press then acts, in a very literal sense, as a medium of communication. Since 1881 a series of statutory provisions cited above has granted newspapers qualified privilege in relation to certain reports in certain closely defined circumstances. By section 7(1) of the 1955 Act the protection is granted only to a report published in a newspaper as defined. The privilege is not granted to the author of the statement complained of, who is liable if the statement is defamatory unless he has some other defence. The privilege is lost if malice is proved. By section 7(2) the enjoyment of qualified privilege is conditional on the grant of a right of reply to the complainant, if the case falls within Part II of the Schedule. By section 7(3) there is no privilege if the publication is of a matter the publication of which is prohibited by law, or if the matter published is not of public concern or if its publication is not for the public benefit. By section 7(4) any privilege enjoyed at common law is preserved. The reports of proceedings privileged under Part I of the Schedule have to be fair and accurate and have (subject to one very limited exception) to be of proceedings in public. The reports privileged under Part II of the Schedule have also to be fair and accurate: further safeguards are provided by close definition (save in paragraph 9) of the bodies whose findings, decisions or proceedings are the subject of report. In paragraph 9, the privilege covers only fair and accurate reports of proceedings at a public meeting held in the United Kingdom, and then only if the meeting is bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of a matter of public concern. The grant of privilege inevitably deprives a complainant of a remedy he would otherwise enjoy if a defamatory statement is made concerning him, but section 7 and paragraph 9 give a very considerable measure of protection to those liable to be injured.

3. The effect of the legislation in 1955 was to grant qualified privilege to newspaper reports of public meetings, subject to the stringent conditions just noted. This grant (as in 1881, 1888 and 1952) must have been intended to enable citizens to participate in the public life of their society, even if only indirectly, in an informed and intelligent way. Since very few people could personally witness any proceedings or attend any meeting in question, it was intended to put others, by reading newspaper reports, in a comparable position. The privilege was not extended to newspaper reports of the proceedings of private bodies and private meetings, because those are proceedings which by definition the public do not witness and to which the public do not have access: the object was not to put the newspaper reader in a better position than one who was able to attend the proceedings or meeting in person.

4. Although the 1955 reference to "public meeting" derives from 1888, it must be interpreted in a manner which gives effect to the intention of the legislature in the social and other conditions which obtain today. The statutory language does not, despite the words "that is to say", define what is meant by "public", but limits the categories of public meeting whose proceedings may be entitled to privilege. I see no warrant in the statutory language for the nexus test adopted by the judge and the Court of Appeal. Thus "public", a familiar term, must be given its ordinary meaning. A meeting is public if those who organise it or arrange it open it to the public or, by issuing a general invitation to the press, manifest an intention or desire that the proceedings of the meeting should be communicated to a wider public. Press representatives may be regarded either as members of the public (as made clear by the language of paragraph 10 of the Schedule) or as the eyes and ears of the public to whom they report. A meeting is private if it is not open to members of the public and if it is not intended that the proceedings of a meeting should be communicated to the public, unless perhaps by the body which holds the meeting. The closing words of paragraph 9 are intended to make clear that a meeting is not to be regarded as other than public because admission is not open to all members of the public but is subject to some restriction. A press conference, attended by members of the press and perhaps other members of the public, has become an important vehicle for promoting the discussion and furtherance of matters of public concern, and there is nothing in the nature of such a conference which takes it outside the ordinary meaning of "public meeting."

5. Everything points towards the public character of the press conference in issue here. The object was to stimulate public pressure to rectify what the Committee as promoters of the conference saw as a grave miscarriage of justice, and publicity was the essence of the exercise. A general invitation to attend was issued to the press. While the attendance of other members of the public was not solicited, nor was admission denied to anyone, journalist or non journalist. Both journalists and other members of the public in fact attended in significant numbers. A public meeting need not involve participation, or the opportunity for participation, by those attending it, but here the opportunity to ask questions and make statements was extended to those attending. Save that the meeting was held at Lord St. Oswald's home, there was nothing whatever private about it.

41. There has not been any judicial consideration of what is meant by “press conference”. Paragraph 11A of Schedule 1 was introduced in 2013. The Explanatory Notes to the Act state at 56 that the legislation “provides for qualified privilege to extend to a fair and accurate report of proceedings at a press conference held anywhere in the world for the discussion of a matter of public interest. Under the current law as articulated in the case of *McCartan*, it appears that a press conference would fall within the scope of a “public meeting” under paragraph 12 of Schedule 1 to the 1996 Act. This provision has been included in the Act to clarify the position.”. Mr Munden for the defendant says that the natural meaning of the term “press conference” is an event to which journalists are invited to receive oral and/or written statements and/or to ask questions, which the organisers intend that the journalists should report to the public.
42. I am satisfied that the rally was a public meeting for the purposes of paragraph 12 of Schedule 1 to the Defamation Act 1996 and I do not think the claimant has a realistic prospect of demonstrating otherwise.
- a. This was an important political rally, attracting coverage from the main news broadcasters, including the claimant’s news network.
 - b. It was a genuine public meeting held in the run up to political elections and was very clearly about the perceived political failings of Imran Khan, discussing matters of some importance. The rally would also have been held to gather support for the party, which again is a legitimate purpose for a public meeting within a democracy.
 - c. The address was given by a senior figure within a major political party. Whilst at the time she was banned from holding elected office, she was not prohibited from campaigning and it was a lawful meeting.
 - d. The event was organised in advance – whilst the date might have been changed at the last minute, it was clearly a planned event in that arrangements had to be made to remove stadium seating. The fact that tens of thousands of people in attendance also suggests a degree of planning.
 - e. There was nothing private about the event: in theory anyone could attend, although I acknowledge that it is more likely that only party supporters would have been present.
 - f. There was no need for the event to be balanced, with speakers of more than one political viewpoint. There was also no need for the meeting to be conducted with decorum – political debate can often be highly charged and confrontational, but this does not in itself remove a public meeting from the protection of the statute.
43. I do not therefore need to decide whether the event was also a press conference. The authorities I have been referred to have focussed on whether a press conference is also a public meeting, not whether a public meeting is also a press conference. Whilst there may well be considerable overlap between the two, they are different concepts. The fact that the press is invited to an event to report does not in itself make that event a press conference: the press is invited to attend all types of occasion, including sports matches, pop concerts, parades and so forth. Every case will turn on its facts. Having watched the video of the rally, it is far from obvious that the event could be categorised as a “press conference” and I consider that the claimant has a realistic prospect of being able to show at trial that it was not.

Issue 2 – whether the live broadcast is “report”.

44. The term “report” is not defined in the 1996 Act. The claimant says that the live broadcast was not a report, since it was not an account of or a resume of the proceeding, see *Tsikata v Newspaper Publishing plc* [1997] 1 All ER 655 at 669G per Ward LJ. Mr Barnes says it would be a corruption of the language of the statute to treat a live broadcast as a “report” of proceedings.
45. The defendant says that the live relaying of what a speaker is saying is plainly a form of reporting that person’s speech, and so performing the media’s role of being the eyes and ears of the public. It is said that to exclude it from the protection of reporting privilege, while allowing reports that use commentary or interpretation, would be perverse. Mr Munden has also taken me to a footnote in Gately, in the section looking at privilege attaching to reports of parliament, which says “It has always been assumed that broadcast reports (whether live or recorded) were covered by the common law privilege and they would clearly also fall within the 1996 Act...”.
46. As already noted, the purpose of statutory reporting privilege was considered by Lord Bingham of Cornhill in *McCartan*, (see paragraphs 1 and 3 from extracts at para 40 above). Statutory qualified privilege extends to public meetings for the purpose of enabling citizens to participate in the public life of their society, even if only indirectly, in an informed and intelligent way. The intention of the statutory defence is to put those who could not attend such events in the same position as those who could.
47. The fact that a report is broadcast live does not in itself take that report outside the scope of the privilege. Whether what is published live is a “report” will be fact specific. In this case, the live footage was broadcast as part of a rolling news programme. It had been signposted earlier in the programme, and the live relay was enhanced with the rolling ticker, which summarised the key points being made. The presenter provided a summary at the end of Ms Sharif’s address, before moving to a break and then further coverage of the rally. I am satisfied that taken together this constituted a report of the rally and address and the claimant does not have a realistic prospect of showing otherwise.

Issue 3 – fair and accurate reports

48. The claimant says it is first necessary to identify the relevant “proceedings” since the privilege attaches to fair and accurate reports of proceedings at the press conference or public meeting. Whilst this is correct, I am not sure much turns on it in this case. The evidence available suggests that the main purpose of the rally was to provide a means for Ms Sharif and her cousin to address party supporters about political matters. Neither party has suggested in their evidence that there were other speakers at the event, although I accept it is possible that there were. Whether the “proceedings” are taken to be the entire rally, or just the main speakers, the important material worthy of being reported would be the same.
49. The claimant also says that the hourly summaries cannot be considered reports of the proceedings, since they included just a few sentences of Ms Sharif’s criticisms of Mr Khan and did not include her calling for him to quit government rather than flood

Pakistan with inflation. The claimant also says that the defendant adopted the allegations. The defendant says that it did report the wider speech, and in fact covered the more general content first in each of its news bulletins before then reporting on what was said about the claimant and ARY.

50. In *Cook v Alexander* [1974] 2 QB 279, the Court of Appeal considered whether a parliamentary sketch was protected by qualified privilege as a fair and accurate report of proceedings in parliament. It was noted that the law recognised the importance of parliament being reported, and so providing a report is fair and honest, the publisher is not liable to an action: “It may be that a speaker in the debate got his facts entirely wrong or was actuated by the most malice, nevertheless, the reporter is entitled to report what he said. Even if it is defamatory of someone, it is privileged because the public interest in the debate counterbalances the private interest of the individual”, per Lord Denning MR.
51. Lord Denning MR continued at 288F: “When a debate covers a particular subject matter, there are often some aspects which are of greater public interest than others. If the reporter is to give the public any impression at all of the proceedings, he must be allowed to be selective and cover only those matters which appear to be of particular public interest. Even then, he need not report it verbatim word for word or letter by letter. It is sufficient that it is a fair presentation of what took place so as to convey to the reader the impression which the debate itself would have made on a hearer of it”.
52. Buckley LJ said that the editor or reporter is entitled to select some part or parts of the debate which he considers to be of particular public importance or otherwise likely to be of particular interest to the public “not on scandalous grounds or other unworthy grounds of that kind, but on the ground that the subject matter is of genuine public interest”. It was said that fairness means a fair presentation of what took place as it impressed the hearers. It does not mean fairness in the abstract as between the claimant and those who were attacking him. The balance of fairness must be in relation to the plaintiff’s reputation – the sole question is whether it was unfair to the plaintiff, not others mentioned.
53. As already noted, the claimant has approached this issue by looking at whether the bulletins could be said to be fair and accurate reports more generally of the rally. *Cook* makes clear, however, that the correct approach is to look at whether the report was fair in relation to the claimant.
54. The broadcast reports gave a fair summary of what Ms Sharif said about the claimant (and ARY). Many of the summaries included actual footage of what was said, and all of them included a summary that was materially accurate. I am satisfied that the claimant does not have a realistic prospect of showing otherwise.
55. The position would be the same if I was to consider matters in the way suggested by the claimant, namely whether the bulletins were also fair and accurate reports of the address, or the rally, more generally. Ms Sharif was the lead speaker, and the most newsworthy part of the rally. Each bulletin opened with a general introduction to the rally, giving the gist of what was said. Within the same bulletin, the defendant reported on what was said about the links between Mr Khan and the media, in the

context of Ms Sharif's address, and her criticisms of Mr Khan. Each bulletin was a fair and accurate report of the public meeting.

56. In terms of the live broadcast, I am satisfied that the report that was broadcast was an accurate summary of what was said and fair as regards the claimant.

Issue 4 - was the publication of the words complained of of public interest and for the public benefit?

57. Section 15(3) is an important part of statutory reporting privilege. As noted above, Lord Bingham in *McCartan*, identified the equivalent of section 15(3) as one part of the "very considerable measure of protection" put in place to balance the harm that might be caused to persons liable to be injured by publication of a fair and accurate report.

58. The need for the words to be of "public interest" and for the "public benefit" are cumulative requirements. Whether such a report has been published on a matter of public interest, and for the public benefit, is a question of fact, to be decided objectively: *Qadir v Associated Newspapers Limited* [2012] EWHC 2064 (QB) at [78].

59. In *Qadir* at [74], Tugendhat J considered how the court should approach section 15(3):

"95. Many of the categories of documents and types of events referred to in the Schedule to the 1996 Act are ones which are particularly likely to contain allegations defamatory of someone. In the case of many documents or other occasions, including particulars of claim, the documents will include a partisan account of a highly contentious matter, where that account has not been subject to review or control by the court or any other impartial body".

"99. In my judgment s.15 reflects the need to have regard both to the public interest in freedom of expression and to the public interest that an individual's right to his reputation be not interfered with otherwise than for a legitimate aim and when it is proportionate to do so. Parliament has itself carried out the balancing exercise in part....

"100. ... The effect of s.15(3) is to give the court trying a defamation action the power and duty to consider a balancing exercise on the particular facts of the case. In effect in that, and in the predecessor legislation, Parliament has required the court to carry out a balancing exercise similar to the one which has now become familiar under the HRA, namely Art 10 and Art 8 (see *Re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593, Lord Steyn at [17])."

60. *Qadir* was about the publication of extracts of Particulars of Claim obtained from the Court office. In respect of those, Tugendhat J determined that:

"Where a defendant has filed an admission, a non-party has no right to obtain the claim form or particulars of claim, so Schedule 1 para 5 will not apply at

all. Where a defendant has filed a defence or an acknowledgement of service, then that will necessarily state or imply that the defendant disputes the claim.” [99]

“In my judgment it follows that, as a general rule (that is one to which there may be exceptions) it will not be for the public benefit to publish any defamatory allegations made in a claim form or particulars of claim available to the public from the court under CPR r.5.4C without at the same time publishing the fact that the defendant has denied, or is disputing, the allegations, as the case may be...” [100].

61. In *Crossley & another v Newsquest (Midlands South) Ltd* [2008] EWHC 3054 (QB), Eady J recognised that what is needed to satisfy s.15(3) may depend in part on the nature of the material being reported:

“25. It may be that the significance of s.15(3) is to be found in the different wording of s.14. Absolute privilege is confined to reports of domestic and European courts. It does not extend to courts elsewhere. The categories covered by s.15, by contrast, are very wide indeed: see the contents of Sch.1 to the 1996 Act. Thus, it may be that the additional hurdles set up in s.15(3) would have to be overcome in relation to matters taking place elsewhere in the world. For example, the privilege would attach to reports of ‘proceedings in public before a court anywhere in the world’. If a British citizen were to be defamed in the course of such proceedings, it may be that the Defendant would have to show ‘public concern’ and ‘public benefit’ before being entitled to rely on the statutory privilege. Such concerns were expressed in the report of the Supreme Court Procedure Committee on Defamation (the “Neill Committee”) in July 1991 at para. XII.13: “Equally, however, we think it wrong that defamatory (in some cases very grave) charges can be reported in this country under statutory privilege without any corresponding statutory protection for the individual who is under criticism or attack. We are not satisfied that sufficient protection would be provided in such circumstances by the exercise of editorial discretion.”

26. That is a possible clue to Parliament’s intention in the enactment of s.15(3). Be that as it may, I am quite satisfied that the present Defendant does not require to overcome any additional hurdles in relation to a report of proceedings in the Worcester County Court. Citizens in this jurisdiction are entitled to know what goes on in public hearings before any of Her Majesty’s courts.”

62. In 1996, the Court of Appeal considered equivalent provisions in the Defamation Act 1952 in *Tsikata* (supra). This was an appeal against the decision of Jonathan Sumption QC (as he then was) at the trial of a preliminary issue. The case was about a passage in an article published by The Independent newspaper on 18 June 1992 in the following terms: “In June 1982, three High Court judges were kidnapped and executed at an army shooting range. A special inquiry into the killings recommended the prosecution of ten people, including Flt. Lt. Rawlings' close aide, Captain

(Retired) Kojo Tsikata, who was named as "the master mind" of the plot. Five people were prosecuted and executed, but not Captain Tsikata.”. The special inquiry referred to had been chaired by a High Court judge, with a panel. It had heard evidence from more than sixty witnesses, who were cross-examined by lawyers representing interested parties.

63. One argument raised by the claimant in *Tsikata* was that it was not for public benefit or in the public interest for the article to omit two important pieces of updating information in respect of the Inquiry’s findings. The first was that the Attorney General of Ghana had not accepted the findings made by the Inquiry in respect of Captain Tsikata, considering them to be evidentially unsound. The second was that the inquiry’s findings were based on testimony of one of Captain Tsikata’s co-accused, and that shortly before he was executed, this co-accused had admitted to inventing the allegations.
64. The Court of Appeal considered this to be an important matter for the newspaper to report, particularly since Captain Tsikata remained involved in public life. The Court looked carefully at the status and source of the information. It had been argued by the defendant newspaper that in deciding whether a privilege attached to any particular publication, the court was concerned to examine both the status of the body whose deliberations had been reported and the subject matter with which it was concerned. Neill LJ noted that “one might add that it is also relevant to take account of the extent to which the conclusions of the body concerned can be said to have been reached after detailed examination”.
65. Ward LJ at 670H weighed up matters in the following terms:

“What has caused me great anxiety is whether the public truly gain benefit from this article if they are only told half the truth about the matter in issue. Should reputation suffer such a sacrifice to give freedom to the press? At the end Mr Kentridge persuaded me that there is a public benefit in receiving this information. Its source was a judicial inquiry whose status derived from a law passed to empower it. The inquiry was conducted along judicial lines. The plaintiff had the opportunity to put his case. The subject matter was of the gravest relevance to the conduct of affairs in Ghana and the due administration of its government. The plaintiff was then a special adviser to ruling Council and was responsible for the security services. He was a close aide of Flight Lt Rawlings. Moreover, and crucially, he remained in high office in the government whose part in the forthcoming elections was under critical review. He is not part of history though his actions may be. There is a benefit in knowing what view the Inquiry had taken of him. Their status commands some respect. To require a newspaper so thoroughly to investigate subsequent events and report them in order to place the whole picture before the public in order to exclude damage to individual reputation is to make unacceptable inroads into the press' role as the public watchdog. It transforms investigative journalism from a virtue to a necessity. A degree of flexibility must be allowed and that will vary from case to case. Here I have been persuaded that the publication of the report is entitled to its qualified privilege.”

66. Neill LJ at 867F also considered this to be a difficult issue, and focussed on the basis upon which this privilege exists, and the surrounding facts:

“... the law provides that in certain circumstances and in relation to certain types of subject matter a newspaper is entitled to qualified protection if it publishes a fair and accurate report of proceedings in public before a tribunal in a Commonwealth country. A newspaper may not know what happened subsequently nor may the newspaper be in a position to assess the quality or effect of any later denials or refutations. Each case must depend on its own facts. But in this case it seems to me that a prima facie defence is made out and that the conditions in section 7(3) are satisfied.”

67. Thorpe LJ approached matters slightly differently. He too focussed on the fact that Captain Tsikata was still in public life, and the importance of reporting matters that are relevant to forthcoming elections. In respect of whether contradictory information should have been published, he considered that only “authoritative refutation” would have the effect of removing the qualified privilege which otherwise attached to the report, adopting an example provided by counsel of the case of a criminal charge subsequently conceded to have been mistakenly brought or subsequently dismissed. In respect of Captain Tsikata, there had not been authoritative refutation, rather the expression of a different view by the Attorney General and other material of “doubtful weight”.

68. In *Alsaifi v Trinity Mirror plc and others* [2017] EWHC 1444 (QB), Warby J (as he then was) considered whether the public interest in a report on the Secretary of State having issued a Prohibition Order against a teacher was undermined by a failure to also report that the Order had been quashed by the High Court at [80]:

“Qadir indicates that a failure to report such a matter is capable in principle of defeating a defence of qualified privilege, by undermining the public interest in the report or tending to show malice: see in particular [106]-[107]. But the authorities indicate very clearly that both matters must turn on what the publisher knew or, in the case of public interest, ought to have known. “A newspaper may not know what happened subsequently nor may the newspaper be in a position to assess the quality or effect of any later denials or refutations.” Tsikata at 667f – 667g.”.

69. The claimant says that it cannot be for the public benefit to broadcast defamatory allegations where contradictory facts are in the public domain, and easily ascertainable, if not already known by any professional and conscientious journalist. Further, it is said it was not in the public interest to broadcast material in which the defendant does not have any positive belief in the truth of what was said. Mr Barnes also notes that the defendant has not explained the public interest and public benefit in reporting these matters in the UK.

70. The defendant says that the broadcasts reported on serious allegations of corruption and wrong-doing involving the former Pakistani prime minister and leader of the opposition and the head of a major media organisation. The claimant is himself a

public figure, named as one of the 500 most influential Muslims in the world, with enormous power in public life. Mr Munden says it is neither here nor there whether the allegations are true, since there was a public interest in reporting the fact that Ms Sharif had made these statements, given her status and the political context. He says it would be contrary to the public interest to require the media to fact-check political speech before broadcasting it, and only broadcasting those statements that could be shown to be true or setting out a detailed history of claim and counterclaim. The defendant says the public has a clear right to know what statements someone in the position Ms Sharif is making at public events, whether true or false.

71. The defendant also relies upon the importance of political speech within a democratic society and the public interest in open discussion of matters of public interest, see for example *Campbell v MGN Limited* [2004] UKHL 22 at [148], *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 Admin at [38]. In *Barron v Collins* [2015] EWHC 1125 (QB) Warby J acknowledged at [12] that “freedom of political expression is one of the most important freedoms”. He later said at [54]:

“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. The solution must in my judgment lie in resort, where applicable, to the defences of truth and honest opinion or in a suitably tailored application of the law protecting statements, whether of fact or opinion, on matters of public interest, for which Parliament has provided a statutory defence under s 4 of the Defamation Act 2013.”

72. Mr Chagtai for the defendant has said in his statement that there is a significant Punjabi diaspora who have settled in UK and who have maintained an interest in Punjab and Pakistani politics, which is why there is a public benefit in the story being broadcast in the UK.
73. There is a clear dispute about the extent to which the defendant knew, or should have known, that the allegations being made by Ms Sharif about the claimant were disputed and/or untrue. The defendant has not suggested that it would have a defence of truth. At this stage, the court has been provided with very little information, beyond some selective press cuttings and other similar materials.
74. Mr Rana for the defendant acknowledges in his statement that the allegations made “were previously in the public domain”. He says that whilst the allegations are not new “what made it of particular significance however was that during this address Ms Sharif chose to engage directly with some of the allegations and criticisms by Mr Khan and to go on the offensive against a key media ally of Imran Khan”. Mr Rana says that this represented a clear turning point in the tenor of the debate and was important and of clear public interest. This is why a decision was taken to report further on what she had said about the claimant.

75. The defendant's solicitors have also acknowledged (in their response to the letter of claim) that the allegations made were widely known. The letter said "Your client presides over one of the main broadcasters in Pakistan and your client will be bound to agree that there has been considerable speculation concerning his and ARY News' access to and influence upon the former Prime Minister and his administration. Indeed there are ongoing investigations by the Federal Investigation Agency ("FIA") and the Federal Bureau of Revenue ("FBR") in the courts in relation to this".
76. Mr Rana confirms that allegations about ARY and tax evasion had been the subject of a government investigation in 2019, which was widely reported at the time. It appears it was also reported that there was a pending appeal. Mr Rana also explains how it was in the public domain that concerns had been raised by the Pakistan Broadcasters Association that ARY had been unfairly claiming tax relief not allowed to other media organisations. Again, the evidence before the court also includes denials from ARY. In March 2020, GEO News itself had reported on the Federal Board of Revenue's investigation into ARY's tax affairs, and perceived unfair treatment compared to other organisations. The article confirmed that the allegations had been denied.
77. Mr Rana confirms that allegations about ARY and gold smuggling have been levelled previously, and ARY was reportedly subject to an investigation by US authorities. The defendant's Mr Chagtai also acknowledges that there have been various allegations about ARY companies and their involvement in the gold trade. Mr Yousaf for the claimant says these are historic allegations going back twenty years, based on no credible evidence and in respect of which there had been multiple public denials.
78. For some reason, the claimant's evidence included a judgment from defamation proceedings in Hong Kong in 2006 brought by ARY companies. The article complained of had been about allegations that ARY was involved in money laundering, terrorist financing and drug trafficking. The court did not consider the truth of the allegations made, dismissed a defence of Reynolds qualified privileged and awarded damages. The Hong Kong judgment included reference to an allegation that ARY assisted drug traffickers in laundering their money by the export to them of gold, with the court finding that "there is no evidence whatsoever supporting the allegation".
79. In respect of the allegations about World Call, Mr Rana says these were not new, and it had been widely reported that ARY was to acquire a stake. Mr Rana says that it was a controversial deal which ultimately was unsuccessful. His statement also explains his understanding of how the Pakistan Electronic Media Regulatory Authority rules would have prevented any such acquisition. Mr Chagtai says in his statement that he did not know (and still does not know) that the allegations made by Ms Sharif about World Call were false. He says he was aware that there was a proposed deal, but at the time of broadcast did not know the status of it. He says the fact that the deal did not go through does not mean there is no truth in what Ms Sharif said about the former PM's role in this proposed acquisition. Mr Yousaf for the claimant says that it was common knowledge at the time that the deal was not going

ahead, that the company had not been given away and that ARY's withdrawal from the deal had been widely publicised.

80. This is a summary judgment application, not a trial of a preliminary issue. In many cases, it will be readily apparent that s.15(3) has been satisfied. This is not one of them.
81. Firstly, there is the status of the information being reported. I acknowledge that within Pakistan, Ms Sharif is clearly an important political figure. As already noted, both parties acknowledge that political rallies in Pakistan can be highly charged affairs in which politicians make serious allegations and attacks on their opponents. At this rally, Ms Sharif used expressive and extreme language, accusing Mr Khan of significant criminality, a lack of integrity and incompetence. She spoke of the claimant's relationship with Mr Khan in equally extreme terms, raising allegations that were clearly highly contentious.
82. In *Tsikata* (supra) significant weight was placed on fact that the report was of a judicial inquiry, undertaken by a High Court judge at which witnesses had been cross-examined. In *Crossley* (supra), the fact that the report was of proceedings in one of Her Majesty's courts was seen as significant, with a distinction being made in respect of events abroad. Such a distinction may also be relevant here – if this case was about a report of a UK politician speaking at a rally in the UK, the politician would have been bound to comply with UK law, which might be relevant when considering whether broadcast was for public benefit. Ms Sharif was under no such obligation to comply with UK law and it is less clear whether Ms Sharif's address had sufficient status for it to be said to have been in the public interest and for the public benefit for it to be reported to a UK audience. This is a matter properly considered at trial.
83. Secondly, there is the question of what was known, or arguably should have been known, by the defendant. It is important to keep in mind that this is a reporting privilege which allows for the publication of fair and accurate reports of certain events or matters. The publisher of a fair and accurate report does not have to fact-check what is said, or trawl back through cuttings looking for past denials.
84. In this case the defendant accepts that the allegations made by Ms Sharif against the claimant (and ARY) were not new and had been widely reported. The defendant has not really explained its position clearly, providing short, qualified denials of certain matters, not really explaining properly what was already known about serious allegations being made by Ms Sharif about the claimant. It is to be remembered that the allegations being made were about the owner of a large news outlet, and so it might be said that the defendant's senior staff are likely to have had a degree of awareness of things said about him previously. Again, on the facts of this case, these are not matters that can fairly be determined summarily. Both parties have a realistic case in on the issue of whether s.15(3) applies.

85. The law in respect of malice was summarised by Nicklin J in *Huda v Wells* [2018] EMLR 7:

“70 Malice means publishing a statement that the defendant *knew* was false, or was reckless (in the sense of complete indifference) as to its truth or falsity. It is tantamount to dishonesty: *Alexander –v- Arts Council of Wales* [2001] 1 WLR 1840 [18]. It is that state of mind that justifies depriving a defendant of a defence of qualified privilege or makes it just to allow recovery for the publication of a falsehood. The classic exposition of malice is from the speech of Lord Diplock in *Horrocks -v- Lowe* [1975] AC 135, 149-150.

71 I do not understand the Claimant's case in malice to have been advanced on this basis, but for the sake of completeness, I should note that (in theory) malice can also be established by proving that, in publishing the words complained of acted with a "dominant intention" to injure the claimant. This species of malice may still have a legitimate role in malicious falsehood claims (particularly trade libel) but it has a dubious justification when advanced in answer to a well-founded plea of qualified privilege. It has been expressly excluded as a basis for proving malice in answer to a fair comment/honest opinion defence: *Albert Cheng –v- Paul* [2001] EMLR 777. In 2002, Eady J noted that he could not recall an instance of "dominant intention" malice having been proved and described this form of malice as an "endangered species" in relation to qualified privilege: *Lillie & Reed –v- Newcastle City Council* [2002] EWHC 1600 (QB) [1093]. I am not aware of any such case in the 15 years since.

As malice is a serious allegation – the equivalent of fraud – "*it must be pleaded with scrupulous care and specificity. ... [I]t is quite inappropriate to proceed on the basis that something may turn up (whether on disclosure of documents or at trial)*": *Henderson –v- The London Borough of Hackney* [2010] EWHC 1651 (QB) [40] *per* Eady J.

Each of the particulars relied upon by the Claimant is required to be indicative of this dishonest state of mind order to be sustainable. Each particular has to raise a "*probability of malice*" and each particular has to be "*more consistent with the existence (of malice), than with its non-existence*": *Turner -v- MGM* [1950] 1 All ER 449, 455a-e *per* Lord Porter; *Telnikoff -v- Matusevitch* [1991] 1 QB 102 at 120 *per* Lloyd LJ. As made clear in *Turner* "*each piece of evidence must be regarded separately... [I]f the result is to leave the mind in doubt, then that piece of evidence is valueless as an instance of malice whether it stands alone or is combined with a number of similar instances*" (455b-c)".

86. Mr Barnes for the claimant says it is premature to evaluate the strength of any plea of malice, the claimant not yet having served a reply setting out its pleaded case. He notes that the defendants have not yet given disclosure, including of documentary records concerning the editorial and production decisions taken in respect of the broadcasts complained of. He says that the issue of malice can only be resolved satisfactorily at a trial.

87. The claimant's current case on malice is said to be inferential based upon the facts currently known, namely the facts of the broadcasts, their seriously defamatory nature and their knowable falsity. It is said that the defendant:
- a. misused any privileged occasion with its dominant improper purpose or motive being to damage the claimant's reputation by its broadcasts;
 - b. knew when it broadcast its allegations that they were untrue or was recklessly indifferent to the truth of the allegations;
 - c. failed to exercise conscientious, responsible and reasonable journalistic endeavour which would have uncovered the falsity of the allegations;
 - d. unnecessarily, gratuitously and opportunistically repeated the allegations;
 - e. failed to comply with all relevant journalistic and broadcasting norms, nor take any steps to verify or check the allegations before broadcasting them. It failed to include claimant's side of the story and failed to adopt a balanced or measured tone;
 - f. could not have held a belief that publication in the public interest was reasonable;
88. The claimant says that he also relies upon the animus between the defendant and the claimant, including previous litigation.
89. The Defendants witnesses have said very little about the allegation of malice, save that it is untrue.
90. Mr Munden says that the claimant has not set out a sustainable case on malice, having failed to comply with the strict pleading requirements identified in case law. He points out that the claimant has also failed to identify the person or persons within the defendant who had the relevant statement of mind (see *Qatar Airways Group v Middle East News FZ LLC [2020] EWHC 2975* per Saini J at [150] – [152]). He also questions whether “dominant improper motive” remains a form of malice available in privilege reporting cases (*Huda supra*), noting that the claimant has not set out any foundation for his assertions as to motive.
91. On the facts of this case, I am not satisfied that it is appropriate for this issue to be determined on a summary judgment application.
92. As already noted, it is difficult for a claimant to prove malice in response to a defence of qualified privilege. I acknowledge that it is not immediately apparent on what basis some of the matters identified in paragraph 87 above would be applicable in this case, and many of the points made by Mr Munden about the claimant's case on malice are good ones.
93. The court will, however, need to consider what the defendant knew, or should have known, in respect of the allegations made by Ms Sharif about the claimant, when considering the test in 15(3). As noted above, the defendant has not said much about these issues in its evidence, and it has said even less in evidence in response to the suggestion of malice. In this case there is a degree of overlap as between matters relevant to s.15(3) and any case on malice (when pleaded), and so they should be considered at the same time.

94. The defendant's application for summary judgment is dismissed.

SCHEDULE

20:00 [10/129-130]

Headline News

Maryam Nawaz (clip): Call out, liar, liar, liar, more loudly, more loudly. My lions from Sargodha, tell me with one voice: Should PML N need to bear the brunt of the destruction wrought by Imran Khan? Should we stay in the government or quit it? I am with you. I am with you. I say such government; the one similar to Imran Khan's government which inflicts the curse of inflation on the people, the devastating inflation, such government should be forsaken. Quit the government and got the people and contest in the field.

Anchor Voiceover: If devastating inflation inflict the people, then it is better to quit the government and come in the field. We removed Imran Khan to foil his rigging scheme. I bear witness that Pakistan can't progress as long as rioter like Imran exists. Imran Khan is a cancer; he is the byname of destruction. The vice President of PML N, Maryam Nawaz's addressing in Sargodha said the man who has spent his life living on donations and zukat, he is instilling the name the lesson of sovereignty. Imran Khan is a snake in the sleeve of Pakistani state. President Arif Alvi's son abused the army, while Imran, the rioter, abused that media which made him Imran Khan. It is the duty of judiciary, army and media to eliminate this rioter.

Text on screen

It is better to quit government than to inflict inflation, Maryam

Removing Imran Khan, his rigging scheme was foiled.

There will be no progress as long as Imrani rioter exists.

Imran Khan is the byname of destruction, leader PML N

This person gives the lesson of sovereignty, Maryam Nawaz

The who has spent his entire life living on donations and zukat, Maryam Nawaz

Imran Khan is the snake in the sleeve.

President's son abused the army.

Judiciary, army and media should eliminate this rioter, Maryam Nawaz

20:03 [2/11-12/PoC§8]

MARYAM NAWAZ: You know why he doesn't say anything about ARY? ARY which in collaboration with him attacking state institutions, ARY's anchors are abusing state institutions in their tweets, they and Imran are close like two fingers. Close friend of Imran Khan, Salman Iqbal the owner of ARY, a smuggler of gold, Imran Khan gave him favour of

Rs.40 Billion, Imran Khan waived his 10 to 12 Billion Rs. Tax, Imran Khan gave him World Call worth 4 Billion Rs. without any due process and they both backing each other because they both equally involved in this theft.

ANCHOR: Mariyam Nawaz said that Imran Khan's close friend Salman Iqbal, owner of ARY, is a gold smuggler, Imran Khan gave Salman Iqbal favour of Rs.40 Billions, waived 10 to 12 Billion Rs. Tax of Salman Iqbal. Gave away World Call worth 4 Billion Rs. without any due process to Salman Iqbal, both backing each other because they both equally involved in the theft. While addressing to Sargodha gathering, Maryam Nawaz laid accusation that ARY in collaboration with Imran Khan attacking state institutions, ARY's anchors are abusing state institutions in their tweets.

TICKER: Imran Khan is calling channels traitors, agents and for-sale except ARY, Maryam Nawaz

Imran Khan is after all the channels except ARY, Maryam Nawaz

Imran Khan abuse this media which made him Imran Khan, Maryam Nawaz

Media who broadcast his empty seats gathering, Gave him one sided coverage, Maryam Nawaz

Imran Khan is after all the channels except ARY, Maryam Nawaz

Imran Khan is calling channels traitors, agents and for-sale except ARY, Maryam Nawaz

Imran Khan Collaboration with ARY is attacking on state Institutions, Maryam Nawaz

ARY whose anchors are abusing stale institutions in their tweets, Maryam Nawaz

Friend of Imran Khan, Salman Iqbal the owner of ARY and a smuggler of gold, Maryam

ARY is attacking on state Institutions, Maryam Nawaz

ARY whose anchors are abusing state institutions, Maryam

Imran Khan gave Salman Iqbal favour of Rs.40 Billion, Maryam Nawaz

Imran Khan gave Salman Iqbal World Call worth 4 Billion, Maryam Nawaz

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ARY whose anchors are abusing state institutions, Maryam