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Case No. KB-2024-001788

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

Royal Courts of Justice, Strand, London WC2A 2LL

Date: 11 February 2025

**Before :**

**THE HONOURABLE MR JUSTICE PEPPERALL**

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**Between :**

**DALE VINCE OBE**

**Claimant**

**- and -**

**LORD BAILEY OF PADDINGTON**

**Defendant**

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**William Bennett KC and Ben Hamer (instructed by Brett Wilson LLP) for Dale Vince OBE**  
**David Price KC and Jake Rudman (instructed by Equality Law) for Lord Bailey of Paddington**

Hearing date: 8 November 2024  
Further submissions: 20, 21 and 22 November 2024

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**Approved Judgment**

This judgment was handed down remotely at 10.00 am on 11 February 2025  
by circulation to the parties and by release to the National Archives.

**THE HONOURABLE MR JUSTICE PEPPERALL:**

1. Dale Vince OBE is a well-known and successful businessman. He is the founder and director of the energy company, Ecotricity Group Limited, an environmental campaigner and a major donor to the Labour Party. By this libel action, Mr Vince sues Lord (Shaun) Bailey of Paddington, a Conservative member of the Greater London Assembly, the former Conservative candidate for Mayor of London and, since 2023, a Conservative peer.

**BACKGROUND**

2. On 7 October 2023, Hamas terrorists entered Israel from Gaza. They committed murder, rape and kidnapping on a massive scale. Some 1,200 people were murdered and 240 others taken prisoner. Two days later, Mr Vince was interviewed by Stig Abell on Times Radio. During the interview, Mr Vince was asked about these events.
3. Mr Vince's interview attracted little media attention at the time. In March 2024, there was a furore about remarks made by the prominent Conservative donor, Frank Hester, about the Rt. Hon Diane Abbott MP. Responding to that story, on 13 and 14 March 2024, Guido Fawkes published two articles in respect of Mr Vince's views about Hamas. In the first article, Guido Fawkes published a 16-second extract from the longer Times Radio interview. Thereafter, a number of politicians and others commented on Mr Vince's interview.
4. On 14 March 2024, Lord Bailey appeared as a guest on the Patrick Christys Tonight programme on GB News. In the course of his appearance, there was discussion about Mr Hester's remarks. Lord Bailey responded by pivoting to discuss Mr Vince's views about Hamas.
5. Mr Vince threatened legal action in respect of statements made by Lord Bailey on the GB News programme. By a letter dated 16 May 2024, Lord Bailey's former solicitors responded in trenchant terms. The letter asserted that Lord Bailey intended to place the letter in the public domain. Further, by a post published at <https://CrowdJustice.com> on 2 September 2024, Lord Bailey sought crowd funding to help him to fight this case. The post again made statements about Mr Vince's views.
6. By this claim, Mr Vince seeks damages and other remedies for libel in respect of Lord Bailey's appearance on GB News and the crowd funding appeal. Further, he seeks an injunction to restrain the threatened publication of the 16 May letter. He argues that the publications asserted that he supported or had endorsed the terrorist acts of Hamas, or that he was an apologist for Hamas and was himself an antisemite who had publicly defended Hamas as freedom fighters just two days after the October atrocity. Further, he argues that Lord Bailey's threatened publication asserted that he had committed a serious criminal offence contrary to the Terrorism Act 2000.
7. Lord Bailey takes issue with the pleaded meanings and asserts that the imputations actually made were substantially true, and that in any event the statements complained of contained honest statements of opinion.

8. By an application made on 30 September 2024, Lord Bailey seeks summary judgment in respect of the GB News and CrowdJustice publications.
9. Directions were given on 23 October 2024. Upon Lord Bailey's admission that, regardless of the determination of meaning, the words complained of were defamatory of Mr Vince at common law, Master Dagnall ordered the trial of the following preliminary issues:
  - 9.1 The natural and ordinary meaning of the words complained of.
  - 9.2 Whether the statements complained of were, or contained, expressions of opinion.
  - 9.3 Insofar as the words complained of were, or contained, an expression of opinion, whether the basis of the opinion was indicated in general or specific terms.
10. Further, the master ordered that the preliminary issues be tried together with Lord Bailey's application for summary judgment.
11. The parties' agreement to the following facts was recorded in a recital to the master's order:
  - 11.1 All or a substantial proportion of viewers of the GB News programme on 14 March 2024 would have known or believed that Hamas is a terrorist organisation which had carried out acts of terrorism, namely mass murder, kidnapping and rape on 7 October 2023.
  - 11.2 All or a substantial proportion of readers of the CrowdJustice post on 2 September 2024 would have known that the abominable acts referred to by Lord Bailey were the mass murder, kidnapping and rape which took place on 7 October 2023 in Israel.
12. By an application made on 1 November 2024, Lord Bailey applies for a direction that I should also try further preliminary issues and strike-out the claim in respect of the threatened publication.
13. In accordance with the guidance in Tinkler v. Ferguson [2019] EWCA Civ 819, I watched Lord Bailey's appearance on GB News and read the letter and crowd funding appeal before considering the parties' contentions and submissions in this case so as to capture my initial reactions to each of the actual and threatened publications.

## **LEGAL PRINCIPLES**

### **THE NATURAL AND ORDINARY MEANING**

14. In Koutsogiannis v. Random House Group Ltd [2019] EWHC 48 (QB), [2020] 4 W.L.R. 25, Nicklin J helpfully summarised the well-established principles applicable when determining the natural and ordinary meaning in a passage that was subsequently approved by the Court of Appeal in Millett v. Corbyn [2021] EWCA Civ 567, [2021] E.M.L.R. 19. Nicklin J observed, at [11]-[12]:
  - "11. The court's task is to determine the single natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable reader would understand the words bear. It is well recognised that there is an artificiality in this process because individual readers may understand words in different ways: Slim v. Daily Telegraph Ltd [1968] 2 Q.B. 157.

12. The following key principles can be distilled from the authorities ...
- i) The governing principle is reasonableness.
  - ii) The intention of the publisher is irrelevant.
  - iii) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.
  - iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.
  - v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.
  - vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.
  - vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.
  - viii) The publication must be read as a whole, and any ‘bane and antidote’ taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic “rogues’ gallery” case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (e.g. bane and antidote cases).
  - ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.
  - x) No evidence, beyond the publication complained of, is admissible in determining the natural and ordinary meaning.
  - xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication’s readership.
  - xii) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.
  - xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant’s pleaded meaning).”

*Bane & antidote*

15. In finding the meaning, the whole of the publication must be considered. As Baron Alderson observed in Chalmers v. Payne (1835) 2 C.M. & R. 156, at 159, “the bane and the antidote must be taken together.” In Horan v. Express Newspapers [2015] EWHC 3550 (QB), Dingemans J, as he then was, explained, at [17]:

“This simply means that in reading the article as a whole if a ‘stain’ is removed in another part of the publication, the bane and antidote must be taken together when considering whether the article is defamatory, see Cruise v. Express Newspapers [1999] Q.B. 931 at 939. Whether the antidote has removed the bane is very much a matter of impression. In Cruise, it was suggested that it would be rare that the antidote removed the bane, and reference was made to cases in which the bane had been destroyed by the contents of the article. There is no rule of law to the effect that an antidote can never remove the bane, and there is no rule of law to the effect that an antidote will always remove the bane. It is a matter for the hypothetical reasonable reader.”

16. In Sergi v. Australian Broadcasting Commission [1983] 2 N.S.W.L.R. 669, Huntley JA observed pithily, at 670:

“The bane and antidote theory ... is merely a vivid way of stating that the whole publication must be considered, not a segment of it.”

17. Similarly, in this jurisdiction, Simon Brown LJ said in Mark v. Associated Newspapers Ltd [2002] EWCA Civ 772, [2002] E.M.L.R. 38, at [37]:

“One asks, therefore, in this as in any other case where the principle is invoked, whether, considered as a whole, the publication is damaging to the claimant’s reputation.”

*The political context*

18. In Ware v. French [2021] EWHC 384 (QB), Saini J observed, at [9], that “political discourse is often passionate and is not as precise as, say, financial journalism”.

19. In Barron v. Collins [2015] EWHC 1125 (QB), Warby J, as he then was, considered a speech at a party-political conference. It was, he observed at [28], a “rallying call to the party faithful” who will have “made allowance for the fact that political expression will often include opinion, passion, exaggeration, and even inaccuracy of expression”. That said, he continued at [53]-[54]:

“53. As I have noted, the law relating to meaning, and to the distinction between fact and comment, makes some allowance for the need to give free rein to political speech. But the nature of the principles means that there are limits on the protection that can be given to political speech by those means.

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.”

20. Millett v. Corbyn concerned comments by the then Leader of the Opposition, the Rt. Hon. Jeremy Corbyn MP, on the BBC's flagship Sunday morning politics programme, the Andrew Marr show. Warby LJ said, at [19]:

“Nor can the political role and status of Mr Corbyn, or the political nature of the programme and its subject-matter, alter the approach required as a matter of law, still less dictate the answer to the question of whether the statement was one of fact or opinion. These are all important features of the context to which the court should be alive when deciding how Mr Corbyn's words would have struck the ordinary viewer. But they are no more than that.”

*Common knowledge*

21. While evidence is not admissible in determining the natural and ordinary meaning, the context of any publication includes matters of common knowledge: see Koutsogiannis, at [15(xi)]. Thus, facts that are so well known that, for practical purposes, everyone knows them can properly be taken into account: Riley v. Murray [2020] EWHC 977 (QB), [2020] E.M.L.R. 20, at [16(i)]. In Fox v. Boulter [2013] EWHC 1435 (QB), Bean J, as he then was, distinguished between “matters of universal notoriety” which he identified as matters which any intelligent viewer or reader might be expected to know, and matters which required “assiduous reading and a good memory so as to recall the facts of a story dating back several weeks or months”.

INNUENDO MEANINGS

22. While the natural and ordinary meaning of a statement is to be determined without evidence, if it is established that readers or viewers were aware of some extraneous facts and such knowledge would affect the way in which an ordinary reasonable person would understand the statement, then there will also be an innuendo meaning.

THE DEFENCE OF TRUTH

23. Section 2 of the Defamation Act 2013 provides:
- “(1) It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true.
  - (2) Subsection (3) applies in an action for defamation if the statement complained of conveys two or more distinct imputations.
  - (3) If one or more of the imputations is not shown to be substantially true, the defence under this section does not fail if, having regard to the imputations which are shown to be substantially true, the imputations which are not shown to be substantially true do not seriously harm the claimant's reputation.”
24. The master did not order trial of Lord Bailey's s.2 defence but it will be necessary to consider the defence in the context of Lord Bailey's summary judgment application and to determine his application for the trial of further preliminary issues.

THE DEFENCE OF HONEST OPINION

25. Section 3 of the Act provides the defence of honest opinion:

- 25.1 The first condition is that the defendant must show that the statement complained of was a statement of opinion: s.3(2).
- 25.2 The second condition is that the defendant must show that the statement complained of “indicated, whether in general or specific terms, the basis of the opinion”: s.3(3).
- 25.3 The third condition is that the defendant must show that an honest person could have held the opinion on the basis of: (a) “any fact which existed at the time the statement complained of was published”; or (b) anything asserted to be a fact in an earlier privileged statement: s.3(4).
- 25.4 The burden of proof then passes to the claimant who may yet defeat the defence by showing that the defendant did not hold the opinion: s.3(5).
26. As is conventional, the preliminary issues ordered in this case include the first and second conditions only under s.3. Insofar as the court finds that any statement made by Lord Bailey was one of opinion, it will be necessary to consider the remaining questions that may arise under the s.3 defence in the context of Lord Bailey’s summary judgment application and to determine whether the court should accede to his application to decide the third condition as a further preliminary issue.

*The first condition: Fact or opinion?*

27. While it is convenient to set out the principles separately, it is important to guard against compartmentalising the assessment of meaning and the question of whether the statement complained of was a statement of fact or opinion: British Chiropractic Association v. Singh [2010] EWCA Civ 350, [2011] 1 W.L.R. 133. The key point is that the court must consider whether the statement complained of, and not the imputation that it conveys, is one of fact or opinion.
28. Again, useful guidance was given by Nicklin J 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 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.”
29. Although not a defamation case, Bowen LJ’s observations in Smith v. Land & House Property Corporation (1884) 28 Ch. D. 7, at 15, are pertinent to bare comment cases:
- “It is material to observe that it is often fallaciously assumed that a statement of opinion cannot involve the statement of a fact. In a case where the facts are equally

well known to both parties, what one of them says to the other is frequently nothing but an expression of opinion. The statement of such opinion is in a sense a statement of a fact, about the condition of the man's own mind, but only of an irrelevant fact, for it is of no consequence what the opinion is. But if the facts are not equally known to both sides, then a statement of opinion by the one who knows the facts best involves very often a statement of a material fact, for he impliedly states that he knows facts which justify his opinion."

30. While a decision under the old law, Fletcher-Moulton LJ said in Hunt v. The Star Newspaper Co. Ltd [1908] 2 K.B. 309, at 319:

"The law as to fair comment, so far as is material to the present case, stands as follows: In the first place, comment in order to be justifiable as fair comment must appear as comment and must not be so mixed up with the facts that the reader cannot distinguish between what is report and what is comment... The justice of this rule is obvious. If the facts are stated separately and the comment appears as an inference drawn from those facts, any injustice that it might do will be to some extent negated by the reader seeing the grounds upon which the unfavourable inference is based. But if fact and comment be intermingled so that it is not reasonably clear what portion purports to be inference, he will naturally suppose that the injurious statements are based on adequate grounds known to the writer though not necessarily set out by him ...

Any matter, therefore, which does not indicate with a reasonable clearness that it purports to be comment, and not statement of fact, cannot be protected by the plea of fair comment. In the next place, in order to give room for the plea of fair comment the facts must be truly stated. If the facts upon which the comment purports to be made do not exist the foundation of the plea fails."

31. Warby LJ put the matter pithily in Millett v. Corbyn, at [24]:

"In practice, when someone uses a descriptive word without giving any detail of what he is describing, that will tend to come across as an allegation of fact. That is what the cases on 'bare comment' say."

*The second condition: Indication of the basis*

32. The leading case before the 2013 Act was Joseph v. Spiller [2010] UKSC 53, [2011] 1 A.C. Lord Phillips explained the requirement:

"102. It is a requirement of the defence that it should be based on facts that are true. This requirement is better enforced if the comment has to identify, at least in general terms, the matters on which it is based. The same is true of the requirement that the defendant's comment should be honestly founded on facts that are true.

103. More fundamentally, even if it is not practicable to require that those reading criticism should be able to evaluate the criticism, it may be thought desirable that the commentator should be required to identify at least the general nature of the facts that have led him to make the criticism. If he states that a barrister is 'a disgrace to his profession' he should make it clear whether this is because he does not deal honestly with the court, or does not read his papers thoroughly, or refuses to accept legally aided work, or is constantly late for court, or wears dirty collars and bands.

104. Such considerations are, I believe, what Mr Caldecott had in mind when submitting that a defendant's comments must have identified the subject



matter of his criticism if he is to be able to advance a defence of fair comment. If so, it is a submission that I would endorse. I do not consider that Lord Nicholls was correct to require that the comment must identify the matters on which it is based with sufficient particularity to enable the reader to judge for himself whether it was well founded. The comment must, however, identify at least in general terms what it is that has led the commentator to make the comment, so that the reader can understand what the comment is about and the commentator can, if challenged, explain by giving particulars of the subject matter of his comment why he expressed the views that he did. A fair balance must be struck between allowing a critic the freedom to express himself as he will and requiring him to identify to his readers why it is that he is making the criticism.”

33. Gatley on Libel & Slander (13<sup>th</sup> Ed.) describes Joseph v. Spiller as an important elucidation of the law and a vital precursor to the statutory reform. Importantly, as demonstrated above, the case relaxed the previous understanding that the reader had to be put in a position where he could judge for himself how far the comment was well founded.
34. In Riley v. Murray [2022] EWCA Civ 1146, [2023] E.M.L.R 3, Warby LJ explained the second condition at [44]:

“The only question raised by s.3(3) of the 2013 Act is whether the statement complained of indicated the basis of the opinion which it contained. That is a question of analysis or assessment which turns exclusively on the intrinsic qualities of the statement complained of. If the statement did not indicate the basis for the opinion the analysis stops there and the defence fails. If it did, the condition is met and the analysis moves on to the next stage. The extraneous question of whether the matters indicated as the basis for the opinion are true or false is immaterial at this stage of the analysis. As Nicklin J held at [92], “The issue (at this stage) is not whether the factual premise is right, but whether it was sufficiently indicated.””

#### **THE GUIDO FAWKES ARTICLES**

35. At 13:47 on 13 March 2024, the following article was published on Guido Fawkes’ website:

#### **‘MULTI-MILLION POUND DONOR TO LABOUR SAYS HAMAS ARE FREEDOM FIGHTERS’**

Labour have spent the week saying the Tories should pay back the £10 million they received from someone who they say said something racist. Similarly long time Labour Party donor Dale Vince has given Starmer’s party at least £2.5 million to date, including a £1 million cheque late last year. He’s recently launched an initiative calling for the youth of Britain to vote Labour. Well and truly in the fold of Labour’s funding class . . .

If Labour thinks donor’s cash donations should be returned when they say extreme things, what do they make of Vince’s views? Late last year on Times Radio, after saying that Hamas should be able to defend itself, Vince stated that ‘one man’s terrorist is another man’s freedom fighter’. When challenged on the fact that saying Hamas are freedom fighters isn’t the official Labour position, Vince said: ‘This is my view, this is how I feel’. When can we expect Starmer to announce that the £2.5 million will be returned?”

36. The article included a picture of Mr Vince with the tagline “This is my view”. The picture was a still from the Times Radio interview. Readers were invited to watch an embedded 16-

second clip from the interview. That clip contained only the following exchanges between Mr Abell and Mr Vince from the full interview:

- “Stig Abell:* I’m not saying that. I’m saying: is a terrorist attack from Hamas, Palestine defending itself?
- Dale Vince:* I think one man’s freedom fighter is another man’s terrorist, right. That’s how it works.
- Stig Abell:* So that is not the Labour position interestingly. They are not saying that; they are saying the opposite of that.
- Dale Vince:* No, I know, yeah I understand.
- Stig Abell:* But you are happy to, this is pragmatism.
- Dale Vince:* But this is my view.
- Stig Abell:* This is your view.
- Dale Vince:* This is how I feel.”

37. At 10:37 on 14 March 2024, Guido Fawkes published a second article about Mr Vince:

**‘JEWISH MP BLASTS LABOUR FOR TAKING MILLIONS FROM ‘HAMAS FREEDOM FIGHTERS’ DONOR**

**LABOUR SLAMMED FOR HAMAS ‘FREEDOM FIGHTERS’ DONOR**

Labour have gone down the suspect donor rabbit hole this week. By claiming that money should be returned from a donor who said something naughty they’ve opened themselves up to obvious criticism. Longtime Labour Party donor Dale Vince has given the party at least £2.5 million to date and said in October of Hamas: ‘one man’s terrorist is another’s freedom fighter... this is my view’. No apology from Vince, no statement of criticism from Labour...

Prominent Jewish MP Andrew Percy tells Guido:

‘Nobody should take a penny or have any involvement with anyone who describes the Hamas terrorists who raped Israeli women, butchered innocent children, and murdered civilians in their own homes in the most brutal way as ‘freedom fighters’. This is a group who want to murder not just all Jews in Israel but all Jews in this country too. Surely the Labour Party won’t want to take a penny from anyone who thinks genocidal terrorist murderers and rapists are freedom fighters.’

Labour say the comments aren’t comparable to Hester’s. Why not?”

**THE PATRICK CHRISTYS SHOW**

**THE PUBLICATION**

38. Lord Bailey appeared on the Patrick Christys show with Allison Pearson from the Daily Telegraph and Matthew Laza, who was introduced as a former Labour Party adviser. Responding to the question of whether the Conservative Party should have repaid Mr Hester’s donations, there was the following exchange:

- “Lord Bailey:* Let’s talk about paying back donations. You’ve had major Labour Party donors who have called Hamas freedom fighters.
- Matthew Laza:* Who?
- Lord Bailey:* Dale Vince. There you go, Dale Vince. He said, um, one man’s terrorist is another man’s freedom fighter.

- Matthew Laza:* Dale Vince does not support Hamas.
- Lord Bailey:* He never was even asked to pay the money back. Let's talk about Just Stop Oil then – he supports them whole-heartedly. They've been absolutely devastating for people ...
- Matthew Laza:* There's a difference between supporting Just Stop Oil, Shaun, and calling for the death of an MP.
- Lord Bailey:* Not really, when you've called Hamas freedom fighters. I'm afraid no.
- Matthew Laza:* He did not say that.
- Lord Bailey:* He did, he said 'one man's ...
- Matthew Laza:* It's a well-known phrase that – he didn't say that he thought they were freedom fighters.
- Lord Bailey:* Well, I'll tell you something now, that's how people read that statement. The point is you'd take a Labour MP much more seriously if when they messed up they asked for the money back, not only when the Tories did."

## MEANING

### Argument

39. Mr Vince pleads the following natural and ordinary, alternatively innuendo, meaning:
- “The Claimant had, or it was reasonably suspected that he had, endorsed the terrorist acts of Hamas by stating words to the effect that its members are freedom fighters.”
40. William Bennett KC, who appears with Ben Hamer for Mr Vince, stresses the particular need in this case to focus on the recording rather than the transcript which, he argues, cannot capture the emphatic way in which Lord Bailey made his allegation against Mr Vince.
41. Mr Bennett accepts that Mr Laza's intervention may raise a question mark in the reasonable viewer's mind but that the viewer will then think “Well, Lord Bailey seems absolutely certain of what he is saying.” Accordingly, the intervention can do no more than lower the so-called Chase level.
42. Mr Bennett acknowledges that the reference to “terrorist acts” arises from the agreed facts. While there was no direction for trial of the innuendo meaning, Mr Bennett submits that that was an oversight, that the very purpose of the agreed facts was to allow the court to consider innuendo and that the court should consider the issue.
43. Lord Bailey contends for the alternative meaning:
- “The Claimant stated that one man's terrorist is another man's freedom fighter in relation to Hamas giving rise to the reasonable interpretation that its members are freedom fighters.”
44. David Price KC, who appears with Jake Rudman for Lord Bailey, argues strongly against the first part of Mr Vince's pleaded meaning. He observes that lawyers are trained to read implications but that the ordinary viewer would not go beyond the second part and that

there is no basis for finding a meaning that Mr Vince has endorsed the terrorist acts of Hamas. He submits that the “one man’s terrorist” cliché is apologetic; it is a failure to call out terrorism for what it is. It may imply support for the cause, but it does not imply support for terrorist actions.

45. Mr Price contends that there is no need in this case to resort to an innuendo meaning since the agreed facts were so notorious that I can regard them as matters of common knowledge.
46. Mr Price argues that the reasonable viewer would regard Mr Laza’s intervention as an authoritative correction. He relies on the bane and antidote principle and argues that, taken in the round, the sting was drawn by Mr Laza’s intervention.

*Analysis*

47. Sadly, there are many terrorist outrages around the world that quickly fade from the collective consciousness. Even though on foreign soil, the events of 7 October 2023 were, however, in that rare category of events that were so brutal and committed on such a scale that they attracted wall to wall media coverage. Even as the months passed, the events of 7 October 2023 and the identity of Hamas as a terrorist organisation were kept in the news by Israel’s invasion of Gaza and the continued detention of a substantial number of hostages. The 7 October attack achieved what Bean J referred to as “universal notoriety”. Accordingly, at the time of the publications in this case, I find that the fact that Hamas is a terrorist organisation and that it was responsible for the murder, rape and kidnap of Israeli citizens on 7 October 2023 were matters of common knowledge that can properly be taken into account when identifying the natural and ordinary meaning of these publications.
48. While I have the benefit of an agreed transcript of part of Lord Bailey’s appearance on the Patrick Christys show, the ordinary reasonable viewer will not have done. My focus is therefore on the video recording itself although the transcript has been useful in setting out the key passages accurately in this judgment.
49. In addition to the general principles discussed above, this publication requires consideration of the proper approach to television programmes. In Bond v. BBC [2009] EWHC 539 (QB), Eady J said, at [9]:

“It is important to acknowledge that assessing the meaning(s) of an hour-long television programme is to a large extent a matter of impression. . . . one must not be over-analytical, in the sense of subjecting the text to a leisurely or legalistic breakdown: ordinary viewers will not have had that opportunity. The overall flavour of a programme may contribute to an interpretation which would not necessarily be found when subjecting the text to piecemeal analysis. There is a risk that such an exercise will focus on the trees and miss the wood.”
50. In Millett v. Corbyn, Warby LJ said in respect of a television interview given by the leader of the opposition on the Andrew Marr show, at [18]:

“With a broadcast such as this, this is not a matter of studying the transcript, which cannot tell you how the words are spoken, in what tone, or with what emphasis. It means watching and listening to the interview as a whole, bearing in mind that the ordinary viewer will do so only once. The court should avoid over-elaborate analysis and give weight to its own impression. This approach applies equally to the

methodology for deciding meaning, and whether the offending statement is fact or opinion...”

51. As the parties recognise, a particular feature of this publication that requires greater analysis is that Lord Bailey appeared on the show as a member of a panel. Lord Bailey’s comments about Mr Vince provoked an intervention from Mr Laza to set the record straight.
52. A similar situation arose in Zarb-Cousin v. Association of British Bookmakers [2018] EWHC 2240 (QB). In that case, the claimant appeared on Channel 4 News to discuss gambling addiction together with a spokesman from the Association of British Bookmakers. The spokesman accused Mr Zarb-Cousin of a deliberate and conscious misportrayal of the bookmaking industry and of being funded by the casino industry. Mr Zarb-Cousin responded immediately in emphatic terms:

“I’m not, no. I’m not. No, absolutely not. Wow.”
53. Nicklin J considered what the ordinary reasonable viewer would make of the denial. He observed, at [40], that the denial was analogous to a newspaper article that reports allegations against a person but then includes his or her clear denial. He added:

“Whilst everything does depend on the context, the effect of that type of reporting is often not to create the impression of guilt but to leave in the mind of the ordinary reasonable reader grounds to suspect the person of guilt of the conduct alleged. Sometimes, the effect of the denial can itself be undone by the way it is reported. If a mountain of evidence is presented in an article and there is a mealy-mouthed denial, the reader may conclude that the denial is insincere or not to be accepted.”
54. In other words, a clear denial may colour the overall effect of the publication. As the bane and antidote cases make clear, the court must consider the overall effect of the entire publication. In an extreme case a denial might in theory remove the defamatory sting altogether. More often it is, as Nicklin J observed, likely to downgrade the Chase level of a publication from a statement that the claimant is guilty of some conduct (level 1) to a statement that there are reasonable grounds to suspect that the claimant is guilty (level 2) or even perhaps that there are grounds to investigate whether the claimant has committed the conduct alleged (level 3).
55. In my judgment, the effect of the interventions from Mr Laza in this case was, first, to elucidate that Mr Vince had not literally called Hamas freedom fighters and draw out the basis on which Lord Bailey was criticising Mr Vince; secondly, to assert by way of balance that Mr Vince did not support Hamas; and, thirdly, to demonstrate that views differed as to whether Mr Vince’s remarks should be construed as indicating that he regarded Hamas as freedom fighters. The overall impression created by the publication was therefore not that Mr Vince had in fact called Hamas freedom fighters but that there were reasonable grounds to suspect that he had done so.
56. In my judgment, the natural and ordinary meaning of the statement complained of on the Patrick Christys show is as follows:
  - 56.1 Mr Vince has said of the terrorist organisation Hamas that one man’s terrorist is another man’s freedom fighter.

56.2 There are reasonable grounds to suspect that, by using such words, Mr Vince has called the terrorist organisation Hamas freedom fighters.

57. If I am wrong to take judicial notice of the common knowledge that Hamas is a terrorist organisation, then – taking into account the agreed facts – I am satisfied that the publication bears such innuendo meaning. Ordinarily the court will be wary about making findings as to the innuendo meaning in a trial of preliminary issues. Here, however, the facts relied upon by Mr Vince are agreed and no party has argued that the court requires evidence before determining the innuendo meaning. Further, Mr Price does not argue against doing so by reason of the terms of the master’s order.

### FACT OR OPINION

#### Argument

58. Mr Bennett argues that this is a bare comment case where the impression created was a statement of fact because Lord Bailey was so emphatic. He stresses the passage when Lord Bailey appears to equate Mr Vince’s conduct with calling for the death of an MP. He submits that while Lord Bailey mentioned the “one man’s terrorist” remark, the viewer is left thinking “can that really be the only information that he is relying on”.
59. Mr Price argues that the statement that Mr Vince had said that “one man’s terrorist is another man’s freedom fighter” was a statement of fact, while the assertion that that amounts to Mr Vince having called Hamas freedom fighters was an interpretation of what he had actually said. It was therefore opinion. Mr Price observes that the dispute between Lord Bailey and Mr Laza was not about the words said by Mr Vince but about what those words meant. Further, Mr Price relies on Lord Bailey’s assertion that that is how people read Mr Vince’s statement. He submits that you don’t get better than that as a defendant lawyer.

#### Analysis

60. In my judgment, Lord Bailey’s statement that Mr Vince had said of Hamas that one man’s terrorist is another man’s freedom fighter was a clear statement of fact.
61. The position in respect of his statement that Mr Vince had called Hamas freedom fighters requires closer analysis. Again, Mr Laza’s challenge illuminates the impression created by Lord Bailey’s words:
- 61.1 Lord Bailey’s opening words asserted that Mr Vince had called Hamas freedom fighters. Had matters stopped there, the impression created might well have been that Lord Bailey was asserting that as a matter of fact.
- 61.2 Mr Laza first challenged Lord Bailey to identify which donor had called Hamas freedom fighters. In naming Mr Vince, Lord Bailey then explained that Mr Vince had said that one man’s terrorist is another man’s freedom fighter.
- 61.3 After criticism of Mr Vince’s support for Just Stop Oil, about which no complaint is made in these proceedings, Lord Bailey repeated the claim that Mr Vince had called Hamas freedom fighters. Again, taken in isolation, the impression created might well have been an assertion of fact.
- 61.4 Challenged again by Mr Laza that Mr Vince had not said that, Lord Bailey said: “He did, he said ‘one man’s ...’”.

- 61.5 He was then interrupted by Mr Laza who insisted that that was a well-known phrase but Mr Vince had not actually said that he thought that Hamas were freedom fighters. Although he was interrupted, the impression created was that Lord Bailey was repeating the assertion that Mr Vince had said of Hamas that one man's terrorist is another man's freedom fighter, and that the two men were not disagreeing as to the words used by Mr Vince but as to the proper interpretation of his words.
- 61.6 Finally, Lord Bailey responded to Mr Laza's challenge that Mr Vince had not said that he thought that Hamas were freedom fighters by asserting that that was how people read that statement. That remark is critical to the analysis and clearly identified that Lord Bailey was not saying that Mr Vince had said in terms that Hamas are freedom fighters but that that was his – and other people's – interpretation of the words actually used by Mr Vince.
62. Taking the publication in the round, I consider that the impression created by Lord Bailey's statement was that it was his opinion that, by saying in respect of Hamas that one man's terrorist was another man's freedom fighter, Mr Vince had called Hamas freedom fighters.
63. I draw support for this conclusion from the House of Lords' decision in Telnikoff v. Matusevich [1992] 2 A.C. 343. In Telnikoff, the critical passage had read:
- “Mr Telnikoff demands that in the interest of more effective broadcasts the management of the BBC's Russian Service should switch from professional testing to a blood test. Mr Telnikoff is stressing his racist recipe by claiming that no matter how high the standards and integrity 'of ethnically alien' people Russian staff might be, they should be dismissed.”
64. The House of Lords concluded that the first sentence was a statement of fact (that Mr Telnikoff had made such demands. As to the second sentence, the words “Mr Telnikoff is stressing his racist recipe” were said to be undoubtedly pure comment, but that what followed was a statement of fact as to a claim said to have been made by Mr Telnikoff. In other words, the second sentence was capable of being read as including a statement of fact (that Mr Telnikoff had made such a claim) upon which the defendant expressed his opinion.

#### **INDICATION OF BASIS**

65. In my judgment, the statement complained of indicated that the basis of Lord Bailey's opinion that Mr Vince had called Hamas freedom fighters was his statement, when talking about Hamas, that “one man's terrorist is another man's freedom fighter”.

#### **THE CROWD FUNDING APPEAL**

##### **THE PUBLICATION**

66. On 2 September 2024, Lord Bailey appealed for crowd funding to support him in these proceedings. In doing so, he wrote on the CrowdJustice website:
- “Two days after last October's abominable Hamas attack in Israel, Mr Vince chose words during an interview on Times Radio which I and many others interpreted as him viewing Hamas as 'freedom fighters'.
- His interview was rightly the subject of widespread condemnation, and it was in that context that during a GB News show in March I quoted Mr Vince's words and expressed an interpretation of them which was in line with that of many others.”

67. He criticised Mr Vince’s legal action as meritless strategic litigation against public participation and sought funding to engage King’s Counsel . He explained that his defence “would entail a judge determining whether – as I believe – Mr Vince did indeed describe Hamas as freedom fighters”. He added:

“There is also the important factor of holding to account those that are apologists for vile antisemitic entities such as Hamas.”

## MEANING

### Argument

68. Mr Vince pleads the following natural and ordinary, alternatively innuendo, meaning:

“The Claimant is an apologist for Hamas and other vile antisemitic terrorist organisations and is therefore by implication himself an antisemite. Just two days after Hamas committed the abominable acts of mass murder, kidnapping and rape last October, he publicly defended it as an organisation of freedom fighters.”

69. Mr Vince pleads that the reasonable reader would have known that the abominable acts referred to were the mass murder, kidnapping and rape which took place in Israel on 7 October 2023. Such knowledge, he asserts, was universal by reason of the huge publicity accorded to these events. Alternatively, he relies on those facts in support of his pleaded innuendo meaning.

70. Lord Bailey contends for the following imputation:

“The Claimant used words during an interview on Times Radio on 9 October 2023 [just two days after Hamas committed the abominable acts of mass murder, kidnapping and rape] that gave rise to the reasonable interpretation that he viewed Hamas as ‘freedom fighters’ and he thereby acted as an apologist for Hamas [which is a vile anti-Semitic entity].”

The square brackets in this formulation are derived from matters of common knowledge and are conceded to be the reasons why the imputation is defamatory.

### Analysis

71. In my judgment, the natural and ordinary meaning of Lord Bailey’s crowd funding appeal is as follows:

71.1 There are reasonable grounds for suspecting that two days after the terrorist organisation Hamas committed the abominable acts of mass murder, kidnapping and rape in Israel in October 2023, Mr Vince described Hamas as freedom fighters during an interview on Times Radio.

71.2 There are reasonable grounds for suspecting that Mr Vince is an apologist for vile antisemitic entities such as Hamas.

72. If I am wrong to take judicial notice of the matters of common knowledge that I have underlined above, then – taking into account the agreed facts – I am satisfied that the publication bears such innuendo meaning and, as before, that it is appropriate on the facts of this case to determine that issue now.



**FACT OR OPINION**

*Argument*

73. Mr Bennett argues that this was bare comment and that Lord Bailey implied to the reader that he had knowledge of facts which led him to set out the opinion that he had derived from words spoken by Mr Vince. He points out that there is no quotation of what Mr Vince in fact said.
74. Mr Price focuses on Lord Bailey’s comment as to how he and many others “interpreted” Mr Vince’s words, and later upon his comments that he “believed” that Mr Vince had described Hamas as freedom fighters. These were, he argues, clear indications of opinion.

*Analysis*

75. In my judgment, by his statement that Mr Vince “chose words” that Lord Bailey and “many others” interpreted in a certain way, Lord Bailey made clear that he was expressing an opinion as to the meaning conveyed by the words used by Mr Vince in the Times Radio interview. Against that background, the impression created by the further statement that it was important to hold to account those that are apologists for vile antisemitic entities such as Hamas was that Lord Bailey was making a further statement of opinion, on the basis of his interpretation of Mr Vince’s earlier remarks, that Mr Vince was an apologist.

**INDICATION OF BASIS**

76. In my judgment, the statement complained of indicated that the basis of the statements complained of in the crowd funding appeal was things said by Mr Vince in an interview with Times Radio two days after the 7 October attacks.

**THE SUMMARY JUDGMENT APPLICATION**

**THE EVIDENCE**

77. Lord Bailey’s summary judgment application formally put in evidence the full transcript and recording of Mr Vince’s Times Radio interview on 9 October 2023:

*“Stig Abell:* We’re talking about how more disciplined Labour feel today and one area is of course what is going in, in Israel and Gaza, the Palestinian question.

We had Rachel Reeves on, she had a very clear line: Hamas are terrorists, Israel has a right to defend itself. Under Jeremy Corbyn that line would not have been possible and I know your club Forest Green Rovers lost two sponsors over flying the Palestine flag. You’ve compared the conflict there with the situation in Ukraine. You worry that...

Do you agree with Labour’s position? Hamas are terrorists, Israel has a right to defend itself.

*Dale Vince:* Er, yes.

*Stig Abell:* Straight forwardly as that. Is this you being disciplined or is this what you actually think?

*Dale Vince:* No, no.

*Stig Abell:* Because you, I have seen you on social media saying, during the thing, is this a good example of you want Labour elected, you can

smell trouble in this area and therefore you are not going to say anything that you believe.

*Dale Vince:* No, it's not true, I'm not like that. But look everybody always says Israel has the right to defend itself, nobody ever says that about Palestine, why is that?

*Stig Abell:* So, do you think, so Palestine has a right to it? But is...

*Dale Vince:* Does it not?

*Stig Abell:* Well, I'm not saying that. I'm saying: is a terrorist attack from Hamas, Palestine defending itself?

*Dale Vince:* I think one man's freedom fighter is another man's terrorist, right. That's how it works.

*Stig Abell:* So that is not the Labour position interestingly. They are not saying that; they are saying the opposite of that.

*Dale Vince:* No, I know, yeah I understand.

*Stig Abell:* But you are happy to, this is pragmatism.

*Dale Vince:* But this is my view.

*Stig Abell:* This is your view.

*Dale Vince:* This is how I feel, look, look what's happening in Palestine, millions of people living in an open prison in effect, sixteen-year economic siege, they have no borders open to themselves, they depend utterly on Israel for their power, everything that goes into the country.

*Stig Abell:* So, did you think that was freedom fighting? What you saw over the weekend?

*Dale Vince:* No look, listen I don't, I don't support what they did. I don't.

*Stig Abell:* OK"

78. The application also asserted that Lord Bailey had been aware of widespread reporting and condemnation of Mr Vince's words including by the Deputy Leader of the Labour Party, the Rt. Hon. Angela Rayner MP. The evidence set out allegations and counter-allegations traded between Mr Vince, the editor of Guido Fawkes, Paul Staines, and the then Leader of Reform UK, Richard Tice. Otherwise, the material set out in the continuation sheets to the application form comprised legal argument. There was at that stage no statement in support of the application from Lord Bailey.
79. Witness statements from Mr Vince and his solicitor were served in response to the application on 31 October 2024.
80. Mr Vince explained his remarks during the Times Radio interview and stressed that he had no hesitation in unequivocally condemning Hamas for murder, rape, appalling acts of brutality and kidnapping of hostages. He said in terms that he does not support Hamas, and that he condemns it. Mr Vince expressed his sympathy and concern in respect of Israel's treatment of Gaza and the Palestinians who live there, but insisted that that did not mean that he supports terrorism. He insisted that he is not an apologist for Hamas and that he is not antisemitic. Further, he relied on his clear condemnation of the murder of civilians by Hamas in a further interview with talkSPORT Radio on 16 October 2023.

81. Mr Vince recounted how the Times Radio interview did not attract any media attention at the time but that that changed dramatically on 13 March 2024 when Guido Fawkes published a “very short, out of context and misleading extract” from the interview alongside the headline “Multi-million-pound donor to Labour says Hamas are ‘freedom fighters’”. He said that the 16-second clip of the fuller interview is only available on the Guido Fawkes website.
82. Mr Vince asserted in terms:  
“If [Lord Bailey] had watched the full extract from the interview which concerned Israel/Palestine, he would know that the freedom fighter allegation is not true.”
83. Further, Mr Vince responded to a witness statement made by Lord Bailey’s former solicitor in support of an earlier withdrawn application that had asserted that he had viewed the entirety of the Times Radio interview and read a significant amount of negative press coverage which indicated how people had interpreted the interview before appearing on television. Mr Vince commented:  
“Again, how could Lord Bailey have reached this conclusion if he had listened to or watched the interview? Surely, if he had done so, he would have seen that the ‘negative press coverage’ he refers to had just slavishly followed the Guido Fawkes’ line, which was based on a falsehood that should have been obvious to anyone who had knowledge of what I had actually said during the interview.”
84. Mr Vince’s solicitor, Tom Double, confirmed following his firm’s research that the Times Radio interview had not elicited any significant media interest when first broadcast in October 2023. He then recounted the substantial publicity gained by the Guido Fawkes articles and the tweets made by a number of politicians in the period immediately prior to Lord Bailey’s appearance on GB News and then his later crowd funding appeal. Mr Double concluded by inviting the court to infer that “in contrast to the ubiquity of the Guido Fawkes allegation in the mainstream media and on social media, that very few people would have watched the Times Radio interview in its entirety and therefore assessed what [Mr Vince] had said in its true and proper context”.
85. Witness statements from Lord Bailey and his solicitor were served in reply on 4 November 2024.
86. Lord Bailey explained that he had seen the entire Times Radio interview a number of times before appearing on GB News; once in the weeks after the interview and twice before going on television on 14 March. He said that he prepared for his appearance with his wife, Ellie, who had researched news reports published on 13 and 14 March about Mr Vince’s words. Lord Bailey analysed Mr Vince’s interview albeit with reference to the same part of the interview that was extracted by Guido Fawkes. He insisted that Mr Vince was calling Hamas freedom fighters and explained that he called him an apologist because he believed that calling Hamas freedom fighters sought to sanitise the atrocities of a proscribed terrorist organisation.
87. Lord Bailey’s solicitor, David Romain, formally exhibited the documents referred to in the application notice. He also contrasted Mr Vince’s defence of the “one man’s terrorist” remark in this litigation, which Mr Romain inferred was carefully crafted by his lawyers, with

his more unguarded justification in his May 2024 interview with Politics Live in which he had said:

“Freedom fighters and terrorists, it depends on where you sit in a given conflict, Really, my point was that in the west we tend to agree on who’s the bad guy and who’s the good guy, but we are not the only people in the world. And there are people on the other side of the conflict who see it very differently.”

88. After the hearing, the court received unsolicited evidence and submissions:
- 88.1 On Sunday 10 November 2024, Mr Price emailed a statement from Lady Bailey seeking to support her husband’s case to my clerk.
- 88.2 On 20 November, Lord Bailey’s solicitors emailed my clerk sending me a copy of a video post published by Mr Vince after the hearing in respect of his claims against Mr Staines and Mr Tice. The video post was said to be relevant to the question of costs.
- 88.3 On the same day, Mr Vince’s solicitors emailed my clerk to deny that Mr Bennett had ever accepted the admissibility of Lady Bailey’s evidence upon the summary judgment application.
89. At that point and at my direction, my clerk emailed the parties to remind them of the limited circumstances in which I would expect the parties to communicate with the court between the conclusion of a hearing and before the handing down of judgment. She then wrote:
- “The parties should, however, understand that Mr Justice Pepperall neither invites nor encourages post-hearing argument or the submission of disputed evidence that, under the rules, should have been served some time in advance of the hearing. Subject to any formal application, the judge’s starting point is that cases are to be decided on the basis of the evidence properly served in advance of a hearing and the submissions made at the hearing.
- If one or other party believes that there is a proper reason for communicating with the judge in this case then Mr Justice Pepperall asks that he hears only from the instructed advocates. He would expect great circumspection before lodging any further submissions or evidence. Further, he would not expect a barrage of emails but rather a single email sent jointly by the instructed advocates setting out their respective positions on whatever they consider proper now to draw to the judge’s attention.”
90. Mr Bennett made clear that he would lodge submissions in opposition to any formal application to adduce late evidence but that the ball was in Mr Price’s court. No such application was ever made but Mr Price lodged written submissions seeking to justify the late evidence by submitting that it was required because of Mr Vince’s failure to file evidence of facts which would entitle him to judgment. Further, he argues that Mr Bennett consented to the service of this late evidence; that the balance of prejudice favours the admission of the late evidence; that no application is necessary; and that there is no reasonable basis on which the court could properly refuse to exercise its discretion in favour of admitting the late evidence.
91. Notwithstanding Mr Price’s apparent confidence that the court could only properly exercise its discretion in favour of admitting the late evidence, I disagree with him on each and every point:
- 91.1 First, the late evidence is not justified by any failing on the part of Mr Vince:

- a) Lady Bailey's evidence is apparently served to meet Mr Bennett's argument that he would seek to cross-examine Lord Bailey at trial to challenge his evidence that he had watched the Times Radio interview before appearing on the Patrick Christys show.
  - b) Mr Vince plainly does not know one way or the other what Lord Bailey watched. It was not therefore a matter upon which he could properly give evidence, and it is not the function of witness statements to give notice of argument or lines of cross-examination that might be deployed. In fact, as recited above, he expressed his scepticism as to how, if Lord Bailey had indeed viewed the entire interview, he could have come to the conclusion that he did. That, in my judgment, was as far as he could take the point.
- 91.2 Secondly, it is a mischaracterisation of his submission to suggest that Mr Bennett consented to Mr Vince relying on post-hearing evidence in support of Lord Bailey's application for summary judgment:
- a) In his oral submissions in reply on 8 November, Mr Price volunteered that had it been put in issue that Lord Bailey had seen the whole of the Times Radio interview, his client would have served evidence from his wife. He then said on instructions that he could confirm that Lady Bailey would make a statement. He asserted that he was entitled to do that because it had not been clearly averred until Mr Vince's skeleton argument that the point was in issue.
  - b) Commenting on the possibility that Lady Bailey might make a statement, Mr Bennett submitted:

"It's a deeper and deeper exploration into mini-trial territory. And if Mrs Bailey does say they both read the full interview before going on GB News, then that's not determinative of the issue. It's something that both of them should be properly cross-examined on, at a full trial, not a minitrial."
  - c) I then clarified that Mr Bennett did not object to the court having been told and taking into account that Lady Bailey might be able to provide evidence but that his submission was that simply meant that there was something else to be dealt with at trial.
  - d) The court being told that Lady Bailey might in due course make a statement was quite different from agreement that Lord Bailey could properly file further evidence after the hearing and expect it to be taken into account on his application for summary judgment without any right of reply or further hearing.
- 91.3 Thirdly, the balance of prejudice plainly favours the exclusion of this late evidence:
- a) Part 24 of the Civil Procedure Rules 1998 sets specific deadlines for the filing and service of evidence upon applications for summary judgment. The deadline for service of the applicant's evidence in reply was 4 November 2024 being three clear days before the hearing: r.24.5(3)(b).
  - b) If Lord Bailey suffers prejudice by the failure properly to prepare the application for summary judgment then that is a matter between him and his lawyers. In any event, the dismissal of his summary judgment application would not shut him out from continuing to defend this claim.
  - c) By contrast, Mr Vince would suffer obvious prejudice were the court to allow Lord Bailey to rely on late evidence upon his application for summary judgment without allowing Mr Vince the opportunity to file evidence in response or make submissions to the court, and with the risk that final judgment might be entered against him.

- 91.4 Fourthly, I disagree with the submission that an application was not required. In any event, my clerk's email clearly identified the uncontroversial starting point that, absent a formal application, cases are to be decided on the basis of the evidence properly served in advance of a hearing and the submissions made at the hearing.
- 91.5 Fifthly, any application would in any event have been hopeless since this evidence was not served in accordance with the rules, was first served after the hearing such that Mr Vince has had no opportunity to file evidence in response to Lady Bailey's statement or make submissions to the court in respect of this evidence, and the late admission of this evidence would amount to an obvious and unfair procedural irregularity.
92. Accordingly, I determine this application for summary judgment without reference to Lady Bailey's evidence. Equally, I have not considered the other post-hearing material which is in any event said to be relevant only to the question of costs.

### THE ARGUMENT

93. In advancing the defences under both sections, Lord Bailey relies solely on the answer given by Mr Vince when asked during the interview on Times Radio whether a terrorist attack by Hamas was Palestine defending itself:
- “I think one man's freedom fighter is another man's terrorist right, that's how it works.”
94. Mr Price submits, relying on Ali v. Associated Newspapers Ltd [2010] EWHC 100 (QB), that no extraneous evidence is admissible.
95. Mr Price argues that Mr Vince has no real prospect of defeating Lord Bailey's defence under s.2 that the imputations conveyed by the statements complained of were substantially true. He relies on Begg v. BBC [2016] EWHC 2688 (QB) in which Haddon-Cave J, as he then was, made plain that when determining the message conveyed by the claimant's words, the court is not constrained by the artificial single-meaning rule. In a case where the defamatory imputation is presented as interpretative of the claimant's words, the judge held that the issue under s.2 is whether a section of the audience could reasonably take the words spoken to convey a particular message.
96. In respect of the defence of honest opinion, Mr Price argues that in the event (as has materialised) that Lord Bailey establishes in the preliminary issue trial the first and second conditions under s.3 of the Act (that a particular statement was a statement of opinion and that it indicated, whether in general or specific terms, the basis of the opinion) then Mr Vince has no real prospect of:
- 96.1 resisting Lord Bailey's case on the third condition under s.3(4)(a) that an honest person could have held the opinion on the basis of any fact which existed at the time the statement complained of was published; and
- 96.2 defeating the defence under s.3(5) by establishing that Lord Bailey did not himself hold the opinion.
97. Mr Price again relies on the answer to contend that the court should find that an honest person could have held the opinion that Mr Vince had called Hamas freedom fighters. He points to the passage where Mr Vince accepted his position was the total opposite of the

Labour position. Again, he submits that extraneous facts cannot be relied upon by the claimant: Duke of Sussex v. Associated Newspapers Ltd [2023] EWHC 3120 (KB), at [40].

98. Mr Price argues that where a defendant establishes the objective condition that the opinion could be honestly held it is most unlikely that the claimant would be able to establish that nevertheless the defendant did not himself honestly hold that opinion. He cites Lord Phillips' observation in Joseph v. Spiller, at [108]:
- “In practice this issue is seldom likely to be explored, for the burden is on the claimant and how can he set about proving that the defendant did not believe what he said?”
99. Further, he cites the observation in Gatley, at para. 13-023, that claimants' cases on s.3(5) have consistently been found to be unsupported by the requisite evidence. Mr Price contends that logically the more reasonable the opinion, the more difficult it must be for a claimant to establish that the defendant did not in fact hold the opinion.
100. Mr Price submits that defamation litigation is extremely expensive and has a chilling effect, particularly in relation to political speech. Being sued can itself amount to a serious interference with a defendant's rights under Article 10 of the European Convention on Human Rights & Fundamental Freedoms. If found to be objectively honest under s.3(4), the court should be wary of allowing Mr Vince to keep this action going just to allow him to decide whether to advance a case under s.3(5).
101. Further, Mr Price argues that confronted with a summary judgment application, there was an evidential burden on Mr Vince, as the party bearing the burden of proof under s.3(5), to put forward some case that might have a real prospect of success. As to extraneous matters that might have been known before Lord Bailey's appearance on the Patrick Christys show, Mr Price relies on the criticism of Ms Rayner that Mr Vince's remarks were “appalling”. In respect of the later crowd funding appeal, he also relies on what he characterises as Mr Vince's repeated failure clearly to state that he did not regard Hamas as freedom fighters.
102. Mr Bennett submits that Begg was considered by Warby LJ in Riley v. Murray, who made clear that the case did not lay down some rule of law of universal application but was a decision on its facts.
103. Mr Bennett contends that Mr Price's submissions offend the old common law principle that it was not fair comment to misstate the facts by omitting some highly relevant fact that would falsify or alter the complexion of the stated facts. Such reasoning was applied to the new statutory defence of honest opinion by Jay J in Dyson v. MGN Ltd [2023] EWHC 3092 (KB), at [127]-[128], and by Nicklin J in Duke of Sussex v. Associated Newspapers Ltd, at [40]. In reply, Mr Price accepts the point that the honest opinion defence cannot succeed if the remainder of the interview contradicted the meaning of the narrow question and answer relied upon, but contends that that does not arise here.
104. Mr Bennett makes clear that the question of whether Lord Bailey honestly held the various opinions found in the preliminary issue trial is very much in dispute. While accepting that honesty of belief is the touchstone, he submits that an obvious political motive to deflect attention from the embarrassing scandal engulfing his own party arising from Mr Hester's statement about Ms Abbott is relevant to the analysis. In support of his case on motive, Mr

Bennett points to the extreme language used in correspondence accusing Mr Vince of having committed a criminal offence.

105. Mr Bennett argues that Lord Bailey's assertion in his witness statement is just that; an assertion that Mr Vince is entitled to challenge at trial by cross-examination. He submits that it will be Mr Vince's case that Lord Bailey had not seen the full Times Radio interview before he appeared on TV but only the 16-second clip published by Guido Fawkes.
106. In support of that case, Mr Bennett relies on the evidence that there was no media reaction to the Times Radio interview at the time. That was, he submits, because it was unremarkable. It was only when Guido Fawkes published the 16-second clip on 13 March 2024 that there was any media storm. Furthermore, it was, he submits, a furore in which multiple people made the same allegation as Lord Bailey based on the clip and Guido Fawkes' headline.
107. Alternatively, Mr Bennett argues that – taking Lord Bailey's claim to have undertaken careful research by watching the full interview at face value – there is a proper case to be put to him that he must have known that Mr Vince had been grossly and unfairly misrepresented by Guido Fawkes. He relies in particular on Mr Vince's agreement at the start of the interview that Hamas are terrorists and Israel has a right to defend itself, his confirmation of that answer and rejection of the suggestion that he is just saying that because he wants to see Labour elected and can smell trouble in this area such that he is not going to say what he believes. Mr Vince said that he is not like that. Finally, Mr Vince was asked in terms whether what had happened at the weekend was Hamas defending itself and replied:

“No, look. Listen, I don't, I don't support what they did. I don't.”
108. Mr Bennett argues that the hypothetical honest man would not have plucked a single sentence from the Times Radio interview and ignored these other statements. Further, if Lord Bailey had seen the full interview, he would – Mr Bennett submits – have looked at all of the coverage over the previous 24 hours and thought “Hold on this isn't right. This man is being misrepresented.” But instead, he argues, he joined the stampede of unfair misrepresentation.
109. Mr Price objects that this is to reject Lord Bailey's clear evidence in his witness statement, and dismisses the premise that anyone who had seen the full Times Radio interview could not have formed the honest opinion that Mr Vince had called Hamas freedom fighters. In any event, on Mr Vince's own case that the clip was highly selective, he argues that if Lord Bailey had only seen the clip, the stronger his case as to honest opinion.
110. Mr Price insists that it is wrong in principle to allow a political motive to sustain a s.3(5) defence where there is no evidence sufficiently probative of dishonesty.
111. Mr Bennett points out that, on the s.3(5) issue, Lord Bailey has put a number of documents before the court to advance his case but without any proper disclosure exercise having taken place such that, at this stage, there is no obligation to disclose adverse documents. Finally, Mr Bennett points out that the claims against Mr Staines and Mr Tice continue and that the court should be wary of tying the trial judge's hands. Mr Price submits that is irrelevant and each defendant must take his own course.



ANALYSIS

112. Mr Price is right to submit that this application must be considered on its own merits and that any impact on other claims brought by Mr Vince is not relevant.
113. The defence of truth requires proof that the imputation conveyed by the statement complained of is substantially true. Where a statement conveys two or more imputations, the defence does not fail if, having regard to the imputations which are shown to be substantially true, the remaining imputations which are not shown to be substantially true do not seriously harm the claimant's reputation: s.2(3).
114. As found above, the GB News publication conveyed two imputations. For present purposes, I proceed on the basis that Lord Bailey will establish at trial that the imputation that Mr Vince said of Hamas that "one man's terrorist is another man's freedom fighter" is substantially true; although for the sake of complete accuracy Mr Vince of course put that expression the other way around. The defamatory sting in this case is, however, in the second imputation, namely that there are reasonable grounds to suspect that, by using such words, Mr Vince had himself called Hamas freedom fighters.
115. Again, I have found that the crowd funding appeal conveyed two imputations. The first is similar to that found in the GB News publication. The second is parasitic in that the first imputation is the basis for the further imputation that Mr Vince is an apologist for Hamas. Both imputations are defamatory at common law and accordingly Lord Bailey would have to prove that both are substantially true. I proceed on the basis that if Lord Bailey proves the truth of the first imputation, he will establish the truth of the second.
116. Thus, on both publications, the essence of the key imputation is that there are reasonable grounds to suspect that Mr Vince called Hamas freedom fighters. The fact that this core imputation was conveyed by statements of opinion does not preclude its being defended as true: Sharma v. Singh [2007] EWHC 2988 (QB), at [24]. Accordingly, the defence of truth will succeed if Lord Bailey can show that these imputations were substantially true in the sense of being warranted by the facts. That requires proof of primary facts that, objectively judged, give rise to reasonable grounds of suspicion: Musa King v. Telegraph Group Ltd [2003] EWHC 1312 (QB), at [32].
117. I accept Mr Price's submission that the defendant is entitled to plead and therefore select the fact that he relies upon. I acknowledge that the scope for any requirement to include additional contextual facts is therefore extremely limited: see, under the old law, Branson v. Bower [2002] Q.B. 737, at [36]-[39]; and, under the Act, Dyson v. MGN Ltd, at [126]-[128], and Duke of Sussex v. Associated Newspapers Ltd, at [40]. In my judgment, the specific answer that "one man's freedom fighter is another man's terrorist" cannot, however, be properly divorced from the immediate context provided by Mr Vince in the same Times Radio interview, and specifically:
- 117.1 his agreement that Hamas are terrorists and that Israel has a right to defend itself; and
- 117.2 the final exchange in which, asked by Mr Abell whether he thought the events of 7 October were freedom fighting, Mr Vince said:
- "No look, listen I don't, I don't support what they did, I don't."

118. Taking the interview in the round, I consider that there is a triable issue as to whether the imputation is substantially true. Equally, once the hypothetical honest viewer is required to take into account the entirety of the Times Radio interview, I consider that it cannot be said that Mr Vince has no real prospect of defeating Lord Bailey's case under s.3(4).
119. Even if the court were satisfied that there was no issue to be tried on the third condition, I do not in any event accept that it would be proper to find that there is no issue to be tried under s.3(5). It is not for these purposes either necessary or possible at this interim stage to make any findings as to whether Lord Bailey watched the entirety of the Times Radio interview. Taking at face value his claim to have done so carefully on three occasions, it is at least for the purpose of this summary judgment application properly arguable that he should then have realised that Mr Vince was not calling Hamas freedom fighters and that he had been misrepresented in media reporting in March 2024. That issue cannot be tried on witness statements.

### **THE APPLICATION FOR THE TRIAL OF FURTHER PRELIMINARY ISSUES**

120. By the application made on 1 November 2024, Lord Bailey applied for a direction that I should also try as preliminary issues the following questions:
- 120.1 Whether an honest person could have held the opinion that Mr Vince had called Hamas members freedom fighters on the basis of his Times Radio interview on 9 October 2023.
- 120.2 Whether it is substantially true that in the Times Radio interview Mr Vince stated words to the effect, and/or giving rise to the reasonable interpretation, that Hamas members are freedom fighters.
121. It will be recognised that the first limb of the application seeks trial of the issue that might arise under s.3(4) of the Act while the second limb seeks trial of the issue that might arise under s.2.
122. This application was not listed before me. Given that the summary judgment required the parties to make submissions on these issues in any event, I heard the parties both on the disputed question of whether I should try these matters as further preliminary issues and upon the substance of the matter without ruling on the application.
123. Mr Price argues that these issues turn solely on the proper interpretation of the Times Radio interview and that no other evidence is admissible. Indeed, he concedes that his application must fail if other evidence is admissible. He expressly concedes that, having taken his stand on the chosen fact being the Times Radio interview, Lord Bailey cannot hereafter seek to argue any defence that is dismissed on another factual basis.
124. Mr Price argues that the context for the interview is admitted and is, in any event, within judicial knowledge. He argues that the usage and understanding of the cliché "one man's terrorist is another man's freedom fighter" is a matter of judicial knowledge and is not in any event a fundamental averment for the purpose of the defences of honest opinion and truth. He submits that it would be preferable to determine these issues by what he calls the trial standard rather than simply on the application for summary judgment.

125. Mr Price relies on the observations of Moore-Bick LJ in ICI Chemicals & Polymers Ltd v. TTE Training Ltd [2007] EWCA Civ 725. In that case, a judge hearing a summary judgment application had invited the parties to agree that he should decide a short point of construction as a preliminary issue. Absent agreement, he instead decided only the summary judgment question of whether there was a real prospect of success on the issue. Moore-Bick LJ observed, at [12]:

“In my view the judge should have followed his original instinct. 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.”

126. Mr Price submits that likewise this court should grasp the nettle.
127. Mr Bennett argues that Mr Vince should not be bounced into a trial of other preliminary issues. The defence and any reply should be pleaded, and disclosure should take place. Further, Mr Bennett argues that the law of honest opinion is still developing and should develop further on the basis of actual facts found at trial: Barrett v. London Borough of Enfield [2001] 2 A.C. 530, at 557; X (Minors) v. Bedfordshire County Council [1995] 2 A.C. 633, at 741.

#### ANALYSIS

128. In defamation cases, trials of the preliminary issues of the natural and ordinary meaning of the statement complained of; whether such statement is or contains a statement of opinion; and, if so, whether it indicated the basis of such opinion, are routinely ordered because they turn simply on the publication complained of and extrinsic evidence is not admissible. The early and relatively cheap resolution of these issues provides certainty; allows any defences to be pleaded and evaluated against clear findings; and allows the parties to assess the merits of their cases before substantial further costs are incurred. Moore-Bick LJ’s observation in ICI Chemicals & Polymers is no more than a recognition of the same logic in a different field of law where the point of construction can also be tried cheaply and conveniently as a preliminary issue without further evidence.
129. Great care must be taken before the court considers whether to order the trial of further preliminary issues upon which extrinsic evidence would be admissible. Poorly thought-through preliminary issues can all too often prove to be “treacherous short cuts” (per Lord Scarman in Tilling v. Whiteman [1980] A.C. 1, at p.25) and the “siren song of agreeing or ordering preliminary issues should normally be resisted” (per Lord Neuberger MR in Rossetti Marketing Ltd v. Diamond Sofa Co. Ltd [2013] Bus L.R. 543, at [1]).
130. That said, there is force in Mr Price’s argument that the court should resolve issues at the pre-trial stage if it properly can. While a summary judgment case, Warby LJ’s observations in the recent case of Iqbal v. Geo TV Ltd [2024] EWCA Civ 1566, at [30] are pertinent:

“Resolving any case at an early stage saves expense and court time. It can be especially valuable in defamation cases. These involve a clash between the right to a reputation and the fundamental freedom to communicate information and ideas. Notoriously,

the costs can swiftly become disproportionate to the issues at stake. Summary determination of such claims reduces the risk that the rights of the claimant or the defendant will be ‘chilled’ by the costs of litigation and by the same token tends to give effect to the overriding objective.”

131. In this case, the fact relied upon by Lord Bailey is the interview. Since the interview was recorded, there is no issue as to what was said by Mr Vince. While, as explained above, the brief answer relied upon by Lord Bailey cannot be divorced from the rest of the interview, I accept Mr Price’s submission that no further evidence is admissible on the issues of substantial truth and the objective limb of the honest opinion defence. Accordingly, I am in as good a position as the trial judge would be to determine these two issues. Further, I do not accept that Mr Vince is prejudiced by my taking such course. These two issues are before the court in any event on the summary judgment test and accordingly Mr Vince has been able to consider the arguments that he wishes to make. It follows from the ICI Chemicals & Polymers case that parties should expect the court in appropriate cases to consider whether to decide issues of construction upon which extraneous evidence would not be admissible as preliminary issues even where the only application before the court is for summary judgment. In this case, the matter was aired before the master on 23 October and there was a draft application notice on 28 October.
132. I therefore accept the invitation to determine substantial truth and the third condition of the honest opinion defence as preliminary issues on the express basis that Lord Bailey relies only on the Times Radio interview and accepts that he cannot hereafter seek to resurrect any defence that might be dismissed on the basis of additional facts.
133. I have of course already analysed the issues and arguments on the summary judgment basis at paragraphs 77-119 above. I can therefore state my conclusions shortly.
134. I reject the truth defence. In my judgment, when the entire Times Radio interview is taken in the round and the matter is considered objectively, it was not substantially true to say that there were reasonable grounds for suspecting that Mr Vince called Hamas freedom fighters. He used a cliché that identified that there are two sides to every dispute. The point he was making was that in the west Hamas is regarded as a terrorist organisation, whereas those viewing the dispute through the Palestinian lens might regard them as freedom fighters. He expressed sympathy with the broader Palestinian cause but, if the dichotomy is between those who regard Hamas as terrorists and those who regard them as freedom fighters, he had already stated his position at the start of the interview by agreeing that Hamas are terrorists.
135. I find, however, that on the balance of probabilities, Lord Bailey has succeeded in establishing that an honest person could have held the contrary opinion that Mr Vince had called Hamas freedom fighters and, therefore, the parasitic opinion that Mr Vince is an apologist for Hamas. I therefore find for Lord Bailey on the third condition arising under s.3.

## **THE THREATENED PUBLICATION**

### **THE LETTER**

136. Coad Law, who then acted for Lord Bailey, wrote a 16-page letter to Brett Wilson LLP, Mr Vince’s solicitors, on 16 May 2024. The letter endorsed Brett Wilson’s description of the atrocities committed by Hamas on 7 October 2023:

“In the terror attack ..., it is estimated that Hamas murdered around 1,200 civilians, many of them women and children, and took more than 240 hostages. The perpetrators also raped and mutilated many of their victims.”

137. Further, it quoted Brett Wilson’s description of the “utter and visceral disgust right-thinking members of society feel towards Hamas and its ... supporters in the light of the atrocities committed [during the Hamas Attack].”

138. Against that background, the letter continued:

“Hamas is violently antisemitic to its core and is bent on the destruction of Israel and its inhabitants. Its charter is replete with vicious antisemitism and begins with these words: ‘Israel will ... continue to exist until Islam wipes it out, as it wiped out what went before.’ It is also genocidal and so is closely aligned in its core aims with those of the Nazism of the Third Reich which was responsible for the extermination of 6 million Jews.

As you correctly observe ... the UK Government proscribed Hamas in 2021 and has subjected it to sanctions. Hamas is also widely regarded by many other countries as a terrorist organisation.

We therefore take from your correspondence that it is common ground between both our clients and respective firms that Hamas is a terrorist organisation and that any individual who acts as an apologist for it should be excoriated accordingly ...

It therefore appears that by virtue of his remarks supporting Hamas and its violent methodology during the Interview your client has ‘express[ed] an opinion or belief that is supportive of a proscribed organisation and in so doing [was] reckless as to whether a person to whom the expression was directed will be encouraged to support a proscribed organisation’, and has thereby committed the offence created by s.12(1A)(a) and (b) of the Terrorism Act 2000 as cited in the First Letter ...

Evidently the interpretation placed by our client during the Programme on the comments made by your client during the Interview is widely shared; i.e. that he spoke as an apologist for Hamas.

### **The Programme**

The First Letter also helpfully includes a transcript of the relevant portion of the Programme. Little need be said about this, except firstly that just as in the Guido Fawkes article to which we refer below and many others, our client reasonably interprets your client’s remarks during the Interview to be characterising Hamas as freedom fighters – that being their obvious meaning.”

139. The letter also argued that the Times Radio interview clearly showed Mr Vince to be an apologist for Hamas, that he equated Hamas with freedom fighters, and that he advanced the geopolitical situation faced by Palestinians as justification for Hamas violence generally towards Israel. The letter conceded that Mr Vince qualified his support for Hamas by saying that he did not support what they had done on 7/8 October 2023.

140. The letter concluded with a threat of publication:
- “Please note therefore that it is our client’s intention to place this correspondence in the public domain to enable your client’s conduct and that of your firm to be the subject of public scrutiny.
- Please note that this will be done including whatever response is received to this letter, but in any event at 4.00 on 23 May if no response is forthcoming.
- Please also note that our client intends to ensure that that it is raised in both Houses of Parliament and will be sending a copy of the letter to senior members of his party.”
141. The letter not having been published, Mr Vince seeks an injunction to restrain Lord Bailey from publishing the words complained of or other similar words that are defamatory of him.

#### THE PRELIMINARY ISSUES

142. As with the actual publications, the master ordered that this trial should determine the meaning of the statement complained of in the threatened publication; the issue of whether the statement complained of is, or contains, a statement of opinion; and, if so, whether it indicates the basis of any such opinion.
143. Mr Price argues that the inclusion of these matters in the master’s order does not compel me to embark on determination of these issues. He contends that to do so would be absurd, pointless and unprecedented. He argues that it would be illogical to determine the meaning of a threatened publication and that the court could not properly embark on that course since the context in which the publication might be made remains unknown. Further, Mr Price observes that an imputation determination is not a necessary element in an injunction application to restrain a threatened publication.
144. In response, Mr Bennett cites the well-known rule in Bonnard v. Perryman [1891] 2 Ch. 269 and points out the difficulty in obtaining interim relief to restrain publication where a defendant asserts the truth of his allegations.
145. In my judgment, there is no purpose to be served in embarking on a meaning determination of an unpublished letter and of determining the hypothetical questions of whether, should such letter be published as it stands, the first and second conditions under s.3 would be made out. Such issues would in any event depend upon the context of the publication, to whom the letter is published and, of course, the question of whether the letter is simply published at it stands or is recast in some way.
146. The remedy in a threatened publication case is injunctive relief. Such relief will not be granted unless there are reasonable grounds to infer that Lord Bailey threatens or intends to publish the letter. That issue will have to be judged as and when the court is called upon to determine the claim for injunctive relief, whether that be on an application for interim relief, at trial, or both. The rule in Bonnard v. Perryman may present a difficulty at the interim stage but that is not a reason for embarking on an unnecessary trial of preliminary issues in respect of an unpublished letter.

THE STRIKE-OUT APPLICATION

147. On 1 November 2024, Lord Bailey applied to strike out the threatened publication claim. Mr Price asserts that his client has no intention of publishing the letter and that there is no tangible benefit to the threatened-publication claim such that it is a Jameel abuse (being, of course, a reference to the court’s jurisdiction to stop as an abuse of process defamation proceedings that do no serve the legitimate purpose of protecting the claimant’s reputation as clarified in Jameel v. Dow Jones & Co. Inc. [2005] EWCA Civ 75, [2005] Q.B. 946). He submits that the relevant parts of the imputation were that Mr Vince “acts as an apologist” for Hamas and that he “believes and says that Hamas are freedom fighters”. That, he argues, adds nothing to the imputations complained of in relation to the broadcast and the CrowdJustice publication. Further, he argues that such imputations clearly arise out of the Times Radio interview.
148. Mr Bennett again complains that the strike-out application was not listed before me. While the application to decide additional preliminary issues was served in draft, there was no prior notice of the strike-out application before the application was served on 1 November. Mr Bennett argues that that was too late, that the claimant should not be bounced into having to deal with a late and unlisted application, and the fact that the parties are not geared up to address the point is reflected by the fact that the Jameel case is not even in their bundle of authorities.
149. In my judgment, it would not be just to embark on hearing an unlisted application to strike-out part of this claim when the claimant’s counsel complains that they are not ready for the argument. Unlike the position in respect of the application to determine further preliminary issues, the substance of the abuse point was not already before the court. Accordingly, if Lord Bailey decides to pursue his strike-out application then it will have to be listed for hearing. While the judge hearing the application will not be bound by the following observations, Lord Bailey might, however, want to take into account two particular matters in determining whether to do so:
- 149.1 First, the fact that the threatened publication was not limited to calling Mr Vince an apologist for Hamas who believes and has said that Hamas are freedom fighters, but also alleged the commission of a serious criminal offence under the Terrorism Act 2000. Further, the threatened publication contained the extreme defamatory allegation that Mr Vince was an apologist for a group that was then compared to Hitler’s Third Reich.
- 149.2 Secondly, in Jameel, Lord Phillips MR observed at [74]:
- “Where a defamatory statement has received insignificant publication in this jurisdiction, but there is a threat or a real risk of wider publication, there may well be justification for pursuing proceedings in order to obtain an injunction against republication of the libel.”
- The letter of 16 May 2024 contained a very specific threat to publish its contents. Such threat has not been acted upon but whether it has been withdrawn or remains real and credible would no doubt be important issues. An obvious way in which Lord Bailey could seek to address that issue would be by formally undertaking not to publish the letter.