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Case No: KB-2023-002309

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/06/2024

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

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Between :

Mr ANDREW BRIDGEN **Claimant**

- and –

Mr MATT HANCOCK **Defendant**

- -
- -

Mr Christopher Newman (instructed by direct access) for the **Claimant**
Mr Aidan Eardley KC (instructed by Reynolds Porter Chamberlain LLP) for the **Defendant**

Hearing date: 12th June 2024

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Approved Judgment

This judgment was handed down remotely at 3pm on 24 June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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Mrs Justice Collins Rice :

Introduction

1. Mr Bridgen brings a libel claim over something Mr Hancock tweeted out on 11th January 2023.

2. This judgment follows a short 'preliminary issues' hearing, and determines the 'single natural and ordinary meaning' of the tweet complained of, and whether it is an allegation of fact or an expression of opinion. These are important determinations for libel proceedings because, among other things, they affect the defences potentially available at a full liability trial. But they remain preliminary only: just a first step towards resolving whether Mr Hancock has or has not wronged Mr Bridgen as he claims.

Background

3. At the time, both Mr Bridgen and Mr Hancock were Conservative Members of Parliament (neither of them any longer is, or seeks to be, a Conservative MP; Mr Bridgen has sat, and seeks to sit again, as an Independent MP). Mr Hancock had served as Secretary of State for Health and Social Care from 2018 to 2021, a period which saw the onset of the national covid emergency, the rapid UK development of several vaccines, and the launch of mass vaccination programmes.

4. Powerful scientific evidence for the benefits, indeed life-saving potential, of vaccination had been placed before the public; vaccination was strongly incentivised, and for some practical purposes (for example foreign travel) more or less a pre-requisite. There was at the same time evidence for side-effects of different vaccines, mostly mild but in very rare cases serious. At a time of high public health concern, a degree of generalised anxiety and some speculation and disinformation was apparent on social media about this. But scientific evidence and advice was presented to the public about the relative risks of vaccination and non-vaccination, coming down firmly in favour of vaccination for the overwhelming majority of individuals. Mr Hancock had been, and remained, a strong advocate for the individual and public benefits of vaccination.

5. Mr Bridgen remained concerned about the risks and side-effects of covid vaccination, and was investigating the evidence about them. At the end of 2022, he raised the matter in Parliament, including by way of an adjournment debate. On the morning of 11th January 2023, he tweeted out a link to an article suggesting a US study indicated links between vaccination and a range of serious adverse health effects. His tweet commented: '*As one consultant cardiologist said to me this is the biggest crime against humanity since the Holocaust*.'

6. At Prime Minister's Questions later that day, Mr Hancock asked:

> Does the Prime Minister agree with me that the disgusting, antisemitic, anti-vax conspiracy theories that have been promulgated online this morning are not only deeply offensive,

> but anti-scientific and have no place in this House or in our wider society?

The Prime Minister replied:

> Can I join with my Rt Hon Friend in completely condemning those types of comments that we saw this morning in the strongest possible terms. Obviously, it is utterly unacceptable to make linkages and use language like that, and I'm determined that the scourge of antisemitism is eradicated. It has absolutely no place in our society and I know the previous few years have been challenging for the Jewish community and I never want them to experience anything like that ever again.

7. Immediately afterwards, Mr Hancock tweeted out a video clip of that exchange, underneath the text:

> **The disgusting and dangerous anti-semitic, anti-vax, anti-scientific conspiracy theories spouted by a sitting MP this morning are unacceptable and have absolutely no place in our society.**

This is the tweet of which Mr Bridgen complains in these proceedings.

8. Mr Bridgen had the Conservative whip removed as a result of his own tweet of that morning.

Legal principles

9. There is no dispute as to the applicable legal principles. I have directed myself to the useful and well-established guidance on determination of 'single natural and ordinary meaning' distilled from the authorities (including that of the Supreme Court in *Stocker v Stocker* [2020] AC 593) and set out in *Koutsogiannis v Random House Group* [2020] 4 WLR 25, at paragraphs 11 and 12. The guidance of the authorities is of course just that – guidance – intended to simplify not complicate the exercise. And each case turns on its own facts. But the following briefly summarises the guidance as it is agreed to apply to the present case.

10. My 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*". The governing principle is reasonableness. The intention of the publisher (here, Mr Hancock) is irrelevant in law: the test focuses on how words are read, not how or why they came to be written. It is objective, not subjective.

11. So far as tweets in particular are concerned, I remind myself of the guidance in *Monroe v Hopkins [2017] 4 WLR 68* at [34]-[35]. This is a '*conversational medium*' swiftly and briefly engaged with, so that an '*impressionistic approach*' is the right one. But it must take account of whole tweet and the context in which the ordinary reasonable reader would have read it.

12. That reference to 'context' was further explained by Nicklin J in *Riley v Murray [2020] EMLR 20* at [15]-[17]. I can, and where relevant should, take account of: (a) matters of common knowledge – facts so well known that, for practical purposes, everybody knows them; (b) matters to be treated as part of the publication – for example via a hyperlink; and (c) any other material that could reasonably be expected to have been known or read by *all* the readers of the publication complained of. But otherwise, no *evidence* beyond the tweet complained of is admissible as to what it means. And natural and ordinary meaning does not rely on a reader having any *special* knowledge.

13. I am guided away from over-elaborate or lawyerly analysis of text. That is not how tweets are consumed. I need to avoid both literalism, and any strained or forced interpretation. I can and must determine the single meaning I myself consider correct, and am not bound by the meanings advanced by the parties (so long as I do not alight on something more injurious than the claimant's pleaded meaning).

14. So I am to keep in mind, as guided, the perspective of an ordinary, reasonable reader of the tweet complained of, reading it once through as it appears, and forming an impression of what it conveys on its face. The reasonable reader is neither naïve nor suspicious; is able to read between the lines and pick up an implication; and is allowed a certain amount of loose thinking without being '*avid for scandal*'.

15. I have further directed myself to *Koutsogiannis* at [16] and [17], as well as to *Millett v Corbyn* [2021] EWCA Civ 567, for guidance on considering whether the words complained of contain allegations of fact or expressions of opinion. I am reminded by the authorities that the test for the difference between fact and opinion is an objective one. That comes back to how the words would strike the ordinary reasonable reader. I have to look at the substance, not the intention of the writer or any label the writer may, or may not, have attached.

16. Subject matter and immediate context can be especially important here. In the classic formulation, "*opinion is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, judgment, remark or observation*" (*Clarke v Norton [1910] VLR 494* at page 499). But sometimes care is needed: there is a difference between comment which is pure opinion and comment which is an imputation of underlying fact.

17. While there are two preliminary issues I am required to determine, the authorities counsel against trying to solve them in too linear or compartmentalised a fashion. I have to bear in mind whether this is a case in which the questions of 'meaning' and 'fact/opinion' might throw light on each other, such that it would be wrong to tackle them in a sequence which proves to be a trap of false logic. I note the risk and seek to avoid it.

Consideration

(a) Preliminary approach

18. I adopted the standard approach to the determination of meaning. I read the tweet complained of quickly once through, before knowing what either party wanted to say about it. I formed and noted my initial impressions. I then read the parties' skeleton

arguments, heard their oral submissions, and reserved judgment as to how far to adjust those initial views.

19. My original impression, reading the words with which the tweet opened, was that Mr Hancock was expressing strongly condemnatory views about something another MP had said that morning. My attention was particularly drawn to the *specific* epithets '*anti-semitic, anti-vax, anti-scientific*' as clues to what it was that might have been said and why it was being condemned.

20. I noted the videolink embedded in the tweet, with its picture of Mr Hancock on his feet in the House of Commons. I noted the headline superimposed on that picture – '*disgusting, anti-semitic, anti-vax conspiracy theories*' – a distillation of or selection from the body of the tweet, and as such placing a particular emphasis on the words chosen. I clicked on and watched the short video excerpt from PMQs (less than a minute) and confirmed my expectation of the political context of remarks having been made in Parliament, and the fact that Mr Hancock was now repeating them outside Parliament.

21. So my overall initial impression of what the tweet conveyed was that an MP had said something that morning which, in Mr Hancock's view, was reprehensible because it gave public currency to (a) conspiracy theories – groundless, speculative and potentially dangerous disinformation – which in turn were (b) specifically to do with vaccination (I thought that the clearest clue to the *content* of what the MP might have said, because 'anti-vax' was the most context-specific and narrow of all the epithets, re-emphasised in the headline, and the most recognisable from Mr Hancock's political interests and record) and which were, as such, unscientific and irrational, irresponsible from the point of view of public health, and also – and perhaps most objectionably – (c) offensively antisemitic.

22. I thought the assertion that the MP had said something that morning, and that it had to do with vaccination, were propositions of fact, but that all the rest amounted to expressions of Mr Hancock's (strong) opinion.

(b) The parties' contended meanings

23. Mr Bridgen fears the hypothetical reasonable reader of the tweet complained of would have understood it to have alleged he was, as a matter of fact, an antisemite. That is the complaint he makes in these proceedings. He does not make any other formal complaint of the content of the tweet.

24. Mr Hancock contends that, on this point, the tweet meant and would have been understood to have meant that Mr Bridgen had disseminated views which were, in Mr Hancock's opinion, antisemitic in nature.

25. The parties make these submissions without prejudice to the question of the referability of the tweet to Mr Bridgen, a matter to be determined at trial. I am invited to consider them on the same basis.

(c) Further reflection

26. I thought my original impression was closer to Mr Hancock's contended meaning than Mr Bridgen's. So I have reflected carefully on both parties' detailed submissions, and on the guidance provided by the authorities, as I approach the task before me.

27. Although the difference I have to resolve between the parties focuses on the meaning of the tweet in relation to antisemitism, it is not controversial that I have to take into account, by way of immediate context, the whole tweet, and the fact that the tweet is an example of political speech in the most political of contexts imaginable – the repetition by an MP (and former Cabinet Minister of the governing administration) of proceedings in Parliament. The parties do differ acutely in the inferences they invite me to draw from that, and I consider that below.

28. It is not controversial either that the hypothetical reasonable reader of this example of political speech would have a general awareness of matters of public debate or controversy about (a) vaccination in general, covid vaccination in particular, and Mr Hancock's record of responsibility for and public comment on the latter and (b) allegations of antisemitism in UK politics and public life.

29. The parties agree that, although the clip from PMQs forms part of the publication complained of, considerations of Parliamentary Privilege place a clear limit on their freedom to pray it in aid in these proceedings one way or another, and they do not seek to do so. As invited, I can and do consider the meaning of the tweet without reference to the *content* of the video beyond confirmation of the fact Mr Hancock was saying again what he had said in Parliament.

30. Nor is it controversial that it cannot be taken, *for present purposes*, that the ordinary reasonable reader would necessarily have read Mr Bridgen's tweet of that morning or understood to what specific utterance Mr Hancock was taking exception. Mr Hancock had not retweeted it or linked it. It cannot be assumed that *all* readers of his own tweet had also read Mr Bridgen's. I am proceeding on the basis simply of what Mr Hancock's tweet says on its face, in the more general political context.

31. Of that more general context, Mr Newman, Counsel for Mr Bridgen, urges on me the sheer momentousness of one MP making public allegations of antisemitism against another outside Parliamentary proceedings. He says the standards of public life which any reasonable reader would expect of a senior MP would also lead them to expect that the taint of antisemitism – in effect, an assertion that a colleague was unfit for his office – would only have been applied on the most carefully considered and evidenced basis, and would naturally be taken to be both a direct impugning of that colleague's convictions and character, and an allegation of objective and demonstrable fact. He says the reader would understand the tweet as a final judgment on Mr Bridgen, and that it would be naïve to regard its ostensibly evaluative language as anything other than the trappings of deniability (akin to tacking on 'allegedly' as a half-hearted distancing device, perhaps).

32. Mr Newman encourages me in this context to a careful reading of the decisions in some other defamation cases involving politicians: *Millet v Corbyn [2021] EMLR 19* and *Galloway v Telegraph Group [2004] EWHC 2786 (QB)*. He says this too is a case in which a reader would be astute to understand not just an expression of opinion, but an assertion of underlying factual reality meriting condemnatory

descriptive language. He suggests Mr Hancock's tweet is recognisable not as a species of participation in a contest of ideas or opinions, but as an exercise in definitively shutting down any such debate, and indeed as an *ad hominem* attack.

33. Mr Newman draws my attention also to what he says would be a reasonable reader's ready understanding of 'antisemitic' as being a term freighted with underlying factual assumptions. He says that unlike 'racist' (cf *Blake v Fox [2023] EWCA Civ 1000*) it is a term with incontestable meaning, however contestable its application to given factual propositions (some of them famously so).

34. I have looked again carefully at the authorities Mr Newman showed me and reflected on what he said. I have also noted, as Mr Eardley KC, Leading Counsel for Mr Hancock, asked me to do, that a court '*should be alert to the importance of giving free rein to comment and wary of interpreting a statement as factual in nature, especially where as here it is made in the context of political issues*' (*Yeo v Times Newspapers Ltd [2015] 1 WLR 971* at [97] per Warby J (as he then was)).

35. I do not, however, lose sight of the intensely fact-specific nature of my task, and I do come back to its essential character as requiring me to stand in the shoes of an ordinary, reasonable reader of Mr Hancock's tweet: someone interested in politics encountering it in the ordinary run of things as part of the constant flux of social media, and forming a swift impression of what it conveys.

36. I hold in mind also that that is a quintessentially objective exercise, and that the test is *not* about the impression this tweet made on Mr Bridgen himself. It would be entirely understandable for him to have experienced it subjectively as a personal attack on himself and his world-view, and to fear that others would have seen it in that light too. But I have to take a different starting point.

(d) Conclusions

37. Returning to the tweet itself, in my judgment an ordinary reader would in the first place orientate themselves around its reference to something that had happened '*this morning*' – that is, to a *recent event*. That event is clearly signposted as something said by an unnamed sitting MP. The plain focus of the tweet, not least because of the anonymity, is on the recent event rather than the individual - on what was said, not who said it (beyond their being an MP and hence in a position of public influence). The reader, not being (politically) naïve, would understand without difficulty that the opportunity of this recent event was being taken to enable Mr Hancock to distance himself (and the Government) from the sort of views he condemns in it: to position himself, in other words, as someone opposed to conspiracy theories, in favour of vaccination, pro-science and intolerant of antisemitism. It is as much about Mr Hancock as it is about Mr Bridgen, if not more so.

38. I am unpersuaded by Mr Newman's submissions that the ordinary reasonable reader would approach a tweet of this sort with a predisposition to think they were being given a considered value-judgment about the unnamed MP, or that they were being told very much about the MP at all. This tweet was on its face simply reactive to another's comment, and I am satisfied would have been readily understood as such. Comment, and rapid reactive comment, are the everyday currency of political speech, especially on social media.

39. The vehemence of the condemnation in this tweet would not in my judgment be understood as a pointer towards the assertion of underlying factual realities. There is the error of strained interpretation, or over-literalism, in that. On the contrary, the accumulation of value-laden epithets and the high rhetorical register of this tweet would, I am satisfied, have been readily understood as an amplifier for Mr Hancock's own views rather than a signifier of objective factuality. I am mindful of the trap of assuming that because some (but by no means all) of the epithets deployed could arguably be calibrated against external standards of one sort of another (for example '*anti-semitic, anti-vax, anti-scientific*') they must be regarded as referable to allegations of (factual) divergence from those standards. Epithets of this sort may or may not be – it depends on how they would strike an ordinary reader. Here, I am satisfied this tweet would be recognised as a vehement intervention in public political discourse, by no means the less so for being pungently dismissive or even appearing to seek to shut down that discourse in some respects.

40. The authorities warn clearly against getting too exegetical about tweets. We did spend a little time at the hearing on the word '*spouted*'; but really on any basis this term is breezily dismissive. The reference to '*conspiracy theories*' would in my view be understood in the same register – not as a pointer to beliefs held or world-views in fact espoused by the unnamed MP, but as a sweeping dismissal of any claims the particular *utterance* might have to being taken seriously or respectfully.

41. Mr Bridgen of course takes particular exception to '*anti-semitic*'. The reader of Mr Hancock's tweet might be expected readily to infer a certain amount about the *content* of what had provoked this tweet from its being labelled '*anti-vax*', '*anti-scientific*', '*dangerous*' and '*conspiracy theories*', given a general awareness of the background of the pandemic and Mr Hancock's part in its history. The unnamed MP was being said to have put out publicly something questioning or critical of vaccination on an unsustainable basis. I agree, however, with Mr Newman that '*anti-semitic*', '*disgusting*' and '*unacceptable*' introduce a distinctive and less readily referable dimension. The reader has no immediate context for this.

42. But having understood the tweet to be a broadside condemnation of something the unnamed MP had said earlier that day relating to vaccination, in my judgment the reader would readily understand that Mr Hancock was not only assigning it to the category of dangerous, unscientific disinformation on that account, but had also identified it as distinctively antisemitic, and all the worse – reprehensible, offensive and dangerous – for that. I am satisfied that the ordinary reasonable reader would, in the context of the whole tweet, have no difficulty in understanding they were being told Mr Hancock's strong opinions about the character, or mode of expression, of what had been said, rather than any facts, or even opinions, about the convictions, beliefs or intentions of the unnamed MP in this respect. A reader would have to be '*avid for scandal*' indeed, in my judgment, to extrapolate from the excoriation of what another MP had said to the labelling of that individual as *an antisemite* beyond the terms in which their recent observations had been framed.

43. An ordinary, reasonable, reader, by contrast, would allow for the possibility that the MP might have simply misspoken in this respect, and understood Mr Hancock not to be suggesting anything more, while making his views about what *had* been said strongly felt. Political speech in the social media age is fast-moving and opinionated, and everyone knows slips and second thoughts are commonplace (as is seeing them

pounced on). Calling out speech as antisemitic is a particularly grave matter: more than usual care might be expected from a speaker to avoid making that *particular* mistake. But recent political experience includes familiar examples of precisely that – acknowledged and regretted mistakes or misunderstandings with antisemitic tropes (and indeed their consequences) – and a reader would readily acknowledge the difference in political discourse between passing judgment on a single comment and impugning wholesale the integrity and morality of the speaker.

44. A reader of tweets like this knows and expects they are tuning in to robust and opinionated reactive political comment. They would readily understand that Mr Hancock was calling out the *promulgation* of material in another's comment – what the MP had said and how they had said it – as objectionable from the perspective of public health and standards of public discourse, rather than definitively condemning the MP as an individual.

45. In all these circumstances, I have, with the assistance of Counsel, tested and re-evaluated my first impressions and find I have perhaps not moved very far from them. I am satisfied the ordinary reasonable reader would not have understood this tweet in the terms Mr Bridgen most fears. I am satisfied they would readily have understood it to be essentially an expression of Mr Hancock's opinions, and, as regards the epithet '*anti-semitic*' along with all the other epithets, to be referable to the MP's mode of expression rather than the MP's character or convictions.

Decision

46. The single natural and ordinary meaning of the publication complained of is as follows:

> **<u>An unnamed MP had said something that morning related to vaccination</u> which was baseless, unscientific, dangerous and offensive, including because its character was antisemitic**.

47. The underlined words are an assertion of fact. The remainder is an expression of opinion.

48. There is no dispute between the parties that, in this meaning, the publication is 'of defamatory tendency' at common law, that is to say it *intrinsically* has a tendency substantially to affect in an adverse manner the attitude of other people towards a claimant. I concur. To label speech as antisemitic is to label it as gravely offensive, falling well below the standards expected in our society; it means people would tend to think substantially less well of the speaker.

49. There is also no dispute between the parties that, to the extent the publication complained of constitutes an expression of opinion, for the purposes of section 3 of the Defamation Act 2013 both the first and the second conditions are fulfilled: the statement complained of indicated, whether in general or specific term, the basis of the opinion – that is, by way of its reference to what had been said '*by a sitting MP this morning*'. I agree with that.