Neutral Citation Number: [2024] EWCA Civ 1566

Case No: CA-2023-002519

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST
His Honour Judge Lewis (sitting as a Judge of the High Court)
[2024] EWHC 3024 (KB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/12/2024

Before :

LORD JUSTICE UNDERHILL
(Vice-President of the Court of Appeal (Civil Division))
LORD JUSTICE DINGEMANS
and
LORD JUSTICE WARBY

- -

Between :

SALMAN IQBAL	**Claimant/ Respondent**
- and –	
GEO TV LIMITED	**Defendant/ Appellant**

- -
- -

Adam Speker KC and Richard Munden (instructed by **Carter-Ruck**) for the **Appellant**
Jonathan Barnes KC and Gervase de Wilde (instructed by **Gresham Legal**) for the **Respondent**

Hearing date: 5 November 2024

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Approved Judgment

This judgment was handed down remotely at 10.00am on 13 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

LORD JUSTICE WARBY :

1. This is an appeal against a decision not to enter summary judgment in favour of the defendant to a libel action. The appeal raises issues about the proper interpretation and application of the statutory provisions which confer privilege subject to proof of malice on, among other statements, fair and accurate reports of proceedings at public meetings.

The statutory provisions

2. Section 15 of the Defamation Act 1996 is headed "Reports, &c. protected by qualified privilege". In its current form, which applies to the publications complained of in this case, it provides as follows:-

> "(1) The publication of any report or other statement mentioned in Schedule 1 to this Act is privileged unless the publication is shown to be made with malice, subject as follows.
>
> (2) In defamation proceedings in respect of the publication of a report or other statement mentioned in Part II of that Schedule, there is no defence under this section if the plaintiff shows that the defendant—
>
> (a) was requested by him to publish in a suitable manner a reasonable letter or statement by way of explanation or contradiction, and
>
> (b) refused or neglected to do so.
>
> For this purpose "in a suitable manner" means in the same manner as the publication complained of or in a manner that is adequate and reasonable in the circumstances.
>
> (3) This section does not apply to the publication to the public, or a section of the public, of matter which is not of public interest and the publication of which is not for the public benefit.
>
> (4) Nothing in this section shall be construed—
>
> (a) as protecting the publication of matter the publication of which is prohibited by law, or
>
> (b) as limiting or abridging any privilege subsisting apart from this section."

3. Schedule 1 Part II to the 1996 Act is headed "Statements privileged subject to explanation or contradiction". The list of such statements includes the following:

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

4. Paragraph 12(2) of Schedule 1 contains this definition:-

> "(2) In this paragraph a "public meeting" means a meeting bona fide and lawfully held for a lawful purpose and for the

> furtherance or discussion of a matter of public interest, whether admission to the meeting is general or restricted."

The facts

5. This case involves two major news broadcasters and two major political parties in Pakistan.

6. The two broadcasters are ARY Digital Network (ARY) and the Jang Group. ARY is responsible for the Urdu language TV channels ARY Digital and ARY News. Each of those channels is or has been broadcast to substantial numbers in this jurisdiction. The claimant (Mr Iqbal) is the founder and president of ARY. The Jang group, which is run by Mir Shakil-ur-Rahman, produces the Urdu language news channel GEO News. The defendant (Geo) is an English registered company which is a member of the Jang group. It is the OFCOM licensee for GEO News which it broadcasts to a substantial audience in the United Kingdom.

7. The political parties are the Pakistan Muslim League (Nawaz) (PML-N), led by Shehbaz Sharif, and Pakistan Tehreek-e-Insaf (PTI), led by Imran Khan. Mr Khan was Prime Minister of Pakistan from 18 August 2018 until 10 April 2022, when he was removed from office following a vote of no confidence. His successor was Shehbaz Sharif, leading a coalition government. After Mr Khan was ousted, he and his supporters took to the streets, with mass protests attended by hundreds of thousands calling for an early general election. In response the PML-N launched its own series of rallies aimed at countering Mr Khan's narrative and the PTI's calls for an early election.

8. It was against this background that on the evening of 19 May 2022 the PML-N held a rally in Sargodha, Pakistan (the Event). The main speakers at the Event were Maryam Nawaz Sharif followed by Hamza Shahbaz, the then Chief Minister of the Punjab. The claim is concerned with what was said by Ms Sharif. She is the daughter of former prime minister, Nawaz Sharif, and niece of prime minister Shehbaz Sharif. Though banned at the time from holding political office, Ms Sharif is said to have been the Vice-President of the PML-N. She was a very popular figure in her party and was apparently considered to be a potential future prime minister.

9. In an address lasting about half an hour Ms Sharif first outlined the achievements of her father Nawaz Sharif as prime minister, and then engaged in a wide-ranging attack on the integrity, abilities and conduct of Imran Khan. She accused Mr Khan of being incompetent, destroying the economy, and allowing terrorism to re-surface, of ruining her father's work, and of unjustly criticising what Shahbaz Sharif had achieved in his four weeks as Prime Minister. In the closing part of her speech, Ms Sharif turned to accusing Mr Khan of unfair criticism of those who disagreed with him. The words of which Mr Iqbal complains as a libel were spoken in this part of the speech. The following is an agreed translation into English of the passage complained of:

> "And, finally, listen to me, I'm just about to end my speech, this tribulation, also abuses the media which made him Imran Khan, the media which showed empty seats in the Jalsa day and night, this media which gave him one-sided coverage. Today, except for one media channel named ARY. Except for one

> media channel, he has gone after all of the media channels, calls them traitors, calls them agents, calls them sell-outs, do you know why he doesn't say anything to ARY? Just listen!
>
> ARY, who is attacking state institutions in collaboration with him [Khan]. ARY who is abusing state institutions from their anchor's tweets. They and Imran Khan are like this [showing both her fingers side by side]. Do you know why? Because Imran Khan's close friend, the owner of ARY Salman Iqbal, a gold smuggler, Imran Khan gave him the benefit of Rs 40 billion. Imran Khan waived his 10 to 12 billion rupees of taxes. Imran Khan gave him 4 billion rupees World Call without any due process. They are protecting each other because they are equal partners in the theft."

10. The Event was covered on GEO News by way of live broadcast between 5 and 6pm UK time (9-10pm in Pakistan) and hourly bulletins thereafter which featured spoken summaries from a news anchor and written "ticker" summaries on screen. The live coverage included the passage I have set out above, which was broadcast at about 5.45pm. That passage, or part of it, or spoken and/or written summaries of what Ms Sharif had said in that part of her address, appeared in eleven news bulletins broadcast thereafter at around 8pm, 9pm (two), 10pm and 11pm on 19 May 2022 and at midnight, 1am, 2am, 3am, 4am and 5am on 20 May 2022. Other media organisations, including ARY, also covered the Event.

11. Mr Iqbal complained to OFCOM about the broadcasts made by Geo. In response, Geo offered to broadcast his response to what Ms Sharif had said. That offer was not taken up. Mr Iqbal's solicitors sent a letter of claim to Geo. In response Geo asserted that it had a defence of publication on matter of public interest pursuant to section 4 of the Defamation Act 2013 (section 4). Geo repeated its offer of a right of reply, which was not taken up. In September 2022 Mr Iqbal issued and served these proceedings for libel. As a result, the OFCOM complaint fell away.

The High Court proceedings

12. The Particulars of Claim complain of the broadcast by Geo in England and Wales of the live section and the eleven subsequent news bulletins I have mentioned. Each of the publications complained of is alleged to mean that Mr Iqbal:

> "(a) illegally smuggles gold: and
>
> (b) participated in a corrupt relationship with Imran Khan while Mr Khan was Prime Minister of Pakistan, which resulted in the Claimant, in return for his political support through ARY for Mr Khan's efforts to undermine the Pakistani state, dishonestly gaining enormous financial advantages which he would not otherwise have properly and lawfully obtained, including illicit gifts and tax rebates of 10s of billions of Rupees, and to acquire World Call, a company worth 4 billion Rupees, at a complete undervalue without any due process, thereby stealing massive funds from the Pakistani state."

13. Geo filed an acknowledgment of service indicating an intention to defend the claim. In correspondence its solicitors asserted that, in addition to the section 4 defence mentioned earlier, Geo had a complete defence under section 15 of the 1996 Act (section 15) on the basis that the broadcasts were fair and accurate reports of proceedings at "a press conference" within paragraph 11A of Schedule 1 to the Act and/or a "public meeting" within paragraph 12, published without malice. Geo issued an application for summary judgment pursuant to CPR 24.2, maintaining that for these reasons Mr Iqbal's claim had no real prospect of success and that there was no other compelling reason for the case to go to trial. In support of the application Geo filed five witness statements, two from its solicitor and three from executives of Geo and other Jang Group companies. In reply, Mr Iqbal filed witness statements from his solicitor and the head of news at ARY News in Pakistan. Mr Iqbal did not make a witness statement himself.

14. Geo's application came before HHJ Lewis sitting as a Judge of the High Court (the judge). Geo did not press its case on the section 4 defence but maintained its contention that section 15 provided a complete and irrefutable answer to the claim. The judge did not consider it obvious that the Event qualified as a "press conference" for the purposes of paragraph 11A of Schedule 1. But he held that Mr Iqbal had no realistic prospect of resisting Geo's case that the Event was a "public meeting" within the meaning of paragraph 12, that each of the broadcasts was a "report" of "proceedings at" such a meeting, and that each report was "fair and accurate". Accordingly, the requirements of section 15(1) and paragraph 12 were plainly met. There was no suggestion that section 15(2) posed any obstacle to Geo's defence. Nothing was said about section 15(4). The judge concluded, however, that he should not enter summary judgment because Mr Iqbal had a realistic prospect of success at trial on two issues, namely whether the broadcasts complained of satisfied the requirements of section 15(3), and whether they were published maliciously. For those reasons, Geo's application was dismissed.

Issues on the appeal

15. Geo appeals on the grounds that the judge was wrong to find that Mr Iqbal had a realistic prospect of success on either the section 15(3) issue or the issue of malice and was accordingly wrong to dismiss the summary judgment application. Geo maintains that the judge failed properly to analyse section 15(3) and that the evidence makes clear that on a proper interpretation its requirements are met. Geo further contends that the judge's approach to the issue of malice was wrong in law and perverse on the facts.

16. By a respondent's notice Mr Iqbal maintains that the judge was right to refuse the summary judgment application. His overarching submission is that the case is inherently unsuitable for summary resolution, and that the judge should have so held. Further and alternatively, it is said that whilst the judge was right to find that the two issues he identified were unsuitable for summary resolution in favour of Geo, he should have gone further. He should have held that the same was true of the questions of whether the Event was a public meeting within paragraph 12, whether the live broadcasts was a "report" of "proceedings" for that purpose, and whether any of the

bulletins were fair and accurate. The contention is that the judge should have held that Mr Iqbal had at least a realistic prospect of success on each of these issues.

17. The main issues on the appeal can thus be categorised as follows:

(1) Does the nature of the case make it inherently unsuitable for summary judgment?

(2) If not, are the following issues apt for summary determination in respect of any of the broadcasts?

(a) whether it falls within the section 15(1) privilege;

(b) whether it is excluded from protection by s 15(3); and

(c) whether it was malicious;

and if so, should summary judgment have been entered?

Legal context

18. Qualified privilege is a creature of the common law. The law has long recognised that there are occasions on which a person should, as a matter of public interest, be free to communicate in defamatory terms without fear of incurring liability, provided they do so without malice. A defendant who proves that the statement complained of was made on such an occasion will be immune from liability unless the claimant proves that the statement was malicious.

19. Many of the occasions that attract qualified privilege at common law are those on which the law recognises that the publisher and publishee have common or corresponding duties or legitimate interests in the subject-matter of the communication. The common law has also long recognised that the public interest in free communication of information about proceedings in public in Parliament and in the law courts requires a qualified privilege for those reporting those proceedings fairly and accurately.

20. In *Purcell v Sowler* (1877) 2 CPD 215 the court was urged to extend this class of common law privilege to a report of a public meeting of the Poor Law guardians. The Court of Appeal recognised a public interest in the subject-matter, namely the administration of the Poor Law, but declined to extend the protection of qualified privilege to a report of an allegation that the medical officer had been guilty of misconduct, when the guardians were not obliged to meet in public and the allegation was made "ex parte" in the officer's absence. Parliament responded by enacting section 2 of the Newspaper Libel and Registration Act 1881, which is recognisable as the ancestor of section 15 and Schedule 1 paragraph 12 of the 1996 Act.

21. Section 2 of the 1881 Act provided that "any report published in any newspaper of the proceedings of a public meeting shall be privileged, if" certain conditions were met. These were that the "meeting was lawfully convened for a lawful purpose and open to the public"; that the report was "fair and accurate and published without malice"; and that "the publication of the matter complained of was for the public benefit". There was then a proviso making the defence unavailable to a defendant who was shown to

have refused to insert in the newspaper "a reasonable letter or statement of explanation or contradiction" by or on behalf of the plaintiff.

22. Seven years later, this provision was repealed and replaced by section 4 of the Law of Libel Amendment Act 1888. This contained similar provisions, in a slightly different structure and language, with some modifications. The opening words provided, so far as relevant, that "a fair and accurate report published in any newspaper of the proceedings of a public meeting ... shall be privileged, unless it shall be proved that such report or publication was published or made maliciously". The section went on to set out three provisos. The first of these, which was new, was that nothing in the section should authorise the publication of "any blasphemous or indecent matter". The second proviso replicated the "explanation or contradiction" provision of the 1881 Act. The third proviso replicated the "public benefit" condition in the 1881 Act but went further. It stated that nothing in section 4 should be "deemed or construed ... to protect the publication of any matter not of public concern and the publication of which is not for the public benefit". These provisions are recognisable as the predecessors of section 15(3) of the 1996 Act. The same proviso stated that section 4 should not be deemed or construed "to limit or abridge any privilege now by law existing", that being the origin of section 15(4) of the 1996 Act. The final sentence of section 4 contained a definition of "public meeting" for the purposes of the section which was in materially the same terms as now appear in paragraph 12(2) of Schedule 1.

23. The Defamation Act 1952 repealed and replaced section 4 of the 1888 Act. Section 7(1) of the 1952 Act provided that "subject to the provisions of this section" the publication in a newspaper of "any such report or matter as is mentioned in the Schedule shall be privileged unless the publication is proved to be made with malice." Paragraph 9 of the Schedule mentioned "A fair and accurate report of the proceedings at any public meeting held in the United Kingdom". Public meeting was defined in identical terms to those of the 1888 Act. Section 7(2) of the 1952 Act contained the familiar provision for the defence to be lost on failure to publish a reasonable letter or statement by way of explanation or contradiction. That provision only applied in an action for libel in respect of "a report or matter mentioned in Part II of the Schedule". Paragraph 9 was in Part II. Section 7(3) re-enacted the provisos as to public concern and public benefit, and added that the section should not be construed as protecting "the publication of any matter the publication of which is prohibited by law". The exclusion of blasphemous or indecent matter was not retained. Section 7(4) contained a saving provision for privileges subsisting before the commencement of the Act.

24. The 1952 Act did not, except for one section, extend to Northern Ireland, but it was followed in Northern Ireland by the Defamation Act 1955 which was in terms materially identical to those of the 1952 Act.

25. The Defamation Act 1996 repealed section 7 and the Schedule to the 1952 Act and replaced them with the provisions of section 15 and Schedule 1. Section 15 significantly extended the scope of the statutory privilege. It now applies to "any" report or statement within Schedule 1 rather than just newspaper reports as before. Otherwise, section 15 was substantially identical to its immediate predecessor, albeit structurally modified: see paragraph [2] above. Paragraph 12 of Schedule 1 to the 1996 Act re-enacted paragraph 9 of the Schedule to the 1952 Act with one relevant

change of substance: the privilege was extended to reports of public meetings held "in a member state" of the EU.

26. The Defamation Act 2013 extended still further the territorial scope of the meetings in respect of which the reporting privilege could be claimed. It amended paragraph 12 by repealing the words "in a member state" and substituting the words "anywhere in the world". The 2013 Act also amended section 15(3) and paragraph 12 by substituting the term "public interest" for "public concern" where those words appeared. This seems to have been done for the purposes of modernisation and consistency with section 4 (to which I return at [68] below). There is no reason to believe that it was intended to make a change of substance.

27. This review shows that a statutory privilege for reports of public meetings has been in place for 143 years. Yet it has been very rarely litigated. Only three decisions have been cited to us: *Kelly v O'Malley* (1889) 6 Times L R 62, 64-65, a first instance case about section 4 of the Act of 1888, *Khan v Ahmed* [1957] 2 QB 149, a first instance decision about s 7 and paragraph 9 of the Schedule to the 1952 Act, and *McCartan Turkington Breen v Times Newspapers Ltd* [2001] 2 AC 277, a House of Lords decision about the corresponding provisions of the 1955 Act.

28. There are relatively few other decisions about the statutory reporting privilege that is now found in section 15 of the 1996 Act. Six have been cited on this appeal: *Boston v Bagshaw* [1966] 1 WLR 1126 and *Tsikata v Newspaper Publishing plc* [1997] 1 All ER 655, both being Court of Appeal decisions concerned with section 7 of the 1952 Act; and *Crossley v Newsquest (Midlands South) Ltd* [2008] EWHC 3054 (QB) (Eady J), *Qadir v Associated Newspapers Limited* [2012] EWHC 2606 (QB), [2013] EMLR 15 (Tugendhat J), *Ismail v News Group Newspapers Ltd* [2012] EWHC 3056 (QB) (Eady J) and *Harcombe v Associated Newspapers Ltd* [2024] EWHC 1523 (KB) (Nicklin J), all of which are first instance decisions on section 15.

Inherently unsuitable for summary judgment?

29. It is commonplace for the court to be asked to strike out a defamation claim or enter summary judgment for the defendant on the basis that the publication complained of took place on an occasion of qualified privilege and the claimant has no viable case of malice. The court frequently does so. See, for instance, *Meade v Pugh* [2004] EWHC 408 (QB) (Tugendhat J), *Seray-Wurie v Charity Commission* [2008] EWHC 870 (QB) (Eady J), *Ismail* (above), *Alsaifi v Amunwa* [2017] EWHC 1443 (QB), [2017] 4 WLR 172 and *Alsaifi v Trinity Mirror plc* [2017] EWHC 1444 (QB) (both decisions of mine) and, more recently, *Abdulrazaq v Ul Hassan* [2021] EWHC 3252 (QB) (Jay J) and *Kostakopolou v University of Warwick* [2021] EWHC 3454 (QB) [77]-[[84] (Sir Andrew Nicol). Examples could be multiplied.

30. This is, in principle, a salutary process. 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.

31. Applications of this kind may be made after service of a Defence and there may also be a Reply, or a draft. That was the position in *Meade v Pugh* and in *Abdulrazaq.* But sometimes, as in the present case, the argument is conducted entirely by reference to evidence contained in witness statements and their exhibits. There is nothing inherently problematic about this. An application to strike out or for summary judgment can be made at any time. The court must of course be careful to ensure that it conducts the process fairly, without overstepping the bounds of the summary jurisdiction. But summary determination of the kind at issue here is generally made easier by the fact that the law as to the availability of qualified privilege and what is required to sustain a plea of malice is, for the most part, well-established, and the factual allegations are not often unduly complex. In each of the *Alsaifi* cases I have mentioned, and in *Kostakopolou*, the court felt able to reach final conclusions in favour of the defendant on the papers, and without the need for formal statements of case beyond the Particulars of Claim.

32. That is not to say that this will always be so. On behalf of Mr Iqbal, Mr Barnes KC has pointed to *Tsikata* and *Qadir* as cases in which the parties' contentions were fully pleaded and the court conducted a trial before reaching a conclusion on the issues of privilege and, in *Qadir,* malice. Plainly, there may be cases in which summary determination is not appropriate.

33. The principles by which the court should be guided when deciding which side of the line a case falls are uncontroversial. The classic exposition is that of Lewison J (as he then was) in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) [15(i) to (vii)]. The judge cited this in full at paragraph [29] of his judgment. Mr Barnes accepts that the judge correctly directed himself as to the principles he should apply. He submits however that in reaching his conclusions on the application of paragraph 12 of Schedule 1 he failed properly to apply those principles.

34. The complaint is that the judge engaged in a "mini-trial" (contrary to *Easyair* [15(iv)]) of issues which were not "short points of law or construction" on which all the necessary evidence was before the court (*Easyair* [15(vii)]). The judge is said to have conducted an evaluative process which ignored or disregarded some of the evidence, and to have picked a way through it to an unjustified conclusion. For summary judgment purposes, it is argued, the judge should have noted that there was no evidence from anyone who attended the Event; he should have taken at face value the evidence filed on Mr Iqbal's behalf, which was not inherently incredible. It is also submitted that the fair resolution of the issues was impeded by the fact that in the absence of a pleading from Geo the judge and Mr Iqbal were to some extent working in the dark.

35. This last point lacks substance. A Defence would have said little if anything more than was set out in the evidence and argument for Geo. Mr Iqbal cannot reasonably complain that he or the judge were left in doubt about the nature of the defence case. The statutory requirements relied on were identified, evidence was filed, and the defence argument was set out in writing. The claimant had ample time and opportunity to address all of this and to formulate his case on malice.

36. As for the "mini-trial" objection, it is stated in broad terms. This ground of appeal cannot be resolved at such a high level of abstraction. Some aspects of the language used in paragraph 12 of Schedule 1 have not received judicial attention before, but

that may be because the wording has been considered clear enough. It is certainly not inherently complex, obscure or uncertain. It is far from self-evident that a trial is required to resolve any issue of statutory interpretation. As for the evidence, what is required is a focused examination of the way the judge addressed the individual issues in the case.

The statutory privilege

The overall approach

37. The first question that arises on this aspect of the appeal is what general approach the court should take to the construction and application of section 15 and Schedule 1.

38. The judge began with the question of whether the broadcasts satisfied the requirements of section 15(1) and Schedule 1. Having concluded that they did, he moved on to consider section 15(3) and the issue of malice. That approach was not controversial until the hearing before us at which it has been challenged on behalf of Mr Iqbal. Mr Barnes submits that the right approach is to start with consideration of section 15(3): this contains overarching threshold requirements and only if the court is satisfied that those twin requirements are met should it move on to consider whether section 15(1) is satisfied.

39. This approach would not only be unconventional, it would also be inconsistent with the structure and language of section 15 and the legislative history. From the start, the statutory privilege has taken the basic structure of common law qualified privilege as its starting point, adding a series of further qualifications. The statutory provisions have always begun by stating that a privilege shall attach to some specified kind(s) of publication before setting out a series of qualifying conditions, introduced by the terms "if", "provided that", "unless", "subject to" or (in the current version) "subject as follows". It is well-established that legislative provisions of this kind should be treated as setting out a general principle subject to exceptions. That was plainly the intention here. I would endorse and adopt as broadly accurate this passage from paragraph 52 of the Explanatory Notes to the 2013 Act:

> "Section 15 of and Schedule 1 to the 1996 Act … provide for qualified privilege to apply to various types of report or statement, provided the report or statement is fair and accurate, on a matter of public concern, and that publication is for the public benefit and made without malice."

40. This being so, I can see no basis for an approach that starts in the middle of section 15. As Dingemans LJ pointed out in argument, one might just as well begin at the end of the section with the question of whether the publication was contrary to law. Such a topsy turvy approach would clearly be unjustified. The right approach is the one adopted by the judge. The court should start by considering s 15(1) and Schedule 1 and then, if the case is found to fall within those provisions, address such of the exceptions or qualifications listed in subsections (2) to (4) as call for consideration in the case before the court. If privilege is upheld the court should move to the question of malice. That is how I shall address the issues for the purposes of this appeal.

Section 15(1) and Schedule 1 paragraph 12

41. The judge reviewed the evidence about the Event in paragraphs [7] to [14] of his judgment. Paragraphs [15] to [25] set out details of Geo's broadcast coverage. At [28]-[33] the judge set out the principles governing summary judgment and the relevant provisions of the 1996 Act. At [34] he identified five issues for decision which he then addressed in turn. The first three related to the application of section 15(1) and Schedule 1. I have not been persuaded that the judge's conclusions on any of those issues can be faulted.

(a) A "public meeting"?

42. The first issue identified by the judge was (so far as relevant to the appeal) whether the Event was a "public meeting" as defined in the statute. At paragraphs [37]-[42] the judge addressed that issue. At [38]-[39] he summarised the parties' contentions upon it and their differing positions as to its suitability for summary resolution. At [40]-[41], he directed himself on the law by reference to *McCartan*, citing in its entirety a passage from the speech of Lord Bingham (at pages 291-292 of the report). At paragraph [42] the judge said he was satisfied that the Event was a public meeting for the purposes of paragraph 12 of Schedule 1 to the 1996 Act and did not think Mr Iqbal had a realistic prospect of demonstrating otherwise. He gave six reasons for that conclusion.

> "a. This was an important political rally, attracting coverage from the main news broadcasters, including the claimant's news network.
>
> b. It was a genuine public meeting held in the run up to political elections and was very clearly about the perceived political failings of Imran Khan, discussing matters of some importance. The rally would also have been held to gather support for the party, which again is a legitimate purpose for a public meeting within a democracy.
>
> c. The address was given by a senior figure within a major political party. Whilst at the time she was banned from holding elected office, she was not prohibited from campaigning and it was a lawful meeting.
>
> d. The event was organised in advance – whilst the date might have been changed at the last minute, it was clearly a planned event in that arrangements had to be made to remove stadium seating. The fact that tens of thousands of people in attendance also suggests a degree of planning.
>
> e. There was nothing private about the event: in theory anyone could attend, although I acknowledge that it is more likely that only party supporters would have been present.
>
> f. There was no need for the event to be balanced, with speakers of more than one political viewpoint. There was also no need for the meeting to be conducted with decorum – political debate can often be highly charged and

> confrontational, but this does not in itself remove a public meeting from the protection of the statute."

43. For Mr Iqbal it is submitted that the judge's reasoning was incomplete, as it failed to engage with some aspects of the statutory wording, and that his approach to the points he did address was not properly grounded in authority, insufficiently reasoned, and lacking in any evidential foundation sufficient to justify summary determination of the point. The onus of proof lay on Geo. On the basis of the evidence and argument before him the judge should have found that the Event was not a public meeting as defined in paragraph 12(2) or alternatively that the point required proper consideration at trial.

44. In support of these points Mr Barnes has submitted that the passage from *McCartan* on which the judge relied was principally concerned with whether the event at issue in that case was a press conference rather than a public meeting. He has argued that the judge ignored or disregarded the evidence filed on behalf of Mr Iqbal or unjustifiably preferred the evidence filed by Geo, which was flawed and inadequate. Mr Barnes has presented us with a detailed critique of each of the judge's six reasons for finding in favour of Geo. He has submitted, among other things, that the Event was not "an important political rally ... discussing matters of some importance"; that it involved no "discussion" but, so far as relevant, "nothing more than [Ms Sharif's] monologue interspersed with various incitements" to the crowd. Mr Barnes also criticises the judge for suggesting that it is a "public meeting" that attracts protection when in truth the privilege attaches only to reporting of such a meeting.

45. I see no error in the judge's approach to the substantive law. The passage from *McCartan* on which he relied was not concerned with the notion of a press conference. It set out five reasons for Lord Bingham's "clear opinion that ... [this] was a public meeting within the meaning of section 7 and paragraph 9". The first and second reasons emphasised that in "a modern, developed society" free media reporting of the discussions and decisions that shape the public life of society is essential to ensure that individuals can participate in that life by being "alerted to and informed about matters which call or may call for consideration and action". Lord Bingham went on to deal specifically with the scope and nature of the statutory privilege for reports of public meetings:

> "3. The effect of the legislation of 1955 was to grant qualified privilege to newspaper reports of public meetings, subject to the stringent conditions just noted. This grant (as in 1881, 1888 and 1952) must have been intended to enable citizens to participate in the public life of their society, even if only indirectly, in an informed and intelligent way. Since very few people could personally witness any proceedings or attend any meeting in question, it was intended to put others, by reading newspaper reports, in a comparable position. .....
>
> 4. Although the 1955 reference to "public meeting" derives from 1888, it must be interpreted in a manner which gives effect to the intention of the legislature in the social and other conditions which obtain today. ... … "public", a familiar term, must be given its ordinary meaning. A meeting is public if

> those who organise it or arrange it open it to the public or, by issuing a general invitation to the press, manifest an intention or desire that the proceedings of the meeting should be communicated to a wider public. Press representatives may be regarded either as members of the public ... or as the eyes and ears of the public to whom they report. A meeting is private if it is not open to members of the public and if it is not intended that the proceedings of a meeting should be communicated to the public, unless perhaps by the body which holds the meeting. The closing words of paragraph 9 are intended to make clear that a meeting is not to be regarded as other than public because admission is not open to all members of the public but is subject to some restriction. ..."

The judge was clearly correct to regard these authoritative observations as applicable to the issue before him.

46. Many of the remaining arguments for Mr Iqbal are unconvincing quibbles about language. That is true of Mr Barnes' submission that the Event was not "an important political rally" as the judge held, but "a membership event" to "garner support" for the PML-N. This sets up a false dichotomy, whilst failing squarely to confront the statutory questions of whether the Event was "public" to discuss or further matters of "public interest". The submission that the judge failed to address the statutory requirements that the meeting be "bona fide and lawfully held for a lawful purpose" is also artificial. Although the judge did not use all those words, he did expressly find that the meeting was "lawful"; and the substance of each of the other requirements was sufficiently addressed by paragraphs [42(a) to (c)] of the judgment, where the judge held that the meeting was "genuine" and its purposes "legitimate". The contention that the Event was not or may not have been "lawful" because (on the evidence for Mr Iqbal) other such rallies had involved violence is not sustainable. The requirement is that the meeting be "lawfully held". Incidental violence would not be capable of showing otherwise.

47. The submission that the Event did not in fact involve "discussion" is ill-conceived as well as impossibly narrow. The privilege does not depend on what actually happened but on the purpose for which the meeting is "held". Nor would I accept that a "discussion" for these purposes must entail some form of debate or conversation; a person can discuss a matter by talking or writing about it for an audience (see the report of *Khan v Ahmed* at 150). In any event, the term "discussion" is expansively defined by paragraph 12(2) to mean "the *furtherance or* discussion" of a matter of public interest (my emphasis). These points were properly reflected in the judge's reasoning at [42(b), (d) and (e)]. The criticism of the judge's reasoning at [42(f)] is purely semantic.

48. I do not agree that the judge overstepped the bounds of the summary judgment jurisdiction. He was entitled to find that the Event was plainly a "public" meeting by the standards identified in *McCartan,* and to reach the other conclusions I have set out. He had viewed recordings of the Event and read the evidence filed on behalf of Geo. This included the statement of Mr Chagtai of Geo, which was based on contemporary press reports and information provided by a named colleague with first-hand knowledge of the activities. In his paragraphs [10], [12] and [14], the judge had

already made findings based on this evidence that the Event was held at a time when political campaigning was underway for regional elections in Punjab; it was publicised well in advance by means of a flyer describing it (and other similar events) as a "jalsa", which is a public meeting; it was held in a football stadium (the evidence was that tens of thousands attended); there were invitations to the press to attend and they did attend and report on the Event; Ms Sharif's speech was covered by all the major news broadcasters in Pakistan, including Mr Iqbal's own ARY News; and ARY as well as GEO also covered other such rallies, as well as addresses given by Mr Khan. Mr Chagtai's evidence also supported the judge's findings that the jalsa was genuine and lawful. The judge's findings did not involve ignoring or disregarding relevant evidence filed on behalf of Mr Iqbal. On a proper analysis much of this was irrelevant for the reasons I have given. Nor was there any evidence of any unlawful violence at the Event.

(b) A "report"?

49. The issue relates to the live broadcast only. There has never been any dispute that each of the later bulletins amounted to a "report" within the meaning of the statute. Mr Iqbal maintains, however, that the live broadcast was not, indeed could not qualify as, a "report" within the meaning of the statute. The argument was and is that this presents "a conceptual and temporal impossibility" and that it would be a corruption of the statutory language to treat a live broadcast as a "report" of proceedings. In support of that contention, reliance is placed on a passage in the judgment of Ward LJ in *Tsikata* at 669G, where he said that "it is a report if it is an account of or a resume of the proceedings." Also relied on is a passage in Duncan & Neill on Defamation 5th ed, paragraph 17.27 which cites those words and states that "in order to constitute a report, the matter must appear to have the character of a report on the proceedings, by way of attribution or apparent reference or connection to them." The judge was satisfied that these arguments had no real prospect of success. I agree.

50. Each of the passages relied on has been taken out of its proper context. Neither lends support to the argument for Mr Iqbal.

51. In the passage cited from *Tsikata*, Ward LJ was not attempting an exhaustive definition of the word "report". He was addressing a contention that the words complained of in that case, which referred to an official inquiry report, could not amount to a "report" for the purposes of the statute because of (among other things) their brevity, and the intermingling of those words with other matter. Ward LJ held that the words did qualify as a report despite these matters as they involved narration and it was clear enough to the reader what did and did not amount to reporting. It is obvious that the live broadcast in the present case met both these conditions.

52. Equally, the aim of the passage in Duncan & Neill was to emphasise the well-established principle that it is not enough for the relevant proceedings to be a source, or even the source, of the reported information; it must be made apparent to the reader, listener or viewer that the published content is a report of those proceedings. The decision cited for that proposition is that of Eady J at paragraph [39] of *Shakil-Ur-Rahman v ARY Network Ltd* [2016] EWHC 3110 (QB), [2017] 4 WLR 22 where the judge rejected ARY's claim to a section 15 reporting privilege on the basis that the programme complained of "made no mention of the proceedings and therefore could not be regarded as a report for this purpose". Here, the position is the reverse.

The viewer of the live coverage could have been in no doubt that they were seeing a live unedited version of what was going on at the "jalsa".

53. Nor is there anything in the statutory language, the legislative context, or other authority that could justify the restrictive approach advocated on behalf of Mr Iqbal. A report of an event is an account of it, a statement that conveys information about what happened. A live broadcast falls within this meaning. There is no conceptual or temporal difficulty. The judge cited Lord Bingham's observation (above) that the purpose of the statutory privilege is to put consumers of media reports in the same position as those who can personally witness the proceedings. This reflects a point about reporting privileges that was firmly established at common law long before the 1881 Act. In *Purcell v Sowler,* Mellish LJ said that a report of proceedings in a court of law had "always been held privileged, because all Her Majesty's subjects have a right to be present, and there would, therefore, be nothing wrong in putting the rest of the public in the position of those who were actually present": see p220. Mellish LJ went on to say that the privilege had been properly extended to the publication of debates in Parliament "as they stand on the same principle."

54. A footnote to paragraph 17-008 of Gatley on Libel and Slander (13th edition) states, in connection with the common law privilege for reports of Parliamentary proceedings, that "it has always been assumed that broadcast reports (whether live or recorded) were covered by the common law privilege and they would clearly also fall within the 1996 Act". That is surely sound and must apply equally to reports of the kind we are considering here. Viewing a live broadcast is one of the best approximations to the experience of being present at an event. The approach for which Mr Iqbal contends would lead to paradoxical results. A summary, resumé, or even an abbreviated "sketch" of what took place can still amount to a fair and accurate report even if it contains minor errors, is given a "tabloid tweak", or is to some degree impressionistic: see, for instance, *Ismail* [14], Ward LJ in *Tsikata* (above), and *Alsaifi v Amunwa* [63]. If the argument for Mr Iqbal were accepted, a full, unedited, and entirely accurate transcript or recording of proceedings would be unprotected. We should not attribute to Parliament an intention to bring about such absurdity.

55. I would also reject the further point made by Mr Barnes in oral argument, that to treat the privilege to extending to a live report would deprive the malice qualification of any meaningful function. It may be that malice would only very rarely have a role in such a case. But, if so, the reason would be that a third party broadcaster of a live event is not likely to have a malicious state of mind. A claimant can hardly complain that he is unable to prove malice because the defendant was not malicious.

(c) A "fair and accurate" report of "proceedings"?

56. Three relevant criteria emerge from the language of paragraph 12: to qualify for protection the statement complained of must be a report "of proceedings at" a public meeting, the report must be "accurate", and it must be "fair". The judge found that all these criteria were met and that Mr Iqbal had no real prospect of showing otherwise. Having considered authority on the meaning and effect of the fairness and accuracy requirements he held at [54] that:-

> "The broadcast reports gave a fair summary of what Ms Sharif said about the claimant (and ARY). Many of the summaries

> included actual footage of what was said, and all of them included a summary that was materially accurate."

57. Mr Iqbal does not challenge these conclusions. His argument is that they are not enough to justify a finding that the statutory criteria are established to the summary judgment standard. The submission is that the first essential step is to define "the proceedings being reported upon"; only then can the court assess whether the report is fair and accurate. It is said that the judge never defined what the proceedings were, referring variously to "the rally", Ms Sharif's address, or her address and further coverage of the rally, and (in the passage just quoted) "what Ms Sharif said about the claimant (and ARY)." This failure to define the proceedings is said to undermine the judge's legal conclusions.

58. The argument is unsustainable. A defendant relying on this privilege is not required to show that the publication complained of is a fair and accurate report "of *the* proceedings" as a whole. That is not what paragraph 12 says or means. The first criterion is that the matter of which complaint is made was a report of "proceedings *at*" the meeting in question; the question is whether the reported matter is something that formed part of the meeting process. If so, the second and third criteria fall for consideration. For these purposes, the fairness and accuracy of a report are to be judged by reference to the impact on the reputation of the claimant. The court is not concerned with whether there may have been inaccuracy or unfairness in relation to anyone or anything else. If the report gives an account, summary, or precis of those aspects of the relevant proceedings that relate to the claimant or have a bearing on the claimant's reputation, and the report is substantially accurate and fair so far as the claimant is concerned, it will qualify for protection. All of this is clear law. See in particular the decision of the Court of Appeal in *Cook v Alexander* [1974] 2 QB 279 to which the judge referred.

59. There is some authority to suggest that, in an extreme case, an entirely irrelevant defamatory outburst might not qualify as part of the "proceedings" for this purpose, although the better view seems to be that the word should be given a liberal interpretation: see Gatley para 14-046. It is unnecessary to explore the issue here. There is no room for doubt that the broadcast statements of which Mr Iqbal complains in this case were reports of "proceedings at" the Event. Ms Sharif's speech was not some extraneous and irrelevant intrusion. It appears to have been the main focus of the Event. It was on any view a central part of it and consistent with its aims and purposes. As for fairness and accuracy, the evidence is that the passages complained of by Mr Iqbal contain everything Ms Sharif said about him on this occasion. The live broadcast reported it all, verbatim. The judge's conclusion that these statements were reported fairly and accurately in the later bulletins is not challenged. Mr Iqbal has never identified any other relevant part of the proceedings. Nor have any grounds been put forward for believing or even suspecting that there was or might be anything about any other part of the proceedings at the Event that could have neutralised, mitigated or had any other bearing on the reputational impact of the statements that were reported.

Section 15(3)

60. The judge framed the fourth issue for decision in these terms: "Was the publication of the words complained of of public interest and for the public benefit". At [57]-[58] he

cited a statement by Lord Bingham in *McCartan* that section 15(3) provides claimants with a "very considerable measure of protection" from the harm that might be caused by publication of defamatory statements in a fair and accurate report. He further directed himself that "[t]he need for the words to be 'of public interest' and for the 'public' benefit are cumulative requirements"; and that "whether a report has been published on a matter of public interest and for the public benefit" are questions of fact to be decided objectively. For these propositions he cited *Qadir.* At [59] to [60] the judge cited a section of *Qadir* in which Tugendhat J held that "the effect of s 15(3) is to give the court trying a defamation action the power and duty to consider a balancing exercise on the particular facts of the case … similar to the one which has now become familiar under the HRA" and referred to Lord Steyn's elucidation of that balancing exercise in *In Re S (A Child)* [2005] 1 AC 593 [17]. At [61] to [68] the judge cited passages from *Crossley*, *Tsikata* and *Alsaifi v Trinity Mirror plc.* At [69]-[72] he summarised the evidence and submissions of the parties on the application of section 15(3). At [73]-[84] he discussed the issues at some length before setting out his conclusions at [80]-[84]. He said that it was not "readily apparent that s 15(3) has been satisfied", and that "both parties have a realistic case on the issue". The judge gave two reasons for these conclusions.

61. The first reason related to "the status of the information being reported", as to which the judge said this:

> "81. ... I acknowledge that within Pakistan, Ms Sharif is clearly an important political figure. As already noted, both parties acknowledge that political rallies in Pakistan can be highly charged affairs in which politicians make serious allegations and attacks on their opponents. At this rally, Ms Sharif used expressive and extreme language, accusing Mr Khan of significant criminality, a lack of integrity and incompetence. She spoke of the claimant's relationship with Mr Khan in equally extreme terms, raising allegations that were clearly highly contentious.
>
> 82. In ***Tsikata*** (supra) significant weight was placed on fact that the report was of a judicial inquiry, undertaken by a High Court judge at which witnesses had been cross-examined. In ***Crossley*** (supra), the fact that the report was of proceedings in one of Her Majesty's courts was seen as significant, with a distinction being made in respect of events abroad. Such a distinction may also be relevant here – if this case was about a report of a UK politician speaking at a rally in the UK, the politician would have been bound to comply with UK law, which might be relevant when considering whether broadcast was for public benefit. Ms Sharif was under no such obligation to comply with UK law and it is less clear whether Ms Sharif's address had sufficient status for it to be said to have been in the public interest and for the public benefit for it to be reported to a UK audience. This is a matter properly considered at trial."

62. The judge's second reason related to "the question of what was known, or arguably should have been known, by the defendant". On this issue the judge said the following:

> "83. ... It is important to keep in mind that this is a reporting privilege which allows for the publication of fair and accurate reports of certain events or matters. The publisher of a fair and accurate report does not have to fact-check what is said, or trawl back through cuttings looking for past denials.
>
> 84. In this case the defendant accepts that the allegations made by Ms Sharif against the claimant (and ARY) were not new and had been widely reported. The defendant has not really explained its position clearly, providing short, qualified denials of certain matters, not really explaining properly what was already known about serious allegations being made by Ms Sharif about the claimant. It is to be remembered that the allegations being made were about the owner of a large news outlet, and so it might be said that the defendant's senior staff are likely to have had a degree of awareness of things said about him previously. Again, on the facts of this case, these are not matters that can fairly be determined summarily. ... "

63. Geo advances six criticisms of the judge's reasoning in support of its overall contention that his conclusions were wrong in law alternatively wrong on the facts, and that he should have found in Geo's favour. Geo submits that the judge (a) failed to construe section 15(3) properly or at all; he never sought to identify the meaning of the sub-section or to explain how he approached its application; (b) erred in law by applying too high a test and, in particular, by accepting that section 15(3) requires the court to strike a balance between the competing Convention rights in "all the circumstances" of the case; (c) having rightly identified the test as objective, was wrong to treat Geo's actual, subjective state of knowledge as a material factor; (d) wrongly treated as relevant the objective question of what a reasonable person in the defendant's position would have known; (e) erred in law by treating the "status" of the information as relevant, or alternatively reached an untenable conclusion on the issue; and (f) erred in law by identifying the fact that the meeting took place outside the UK as a material consideration, or alternatively reached an untenable conclusion on that issue.

64. I agree that the judge's approach to the true interpretation and application of section 15(3) was flawed and wrong.

65. I would begin with five straightforward general points about the construction of section 15(3).

(1) First, it must be read in its context within the section as a whole. For the reasons already noted, sub-section (3) arises for consideration if and only if the court has first concluded that subsection (1) applies, in other words that the publication complained of was a report or statement of a kind mentioned in Schedule 1. Each paragraph of Schedule 1 identifies a statement, event, or proceeding that is inherently of some public interest. In the case of proceedings in public in

Parliament or in a court that is obvious. The same is true of other matters listed in Schedule 1, such as "a notice or other matter issued for the information of the public by .... a legislature ..." (paragraph 9). Not every public meeting is held for the purpose of discussing or furthering matters of public interest; but Parliament has so worded paragraph 12 as to ensure that the privilege will only be available for reports of those that are. The starting point, therefore, is that the "matter" under consideration at the section 15(3) stage is contained in a fair and accurate report of a statement in which or an occasion on which matters of public interest have been, or were to be, raised, disseminated, discussed or furthered.

(2) Secondly, and relatedly, section 15(3) operates by way of disapplication of the privilege conferred by section 15(1) and Schedule 1. That is clear from its position within the section as a whole and from its language. The effect of section 15(3) is that the privilege which (by this point) the court has found applicable will not apply if the specified negative conditions are met.

(3) Thirdly, section 15(3) only disapplies the privilege in respect of "matter" that meets the specified conditions. A privileged report will only lose the protection of the privilege conferred by section 15(1) to the extent it contains such "matter".

(4) Fourthly, section 15(3) contains two distinct conditions which call for separate consideration. The privilege is disapplied in respect of matter if it is "not of public interest" *and* its "publication is not for the public benefit". These are different issues, as the language and legislative history shows. The first condition is about the qualities of the "matter" under consideration. The second is concerned with the impact and value of its publication.

(5) Fifth, so far as the first condition is concerned, it follows from what I have said at (1) above that any "matter" contained in a privileged report is inherently likely to be of "public interest". It will be a rare case in which this is not so. It would seem that for matter to fall within paragraph 12 and yet be excluded on this ground, its content would have to lie outside the scope of the public interests that underlie and justify the privilege, and beyond the scope of any other public interest.

66. The judge did not undertake any such analysis, nor did he approach the case on this basis. He treated section 15(3) as raising questions about "the words complained of" as a whole or rather than "matter" within the report. Although he acknowledged that the statutory language raises two questions the judge failed clearly to identify, define, distinguish and address them both. He used various differing terms to identify the issue with which he was dealing. But as is clear from the words I have quoted at [60] above his focus was on whether "publication" of the words complained of would be in the interests of the public or for their benefit. He did not, in substance, consider the first question that arose under section 15(3), namely whether the privileged reports complained of contained "matter" that was "not of public interest".

(a) "matter ... not of public interest"?

67. In my judgment, there can be only one answer to that question: the words complained of were all "matter of public interest" within the meaning of the statute. That is because the question at this stage is about the content and subject-matter of the words in question, or the topic with which they were concerned. The seriousness of the

allegations, the form of expression, the tone in which they were expressed, and matters of that kind are immaterial. The words complained of by Mr Iqbal were a report of allegations made by a senior politician that under a previous administration bribery and corruption had flourished at the highest levels of politics and business. It is plain, and it follows from the judge's findings on the application of paragraph 12, that this was matter of public interest.

68. This approach to the interpretation and application of section 15(3) gives effect to the ordinary meaning of the statutory language. It also gains some support from authority. In *Kelly v O'Malley* Baron Huddleston directed the jury that "if a newspaper chooses to publish defamatory matter about anybody though uttered at a public meeting but which has nothing to do with the objects of the meeting, then it cannot shield itself behind the ... [1881] Act." More importantly, perhaps, this approach is supported by the principle that where the same or similar terms appear in an Act of Parliament the court should give them a consistent interpretation. Section 4 of the 2013 Act affords a privilege for "publication on matter of public interest". That privilege depends on the satisfaction of two distinct conditions. The first is about the statement complained of; it has to be "on a matter of public interest". This requires consideration of the statement itself (see *Doyle v Smith* [2018] EWHC 2935 (QB), [2019] EMLR 15 [64]). The second condition is about the publication of the statement complained of; the defendant has to believe that this was "in the public interest".

69. I regard these conclusions as decisive of the section 15(3) issue. First, the two conditions are cumulative; this is common ground, clear from the legislative language and history, and consistent with *Kelly v O'Malley, Boston v Bagshaw* and *Qadir*. Secondly, each condition is framed as a negative. A sixth straightforward point of construction follows: a privilege that would otherwise exist pursuant to section 15(1) will only be disapplied by virtue of section 15(3) if both the negative conditions specified in that sub-section are met. In other words, the privilege can only be lost in respect of matter that is "not of public interest", and then only if the publication of that matter is "not for the public benefit". So, as the words complained of in this case were all matter of public interest the privilege cannot be lost by virtue of section 15(3). I shall nevertheless consider the second section 15(3) condition as the issue is of wider importance and we have heard full argument upon it.

(b) "matter ... the publication of which is not for the public benefit"?

70. I have concluded that the judge erred on this aspect of the case also.

71. The judge treated it as incumbent on Geo to establish not only (i) that all the requirements of paragraph 12 were met (including that the Event was held lawfully and in good faith for the lawful purpose of discussing or furthering matters of public interest), and (ii) that Ms Sharif's address formed part of the proceedings for that purpose, and (iii) that Geo's reports of what she said were all fair and accurate, but also (iv) that on balance, bearing in mind what was or ought to have been known to Geo and all the other circumstances, the public interest would be served by, or the public would gain benefit from, the reporting of both the "serious" content of the address and the "expressive and extreme" language in which it was delivered. I am satisfied that approach was wrong.

72. I do not go so far as Mr Speker KC, who argues that the question at this stage is simply whether the publication of the contentious "matter", viewed in isolation, is for the public benefit. That would be at odds with the reasoning of this Court in *Tsikata*, adopted in *Qadir*. Both those cases proceeded on the basis that whilst the statutory question relates to the publication of "matter" complained of the answer can, in principle, involve a broader, contextual evaluation. I would not dissent from that general proposition. I leave to one side the question of the burden of proof under s 15(3), which is a matter for another day. I cannot accept, however, that the judge's approach to the "public benefit" question was right. I do not think either of his two reasons for sending this issue to trial afforded relevant and sufficient grounds for doing so.

73. The judge's first reason, namely the status of the information, rests on a misinterpretation of *Tsikata*.

74. The facts of *Tsikata* were that an article published in 1992 reported fairly and accurately that a special inquiry into the kidnap and killing of three Ghanaian High Court judges in 1982 had recommended the prosecution of ten people including the claimant "who was named as the mastermind" of the plot. The article added that unlike others named in the report the claimant had not been prosecuted. The article did not report or refer to the following further facts: the inquiry report had been published in 1983; it was published together with comments of the Attorney-General explaining that he disagreed with the recommendation to prosecute the claimant as it was based exclusively on the word of a co-conspirator, K, who had made inconsistent statements; at K's trial the claimant gave evidence and denied involvement, yet K failed to cross-examine him; and there was evidence that after his conviction and before his execution K had confessed to inventing his allegations. In the claimant's action for libel one question that arose was whether, in these striking circumstances, the contents of the article were "matter of public concern the publication of which was for the public benefit" within s 7(3) of the 1952 Act. The High Court held that they were, and the Court of Appeal unanimously agreed.

75. The three judgments on the appeal contain five references to "status". The first three are in passages of the judgments of Neill and Ward LJJ that addressed a different issue, namely whether the recommendation in the final inquiry report qualified as a "report" of "proceedings in public" within the meaning of paragraph 5 of the Schedule to the 1952 Act. The judge cited one of these passages as if it related to the "public benefit" exception. The only references to status in that connection are to be found in the judgment of Ward LJ. He noted the common law principle that privilege will attach "if it appears that it is to the public interest that a particular report should be privileged" (*Perera v Peiris* [1949] AC 1, 20 (Lord Uthwatt)). Ward LJ then "ventured to suggest" that "the public interest may be measured by the degree of public concern and public benefit". He reviewed those aspects of the matter, noting that the newspaper had "only told half the truth about the matter in issue" but concluded nonetheless that "there is a public benefit in receiving this information. Its source was a judicial inquiry whose status derived from a law passed to empower it … there is benefit in knowing what view the Inquiry had taken of [the claimant]. Their status commands some respect".

76. This reasoning does not form part of the ratio decidendi of *Tsikata* on the "public benefit" issue. That is to be found in the judgment of Neill LJ, with which both the

other members of the court agreed. Neill LJ said that the issue turned on "the basis on which the privilege exists and the surrounding facts". He went on:

> "The law provides that in certain circumstances and in relation to certain types of subject matter a newspaper is entitled to qualified protection if it publishes a fair and accurate report of proceedings in public before a tribunal in a Commonwealth country. A newspaper may not know what happened subsequently nor may the newspaper be in a position to assess the quality or effect of any later denials or refutations."

The emphasis here is on the privileged status which Parliament has conferred on a newspaper report of the specified description.

77. Doubtless, that status is explained by the nature and functions of the underlying proceedings that are the subject of the protected report, and the public interest in knowing about those proceedings. But Neill LJ did not undertake his own assessment of whether the status and essential characteristics of the Ghanaian proceedings were such that fair and accurate reporting of them was "for the public benefit". He was right to refrain from doing so and Ward LJ, with respect, was wrong. That basic exercise had already been undertaken by Parliament via section 7(1) and the Schedule of the 1952 Act which overtook the common law approach identified in *Perera v Peiris*.

78. Numerous foreign acts, events and proceedings were included in the list that could be reported under privilege pursuant to section 7 and the Schedule to the 1952 Act. Parliament thereby enacted a statutory presumption that reporting of the designated kinds would be beneficial to the public in England and Wales. Over time, Parliament has progressively expanded the range of foreign acts that can be reported upon with the protection of statutory privilege and the range of those who can claim the protection of that privilege. Since 2013 the privilege has extended to reports by anyone of proceedings at public meetings anywhere. Parliament must be taken to have legislated in this way in the knowledge that the underlying conduct would be governed by laws, rules and customs that differ from our own. The role of the court cannot be to examine and assess the general characteristics of proceedings that may be reported under privilege, or their legal and cultural contexts. It would be illegitimate for a court to second-guess the legislature on issues of that kind. The court's role must be to consider whether, in respect of some reported "matter", there is some feature of the particular case that serves to rebut the statutory presumption that its publication is beneficial to the public. The comments of Eady J in *Crossley* to which the judge referred on this issue were obiter. To the extent they are at odds with what I have just said I would respectfully disagree.

79. For these reasons it was an error for the judge to treat the status of the Event (including its location), the status of Ms Sharif's address (including the fact that she was not "bound to comply with UK law"), and the status of Ms Sharif herself as matters of relevance to the "public benefit" issue.

80. The judge also erred in having regard for this purpose to the nature and gravity of Ms Sharif's allegations, the language she used to express them, and their "contentious" character. It is not easy to regard these as aspects of "the status of the information".

However that may be, I am unable to see how matters of this kind can be analysed as tending to undermine or defeat the qualified privilege at issue. The purpose of qualified privilege generally is to protect freedom of speech on certain occasions by guaranteeing immunity from suit to those who make or report defamatory allegations without malice. It is axiomatic that a person speaking honestly on political matters is not required to avoid contentious topics or to choose their words carefully in order to retain the benefit of any privilege that would otherwise apply. The judge himself had recognised this at paragraph [42] of his judgment when he observed that "there is no need for the meeting to be conducted with decorum – political debate can often be highly charged and confrontational, but this does not in itself remove a public meeting from the protection of the statute." Here, we are concerned with a privilege for fairly and accurately reporting words spoken on political issues at a public meeting. The reporter's position should if anything be stronger than that of the speaker. I can see no warrant in authority or principle for restricting the reporting privilege by reference to the gravity of the reported allegations, or the other characteristics of the speech to which the judge referred.

81. The judge's second reason for concluding that there should be a trial of the "public benefit" issue was the need to explore what was or should have been known by Geo about the truth of the allegations made by Ms Sharif. The case for Mr Iqbal was that "contradictory facts are in the public domain, and easily ascertainable, if not already known by any professional and conscientious journalist". The judge concluded that this was arguable and that if it was established then, in the light of the passages he cited from *Tsikata, Qadir,* and *Alsaifi v Trinity Mirror,* the court might find that it was "not for the public benefit" to report Ms Sharif's defamatory statements, at least without including such contradictory information.

82. At this point in the analysis we are not concerned with the judge's assessment of the evidential position; the question is whether Geo's state of mind is legally relevant. In my opinion the answer is no, for at least five reasons.

(1) I start, again, with the language of the statutory condition. This is concerned with the "public benefit" of publication. Nobody suggests that the use of the words "was for" brings in questions of motive or intention. Rather, those words highlight the need to view the issue of public benefit at the time of publication and to avoid hindsight. The question is not *why* the "matter" was published but what *effect* its publication was likely to have. In addressing that question, as it seems to me, the publisher's state of mind is logically irrelevant.

(2) Secondly, to consider at this stage whether the publisher knew or should have known the reported statements were untrue would represent a striking departure from the structure of the common law and introduce analytical confusion. In the common law of qualified privilege the publisher's state of mind becomes relevant only if the privilege has been established and the court is considering whether it is defeated by malice. At that stage, actual knowledge of falsity will be relevant and may well be enough to prove malice, as may reckless indifference to the truth; but mere carelessness can never be probative of malice and is irrelevant. The judge's approach would make actual knowledge of falsity relevant at an earlier stage and introduce the otherwise irrelevant consideration of negligence. That would significantly water down the privilege defence. I can see nothing in the statutory language or history to suggest that any of this was intended by Parliament.

(3) Then there is the statutory context. The section 4 defence, which is of general application, expressly requires proof that the publisher reasonably believed that publication was in the public interest. On the judge's approach section 15(3) implicitly requires a parallel but different enquiry into the publisher's state of mind. The statute and the substantive law would both lack coherence.

(4) Fourthly, the judge's approach would be antithetical to the policy that underlies the statutory reporting privileges, namely "the public's entitlement to be informed ... of information within the categories identified by Parliament ... as attracting such privilege": *Lillie v Newcastle City Council* [2002] EWHC 1600 (QB) [1093] (Eady J). In this context the role assigned to the reporter is that of a messenger not a gatekeeper.

(5) Fifth, the judge's approach flowed from a misreading of authority.

83. *Tsikata* does not support the judge's decision in this case. Indeed, the decision and reasoning in *Tsikata* are inconsistent with any general rule that the reporting privilege may be disapplied on proof of contradictory or balancing facts that are reasonably ascertainable. The allegation in *Tsikata* was very serious indeed. The balancing facts were very strong. If those facts were not actually known to the media defendant they plainly could have been discovered without difficulty even in the pre-internet era. For one thing, the inquiry's recommendation and the Attorney General's doubts about it were made public simultaneously. Yet the court held that the statutory privilege was not disapplied. The court reasoned that it would generally be inappropriate to require a newspaper report to include extraneous balancing material as the price of retaining privilege.

84. That is the essence of what Neill LJ said in the passage I have set out at [76] above as the ratio decidendi of the case. The point is underlined by the further observations of the other members of the court. Ward LJ observed that "To require a newspaper so thoroughly to investigate subsequent events and report them in order to place the whole picture before the public in order to exclude damage to individual reputation is to make unacceptable inroads into the press' role as the public watchdog. It transforms investigative journalism from a virtue to a necessity." Thorpe LJ accepted the submission on behalf of the defendant that the authorities showed the newspaper "was entitled to report the accusatory findings of the Special Investigation Board as a distinct outcome and without reference to subsequent or event contemporaneous qualification … Only authoritative refutation has the effect of removing the qualified privilege which otherwise attaches to the report."

85. The judge correctly reflected the thrust of this reasoning in paragraph [83] of his judgment where he said, "The publisher of a fair and accurate report does not need to fact-check what is said, or trawl back through press cuttings looking for past denials". The approach he adopted in later passages of the judgment was at odds with this, however.

86. In *Qadir*, the first article complained of contained a fair and accurate copy of or extract from documents required by law to be open to public inspection within paragraph 5 of Schedule 1: the claim form and Particulars of Claim in a legal action against Mr Qadir in which he was accused of fraud. The issue was whether the privilege presumptively conferred by section 15(1) was lost pursuant to section 15(3)

because the article did not include the extraneous fact that the claim was defended. Tugendhat J held that it was lost for that reason. He noted that, under the rules of court, the statements of case were only available to the public because Mr Qadir had filed an acknowledgment of service disputing the claim. He held that the defendants knew, or could and should have known, that this had happened. On that basis he distinguished *Tsikata*. For the reasons I have explained, this involved a misinterpretation of *Tsikata.* (It is that same misinterpretation that was adopted without argument in the later case of *Alsaifi v Trinity Mirror*, which takes the matter no further.)

87. Tugendhat J went on to hold that the publication of the article was not for the public benefit observing, at [100], that:

> "as a general rule … it will not be for the public benefit to publish any defamatory allegations made in a claim form or particulars of claim available to the public … without at the same time publishing the fact that the defendant has denied, or is disputing, the allegations, as the case may be…"

I regard this passage as containing the essence of the decision on this point in *Qadir*. The reasoning does not turn on what the defendant knew or should have known, as Tugendhat J further indicated at [107]-[108]. The decision in *Qadir* may be defensible on the facts, and in relation to reporting of this specific kind. It cannot, however, be justified on the broader basis that the statutory reporting privilege is lost by a failure to report balancing facts which the defendant could have ascertained by investigation. That would be inconsistent with *Tsikata* and wrong in principle.

88. I would also agree with Mr Speker that the decision in *Qadir* cannot be supported on the still broader basis suggested by Tugendhat J, that section 15(3) requires the court to assess the "public benefit" by conducting an *In re S* exercise that treats the starting point as neutral and strikes a balance that takes account of all the circumstances. Here, the scales do not start in equal positions. Parliament has established a general rule and the court must not usurp its role. The question is whether there is something about the nature and facts of a particular case that swings the scales back to such an extent that the reporting is not for the public benefit.

89. The dissemination of fair, accurate, and thorough reports of what one side has said about the other at a public meeting in the context of a fast-moving electoral or political contest is generally for the public benefit. Strong reasons would be needed to justify a conclusion that in a particular case the public interest required the reporter to engage in some form of censorship or editing of defamatory content, or to include balancing matter, as a condition of the statutory privilege. No tenable case to that effect has been advanced.

90. This was a large event of considerable national and local political importance. Viewers benefited from knowing what Ms Sharif was saying about her political opponents to the many thousands present at the Event. The Event was covered by many other media organisations, including Mr Iqbal's own channel ARY. It would have been an exceptional step for any media organisation to censor or edit what she said; none of them appears to have done so. There was nothing in the circumstances that arguably called for such a step, or the provision of extraneous balancing content.

In the context of this case the relevant circumstances include the fact that what Ms Sharif said about Mr Iqbal cannot be divorced from what she said about Mr Khan, nor indeed could Mr Iqbal have been effectively anonymised; the fact that section 15(2) gave Mr Iqbal a right to seek from Geo the publication of a reasonable statement by way of explanation or contradiction; and his status as a powerful public figure with the ability, no doubt, to reach a public audience via his own media organisation if he so chose. In all the circumstances I can see no basis for concluding that any of the broadcasts complained of was "not for the public benefit" within the meaning of section 15(3).

Malice

91. In the present context malice does not bear its ordinary meaning of spite, ill-will or animosity. So far as common law privilege based on interest and duty is concerned, the classic exposition of malice is that of Lord Diplock in *Horrocks v Lowe* [1975] AC 135, 149-150. The key points are these. Malice consists in abusing the privileged occasion for some dominant improper motive. Proof that the defendant lacked an honest belief in the truth of what was published – that it was published in the knowledge that it was untrue or with reckless indifference to whether it was true or not - will generally be conclusive evidence of such a state of mind. But recklessness is not the same as carelessness, impulsivity or even irrationality. And there are "exceptional cases" where a person may be under a duty to pass on defamatory reports made by another even if he believes them to be untrue.

92. In two first-instance decisions mentioned by the judge, the court has noted that there have been few if any findings of "dominant improper motive" malice, describing it as an "endangered species", and casting doubt on whether the *Horrocks v Lowe* analysis can even apply to reporting privileges: see *Lillie v Newcastle City Council* [1093] (Eady J) and *Huda v Wells* [2017] EWHC 2553 (QB), [2018] EMLR 7 [70-71] (Nicklin J). These were, however, obiter observations and neither case ruled out the possibility that a reporting privilege may be defeated by proof that the publisher knew the underlying statement to be true or was recklessly indifferent to its truth or falsity.

93. The law takes a particularly strict approach to the pleading and proof of allegations of malice, treating them as akin to fraud. The principles have been established for over 150 years and repeatedly reaffirmed. Eady J summarised them in *Seray-Wurie* at [33]-[35]:

> *"*The facts relied on by the claimant, whether in a pleading or in a witness statement, must be capable of giving rise to the probability of malice, as opposed to a mere possibility … in order to survive, allegations of malice must go beyond that which is equivocal or merely neutral. There must be something from which a jury, ultimately, could rationally infer malice … mere assertion will not do. A claimant may not proceed simply in the hope that something will turn up if the defendant chooses to go into the witness box …".

An allegation of malice must be pleaded with "scrupulous care and specificity": *Henderson v The London Borough of Hackney* [2010] EWHC 1651 (QB) [40], also a decision of Eady J.

94. As I have noted, Geo's application was dealt with in the absence of a formal statement of the claimant's case on malice. But that is not an essential part of the process provided the claimant has a fair opportunity to set out his case on malice: see *Kostakopolou* at [77]-[84]. Allegations of malice had been made in the correspondence. Geo's evidence referred to these and rebutted them. Mr Iqbal was professionally represented and had ample time and resources available to respond evidentially and to formulate his case in advance of the hearing. For that purpose he relied on evidence from his solicitor, Mr Kakkad, and Mr Yousaf, ARY's Head of News. There was, as the judge noted at [73], "a clear dispute" about the extent to which Geo "knew, or should have known, that Ms Sharif's allegations about Mr Iqbal were disputed and/or untrue".

95. Mr Iqbal's overall position was summarised by the judge as follows:

> "87. The claimant's current case on malice is said to be inferential based upon the facts currently known, namely the facts of the broadcasts, their seriously defamatory nature and their knowable falsity. It is said that the defendant:
>
> a. misused any privileged occasion with its dominant improper purpose or motive being to damage the claimant's reputation by its broadcasts;
>
> b. knew when it broadcast its allegations that they were untrue or was recklessly indifferent to the truth of the allegations;
>
> c. failed to exercise conscientious, responsible and reasonable journalistic endeavour which would have uncovered the falsity of the allegations;
>
> d. unnecessarily, gratuitously and opportunistically repeated the allegations;
>
> e. failed to comply with all relevant journalistic and broadcasting norms, nor take any steps to verify or check the allegations before broadcasting them. It failed to include claimant's side of the story and failed to adopt a balanced or measured tone;
>
> f. could not have held a belief that publication in the public interest was reasonable.
>
> 88. The claimant says that he also relies upon the animus between the defendant and the claimant, including previous litigation."

96. Geo submitted to the judge that Mr Iqbal's case fell short of the legal standards I have mentioned. It said that Mr Iqbal had also failed to satisfy the requirement that a libel claimant alleging malice against a corporation must identify at least one individual with the relevant state of mind (*Broadway Approvals v Odhams Press Ltd* [1965] 1 WLR 805, 813). It was said to be doubtful that "dominant improper motive" can sustain a plea of malice in a case of reporting privilege. Even if it could, it was said that no proper foundation had been laid for such a case.

97. The judge directed himself as to the law and prac tice in terms consistent with the summary at [94]-[96] above. He acknowledged that proof of malice was difficult and said it was "not immediately apparent on what basis some of the matters identified in 87 would be applicable in this case" and that "many of the points made by Mr Munden [Counsel for Geo] … are good ones." The judge concluded, however, that it was not appropriate to determine the malice issue on a summary judgment application:

> "93. The court will, however, need to consider what the defendant knew, or should have known, in respect of the allegations made by Ms Sharif about the claimant, when considering the test in 15(3). As noted above, the defendant has not said much about these issues in its evidence, and it has said even less in evidence in response to the suggestion of malice. In this case there is a degree of overlap as between matters relevant to s.15(3) and any case on malice (when pleaded), and so they should be considered at the same time."

98. I agree with the judge that many of Geo's objections were plainly sound. There is evidence of historic animosity between Geo and ARY and their respective principals. The *Rahman v ARY* case I have mentioned attests to that, but there is more. It is, however, clear law that none of this can support a plea of malice. Simply stated, the fact that someone dislikes or even hates another person does not make it probable that anything they say about them is malicious in any sense recognised by defamation law. Nor do any of the propositions identified in the judge's [87(c), (d), (e) or (f)] disclose a reasonable basis for alleging malice. These are at best allegations of careless or irresponsible journalism. None of them is capable of establishing a probability of malice.

99. That leaves Mr Iqbal's headline allegations, namely (a) dominant improper motive and (b) knowing or reckless untruth. Since the judgment under appeal Nicklin J has held that proof of a dominant improper motive is incapable in law of defeating a reporting privilege: see *Harcombe* (paragraph [28] above) at [352]-[379]. It is unnecessary to decide that question. Nicklin J acknowledged (at [378]) and it is not in dispute that proof of knowing or reckless falsity may suffice. On the facts of this case, and in the light of what I have said at [98] above, that is the only way in which Mr Iqbal could make good his allegation of dominant improper motive. No other tenable basis for such an allegation has been put forward. So the decisive issue is whether Mr Iqbal has a real prospect of establishing that Geo reported Ms Sharif's allegations in the knowledge that they were false, or with reckless indifference to their truth.

100. In relation to the live broadcast, he plainly has no such prospect, for the reasons given by Mr Speker. There is no evidence, nor even a suggestion, that Geo knew in advance what Ms Sharif was going to say about Mr Iqbal. To this extent the judge was plainly wrong to find a triable issue on malice. Although that has not been formally conceded on the appeal it has not been disputed. The focus of the argument has been on the bulletins.

101. Geo has three criticisms of the judge's approach. The first is that he said the issue of malice overlapped with the question of what Geo "should have known" which, in the

judge's view, would arise under section 15(3). I do not think that this reflects a legally mistaken approach to malice. It is another purely semantic point. I am satisfied that the judge, who is very experienced in this field, had firmly in mind the well-known principle that negligence cannot amount to malice. I read what he said as reflecting the obvious point that evidence about what Geo actually knew was liable to overlap with evidence about what it should have known.

102. Geo's second criticism is that the judge failed correctly to apply the principles of pleading and proof which he had identified: he wrongly proceeded on the basis that Mr Iqbal's "current case" on malice had not yet been fully answered by Geo and might become stronger. I agree. There are two problems here. First, Geo having filed evidence in support of its case on this point the onus lay on Mr Iqbal to adduce a sufficient case of malice for summary judgment purposes. If Mr Iqbal's case fell short, it could not be made good by the absence of a comprehensive answer from Geo. Secondly, a possibility that things might change is not enough. It is true, as Mr Barnes has pointed out, that any court considering a summary judgment application must take account not only of the evidence before the court but also any evidence that can reasonably be expected to be available at trial: *Easyair* [15(v)]. But a party relying on this principle is not entitled to invite the court to speculate. He must serve evidence to substantiate his claim that there is a reasonable prospect of further supportive evidence becoming available: *Korea National Insurance Corp v Allianz Global Corporate & Specialty AG* [2007] EWCA Civ 1066, [2007] 2 CLC 748. There was nothing of this kind here.

103. The third criticism of the judge's approach is that he was plainly wrong on the evidence. Again, I agree. What has to be identified at this stage is some factual proposition which, on the evidence before the court, Mr Iqbal has a realistic prospect of making good at a trial and which, if proved, would establish a probability that someone for whose conduct Geo is responsible participated in the broadcast of Ms Sharif's allegations with knowledge of or reckless disregard for their falsity. The judge did not identify any such factual proposition. Nor have I been persuaded that there is one.

104. Mr Iqbal's skeleton argument for this appeal did not specify any factual case of this kind. It merely referred to the points listed in the judgment below. The more detailed oral submissions of Mr Barnes focused on three specific aspects of Ms Sharif's speech: the allegations of gold smuggling, tax waivers, and corrupt acquisition of WorldCall. Mr Barnes relied on the witness statement and exhibits of Mr Yousaf as evidence that his client had a realistic prospect of establishing as a matter of fact that each such allegation was "fake news", "long-discredited", and "known to be untrue". One immediate difficulty with this approach is that the relevant section of the witness statement refers to what Geo "must – or should – have known" concerning Ms Sharif's claims, and to what anyone in Geo's position "would have known – or should have known". As Mr Speker pointed out, once it is conceded that Geo may not have had actual knowledge, the claimant's case is equally consistent with mere negligence which is not enough.

105. This is not just a point about language. The proposed case of malice also lacks substance. As to gold smuggling, Mr Yousaf's evidence is that these are "historic allegations (going back more than 20 years) based on no credible evidence whatsoever, in respect of which both ARY and [Mr Iqbal] had issued public denials

on multiple occasions." The details provided to support these broad assertions do not, in my opinion, come close to demonstrating a real prospect of establishing that someone at Geo had a dishonest state of mind about these matters. The details mainly relate to companies in the ARY group rather than Mr Iqbal personally and consist of denials rather than independent findings. The most recent details relate to a judgment given by Hong Kong High Court (Reyes J) in 2008 in a libel action brought by ARY Traders, ARY Digital and Abdul Razzak Yaqoob against Asia Times Online Ltd and another. The libels, published in April 2006, contained allegations of involvement in money laundering terrorist financing and drug trafficking. The judge rejected a defence of responsible journalism ("*Reynolds"* privilege). Mr Iqbal was not a party but gave evidence and he is briefly referred to in the judgment. Having read the judgment carefully, I cannot regard it as capable of proving that Geo was malicious when broadcasting Ms Sharif's speech in May 2022. The judge himself was understandably unclear as to why this decision was considered relevant.

106. In relation to the allegation of corrupt tax waivers, the evidence is that these "are also nothing new". Mr Yousaf refers to some specific tax proceedings involving ARY Communications in which that company was ultimately successful in 2021. It seems to me fanciful to present this as a sufficient platform for a case of malice against Geo in respect of what Ms Sharif said. As to WorldCall, Mr Iqbal's case is that the company plainly was not "given away" by Mr Khan as stated by Ms Sharif; the deal did not go through in the end, and "ARY's withdrawal from the deal was widely publicised". But the meaning attributed to Ms Sharif's words is that Mr Iqbal "participated in a corrupt relationship with Mr Khan …. *to acquire* WorldCall …" (emphasis added). The facts relied on cannot make it probable that Geo knew that to be false or was reckless as to its truth or falsity. Further, Mr Barnes acknowledged that he could not presently identify any individual as having the knowledge alleged. He said Mr Iqbal's legal team would need to see how Geo came to broadcast the offending material before they could do so. That falls into the category of hoping something will turn up.

Conclusions

107. For these reasons I would set aside the judge's order and enter summary judgment for Geo on the entirety of the claim.

LORD JUSTICE DINGEMANS :

108. I agree.

LORD JUSTICE UNDERHILL :

109. I also agree.