



Neutral Citation Number: [2024] EWHC 146 (KB)

Case No: QB-2021-001248

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29/01/2024

**Before :**

**THE HONOURABLE MRS JUSTICE COLLINS RICE**

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Between :

**(1) SIMON BLAKE**

**(2) COLIN SEYMOUR**

- and -

**LAURENCE FOX**

**Defendant/Counterclaimant**

- and -

**NICOLA THORP**

**Defendant to Counterclaim**

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**Miss Lorna Skinner KC & Ms Beth Grossman (instructed by Patron Law) for the**  
**Claimants & Defendant to Counterclaim**  
**Mr Patrick Green KC, Ms Alexandra Marzec & Mr Greg Callus (instructed by Gateley**  
**Legal) for the Defendant/Counterclaimant**

Hearing dates: 22<sup>nd</sup> November -1<sup>st</sup> December 2023

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**Approved Judgment**

This judgment was handed down remotely at 3pm on Monday 29<sup>th</sup> January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**THE HONOURABLE MRS JUSTICE COLLINS RICE**

**Mrs Justice Collins Rice :**

**Introduction**

1. This case arises out of some brief exchanges in October 2020 on the social media platform known at the relevant time as Twitter. Mr Fox called for a boycott of Sainsbury’s supermarket over an employee diversity and inclusion policy. Mr Blake, Mr Seymour and Ms Thorp, severally, responded by calling Mr Fox a racist. He called each of them a paedophile. Two sets of reciprocal libel claims ensue.
2. All of the parties to this litigation have a national profile.

*Mr Laurence Fox*

3. Mr Fox was born into a well-known British theatre dynasty. He set out as a young man in that line of work, graduating from RADA in 2001 and embarking on an acting career. He is perhaps still best known for his role as DS Hathaway in the popular ITV detective drama series *Lewis* (a spin-off from the original Oxford-located *Inspector Morse* series), which ran from 2006 to 2015. His most recent significant TV work, *White Lines*, was released on Netflix in 2020; he considers it the high point of his acting career.
4. His life took a new direction in 2020. He told *The Times* the previous year he had become politically ‘radicalised’ against ‘woke culture’ and ‘political correctness’ by watching YouTube videos. He began to see what he described to me as a crisis of free speech in the UK: a stifling of open debate about important national issues – including, but not limited to, immigration and racism – by a dominant ‘orthodoxy’ of discourse which was itself profoundly illiberal, divisive, negative and corrosive of the UK’s flourishing as a successful and authentically inclusive democracy. He identified an ideological substructure in this orthodoxy which he considered fundamentally Marxist. He viewed it as having penetrated, and damaged, much of our national infrastructure, including politics, academia, the police and the mainstream media.
5. By the autumn of 2020, Mr Fox was ready to give public organisational expression to his vision of this pernicious orthodoxy and how it could be exposed, challenged and ultimately replaced. Together with former Conservative Party and Brexit campaign funder Mr Jeremy Hosking, he launched a new political party – Reclaim – of which he was, and remains, leader. (Mr Andrew Bridgen until recently sat as a Reclaim MP in Westminster, after losing the Conservative whip in early 2023.) Reclaim now has a hundred thousand registered supporters, and Mr Fox himself is a seasoned political campaigner. He stood as the Reclaim candidate in the 2021 London mayoral election. He also stood in the Uxbridge and South Ruislip by-election in June 2023 (the seat vacated by the resignation of Mr Boris Johnson); he received 2.3% of the vote and finished fourth, ahead of the Liberal Democrats.
6. Mr Fox has also released two music albums on his own record label and, until recently, he presented a regular Friday night slot on *GB News*.

*Mr Simon Blake*

7. Mr Blake was awarded an OBE in 2011 for services to the voluntary sector and young people, recognising what is now a 30-year career in the social sector, mostly with and for children and teenagers, and with a particular emphasis on their sexual health and education. Since 2018, he has been CEO of Mental Health First Aid (MHFA) England, a social enterprise supporting education, positive attitudes and action around mental health issues.
8. He told me '*I have a proven track record of championing equity and inclusion, tackling stigmatised issues and creating platforms for people's voices to be heard*'. This has expressed itself in a range of non-executive roles in the health and education sectors. From 2015 to 2021 Mr Blake was a trustee and deputy chair of Stonewall, the UK's leading LGBTQ+ charitable organisation.

*Mr Colin Seymour*

9. Mr Seymour was born and grew up in Canada but moved to London in his early twenties, and now holds both Canadian and British passports. He has been a professional drag and circus-skills artist (stage name 'Crystal') since 2014. He came to national prominence in the UK in 2019, as a contestant in the first season of the BBC's popular *RuPaul's Drag Race UK*, and since then has appeared as Crystal on TV in the UK and Canada, and in cabaret, festivals and other live events. Some of his drag performance work is distinctively intended for family-friendly audiences.
10. He hosts and presents a podcast *The Things That Made Me Queer*, is a regular columnist in the *Metro*, and guests and commentates in the media on issues such as drag, creativity, performance, sexuality and gender. He told me also about his profile as an advocate, fundraiser and activist for gay issues and racial equality.

*Ms Nicola Thorp*

11. Ms Thorp grew up in Blackpool, and graduated in drama from ArtsEd in London in 2010. She set out on an acting career, and is probably best known as such for appearing in ITV's *Coronation Street* as Nicola Rubinstein between 2017 and 2019.
12. She first made national headlines in 2016 over a petition campaign she started when she was sacked from a temporary receptionist job for refusing to wear high heels in accordance with her agency's policy. She took the campaign to Parliament (appearing before a select committee) and the media (memorably clashing with Mr Piers Morgan on *Good Morning Britain*). Her agency changed its policy.
13. The experience led to her leaving acting behind for the opportunities of a new career as a current affairs broadcaster, TV presenter and guest, and columnist for *Metro Online* on issues such as women's rights, social justice, equality and discrimination. Since October 2023, she has been co-hosting the breakfast show *Talk Today* on Talk TV.

**Factual Background**

- (i) **The year 2020 in the UK**

14. The events with which this case is concerned occurred in the autumn of 2020. The year had begun momentarily in the UK with its exit from the EU. From the outset, however, 2020 was dominated by the outbreak and development of the covid-19 pandemic, the national response to it, and its transformational impact on life in the UK. Covid-19, indeed, dominated global affairs throughout the year.
15. One unrelated global event of 2020, the consequences of which feature prominently in this case, was the death of Mr George Floyd on 25<sup>th</sup> May. Mr Floyd was an African-American, killed by a white US police officer who, while arresting him, knelt on his neck for 9½ minutes and prevented him breathing. The officer was later tried and convicted of Mr Floyd's murder. The murder was videoed; the video was widely viewed, and caused international shock and outrage. Mass demonstrations and protests ensued, with widespread criticism alleging systemic or 'institutional' US police racism.
16. These events gave a powerful impetus to the 'Black Lives Matter' movement that summer. 'BLM' as a slogan (originally a hashtag) gained global currency in 2013 in the aftermath of the murder of African-American teenager Trayvon Martin. It is a term which has been used, or claimed, by a number of specific organisations, some of whose reputational fortunes have waxed and waned over time. But in the UK in mid-2020, and as part of the reaction to Mr Floyd's murder, it was widely understood as a broader signifier for anti-racist sensibility in general, for vocal and active protest against 'institutional racism' in particular, and for positivity and action to promote institutional and cultural inclusivity. It had its sceptics and critics, then and (perhaps increasingly) since, but BLM at the time was a widely-heard expression in UK public life; and commitment to what were understood, or assumed, by many to be its values of inclusivity, fairness and justice was widely and expressly espoused in UK public and corporate culture.

**(ii) Mr Fox's national profile in 2020**

17. The story for present purposes, and as the parties variously tell it, begins on 16<sup>th</sup> January 2020, when Mr Fox appeared as a panellist on the BBC's late evening current affairs show *Question Time*, hosted by Ms Fiona Bruce. An audience member asked a question about the Duke and Duchess of Sussex 'making a profit' from their royal status. Ms Bruce turned to Mr Fox first. He expressed some sympathy for the young couple's predicament, but felt '*there is a little bit of having cake and eating it which I don't enjoy*'. There was support for that from the audience. Ms Bruce turned to another audience member, a young woman of colour, who observed that the press had, in the case of the Duchess, '*torn her to pieces*', and continued, '*and let's be really clear about what this is – let's call it by its name – it's racism*'.
18. There followed something of a heated, raised-voice, altercation between Mr Fox and the audience member. Mr Fox insisted it was not racism: the UK was the most tolerant, lovely country in Europe. '*It is so easy to throw the term 'racism' at everybody and it is really starting to get boring.*' The audience member retorted that he was a white privileged male with no relevant experience. At this, Mr Fox rolled his eyes, sank his face into his arms, and responded with some vehemence, '*I can't help what I am. I was born like this, it is an immutable characteristic, and so to call me a white privileged male is to be racist. You are being racist.*' There was vocal audience engagement with both speakers. Ms Bruce moved firmly on, pausing only to observe that Ms Priti Patel,

then Home Secretary, had also been of the view that the Sussexes' treatment had not been racist, and that she herself was not expressing a view either way.

19. The altercation provoked hundreds of complaints to OFCOM, and achieved considerable national media prominence at the time, with some strong views expressed, both ways, on the question of racism and of Mr Fox's conduct towards the audience member. He also experienced a substantial volume of immediate commentary on his social media platforms, including, so he reported, both supportive messages, and hostility up to and including death threats – he described it as '*a tsunami of abuse*'. He told me he continued to stand by every word he had said that evening (although he '*could have been less annoyed*'), and has always said so.
20. His *Question Time* appearance perhaps stands as the first occasion on which Mr Fox's political views, and his challenge to an 'orthodoxy' of contemporary social discourse on racism, came to national attention. It evidently made a lasting impression on Mr Fox himself. Looking back in an interview in *The Daily Telegraph* on 2<sup>nd</sup> October 2020, he said, of his subsequent political project, '*the acorn possibly got put in the ground after the Question Time explosion and then it grew*'. The Reclaim Party homepage itself says this (next to a picture of Mr Fox with a megaphone):

Laurence Fox set up the Reclaim Party in October 2020 after appearing on BBC Question Time in January that year. For challenging the woke orthodoxy of "white privilege" and "systemic racism" he was cancelled from a 22-year acting career.

This experience changed Laurence's life overnight – and now he is dedicating his life to protect others from being prevented from contributing to the national debate.

Laurence not only realised freedom of speech was under grave peril: it became clear our media hates our country and culture, and we've been betrayed by careerist, so called liberal politicians.

**Reclaim your country!**

21. A few days after Mr Fox's *Question Time* appearance, the *Delingpod* podcast put out a long discussion between host Mr James Delingpole and Mr Fox. In the course of it, Mr Fox made some observations about the casting of actor Mr Nabhaan Rizwan as a Sikh soldier in the Oscar nominated First World War film *1917*. As he expanded to me on his original comments, he objects to what he calls a policy of '*forced diversity*' in casting, which he sees as widespread in the acting industry and politically motivated, where it produces 'distraction' or 'diversion' from the suspension of disbelief and the delivery of narrative which is any actor's core output. At the time, he considered the casting of Mr Rizwan to have been an example of this, and said so. He did not know then, but realised soon afterwards, that Sikh Indians, and many others from the former British empire, did see active service in WW1 alongside British soldiers.

22. In an appearance on ITV's *Good Morning Britain* on 22<sup>nd</sup> January 2020, Mr Fox discussed his *Question Time* experience, and was pressed by hosts Piers Morgan and Susanna Reid about his *Delingpod* comments and whether they had not been 'unfortunate'. Mr Fox said, '*As you have noticed, I say quite a lot of unfortunate things. But I think it's really important that one is able to express one's opinion. People should not be terrified to say what we feel.*' He reiterated that he had found the Sikh character 'incongruous'. It might have been less so if he had been part of a whole regiment of Sikh soldiers; however, '*I'm not a historian so I don't know, but it just felt incongruous*'. He was asked if he thought his career could be affected by his recent comments. He said '*we will have to wait and see*', but added '*But does one want to work in a career where you have to have the right opinions? I don't. I don't think art is going to be improved if everyone has exactly the same opinion.*'
23. On 23<sup>rd</sup> January 2020, Mr Fox tweeted out as follows:
- Fellow humans who are #Sikhs
- I am as moved by the sacrifices your relatives made as I am by the loss of all those who die in war, whatever creed or colour.
- Please accept my apology for being clumsy in the way I have expressed myself over this matter in recent days.
- And then, separately, but quote-tweeting: '*I stand by everything else I said and will continue to do so. Sleep well.*'
24. A few weeks later, the actors' union Equity put out a statement denouncing Mr Fox and his political views on racism as a '*disgrace to our industry*'. His remarks on *Question Time* had been criticised by Equity's minority ethnic members' committee. Mr Fox threatened a lawsuit, and obtained a retraction and an apology. The apology, however, was subsequently removed and Equity refused to reinstate it. Mr Fox had already attracted attention in the acting world in January for criticising successful minority-ethnic and working-class actors who disparaged the unfairness of and lack of opportunity in the industry despite their being, as he saw it, living proof to the contrary.
25. Mr Fox's response to BLM sentiment following the murder of George Floyd in May 2020 was publicly sceptical from the outset. He told me his considered view was that BLM was itself a fundamentally racist proposition, and had been promulgated in practice to harmful and divisive effect. In some respects, he attributed that to deliberate ill-will on the part of some towards UK society (he repeatedly dubbed BLM a 'Ponzi scheme'). But more generally, he identified the way it took hold in the public imagination as part of the stifling and pernicious 'orthodoxy' in British cultural life to which he took such exception.
26. He quickly adopted '#AllLivesMatter' as a sign-off on his Twitter account. He objected publicly to a number of BLM-related initiatives, as either vacuous 'virtue signalling' or motivated by racism and a Marxist agenda. These included 'Blackout Tuesday', which encouraged the replacement of social media profile pictures with a solid black square on 2<sup>nd</sup> June 2020 as a prompt to reflect on racism. Mr Fox tweeted '*Instagram seems to be broken*' on the day. The initiative was certainly controversial across the political

spectrum, with a number of BLM and ‘anti-racism’ activists themselves questioning its appropriateness and effectiveness.

27. Mr Fox also objected to ‘taking the knee’ – a gesture of BLM solidarity widely adopted, and particularly prominently so in the sporting world. He told the *Daily Mail* on 6<sup>th</sup> June 2020 that kneeling on one knee (otherwise than in church, before royalty or to propose marriage) had connotations of a master-servant relationship with which he was uncomfortable. He gave the paper an account of how he had become more and more depressed with the state of national discourse since what was described as a ‘*ferocious left-wing Twitter backlash*’ in the aftermath of his *Question Time* appearance. He objected to ‘*fascist*’ and ‘*racist*’ having become terms of casual abuse, and contrasted that with the sacrifices made in the 1930s and 40s to combat real fascism. He said the freedoms won thereby certainly included freedom to take the knee, but he was critical of the police, for example, doing so on duty because it brought their impartiality into question. He also further explained that sportspeople were wrong to take the knee because it was a gesture of victimhood and meekness where a challenging assertiveness was plainly demanded in context (such as the All Blacks’ haka).
28. Mr Fox wrote an article called ‘*The pitfalls of wrongthink*’ published by *The Spectator* on 20<sup>th</sup> June 2020. In it, he said he had come to the conclusion he might never get an acting job again ‘*without expressing ‘correct’ opinions*’. He attributed the genesis of that ‘*rather bleak view*’ to the aftermath of *Question Time* and the view, of the ‘*progressive monoculture*’, that he had been guilty there of berating and bullying a person of colour from a position of white privilege. He then moved on to George Floyd and the reaction to his own ‘*Every single human life is precious. The end.*’ riposte to BLM and the suggestion that this was itself racist.
29. The thesis of the article was that the murder of George Floyd was the latest in a series of inherently and acutely important issues and causes which had become ‘*politicised to the point of meaninglessness*’ and hijacked by cynical actors for the purposes of divisiveness where unity of response should have been of the essence. From there, biased national media had misreported protest and mass-movements so as to minimise their divisiveness, and thereby revitalised, or even encouraged, angry mob tactics. The article finishes with this:

So here I am, a posh white bloke, who loves his job, who has worked hard to be good at it, facing an uncertain future – all for the heinous sin of shaking my fist at the ugly, hypocritical and inconsistent god of progressivism. But unhappily for some (my agent and bank manager mainly) I will continue to say what I believe to be true. I’m not always right and very often wrong, but unless we can accommodate multiple understandings of a situation soon, it will end with us abandoning words and reason, the tools given to us to heal and come together, in favour of the simpler but for more terrifying tools of engagement: fists, knives and guns. It’s already happening, and we should all be concerned by it. We cannot stand by in silence. Words are the answer.
30. Mr Fox continued to speak out accordingly, and his public comments continued to attract media attention. His Twitter followership steadily built through the late summer

and early autumn of 2020. And he continued to divide opinion. (A tweet of 13<sup>th</sup> August 2020 pondering what *‘Lewis Hamilton’s white half’* thought about something was, for example, he explained to me, a reference to the fact that Mr Hamilton was of mixed-raced parentage – so, genetically, 50% black and 50% white – and was in the privileged position of being a hugely successful sportsperson; the comment was intended as a satirical prod at ‘orthodox’ thinking on intersectionality. It was not universally received in that way.)

31. On 27<sup>th</sup> September 2020, it emerged into the public domain that Mr Fox was about to launch the Reclaim Party. In a couple of tweets, Mr Fox referred to a *‘new political movement which promises to make our future a shared endeavour, not a divisive one’*, and confirmed he had received more than £5m in donations for the new party. This was picked up and covered in the national mainstream media. He did not dissent from the proposition that this could be regarded as a ‘soft launch’ of the new party. Mr Fox had by this time accrued something like a quarter of a million Twitter followers.

**(iii) The events of October 2020**

32. October is ‘Black History Month’ in the UK, an annual commemoration with its origins in the USA of a century ago, and which broke through in the UK in the 1980s. In more recent decades it has been widely viewed as a platform for education and celebration of Black history and culture. It is not without its critics as a concept – including some prominent voices in the Black community – who see it as tokenistic and divisive. But it has not generally attracted significant public controversy in the UK in practice.
33. October 2020 was the first Black History Month since the rise to prominence of BLM in UK public life after the murder of George Floyd. On the morning of 1<sup>st</sup> October, Sainsbury’s supermarket tweeted that it was celebrating Black History Month, and provided a link to the relevant section of its website. In the afternoon, Sainsbury’s followed up with a tweet, on a rainbow background, which said this:

We are proud to celebrate Black History Month together with our Black colleagues, customers and communities and we will not tolerate racism.

We proudly represent and serve our diverse society and anyone who does not want to shop with an inclusive retailer is welcome to shop elsewhere.

34. On Sunday 4<sup>th</sup> October, at 10.45am, Mr Fox tweeted out as follows:

Dear @sainsburys

I won’t be shopping in your supermarket ever again whilst you promote racial segregation and discrimination.

I sincerely hope others join me. RT

#BoycottSainsburys

Further reading here



[a link to Sainsbury's website]

[quote-tweet of Sainsbury's rainbow-background tweet of the afternoon of 1<sup>st</sup> October]

35. The link in the tweet could be followed to a section of the Sainsbury's website which included the following:

**What have we been doing to support our colleagues?**

We've relaunched our network that supports ethnically diverse colleagues. I AM ME @ Sainsbury's now has over 2600 members and a very active schedule of events. We run mentoring circles, awareness days, learning sessions and celebrations.

Recently, we provided our black colleagues with a safe space to gather in response to the Black Lives Matter movement.

As part of our commitment to ensure that our black colleagues have a fair and enjoyable experience working at Sainsbury's, we are reviewing and publishing our ethnicity pay gap later this year.

36. The following exchanges ensued on the same day. The underlined tweets are those sued upon in the present proceedings, as the claims and counterclaims were originally set out.

i) *The exchange with Mr Blake*

At 5.11pm, Mr Blake quote-tweeted Mr Fox's tweet under the comment 'What a mess. What a racist twat.'. At 5.29pm, Mr Fox quote-tweeted Mr Blake under the comment 'Pretty rich coming from a paedophile'. At 5.32pm, Mr Blake tweeted a screenshot of that to his followers, under the comment 'Here we go.'. At 5.37pm, he asked Mr Fox '@LozzaFox just checking whether you are mixing me up with someone else or if this is just a standard retort.' At 6.01pm Mr Blake tweeted out 'Seems that Mr Fox may have mixed me up with someone else so for the avoidance of doubt I am 46 from Cornwall and I have lived in Cornwall, Cardiff and London.'

At 7.11pm, Mr Blake quote-tweeted Mr Fox, asking him 'please would you remove this tweet as you know it to be untrue. Thanks.'

ii) *The exchange with Mr Seymour*

At 5.19pm, Mr Seymour, tweeting as Crystal, quote-tweeted Mr Fox's tweet under the comment 'Imagine being this proud of being a racist! So cringe. Total snowflake behaviour.'. At 5.30pm, Mr Fox quote-tweeted Crystal under the comment 'Says the paedophile.' At 6.07, Crystal quote-tweeted that under the comment 'Now adding homophobic, boring and lazy to your list of adjectives. What a sad little life Jane.'

iii) *The exchange with Ms Thorp*

At 4.28pm, Ms Thorp tweeted ‘Which part of this do you actually have a problem with?’ At 4.45pm she followed up with

**Any company giving future employment to Laurence Fox, or providing him with a platform, does so with the complete knowledge that he is unequivocally, publicly and undeniably a racist.**

**And they should probably re-read their own statements of ‘solidarity’ with the black community.**

It appears that Ms Thorp and Mr Fox exchanged a few tweets with a view to a reasoned discussion, Ms Thorp pursuing the question of what part of the Sainsbury’s tweet he considered to be promoting ‘racial segregation and discrimination’. But at 5.51, Mr Fox tweeted

**Hey @nicolathorp**

**Any company giving future employment to Nicola Thorpe or providing her with a platform does so in the complete knowledge that she is unequivocally, publicly and undeniably a paedophile**

The following ensued:

NT: *I thought you wanted a reasoned debate? Happy to continue. LF: I do. Just providing context to our chat.*

NT: *OK cool, I understand. Can you answer my question then?*

LF: *Creating segregated work spaces is inherently racist. Your turn.*

NT: *But they weren’t creating segregated work spaces. They created a safe space for Black employees to be able to talk about trauma resulting from events surrounding BLM. That was separate to the working environment and there if they wanted to use it.*

NT: *@LozzaFox ... you still there?*

LF: *You’re making my point for me.*

NT: *What’s wrong with safe spaces for people who are affected by an issue? Presumably you’d be ok with a safe space for male divorcees struggling with custody laws? Or safe spaces for women who have been assaulted? Or victims of paedophilia?*

NT: *And I’m aware that an employer can’t provide safe spaces for all issues. But racism and the BLM movement were huge news events globally and in the UK and directly called employers to account on race issues.*

NT: *At any rate it looks like @LozzaFox has given up on our debate. Safe spaces aren't segregation. Safe spaces aren't even necessarily physical spaces. They can be WhatsApp groups. And they aren't always strictly limited to one group, but rather people you are safe to talk with.*

37. At 6.24pm that same day, Mr Fox tweeted this out:

Language is powerful. To accuse someone of racism without any evidence whatsoever to back up that accusation is a deep slander. It carries the same stigma and reputation destroying harm as accusing someone of paedophilia. Here endeth the lesson.

38. At some point before 9.30am the following day, Mr Fox had deleted all three of his 'paedophile' tweets, and tweeted the following:

If the game nowadays is to throw baseless insults and accusations about, then we should all be free to participate.

Having said that, I have deleted the tweets posted yesterday, in response to being repeatedly, continuously and falsely smeared as a racist, as they just serve as a distraction to the important work that needs to be done.

39. These exchanges had, however, been widely reported in the national press, and widely commented on in social media. Mr Fox's behaviour was described as 'bizarre' in the *Mail Online*. He was being interviewed by Ms Julia Hartley-Brewer on *Talk TV* that same day, Monday 5<sup>th</sup> October, about the launch of Reclaim, and was asked about the previous day's exchanges. He made the following comments in the course of his reply:

Well I think if one is going to throw around a baseless accusation of racism, which as you say, historically could destroy people's careers, and actually has destroyed people's careers, in many ways, up and down the country, to - to throw around these baseless accusations, I think, well, if you are going to do that, then why not - if that's the game, why not throw around some baseless accusations in return. I happen to think it's probably not the wisest strategy, but you know, I'd had a very long week, and I - I think myself, and others, feel... find it very, very difficult, and hurtful, to be called a racist without any evidence whatsoever, and -

I don't think two wrongs make a right, with - on reflection. I don't think one should play their game, ultimately, I don't think it's - it's the right - if you are trying to adopt a more principled stand, then playing their game is not the wisest move. So, I don't think it was a genius move, myself.

40. Challenged on 13<sup>th</sup> October by Mr Nick Ferrari on LBC radio to explain himself, the exchange went like this:

- NF: Do you regret suggesting that the people who you got into a Twitter fight with were paedophiles?
- LF: I think what was happening was I - having now had several months of being smeared baselessly and without any evidence whatsoever, as a racist, which I have put up with - I thought, I'll just throw another meaningless word back at you if that is the state of discourse we have reached: that words mean nothing, then that word- I could have said anything. I could have called them a lollipop.
- NF: With hindsight, how wise was that action if you are the leader of a political party, that is the sort of stuff of the playground, isn't it?
- LF: Well, Twitter is a bit of a playground in that way, isn't it?
- NF: Why do you engage to that level then?
- LF: Yeah, that is a good question – why do I engage to that level?
- NF: If it's a playground, why, as someone who has benefited from the education that you have, and you know your way with words, why would you choose 'paedophile'? Doesn't that debase your argument to a degree?
- LF: Well, I think the point is a linguistic one. If you are going to make an allegation against someone as serious as racism, which can, essentially, can be a career ending allegation, which, as these people well know. So, my response is to go: what is the most cruel word I can respond to you with? So you can understand what it is like to feel falsely and baselessly accused of something which is extremely serious.

41. Mr Fox tweeted out further on 13<sup>th</sup> October as follows:

To that end, and not because I've been sued (I haven't), or because anyone has put me under any pressure to say something (they haven't), I'd like to apologise for the way I reacted last week in reaction to being constantly (without any evidence whatsoever) labelled a racist.

I adore our beautiful language. Seeing it corrupted by casually tossing horrible insults around in order to maintain a climate of fear to silence different opinions saddens me hugely. I was attempting to make the point that words have meanings that are extremely powerful.

On reflection, I could have done this in a wiser and more effective way. I abhor discrimination in all its forms, just as I take a principled stance against racism. The end.

42. The commencement of these proceedings shortly afterwards was also widely covered by the national media.

## Legal Framework

### (i) The pre-determined preliminary issues

43. The defamation ‘preliminary issues’ in this case were determined on the legal basis, and for the reasons, set out in judgments of Nicklin J (*Blake & Ors v Fox* [2022] EWHC 3542 (KB)) and the Court of Appeal (*Blake & Ors v Fox* [2023] EWCA Civ 1000).
44. The key determinations on the claimants’ claims were as follows:
- i) The ‘single natural and ordinary meaning’ of Mr Fox’s tweets responding to Mr Blake and Mr Seymour (‘*Pretty rich coming from a paedophile*’ and ‘*Says the paedophile*’) was that ‘*each of these Claimants was a paedophile, someone who had a sexual interest in children and who had or was likely to have engaged in sexual acts with or involving children, such acts amounting to serious criminal offences*’. This was an allegation or imputation of fact. The imputation was ‘of defamatory tendency at common law’ – that is, in the meaning determined, it would ‘*substantially affect in an adverse manner the attitude of other people towards a claimant, or have a tendency to do so*’ (*Triplark Ltd v Northwood Hall (Freehold) Ltd* [2019] EWHC 3494 (QB) at [11]).
  - ii) Mr Fox’s tweet responding to Ms Thorp was different. He had quote-tweeted her allegation, and reproduced it simply substituting ‘paedophile’ for ‘racist’. ‘*Mr Fox was not using the word ‘paedophile’ literally, to accuse Ms Thorp of being a paedophile; he was using that word rhetorically as a way of expressing his strong objection to being called a racist. Used in that way it was not defamatory*’ (Court of Appeal judgement at [72]). Ms Thorp had originally claimed in libel against Mr Fox on the basis of his tweet to her, but since it was found not to have any defamatory tendency, no tort could have been committed, and her claim was dismissed on that basis.
45. The key determinations on Mr Fox’s counterclaims were as follows:
- i) The ‘single natural and ordinary meaning’ of each of Mr Blake’s, Mr Seymour’s and Ms Thorp’s tweets about Mr Fox was that ‘*the Defendant was a racist*’. This was in each case an expression of opinion. Each too was of defamatory tendency at common law.
  - ii) Mr Blake and Mr Seymour had quote-tweeted Mr Fox’s tweet calling for a boycott of Sainsburys, and that ‘*would appear to the ordinary reasonable reader to be the basis of a comment that the Defendant was a racist*’ (High Court judgment at [56]).
  - iii) But again, Ms Thorp’s tweet was different. Her tweet ‘*did not indicate whether in general or specific terms the basis of her opinion*’ (High Court judgment at [59]).

### (ii) Serious Harm

46. Section 1(1) of the Defamation Act 2013 provides that, even though it may be ‘of defamatory tendency’ at common law, ‘*a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant*’.
47. The leading authority on this provision is the decision of the Supreme Court in *Lachaux v Independent Print Ltd* [2020] AC 612. Lord Sumption’s judgment makes clear ([12]-[14]) that s.1(1) imposed a threshold test, the application of which is to be determined by reference to the actual facts about the impact of a publication, and not just to the meaning of the words. The statutory term ‘*has caused*’ points to some historic harm, which is shown actually to have occurred; and ‘*is likely to cause*’ points to probable, actual, future harm.
48. The serious harm test is a question of fact, and facts must be established by evidence. Facts and evidence are matters which are entirely case-specific. *Lachaux* itself confirmed that there is no hard and fast rule as to *how* serious harm is to be evidenced.
49. That is partly because of the nature of the harm in question. The ‘harm’ of defamation is the effect of a publication in the mind of a third-party publishee (reader), and thereby on a claimant’s *reputation*, and not any specific action adverse to a claimant the publishee may take as a result. The test does not *require* the demonstration of adverse actions by publishees, although such actions may be powerful evidence of the state of the publishee’s mind. Nor does the test relate to any direct effect of a publication on a claimant reading it themselves, although that may be highly relevant to the question of remedies if liability is established.
50. It is also partly because of simple practical considerations relating to establishing, by evidence, not only any individual publishee’s state of mind in response to reading something, but the effects of a publication on any *mass* readership. In such cases, *Lachaux* confirmed ([21]) that the evidential process may be able to be discharged by establishing, and combining, the meaning of the words, the situation of the claimant, the circumstances of publication and the inherent probabilities. This is sometimes referred to as a ‘*Lachaux* inferential case’, based on the ‘*Lachaux* factors’. But the *Lachaux* decision itself was at pains to emphasise it was *not* setting out any special standalone rule of law; it was illustrating the essential point that serious harm is a matter of fact and evidence. As I, and other judges, have said elsewhere, an inferential case is not an *alternative* to an evidential process; it has to *be* an evidential process.
51. More generally, since *Lachaux*, the serious harm test has been given close attention in a series of High Court and Court of Appeal decisions. This jurisprudence was recently summarised fully and clearly by Nicklin J in *Amersi v Leslie* [2023] EWHC 1368 (KB) at [143]-[163], a passage to which I have addressed myself carefully. I do not need to replicate that passage in full here, since there is no real dispute about the applicable law in this case; it turns largely on its facts. I do, however, note two headline points in particular, for present purposes.
52. First, the jurisprudence has consistently highlighted that section 1(1) is a threshold test, and, in applying it, it is necessary not to lose sight of the basic tort rules of causation (*Amersi* at [157]). The language of causation is prominent in section 1(1). Evidence *contrary* to the imputation of causal responsibility is no less important than evidence tending to favour it (*Miller & Power v Turner* [2023] EWHC 2799 (KB) at [74]). A

balanced and fully contextualised approach is needed to the assessment of what *Lachaux* called the *inherent* probabilities arising out of any factual matrix placed before a court.

53. Second, that factual matrix must itself be clearly established by evidence. Section 1 requires a clear articulation, and an evidential basis, for what difference the publications and imputations complained of made (or were likely in future to make) in real life. Drawing inferences is not a process of speculative guesswork. It is a process whereby a court concludes that the evidence adduced enables a further inference of fact to be drawn (*Amersi* [158]; *Miller & Power* [73]).

**(iii) The pleaded defences**

54. Each of the parties in the present cases argues that no ‘serious harm’ can be attributed to their own tweet(s), and that the section 1(1) test is not passed. The burden lies on the party alleging defamation in each case to establish that the test is passed. If it is not, that is the end of the matter.
55. Each party also pleads, in the alternative, a specific defence. The burden lies on the defending party to establish that defence in each case.
56. Mr Blake and Mr Seymour plead the statutory defence of ‘honest opinion’, set out in section 3 of the Defamation Act as follows (so far as relevant):

**3.- Honest opinion**

(1) It is a defence to an action for defamation for the defendant to show that the following conditions are met.

(2) The first condition is that the statement complained of was a statement of opinion.

(3) The second condition is that the statement complained of indicated, whether in general or specific terms, the basis of the opinion.

(4) The third condition is that an honest person could have held the opinion on the basis of—

(a) any fact which existed at the time the statement complained of was published;

(b) anything asserted to be a fact in a privileged statement published before the statement complained of.

(5) The defence is defeated if the claimant shows that the defendant did not hold the opinion.

57. This defence is *potentially* available, if necessary, to Mr Blake and Mr Seymour because of the ‘preliminary issues’ rulings that their tweeted allegations that Mr Fox

was a racist were statements of opinion, and that their statements indicated the basis of that opinion. Subsections (2) and (3) are therefore confirmed to have been satisfied in their case. The matters in dispute at trial were those set out in subsections (4) and (5) – the former is for Mr Blake and Mr Seymour to establish, and the latter for Mr Fox.

58. Because of the preliminary issues ruling that subsection (3) was *not* satisfied in her case, this defence is not available to Ms Thorp. Instead, she relies, if necessary, on being able to prove that the ‘*imputation conveyed by the statement complained of is substantially true*’ (Defamation Act 2013, section 2). This is a higher hurdle to clear than the section 3 defence. So it is not satisfied by demonstrating that she did (subjectively) hold the opinion that Mr Fox was a racist, and that (objectively) an honest person could have held that opinion on the basis indicated. It requires her to establish that it is substantially, objectively, true that Mr Fox is, in fact, a racist.
59. Mr Fox does not rely on any of the statutory defences to justify imputing paedophilia to Mr Blake and Mr Seymour. He does not seek to maintain that the allegations are ‘substantially true’. Instead, he relies on his tweets attracting ‘qualified privilege’ at common law, specifically on the basis that the occasion on which they were made was a ‘reply to attack’.
60. The jurisprudence on ‘reply to attack’ was summarised fully by Jay J in *Abdulrazaq v Hassan* [2021] EWHC 3252 (QB) at [55]-[59]. The key elements of the defence require a defendant to establish that he has himself been the victim of an attack on his legitimate interests; that his response is fairly warranted in the circumstances; and that the response is proportionate to the original attack, does not go wider and does not include irrelevant statements. ‘Mere retaliation’ is not protected, but a defendant is allowed a substantial degree of latitude in defending himself.
61. A prima facie applicable defence of ‘reply to attack’ qualified privilege will be defeated if the other party can establish ‘malice’. The authorities on this are again summarised in *Abdulrazaq* (at [77]-[87]). It is a high bar to clear: it is equivalent to a test of dishonesty.

## **Analysis**

### **(i) Mr Blake’s and Mr Seymour’s cases on ‘serious harm’**

62. I start with the question of whether the (remaining) claimants have established a sound case, on the evidence provided before and in the course of this trial, that Mr Fox’s tweets caused, or were likely to cause, serious harm to their reputations. Each claim is distinct, and the application of the section 1(1) test to each claimant’s case needs to be considered ultimately on its own particular facts. But they do have a certain amount in common, and that is where I begin.
63. As a preliminary observation on Mr Blake’s and Mr Seymour’s cases, I remind myself that the exercise required by section 1(1) is an exercise in judicial fact-finding, guided by *Lachaux* and based on a combination of looking at the salient features of the publications complained of, considering the inherent probabilities, and evaluating all the relevant evidence. Mr Green KC, Leading Counsel for Mr Fox, mounted a root and branch attack on the claimants’ cases on serious harm: he, and Mr Fox’s wider legal team, took a meticulous and comprehensive approach to analysing the detail of the



relevant pleadings and evidence on this issue, and I have considered each point, and the overall critique, in full and with care. But it is of course neither necessary nor desirable for me to make detailed findings of fact on each and every point raised. I am required in the end to take an overall evaluative view, on the balance of the evidence and the multifactorial probabilities, of the *real-life impact* of the tweets complained of – much, perhaps, as a jury might have been directed to do had Mr Fox’s earlier application for a trial in the historical mode been granted. Unlike a jury, however, I will of course explain and give reasons for my key findings of fact and for my overall conclusions.

64. I also bear in mind that, although a deliberately significant barrier for a claimant to clear, this is a threshold test. It is not an exercise in definitively quantifying harm caused. That exercise comes at the remedies stage, if reached.
65. And finally, I should record at the outset that *all* of the parties to the trial were engaging and memorable witnesses, in their own ways. Under sustained and penetrating cross-examination, each exhibited resilience, acuity, articulacy and on occasion eloquence, and each, in my judgment, spoke from the heart. The burden lies on the claiming party to persuade me on the balance of probabilities of the causation of serious harm. For present purposes then, I start from the position that, in my *general* assessment, Mr Blake and Mr Seymour gave evidence potentially worthy of acceptance, and that any wrinkles, inconsistencies or gaps in their evidence and pleadings are more indicative of the ordinary human processes of recollection and understanding than of anything else. But in the end, of course, it is the *objective* probabilities I have to assess, with the assistance of *all* the evidence.

(a) *Inherent gravity of the allegations*

66. Guided by *Lachaux*, and by the Court of Appeal in *Banks v Cadwalladr* [2023] EWCA Civ 219 at [67], I start by considering the *inherent* gravity of the allegations of paedophilia on their own terms. I remind myself they have been found to be in each case, in their natural and ordinary meaning, an allegation of literal *fact*, and specifically an allegation that each claimant had, or was likely to have, engaged in sexual acts involving children, such acts amounting to serious crimes.
67. It is hard to think, in contemporary Britain, of a more grave allegation than that involving the sexual abuse of children. Notwithstanding – perhaps because of – the shocking or depressing regularity with which new child abuse scandals are regularly brought to light, it remains one of our society’s last universal public taboos, regarded with revulsion even by those with few other claims to being ‘right-thinking’ citizens (prison culture in relation to ‘nonces’ being a well-known example). Predatory celebrity paedophiles (Jimmy Savile, Gary Glitter, Rolf Harris) join multiple murderers as the most repellent of bogeymen in the national consciousness; and at the intersection where the sexual murder of children takes place, we find names (Ian Brady, Myra Hindley) reviled as the epitome of the worst of humankind. To accuse someone of ‘being a terrorist or a paedophile’ was given as an example by Bean J (as he then was) in *Cooke v MGN Ltd* [2015] 1 WLR 895 at [43] of the sort of defamatory allegation where ‘*the likelihood of serious harm is plain, even if the individual’s family and friends know the allegation to be untrue*’. So visceral is society’s rejection of the paedophile that anonymity and police protection are a familiar feature of securing the safety of known convicts on release. The *paediatrician* whose home was attacked by mistaken vigilantes has passed into folk memory.

68. Mr Fox himself described it at the time as the ‘*most cruel*’ allegation he could think of. Its cruelty lies not only in the repugnance with which paedophilia is regarded, but also – at any rate when levelled against a man – in its unique quality of never being instinctively incredible any more. Not only are some formerly beloved entertainers unforgettably shattered idols, but scandals of gross institutional betrayal of trust (for example in schools, children’s homes, caring environments, sport and churches), and the emergence of child abuse from the shadows of family lives more generally, have taught us that it lurks everywhere and is never to be dismissed as impossible. As a society we have lost our innocence on this subject. So this was, *intrinsically* at any rate, an exceptionally grave and cruel allegation.

(b) *Extent of publication*

69. Next, I consider the evidence of extent of publication. I am entirely satisfied this is a ‘mass publication case’, in light of the following circumstances. Mr Fox’s allegations were of an inherently eye-catching, not to say startling, nature. They were also made in the context of the response to his attention-grabbing call to boycott Sainsbury’s. That in turn was made in the context of (a) Mr Fox’s series of high profile and outspoken challenges to the ways he thought cultural ‘orthodoxy’ was suppressing free speech about racism, which had themselves provided regular national talking-points ever since the *Question Time* affair, and (b) the soft launch the previous week of the Reclaim Party with a manifesto to similar effect. All of that made them *inherently* likely to reach a mass audience – directly or by onward dissemination from their original publishees.

70. Mr Fox by this time had a very large Twitter following – something like a quarter of a million (it has since nearly doubled) – which was particularly attentive to his assertive position on racism, whether or not they agreed with it. And as not just a prominent actor but an emerging politician on the national stage he had a megaphone and knew how to use one. All the evidence is that *in fact* the ‘paedophile’ tweets reached a mass audience. They were picked up and discussed in the national print/online and broadcast media, and widely discussed on social media. None of that is in dispute. All of it lifted them out of the ordinary run of Twitter utterances (swiftly read and as swiftly buried in the constant avalanche of new comment).

71. The tweets themselves were deleted within the day. Even apart from the probability, and the evidence I was shown, that they had nevertheless circulated, and continued to circulate, widely, it is improbable that that did much to lessen their reach or impact. The media continued to follow every twist and turn of the story. By way of comparison, a defamatory tweet (of *comparatively* less gravity and prominence) which was deleted after only 2½ hours was accepted to have had a big enough impact to cause probable serious harm in *Monroe v Hopkins* [2017] EWHC 433 QB. Warby J (as he then was) found there that:

It is true that the First Tweet was transient. The Second Tweet less so, although any tweet disappears from the reader’s view as time goes on. But this is a weak point. What matters when considering transience, is not the period of time for which a person is exposed to the message, but the impact the message has. It is a commonplace of experience that live broadcasts can have a powerful impact, even if the viewer sees them once only. Print copies of newspapers are not often read more than once.

To that might be added the further commonplace of experience that the impact of tweets, and their propensity to be retweeted, is often highest in the minutes and hours in which they are freshest in any event.

72. By quote-tweeting Mr Fox's allegations to their own followers, Mr Blake and Mr Seymour no doubt added *something* quantitative to their readership (as they explained it, they were seeking to dampen down the credibility and impact of the allegations, and expecting – and, it appears, eliciting – a sympathetic response from their friends and supporters). Such longer-term persistence as the allegations had must in these circumstances also owe at least *something* to the claimants' own quote-tweets. A claimant cannot complain of reputational harm caused by their own republication of the material they complain of.
73. There was, nevertheless, substantial evidence before me pointing to independent screenshotting and onward dissemination by others. As Warby J noted in *Monroe*, the question is, ultimately, not persistence – and nor is it raw numbers: it is *impact*. And on the facts of the present case, the *national* profile these exchanges acquired was swift, and I am satisfied plainly attributable to Mr Fox's own national profile and the established interest in his utterances, rather than materially to any subsequent actions of the claimants. The tweets were made in the context of what was the latest in Mr Fox's series of high-profile, widely covered and controversial public interventions on the topic of racism. In view of the public narrative arc on this since his *Question Time* appearance, and the near-simultaneous launch of the Reclaim Party, it was inevitable the paedophile allegations would become a national news story in their own right, regardless of anything much done by the claimants. And I am satisfied the evidence is that they did.

(c) *Situation of the claimants*

74. Next, there is the particular situation of these two claimants. Mr Fox's firecracker 'paedophile' tweets may have been indiscriminately lobbed (he said, and I accept, that he had no idea who any of his interlocutors were at the time), but here they landed on highly combustible material, reputationally speaking. Three things about Mr Blake and Mr Seymour stand out in particular.
75. First, they are not only both gay men, but both had a public profile *as such* – Mr Blake in his Stonewall and other diversity roles, and Mr Seymour in the distinctively gay subculture or art-world of drag. Both had actively and publicly spoken out or campaigned on gay issues. They both gave evidence from their own experience, which was not challenged, and which I accept, that one of the oldest, most pernicious and most stubbornly ineradicable falsities or myths of homophobia is that men whose sexuality is orientated to other men thereby exhibit a *general* 'proclivity' *likely* to comprehend a sexual orientation to children. The expression of both orientations was, of course, restricted by the criminal law as well as societal norms in this country until well within living memory. That persistent homophobic trope of equivalence, or at least connection, between being a gay man and being a likely paedophile was the petrol-sodden reputational rag onto which Mr Fox's incendiary tweets landed. Each claimant's response registered it as such at the time.
76. Second, both claimants had, in the course of their respective professions, worked with children in circumstances in which sexual propriety was of the essence, and indeed

reputationally so. Mr Blake had worked extensively with vulnerable children and young people, including in matters relating to their sexual health and wellbeing. Mr Seymour's work as Crystal included, as well as adult cabaret, the popular BBC *Drag Race* context and a range of 'family friendly' entertainments where a measure of judgment, *however contestable*, was required and expected as to what was fair and appropriate for his audience. (The same applies to the traditional British pantomime dame. The *double entendre* which is the premise of such entertainments has to be skilfully executed so that what is understood is entirely dependent on the *pre-existing* knowingness or otherwise of an audience member, young or old.) Mr Blake's social roles and Crystal's celebrity status in the family entertainment world depended in different ways on trust (a fragile commodity, as we have seen) and gave them 'access' to children which could be understood as at least *capable* of being an opportunity for paedophilic gratification, inappropriateness or abuse. These were both roles which are particularly sensitive to relevant safeguarding issues. Mr Blake understandably considered it necessary to report the paedophile allegations to the organisations with which he worked at the time, in the circumstances.

77. And third, remarkably, each claimant shared a name with a convicted child sex offender. An online search for 'Simon Blake paedophile' in October 2020 would have established that a man of that name had been convicted two months previously for offences relating to child pornography. Mr Blake undertook that search at the time: that is why he asked Mr Fox whether he might have got him mixed up with someone else, and why he made clear his own age and geographical background, as being different. And a search for 'Crystal paedophile' would have found press reports that a man convicted in 1999 on four counts of raping a boy under 16, and then convicted in 2011 for breaching an order banning him from having contact with children by working as a gymnastics and dance tutor with children, had been performing in 2018 as a drag artist with the stage name 'Crystal Couture' (the act was said to have included jokes about Jimmy Savile).
78. Finally, there is no suggestion whatever that either claimant had himself previously done or said anything remotely capable of justifiably casting the shadow of paedophilia on himself. Their reputations were pristine. Nor is there evidence for any *other* possible *pre-existing* source for an imputation of paedophilia apart from Mr Fox's tweets, and none has ever been suggested. Indeed Mr Seymour's evidence was particularly emphatic that, notwithstanding that pervasive if unspoken homophobic trope, and the fact that he had certainly in the past been subjected to homophobic bullying, he had never before in his life been the express object of such a slur.

(d) *Inherent probabilities and the balance of the evidence*

79. The evidential features of this case considered so far – inherent gravity, extent of publication and situation of the claimants – are all, on the above analysis, matters which, in combination, are indeed capable of laying the sort of evidential groundwork for an inference of the probable causation of serious reputational harm by the 'paedophile' tweets. But I am assessing real world reputational impact. I need to take a contextualised and balanced approach to both evidence and probability, weighing in the balance any factors tending either to amplify or to limit that impact.
80. At the preliminary issues stages, Mr Fox had argued that his 'paedophile' tweets would not be regarded by the hypothetical ordinary reasonable reader as allegations of fact at

all, but as obviously rhetorical flourishes designed only to underline the equivalent baselessness of the allegations of racism that had been made against him in the first place. Those submissions were rejected in relation to Mr Blake's and Mr Seymour's claims, although they ultimately succeeded in relation to Ms Thorp's, bearing in mind the element of mimicry Mr Fox used there. But in finding that Mr Fox's contended interpretation was not the 'single natural and ordinary meaning', Nicklin J did acknowledge that it was *one* meaning that *some* readers may have taken from his Tweets, albeit an extrapolation from the primary and obvious meaning of the words, capable of being arrived at only after some interpretation ([52]). He also said, looking forward to the determination of the issue of serious harm at trial, that '*if the Defendant can establish that in fact a significant number of readers of his Tweets did understand them simply to be making a rhetorical comment about the baselessness of the Claimants' claims of racism against him, then the Claimants may struggle to demonstrate that they have been caused serious harm to their reputation*'. Evidence, rather than the intrinsic meaning of the words, would of course be necessary to establish that, on his findings.

81. The Court of Appeal expanded on this. As a general principle, it accepted that 'ordinary, reasonable' Twitter audiences were of course capable of undertaking the process of pausing to consider and analyse the tweets, and seeing rhetoric and sarcasm when it presents itself. But Mr Fox's 'paedophile' tweets

...were short and pithy tweets of between three and six words. They followed swiftly after the tweets to which they responded. They do not give the appearance of being carefully considered or crafted. They are straightforward assertions. The one striking word was "paedophile". The reader trying to understand what Mr Fox was getting at was given very little else to work with. The only relevant context (on the judge's findings) was that which would have been apparent to all readers. In substance that was no more than the quote-tweet. On the face of it, the allegation was the one complained of.

That is a serious allegation. It has no apparent connection with the statement quote-tweeted by Mr Fox. That statement was clearly an attack on him. The reader would probably have understood that Mr Fox was seeking to counter the charge that he was a racist. But it by no means follows that it would be obvious to the reader that what he was trying to do was to make the somewhat complex rhetorical point that has now been identified. It is common experience that people accused of wrongdoing sometimes lash out in response by denouncing their accusers, in all seriousness, for some similar or other misconduct. ...

Mr Fox says that he did not intend to allege that any of the claimants was in fact a paedophile. But I do not think he can complain of being misunderstood on these occasions. The constraints of Twitter gave him plenty of room to say more than he did in these tweets. There is a good deal of force in Ms Rogers' submission to us: if Mr Fox had wanted to say "I am no more a

racist than you are a paedophile" he could have done so. ([66]-[70])

82. These observations explain the Courts' conclusion that an ordinary, reasonable reader would understand Mr Fox to be making a literal allegation of fact. But at the point of considering serious harm, the question opens out to whether, on the balance of probabilities, anyone's view of the claimants was harmfully impacted as a result *in real life*. In other words, was harm to the claimants' reputation (probably, *actually*) caused in the minds of the readership, or was the allegations' clear *potential* to do so probably not realised after all?
83. I observe in this connection that, contrary to some of the submissions made to me on this point, it is not necessary for the claimants to establish the probability of readers being immutably convinced of the truth of an allegation. That is not how reputation works. Serious reputational harm can be caused by a change of view some considerable way short of that. It is often the insidious creation of a 'bad odour', together with the difficulty of establishing a negative, that does the most reputational harm. That is particularly apposite to an allegation of paedophilia. But the test does require that people's minds were probably changed because of these tweets, and to a degree meriting the description of serious harm.
84. There is certainly evidence of an adverse reaction to both men on Twitter, with paedophilia being cast back in their faces. It was put to me that, carefully read, many of these abusive responses either (a) indicate that the allegation was not in fact taken literally or seriously, or (b) can largely be dismissed as the utterances of deep-dyed Twitter trolls or homophobes who need little excuse.
85. I am unpersuaded that 'careful' reading is necessarily the right approach to the former category, not least bearing in mind they are a self-limiting sample of those who chose to say anything at all. There is a limit to what can be achieved by the fine parsing of online abuse. The probability – and the evidence as I read it – is that published reactions within the readership (at least from those who did not know the claimants) spanned the full spectrum from credulous to dismissive. That is usual in mass publication cases of any sort. I have not been given sufficient reason, from context or from evidence of reaction, to find *enough* apparent or likely scepticism, as a proportion of the whole readership, to be able to conclude it more probable than not that the seriously harmful potential of these tweets simply failed to be realised.
86. As regards the trolls and homophobes, those are labels that might be attached to the particularly credulous, hostile and/or responsive. But however little excuse *they* needed, it is obvious that Mr Fox provided one and set them an example. Online abuse is at least a possible signifier of serious reputational harm (*Monroe v Hopkins* [72]-[74]). It is certainly capable of poisoning the underground springs of reputation, as the authorities put it, or, to use the commoner metaphor, it generates a volume of smoke suggestive of an underlying fire. I accept the evidence of it here.
87. It is apparent that there was also a quantity of *supportive* tweeting from among Mr Blake's and Mr Seymour's own followers. Their friends and supporters at any rate easily recognised the harmful potential, and offered the kind of support that would be provided to someone in plain and literal, indeed acute, reputational difficulty. In Mr

Blake's case, both MHFA England and Stonewall put out supportive public statements. Stonewall's statement on 6<sup>th</sup> October 2020, from its CEO, said this:

We're proud to stand in solidarity with our Deputy Chair Simon Blake in his case against Laurence Fox. At Stonewall we believe that it's important for white people to challenge racism when we see it, and be staunch allies to people of colour.

Calling gay men 'paedophiles' is a homophobic slur that has a long, dark history of being used to paint us as threats to children and stop us from being treated as equal citizens. Using it to silence a gay man standing up for racial justice just demonstrates how far we have to go before we can say that we live in a society where we are all valued, and can live our lives in safety and dignity.

88. In these quarters at least, the calumny was clearly *not* believed. But this statement is nevertheless a direct recognition of harmful *impact*. The very fact Stonewall thought it necessary and important to offer public support in this way does say something about the probable reputational harm they considered it necessary to counteract. Formal (or indeed informal) statements of support are not naturally occasioned by obviously ludicrous and incredible insults, or by rhetorical wordplay.
89. Mr Green KC put it to me that I should give little weight to the happenstance that each claimant turned out to have a paedophile namesake. In my judgment, a quick online search would have been a reasonably foreseeable response to these eye-catching allegations, *particularly* perhaps if the publishee were inclined to scepticism. I accept that, once the results came up, a few minutes' serious further research would quickly have established that Mr Blake and Crystal were not their child sex offender namesakes. Even brief serious research is not, however, necessarily to be expected in this sort of context. The fact that *any* kind of ostensibly corroborative result might have reached the consciousness of any sufficiently interested publishee is indicative of a degree of probable seriously harmful impact. I do not give this anything like determinative weight, but I cannot leave it entirely out of account.
90. I accept that Mr Fox himself took a number of steps to limit the impact of his allegations. As well as deleting the 'paedophile' tweets, his three tweets of 4<sup>th</sup>, 5<sup>th</sup> and 13<sup>th</sup> October contain a *degree* of stepping back or at least dialling down. They do not in my view merit the description of a 'prompt and prominent apology'. They do not withdraw the allegations or make unambiguous clarification of their complete baselessness, in any terms approaching the wholly unqualified nature of the original imputation. Instead, they foreground Mr Fox's own grievance at having been called a racist.
91. But they do appear intended to encourage the view that *all* the allegations made were *equally* baseless. Mr Fox made that point in the Julia Hartley-Brewer and Nick Ferrari interviews (albeit to different audiences). However, there is a problematic assumption or contingency in this proposition of equivalent baselessness. As the Courts have already confirmed at the preliminary issues stages, these were not 'equivalent' allegations. One was an expression of opinion referenced to Mr Fox's published and dramatic stance on Sainsbury's 'racism'. The other was a decontextualised and

unqualified factual allegation of criminality. The asymmetry is plain, and that is a problem for ‘equivalence’.

92. As a rhetorical device – even to the extent Mr Fox subsequently took pains to spell it out as being one – it was not well-calculated to be effective. It relied on a reader recognising both imputations – ‘racist’ and ‘paedophile’ – as immediately and equally incredible. But the context, for the readership, was first Mr Fox’s ‘boycott Sainsbury’s’ tweet, then the ‘racist’ tweets, and only then the (unexpected and unexplained) ‘paedophile’ tweets. The call to boycott Sainsbury’s was itself startling but evidently intended to be taken wholly literally, and the ‘racist’ responses were apparently heartfelt; any reader pondering the exchanges (and especially if they did not click through to the website) might be as likely to think (a) the ‘racist’ jibe had hit home and been met with an equivalently devastating counterblow against these *particular* individuals, since others had questioned or protested the boycott tweet without getting the same response, as they were to think (b) both jibes were patent nonsense.
93. This was Twitter. Mr Fox’s tweet did not on its face say anything about ‘safe spaces’ which, as it turned out, and as he explained to Ms Thorp at the time, was his real objection to Sainsbury’s policies. Instead, Mr Fox chose to quote-tweet the celebration of Black History Month by the supermarket, which, on the face of it, looked like it was being held out as the basis of the call to boycott. Tweets are not always, or perhaps even very often, read by following up every link they contain. Mr Fox’s reference to ‘racial segregation’ was also strong language in its own right to apply to a well-known supermarket on any basis, redolent of civil rights movement USA or apartheid South Africa. In these circumstances, an ordinary, casual reader could be forgiven for not instantly understanding Mr Fox’s precise point (safe spaces, not Black History Month) in calling for a boycott, without more help than he provided. Ms Thorp’s question about what exactly it was that he objected to Sainsbury’s doing was objectively fair, and in context unsurprising. Readers had not been rhetorically primed to understand that, according to his own lights, Mr Fox was *obviously* challenging racism, not exhibiting it.
94. So if the basis for the boycott call was at least ambiguous, and the call itself was linguistically highly charged, then the ‘racism’ allegations were in context to that extent not so *obviously* baseless and ludicrous as to set up a clear rhetorical equivalence for the paedophile tweets. Mr Fox’s original tweet was rhetorically constructed to challenge his readers to boycott Sainsbury’s from a deliberately provocative and factually surprising (as it turned out, to a degree unintended), perspective. If a reader had understood the ‘racist’ allegations as simply being an attempt of some sort to ‘call out’ Mr Fox’s stance on Sainsbury’s, then *whether or not* they agreed with that opinion their instinct might well have been to recognise the response as an *equivalent* ‘calling out’. The very terseness and vehemence of the ‘paedophile’ allegation against each claimant was perhaps as likely to distract, or detract, from the point Mr Fox said he wanted to make rhetorically as it was to illustrate it. As he said himself, ‘language is powerful’.
95. Then there is Mr Fox’s own reputation as someone who *generally* said attention-grabbing and controversial things with a view to be taken entirely seriously, or at least to be making a serious, systematic and sincere underlying point. He had on multiple previous occasions said bluntly, if sometimes unexpectedly, what he genuinely believed. It was a declared matter of principle for him, and he took pride in doing so.



Others had called Mr Fox a racist on 4<sup>th</sup> October 2020, and very many others had done so all that year in response to his previous interventions on the subject of racism. He singled out three particular individuals for the imputation of paedophilia. That particularity was itself likely to attract adverse reputational attention to them.

96. I do agree that bringing Ms Thorp into the ‘paedophile’ allegations, and in particular the manner in which Mr Fox did so, *might* on the other hand detract from their inherent credibility in total. She at least was not an obviously combustible target, and, *for readers who read all three tweets*, the more obvious playfulness of the one to Ms Thorp, and Mr Fox’s engagement – if brief and limited – in rational discussion about his objection to Sainsbury’s policies, might have helped publishees read the other ‘paedophile’ tweets in a similar light. Or they *might* instead have focused on the contrast. We are in the realms of unevidenced speculation.
97. I take into account that the national media reports did, almost without exception, look askance on the exchange. But distancing is not the same as repudiating or counteracting. Mr Green KC put a great deal of emphasis on the term ‘bizarre rant’ as deployed by mainstream media in this context, including in the headlines. I can see that that might go to the credibility of the ‘paedophile’ allegations. But it is also understandable as a comment on the whole matter of making a high-profile call for Sainsbury’s to be boycotted for ‘promoting racial segregation and discrimination’ which perhaps did not altogether speak for itself to a neutral observer, and then reacting in such an accusatory manner to some few specific individuals among his surely predictable if not inevitable critics. The press were careful to report the paedophile allegations neutrally; they did not report them as untrue. They put them in a context of Mr Fox’s ‘*past controversies*’. The frequent public comments about ‘lawyers’ made in relation to the paedophile tweets perhaps tell us something about how their impact was regarded. To the extent that the public was being encouraged by the edited (and lawyered) media to think Mr Fox had made an error of judgment, or even a poor joke, in his response, that is not inconsistent with a conclusion that he had made a regrettable, *and effectively damaging*, smear.
98. Mr Green KC endeavoured to persuade me that a ‘settled narrative’ had quickly evolved that the claimants were innocent of the charge against them. I cannot easily see that from the evidence. I find Mr Seymour’s account of the subsequent public narrative more persuasive – that the charge became widely known about and ‘*continued to exist out there as an allegation*’.
99. The strong prima facie case raised on the *Lachaux* factors, the absence of evidence for any *alternative* sources or tributaries for reputational harm actually caused or likely to be caused by Mr Fox’s ‘paedophile’ allegations, and the evidence of *actual* harm by way of igniting online abuse and prompting counter-measures, weigh heavily on one side of the balance. Taking all the circumstances considered above into account, they are not, in my view, outweighed or neutralised by the limiting factors on the other side.
100. Some final points on causation. I do not accept that to the extent that generalised homophobia is visible among the online responses to the claimants, it should be regarded as the legally relevant *cause* of that response. As I have already set out, I am satisfied on the evidence that the tweets ignited a range of responses, and to the extent those reflect a range of societal views and predispositions, admirable or otherwise, that

was entirely foreseeable, wholly at Mr Fox's risk, and, as a matter of elementary tort law, not effective to break a causal chain.

101. Mr Blake and Mr Seymour attracted further online 'paedophile' abuse and accusation in the context of, and both up to and during the hearing of, this case. I do not need to, and do not, rely on that to reach a view that serious harm was caused by the original tweets. But I do observe in passing that once an excuse and an influential example is given, and the beast of paedophilic rumour is released, its appetite can prove voracious and its instinct for vulnerability unerring. That is how serious reputational harm works. That is why the prospect of reputational vindication in law *necessarily* exists.
102. Mr Seymour became embroiled a couple of years *subsequently* in wider public debates about the suitability of drag entertainment for children in general, about drag artists reading stories to children, about drag shows for mothers and babies, and about his own 'family friendly' performances in particular. To the extent that any of this caused *additional* harm to his reputation, then that does not of course establish that serious harm was *not* caused by the original tweets. I can see that a question arises about whether this should properly be regarded as a 'flaring up' of the original harm or a wholly independent new cause, but that is an issue going to quantum of compensation for consideration at the remedies stage rather than going to the serious harm threshold test.
103. The serious harm test is highly fact-sensitive. I have looked at the facts and evidence the parties drew to my attention, and reflected on the inherent probabilities. My conclusion in all these circumstances is that it is more likely than not that the 'paedophile' tweets have caused, or were likely to cause, serious harm to the respective reputations of Mr Blake and Mr Seymour such that, unless a defence to their publication is made out, each is entitled to a judgment on his defamation claim in vindication of his reputation.

**(ii) Mr Fox's 'qualified privilege' defence**

104. I can deal with this relatively briefly. Mr Green KC did a valiant job of putting this defence at its highest, and certainly no other possible defence suggests itself. But it is hopeless, on the undisputed facts of this case.
105. I have addressed myself as invited to *Abdulrazaq v Hassan* and the authorities cited there. I shall assume in Mr Fox's favour for the present purpose, but without so deciding, that Mr Blake and Mr Seymour had indeed made an apparently unwarranted attack on Mr Fox by calling him a racist. Then, to take the formulation set out in one of the authorities relied on, what the law says is this:

A person may publish, in good faith, false and defamatory statements about another in reply to an attack by that other, and as a defence to that attack. ... The rationale is that a person who has been attacked publicly has a legitimate right or interest in defending himself against it, and the [readers or viewers] of the original attack have a corresponding interest in knowing his response to it. The response has to be proportionate to the original attack in that it should not be made more widely than the

attack or include irrelevant statements. (*Bento v Chief Constable of Bedfordshire* [2012] EWHC 1525 (QB) at [101].

106. The law also says, in the older authorities, that ‘*great latitude must be allowed to a person so put on his defence and endeavouring to meeting the case which has been brought against him*’; and ‘*the language in which a defamatory charge is repudiated is not to be weighed in nice scales*’. But there are limits. It must be, at some basic level, *proportionate* and not include *irrelevant statements*.
107. Had Mr Fox responded to the opinions expressed that he was a racist by saying something along the lines (which is what he told me he believed) that *no, it is Sainsbury’s that is racist with its ‘safe spaces for Black colleagues’, and people like you who support that are racists too*, then he might have given me something to work with. But he did not. He responded to an opinion comment critical of his call to boycott Sainsbury’s on grounds of ‘racial segregation’ with utterly random, and harmful, factual allegations of criminal paedophilia. The Court of Appeal noted at the preliminary issues stage that the paedophile allegations had ‘*no apparent connection*’ with the statements quote-tweeted by Mr Fox. This is the very epitome of ‘mere retaliation’ – an escalatory and disproportionate response by way of entirely irrelevant statements.
108. Mr Fox tries at one and the same time to maintain that this was a deliberately and obviously extravagant rhetorical flourish, and also a fairly proportionate reply within the envelope of the original attack. That is clearly problematic. The ‘reply to attack’ qualified privilege is not a licence to defame. No authority to which I was referred comes anywhere near suggesting that it could or should provide an answer to these claims on the facts of the case.
109. In these circumstances, the ‘paedophile’ tweets not being otherwise defended, Mr Blake’s and Mr Seymour’s claims must succeed as to liability.

**(iii) Mr Fox’s case on ‘serious harm’**

110. I turn now to Mr Fox’s counterclaims, and the threshold question of whether the accusations of being a racist made by Mr Blake, Mr Seymour and Ms Thorp – or any of them – ‘caused or were likely to cause serious harm to his reputation’.
111. I have already included Mr Fox in my assessment of all the parties in this case as being impressively articulate and indeed eloquent witnesses. Mr Fox, like the other parties, spoke from the heart, on occasion with disarming candour and self-deprecation. He cheerfully acknowledged to me, as he has in public to others, that he often ‘says the wrong things’ and makes mistakes, but said he never shies away from acknowledging that, and never compromises his principles or his passionate advocacy for free speech. Speaking from the heart and with passion can and does in his case manifest itself, he suggested, in some tendency to unguardedness or impulsiveness, and/or a certain linguistic, or it might be said theatrical, extravagance.
112. Interestingly, under cross-examination, he was at pains to make repeated insistence on not wanting or being able to say anything about what other people might think of what he says and does. He made clear that was not his point of reference. That may say something about the necessary interiority of an experienced actor’s intuitions, but may also be indicative of how he sees himself as a political thought leader. He does not say

what he thinks others want to hear; he gives voice to what he authentically thinks and feels, and is convinced a sizeable proportion of the country is thinking and feeling the same. Authentic and intuitive free speech is at the heart, and guts, of his political agenda as he explained it. He appeared to me to have thoroughly and sincerely taken on the role of a conviction politician. The relevance of that to the present case appears further below.

113. Mr Fox's case on serious reputational harm is uncompromising. He says that the three sets of accusations that he was a racist ruined his acting career, in particular by causing his agent, Ms Sue Latimer, to drop him. He attributes that effect in particular to Ms Thorp's tweet, since, he said, that was the first occasion on which *someone within his own industry* had levelled that accusation against him. He told me the acting profession was a small world, and a professional reputation can easily be seriously harmed in that way; Ms Thorp's tweet would have resonated significantly in that space. It is not *essential* for him to prove any of these particulars, in order to establish that the serious harm test is passed, but that is the case he asks me to consider. I do so.

(a) *Gravity of the allegations*

114. But first I begin again with the *Lachaux* analysis, and the question of the gravity of the allegations. Mr Fox is in no doubt that to be called 'a racist' is deeply derogatory. It suggests an outlook, and a practice, which is at odds with the values and norms – and at least potentially the laws – on which an egalitarian democracy like ours is based. It is a particularly grave allegation to be made against an aspirant for political service within such a democracy. I agree these were grave allegations to make, in all the circumstances.
115. Each was, however, an expression of *opinion*. Depending on context, the impact of an expression of opinion can be contingent on, and say as much about, the maker as it does in relation to the object, and perhaps never more so than when the opinion is one which takes a position within a spectrum of recognisably contested opinions. That may substantially restrict its impact. Here, Mr Fox's political project is itself one which contests what he describes as a suppressive 'orthodoxy' of opinion about what does and does not constitute racism, and how racism may or may not be spoken about. So we are here in a market-place of ideas, where different perspectives vie for attention, and where a high degree of contestability, not to say subjectivity, is apparent.
116. 'Racist' is a term of which Mr Fox makes free use himself, to criticise this 'orthodoxy' and establish the superior claims of his own opinions. His exchange with the audience member at *Question Time* illustrates this in microcosm. She called the media racist in their treatment of the Duchess of Sussex. He told her it was not racist. She challenged his entitlement to say so. He called her challenge racist. Public opinion was divided on whether *that* was racist. So there we have a free and vigorous contest of opinion about what is and is not racist. Mr Fox insists his view is the (only) correct one. But his political project at the very least must and does acknowledge the existence of a wide and indeed entrenched body of contrary opinion, however wrong or misguided he may consider it. And the *Question Time* exchange seems to have told the public at least as much about Mr Fox and his views in 'calling out' racism as it did about the audience member and hers (and quite a lot more than it did about the British media, the ostensible subject matter of the exchange).

117. Mr Fox called Sainsbury's racist (promoting '*racial segregation and discrimination*') on account of its 'safe spaces' policy. A substantial body of opinion at the time thought that having an online forum where employees of colour could discuss their reactions to the issues of the day – institutional racism, BLM and so on – without being overheard or judged by their employers (whose views they might after all be minded to include in that potentially critical discussion), was positively *anti-racist*. Sainsbury's, as a large and successful UK retailer, was doubtless not intending to be radically or alienatingly counter-cultural in providing its safe space, although its challenge to shoppers who disagreed with its inclusivity policies to go elsewhere might be regarded either as 'brave', or as a confident bet on what the overwhelming majority of its customers were likely to do in reality. Mr Fox strongly disagreed with all this and said so. Some people thought that was being anti-anti-racist – hence racist – and said so. And Mr Fox confirmed to me that *in principle* he would defend anyone's right to have and express a range of diverse views about what – and who – is and is not racist. He exercises that right freely himself. That is the public debate he tells me he seeks - what his anti-suppressive political mission is all about.
118. So I bear in mind that *these particular* allegations of being a racist were opinions offered in the context of a lively contest of ideas which Mr Fox had himself stimulated, some might think provocatively so, about what constitutes being racist. He no doubt considered the criticisms of racism that he received to 'make his point for him' (as he put it to Ms Thorp) – they were misguided expressions of 'orthodox' and suppressive beliefs about what did and did not constitute racism. Like the *Question Time* altercation, it was a debate *about racism* and the accusations of racism made might well be considered by publishers to say as much about the makers and their world view as they did about Mr Fox and his (and quite a lot more than they did about Sainsbury's). I take that into account in considering their *inherent* potential to cause serious reputational harm to Mr Fox.

(b) *Extent of publication*

119. Then, I consider the extent of publication. In the circumstances, this too must be regarded as a mass-publication case. None of Mr Fox's accusers resiled from their opinions; each maintained their opinion resolutely up to and including in the witness box. It is probable that their accusations reached as wide an audience as Mr Fox's about them. The object of their criticism was a person in whose views – and especially his views about race and racism – the public had been predisposed to take a lively interest all that year; and someone who had just let be known the spectacular news that he was launching himself as the leader of a political party with a mission to change public discourse about racism (among other things).
120. Whether the accusations sued on would have reached quite such a large audience had it not been for Mr Fox's 'paedophile' riposte to them is another matter altogether, and discussed further below. These three individuals were not alone in calling Mr Fox a racist because of his call to boycott Sainsbury's, but they *were* alone in being called paedophiles as a result. That is apparently what brought their *particular* accusations to national attention. And to the extent that it was Mr Fox's own republication of their tweets, together with his own startling riposte, that made this indisputably a mass publication case, then of course to that extent Mr Fox cannot complain of serious harm caused thereby. How far Mr Blake, Mr Seymour and/or Ms Thorp advertising their personal opinions of Mr Fox's call to boycott Sainsbury's would *otherwise* have been

read, and had a resultant impact, is not, with due respect to their respective spheres of influence, at all obvious, and requires further analysis (below).

(c) *Situation of the counterclaimant*

121. That takes me to the issue of the situation and circumstances of Mr Fox as a defamation complainant, and by that route to some important issues of causation. It is not in dispute that he no longer works as an actor in the way that he once did, nor that his agent Ms Sue Latimer decided to part company with him (after his being on her books for something like 18 months). He does not necessarily have to *prove* specific consequences of a publication to establish that the ‘serious harm’ test is passed – as I have said, the serious harm of defamation lies in the changed minds of publishees and not anything they may do as a result. But Mr Fox puts the impact on his career and his agent forward as powerful evidence of that change of reputation, particularly in the mind of someone with a high degree of power over his fortunes, and asks me to consider them as such. His evidence was that ‘*word would have spread about Sue dropping me and as a result I would have been black-listed by serious show business as she was such a prestigious agent*’.
122. In these circumstances, it is a startling feature of Mr Fox’s case that I have no witness evidence from Ms Latimer as to why she parted company with Mr Fox. The authorities on defamation do counsel caution in deference to the difficulty complainants may have in finding people prepared to say they thought less well of them and to support their case. But it is no secret that Ms Latimer dropped Mr Fox, and the only question would have been *why*. I do not have her answer. It is not unusual for third parties to be reluctant to get involved in litigation, and there are plenty of good reasons for that. But Ms Latimer’s reasons for dropping Mr Fox are put forward as the high water mark of his case on serious harm.
123. Mr Fox says it was all because of these tweets, Ms Thorp’s in particular. It was his evidence, and that of his Reclaim Party assistant at the time, that that was the reason given him by Ms Latimer herself at the time.
124. The assistant said she had overheard a phone call between the two of them to that effect on 11<sup>th</sup> November 2020. There is no contemporaneous record of this conversation. Mr Fox’s own evidence was that it was the second instalment of a phone conversation begun earlier that day, and that the ‘*vast majority*’ of the business transacted took place in the first phone call, which he described as ‘*distressing and upsetting*’. Mr Fox’s assistant was not asked to recall the overheard second part of the phone conversation until a couple of years later, and in the context of this litigation. She was plainly anxious to do her best to support Mr Fox, and assist him in this matter. But her account was not unambiguous: she referred to unease in Ms Latimer’s team and to coverage of allegations of racism, neither of which leads directly or specifically to these three particular tweets themselves.
125. The assistant also testified to having been aware of media coverage adverse to Mr Fox in the immediate aftermath of *Question Time*, and of reports he had lost work as a result of that, including because he was being accused of being a ‘white supremacist’, as she put it. She told me she was not familiar with the detail of the acting side of Mr Fox’s career, that no mention of Ms Thorp or the claimants by name had been made on the call, but that ‘*generally people were not being nice to him on Twitter*’ and that Ms

Latimer's decision was referable to 'things that were being said about Laurence on Twitter and in the papers' at the time. These were, in other words, recollections of general bad press, at the time and cumulatively, being the key reason, rather than any particular impact of Mr Blake's, Mr Seymour's or Ms Thorp's opinions. I do not, in these circumstances, regard this evidence as significantly advancing his case on the causation of serious harm by the particular tweets sued on.

126. Turning then to such contemporaneous documentary evidence as there is about Ms Latimer's decision, Mr Fox sent her an email headed 'The Future' on 30<sup>th</sup> September 2020 – after the soft launch of Reclaim, and before any of the tweets of which he complains. His oral evidence was that the reference to a conversation with which it opens was most probably about his #AllLivesMatter sign-off and that she had probably asked him to 'rein it in a bit', much as she had done after *Question Time*. It goes as follows:

Dear Sue,

Thank you for talking on Friday. I appreciate this is a very complex and shifting time and you are trying to balance your need to keep your team feeling secure and also trying to protect my professional prospects.

I have to say that I disagree with you about #AllLivesMatter. All lives includes all ethnicities, sexual orientations and beliefs. It is the only area where we can all talk with the emphasis on equality. To elevate one set of racial characteristics above another, because a certain group 'feels' that they are systemically oppressed (against the available evidence) succeeds only to give actual racism an area to propagate. I would be more than happy to share with you the overwhelming amounts of data in this area that support the majority view that the United Kingdom is extremely fair and tolerant, is becoming even more so and has done more than perhaps any country on earth to right the wrongs of the past.

I am staunchly against any form of discrimination. I abhor racism. I feel duty bound, for my children's sake, to resist those who seek to destabilise society with this pernicious ideology. My goal is to support free expression. Only through free debate can ideas like 'Systemic racism', 'White privilege', 'unconscious bias' and critical race theory' be challenged and exposed for what they really are. Modern Racism.

I love my job. I have devoted many years to being good at it and it is a source of great sadness that I have been shunned for expressing what is very much the majority view. It's no surprise that Show business is steeped in this new religion of intolerance and censorship, so I understand that I'm going to be black listed for a while. I feel very blessed for the opportunities I have had in the past and very grateful to those who can also see what's

going on standing by me with financial support and now a full time job.

I want to ask that you don't give up on me. Cancel Culture cannot continue in this way, or it won't just be me, it'll be you, your friends and colleagues that fall victim as well. My goal is to do everything I can to create an opportunity where people feel free to express themselves again so that I can walk back onto a film set, head held high and proud that I played some part in restoring some sanity to this country we call home.

Love Always

Laurence

127. I reproduce this in full, because it is closely contemporaneous documentary evidence of how matters stood between Mr Fox and his agent, from his perspective, *before* the tweets of which he complains. From it can readily be inferred a number of things. First, Ms Latimer and Mr Fox had disagreed about the desirability of his #AllLivesMatter sign-off and the message it sent. That is unlikely to have been an isolated issue; the sign-off was a standing signifier of Mr Fox's political mission and world view. Second, it acknowledges (a) that Mr Fox had *already* experienced 'being shunned' as an actor for his views and (b) he thought 'Showbusiness' culture was particularly inimical to those views – it was a staunch adherent to the orthodoxy of the 'new religion'. Third, it confirms that Mr Fox by this time had a *full-time job* with Reclaim for which (as he later confirmed in evidence) he was being remunerated to the tune of a quarter of a million pounds a year. Fourth, it confirms that at that time Mr Fox already had reason to apprehend that Ms Latimer might be minded to 'give up on' him. And fifth, it suggests Mr Fox thought that the best way to persuade her not to do so was to deliver an impassioned statement of his political mission.
128. That last may have been rather naïve. Perhaps an agent is more interested in being convinced of a passionate commitment to developing an acting career than in being lectured on political or cultural ideas. Mr Fox told me he had aspired to emulate (the recently departed) Glenda Jackson in combining a successful acting career with being a democratically elected representative. Ms Jackson's achievement was a spectacularly rare feat – and she had not been setting out to lead a brand new political party with a central manifesto pledge to roll back cultural 'orthodoxy' particularly by challenging contemporary assumptions about racism.
129. On the 11<sup>th</sup> November itself, immediately after the calls in which Ms Latimer told him of her decision, Mr Fox tweeted out 5.42pm *'I want to thank my acting agent who let me go on the phone just now for reaffirming exactly why I am doing what I am doing. Still waiting for a single example of anything I've ever said or done that could ever be deemed racist. We will reclaim freedom, fairness and common sense.'*
130. Some further light is cast on this by contemporary chatlog evidence. At 6.13pm that evening, Mr Fox reported, to two different contacts: *'Got dropped by my acting agent for being 'racist' this evening. I asked for evidence. None provided.'* He was encouraged by one of his contacts to move quickly to find another agent, if only for appearance's sake and to keep his options open. But he said he did not want one, they



were all the same, and he was getting ‘*a huge wad of cash for this game*’ – that is, for being the leader of Reclaim. He explained to me his irritation with the percentage of his income agents claimed. A third chatlog has Mr Fox saying the following evening ‘*Thinking about how to make positive my serious anger about being dropped by my agent for racism.*’

131. This evidence, like that of his assistant, suggests the reason Ms Latimer let him go was to do with ‘racism’, but does not make any visible connection with the tweets complained of. Indeed, it could be read as an indication that he understood he was dropped for ‘being racist’ or for *generally* ‘being called a racist’, rather than having been so described by anyone in particular.
132. From first principles, the inherent and preponderant probability must be that Ms Latimer took a considered business decision, reached on a commercial and multifactorial basis, and taking the long view. That is how business people generally proceed. Mr Fox is confident they otherwise had had a good professional and personal relationship. It is not my job to speculate further about Ms Latimer’s views of Mr Fox, it is his job to persuade me of them. But Ms Latimer, as a person represented to me as an experienced and respected actors’ agent, had, on the evidence before me, a number of *objectively* recognisable possible reasons to part company with Mr Fox. There are alternative explanations.
133. For example, on the evidence shown to me, Ms Latimer might have concluded, objectively, that the *Question Time* affair was not after all an isolated incident which was going to blow over if he kept a low profile for a bit. On the contrary, she might have concluded Mr Fox was set on a trajectory of repeatedly drawing public attention to himself for expressing controversial views about racism in a controversial manner, the Sainsbury’s boycott call being only the latest example. She might have reached a view about his own lack of insight into what that could mean for an acting career. Whatever anyone might think about his views either way, if an actor becomes strongly personally associated with an extraneous and controversial matter, there is a risk that that may become a distraction from the suspension of disbelief and the projection of narrative which it would be his job to deliver; and it might be that the range of roles in which it would thereby be incongruous to cast him would tend to increase.
134. Again, Ms Latimer might have concluded objectively, on the evidence, that Mr Fox had taken the initiative to declare himself fundamentally out of tune with the values of his profession, a declaration she could foresee might have consequences for his conduct within and his pronouncements about that profession, and indeed the willingness of others to work with him. It was not the first time he had done this. He had mused on 22<sup>nd</sup> January on *Good Morning Britain* that he did not want a career where he had to have the ‘right opinions’. He said the same in his 20th June *Spectator* article – that he might never get an acting job again without expressing ‘correct opinions’, but that ‘*unhappily for some (my agent and bank manager mainly) I will continue to say what I believe to be true*’; no doubt that did not go unnoticed by his agent. He told me the *Question Time* furore was partly attributable to the fact that no-one expected *an actor* to have views of that sort – it was the ‘*ultimate betrayal*’ of the norms of his profession. And he was quoted in *The Daily Telegraph* on 2<sup>nd</sup> October, on the eve of the events complained of, as saying, ‘*I was warned several times that, unless I changed my tune, it would have an effect on my career. And then I was warned formally that is was certain to have a devastating effect on my career.*’

135. That reference to ‘formally’ is perhaps interesting, in context; there were surely a limited number of people in any position to issue Mr Fox with a formal warning about his career. He also said in his oral evidence, about this time, that ‘*Privately I was told by people ‘you know this is not going to do your career any good to carry on saying what you believe, you know how intolerant of views showbusiness can be. It’s not going to do you any good.’ so privately people had said that to me. Sue had said it to me privately...’.*
136. Ms Latimer might also have concluded objectively, on the evidence, that Mr Fox had shown himself to be unreliably accident-prone in *how* he advanced his views – his admittedly ill-informed challenge to the Sikh casting being one example that had had to be publicly rowed back from, and his labelling of some of his critics as paedophiles in due course being another.
137. Ms Latimer might, in other words, have reached a reasonable, considered and objective view, on the publicly available evidence of 2020, that Mr Fox was no longer an asset to her brand, and/or that he had become ‘difficult to place’. Or she might simply have concluded that his having taken on a *full-time* political job and the responsibilities due to a salaried role said something about his priorities and availability, and rather tied her hands.
138. Alternatively, she may have made her decision because her mind was changed about him by reading or coming to hear about the opinions of Mr Blake, Mr Seymour and Ms Thorp concerning Mr Fox’s efforts to rally support for the boycotting of Sainsbury’s for practising ‘racial segregation’. That is the case Mr Fox asks me to accept. To state it is to expose its problems of causality. I have no direct evidence beyond Mr Fox’s assertion, or subjective impression, capable of establishing any such causal link. *Even if* Ms Latimer’s decision were precipitated by the public prominence of allegations of being a racist in connection with the Sainsbury’s affair a month or so earlier, Mr Fox still has to discharge the burden of showing that it was reading *the three tweets complained of*, or any of them, that produced that result – and not, for example, the fact that Mr Fox had singled them out to call their authors paedophiles in retaliation (and precipitated this litigation), that other people whose views Ms Latimer respected (including her own colleagues and others in the acting profession who might have views about continuing to work with him) considered his Sainsbury’s tweet racist, that she herself had come to that view entirely independently, or that, taking the long view of the past and the promised future, this was in the nature of a last straw: Mr Fox’s views about racism had come to define him publicly and politically as a controversialist, and from a professional point of view were at best unhelpful and at least inconvenient.
139. I do not have a sufficient evidential basis for considering the tweets sued on more probably than not causative of Ms Latimer’s decision, so as to make it fair to fix their authors with responsibility for it. It is not inherently more probable than some or all of the many alternatives. In particular, I was given no basis for understanding that Ms Thorp’s opinion was or was likely to have been particularly influential in this matter. She had referred to herself at the time as a ‘*z-list ex soap actress*’ and told me that a lot of others had done so too; she had certainly already moved on from the acting world. There is no persuasive evidence whatever that her intervention had any particular impact just because of her acting past, and I consider it inherently highly improbable that it did. She told me rather ruefully that if she had had the sort of influence attributed

to her tweets by Mr Fox, she would happily have used it to advance her acting career. That had a ring of authenticity.

140. On the contrary, Mr Fox's own evidence was that the sort of views he had been expressing had never been those of the wider profession or its culture (Equity's response to *Question Time* sticks in the mind), and that showbusiness was generally hostile to those views. So I have been given no reason to think Ms Thorp's tweet changed minds in the acting world at all: it had on his own account long made up its own mind. Certainly, she had labelled Mr Fox a racist in the explicit context that '*any company giving future employment to Laurence Fox, or providing him with a platform*' did so in the knowledge that that was what he was, and should '*probably re-reconsider their own statements of 'solidarity' with the black community*'. That was of course framed as a direct message going to Mr Fox's professional (and political) prospects. But in the absence of any persuasive direct evidence, I have to look at the inherent probability that 'any company' – including Ms Latimer's agency – in fact responded by taking a different view of Mr Fox as a result, from any they had otherwise formed by reference to his own public conduct and pronouncements and the reactions they had caused, because of *Ms Thorp's tweet* seeking to 'call him out'. I consider it inherently improbable. That is not how companies usually make decisions. They may have taken the tweet into account or they may not. If they had, it may have made *some* difference. I have no evidential basis for understanding *what* difference, nor for understanding whether it could be described as the causation or likely causation of serious harm. This is a speculative and undemonstrated proposition.

(d) *Inherent probabilities and the balance of the evidence*

141. On the *Lachaux* factors considered so far, then, I am unpersuaded of a strong *prima facie* probability of the causation of serious harm by the tweets complained of. The inherent gravity of the 'racism' allegations and their probable real-life impact are tempered by the context of a lively contest of opinions on racism initiated by Mr Fox himself – they say as much about their authors as about him, and I am satisfied would have been absorbed as such. This is a mass publication case, but one raising clear issues of causation, to be explored. And standing back from the particular question of Ms Latimer's motivations (which, as I say, are not *essential* to finding serious harm sufficiently established), and considering Mr Fox's reputation and career more generally, the issues of causation only intensify.
142. Mr Green KC candidly accepted, as indeed he had to on the evidence, that *Question Time* had had a major impact on Mr Fox's career, including by giving prominence to his 'aftershock' incidents and pronouncements on racism, which themselves kept *Question Time* alive in the public mind. Mr Fox himself cites that episode on the Reclaim website as being operative on his being 'cancelled' as an actor. Mr Green KC also accepted that Mr Fox had turned down acting opportunities in the aftermath – which is not without its own career risks – and very properly did not speculate or overclaim about the opportunities he *might* have had otherwise. He also accepted that the pandemic had had a devastating impact on the performing arts in general. He accepted that Mr Fox had been giving some attention to his music career at the relevant time. He accepted that the Sainsbury's affair coincided almost exactly with the launch of the Reclaim Party and Mr Fox's stepping on to the national political stage.

143. In his oral evidence, Mr Fox accepted that his acting career had been impacted in 2020 *before* any of the tweets complained of – and specifically by having been called a racist (the ‘*tsunami*’ response included much criticism on this score). He accepted that the post *Question Time* furore in January 2020 ‘*certainly affected my prospects at the time*’ and that many took the view that he had exhibited racism; opportunities continued to come along, but he and Ms Latimer had considered it desirable for him to keep a low profile for a bit, and there were a number of offers he refused. That does say something at least about the reputational impact of Mr Fox’s conduct on that occasion and the divided public reaction to it. He also accepts that the impact of the pandemic on the acting profession in general was substantial that year.
144. He says he thought both of these would be equally ‘temporary effects’. It is not clear why he made that assumption, if he did. He accepts he was continuing at the same time to make controversial interventions into and about the public discourse on racism – the very same issue as had arisen on *Question Time*. There was the Sikh casting affair, his views on taking the knee and various other manifestations of BLM, and his *Spectator* article (in which he said he realised he might never get an acting job again because of his principled stance). He had noted in disclosed correspondence as late as 1<sup>st</sup> September that ‘*it’s never been so quiet acting wise*’ (he told me that was a reference to the impact of the pandemic) and ‘*my days in showbusiness are over...*’.
145. A substantial body of people had been responding to Mr Fox’s interventions ever since *Question Time* by calling him a racist (his followership on Twitter nearly tripled overnight). He had been challenged as a racist on Twitter in response to at least fifteen intervening episodes. His own tweet on 5<sup>th</sup> October in the aftermath of the Sainsbury’s affair – which had been only the latest occasion of a quantity of such allegations – confirmed he had been ‘*repeatedly, continuously and falsely*’ smeared as a racist. He told Nick Ferrari on 13<sup>th</sup> October he had had ‘*several months*’ of being called as a racist. The inherent probability in these circumstances that it was the particular tweets sued on here that changed anyone’s mind or affected Mr Fox’s career must be vanishingly small.
146. This is a case, in other words, in which there are very many *alternative* explanations or sources of causative negative impact on Mr Fox’s reputation in general in the matter of racism, and on his career in particular – his own stimulation of controversy, the hostile views of the profession, the pandemic, his diversion into a political career, and the sheer number of *other people* who had joined in the debate he had publicly stimulated and taken public exception to his pronouncements as being racist. I have to take this into account in considering the probable causative impact of the tweets complained of.
147. I also, more narrowly, have to take into account the potentially causative role of Mr Fox’s own contributions to the Sainsbury’s exchanges – both the original call to boycott, and the ‘paedophile’ responses – to any ensuing harm to his reputation and career prospects. In a ‘calling out’ opinion case such as this, a distinction has to be made between the causative role of the calling out and the causative role of that which is called out, considered objectively. The calling out may of course add to the damage. But a libel claimant has to provide a sound basis for understanding *how*, and that any additional harm merits the description of being serious. I have not been provided with that basis here.
148. The coincidence of its being the published opinions of the particular three individuals that he branded as paedophiles *themselves* being causative of the current state of Mr

Fox's acting career, or any other serious reputational harm, is, in all the circumstances of the case, extremely long odds. Indeed, it might be said with some justification that the *only* clearly visible objective explanation for these particular tweets being sued on is that their authors had taken exception to being called paedophiles and issued a libel claim against Mr Fox. I am not satisfied of any sufficient basis for an inference that *their* allegations of racism – rather than any others, or any other operative cause of harm to Mr Fox's career as an actor such as those outlined above – inflicted serious harm on Mr Fox's reputation. The groundwork for such an inference is simply not there. The serious harm test is not squarely addressed, and Mr Fox's burden is not discharged.

149. In these circumstances, on the materials before me, my conclusion is that it is *not* more probable than otherwise that the three expressions of opinion Mr Fox sues on, or any of them, caused serious harm to his reputation. It is in particular much more probable that the *context* - the eye-catching if complicated call to boycott Sainsbury's and the making of the 'paedophile' allegations – had a far greater impact than the content of these tweets themselves. Mr Fox says Mr Blake, Mr Seymour or Ms Thorp precipitated a reputational shift, giving others 'permission' to call him a racist, up to and including his agent. But there is no evidence, and minimal inherent probability, that anyone, least of all his agent, needed these individuals to tell them that Mr Fox had challenging and controversial views on racism which divided opinion. He was proud to do so himself; he told me he was prepared to own the label '*incendiary*'. Some people agreed with him. Those that did not responded exactly as he calculated they would – with opinions to the effect that he was not challenging racism but perpetrating it, just as they did after *Question Time*. And to the extent that these achieved national prominence and impact in the first place as a result of the 'paedophile' taunts, to that extent Mr Fox's own causal role cannot be overlooked.
150. The public and showbusiness response to *Question Time* and to Mr Fox's intervening interventions on racism, his own deliberate and advised dialling down of his acting career, the impact of the pandemic, and his contemporaneous emergence as the leader of Reclaim, are singly and together agents of substantial causative power on his acting career which were operative at the time of the tweets sued on. I have not been shown, and cannot see, what difference the latter made to his reputation and prospects in their own right. So I have no fair or justifiable basis for attaching legal responsibility for causing serious reputational harm to their authors.
151. In so far as the longer view is thought to assist on this issue, I accept that Mr Fox did from time to time receive some very unpleasant treatment in the weeks and months between the events sued on and the case coming to trial, and indeed that he effectively stopped working as an actor. The same period saw two other developments.
152. The first was the trajectory of the Reclaim Party, Mr Fox's contestation of successive electoral opportunities, and the Party's acquisition of a Westminster MP.
153. The second was the continuing, and some might think intensifying, trajectory of controversial public interventions by Mr Fox on the issue of racism. These included tweeting out an unreferenced and uncontextualized excerpt from some song lyrics by rapper Tupac Shakur including two uses of the term 'Nigga'; the incorporation of a picture of a pint of milk into his Twitter profile (a symbol with some recognised connections to white supremacism) for which I was given no convincing explanation; a 'flowing with blood' tweet about racial unrest in the UK; a tweet showing a Black

footballer charged with rape, with the comment ‘*Get kneeling fuckers*’ (which attracted national press coverage); a tweet about the England football team taking the knee with the comment that they deserved to lose (for which he subsequently apologised); a picture of Gary Lineker in blackface; a tweet showing Progress Pride flags cut up and arranged into a swastika (for which he was suspended from Twitter); and a tweet in response to the Mayor of London holding an event in Trafalgar Square celebrating Black culture and showing himself photoshopped into blackface and afro hair with the comment ‘*Can’t wait. As someone who has recently racially transitioned I am glad my culture is going to be celebrated. It has been a long journey. First the hair curling, then the course of white blockers. It’s just great to finally be myself*’ (he admitted that posting pictures of his children in similar blackface had been a mistake). There are numerous other public interventions in a similar controversialist (‘*incendiary*’) vein.

154. Mr Fox has explanations for each of these as to why (a) they are not racist but (b) on the contrary are challenging racism and (c) are constitutionally important exercises of freedom of speech, illustrative of his party’s political stance on these matters. Some people might agree; some might disagree. Some might simply think them gratuitous, gauche or naïve on any basis. Like the Sainsbury’s tweet, they do not clearly, simply or unambiguously speak for themselves, given the constraints of social media, to deliver the precisely calibrated messages Mr Fox says he wants to deliver. It is not only what he says, but *how he says it*, that regularly ignites controversy around Mr Fox, deliberately or otherwise. Taking the long view, I have insufficient evidence that it is to any material degree the tweets sued on, rather than Mr Fox’s chosen and sustained presentation as someone who sets out consciously to challenge public opinion on racism in the UK, including as expressed politically through his leadership of the Reclaim Party and through his choices about the tone and register of his public utterances, that materially account for his current profile and reputation in relation to racism among supporters and critics alike.
155. Mr Fox is a politician with an uncompromising agenda about free speech. On 3<sup>rd</sup> October 2020 – the day before the Sainsbury’s and paedophile tweets – he had tweeted ‘*My view is that free speech should extend all the way to direct incitement to violence. If people want to wish, or hope, that someone comes to harm, or dies, than that is their individual right. I don’t think Twitter should censor these opinions, unpleasant as they are.*’ He told me that was the only public comment he had made on the subject of free speech that he would now retract. He told me he thought in retrospect he had been experimenting at the time with the idea of how far free speech should go, but that he does not agree with it now. He told me from the witness box ‘*I think it is a very difficult thing, to try and work out where your level of free speech absolutism stops, because obviously there are – hence this room – areas where these things aren’t totally absolute.*’ He also apologised in court to Mr Blake and Mr Seymour for his ‘paedophile’ reaction to their criticism.
156. There are indeed choices to be made about the exercise of free speech, and there are consequences. Mr Fox told me he does not make his choices by reference to what other people might think – that he is unable to calibrate that or uninterested in doing so. But a defamation claimant seeks reputational vindication, and what other people think is your reputation. Mr Fox says that what he is ‘*standing up against*’ – ‘*a big cultural shift which is taking place, which is the diversity and inclusion agenda*’ – is ‘*powerful*’. Although he believes many or most people agree that what he says on the subject of

racism is right, and common sense, he knows that many in, and commentating (including via social media), on public life do not. It is his mission to challenge and change that. But the choice of methods for doing so is reputationally relevant in itself.

157. Choices about the exercise of your free public speech have reputational consequences in real life, because they *cause* other people to form or change an opinion about you. On the issues that strongly motivate him, Mr Fox speaks from the heart, often, it seems, relying on the unfiltered directness, drama and political instinct of his utterances as the best guarantor of their authenticity, credibility and impact. He knows that will have an effect on what people think of him. His mission is deliberately, and uncompromisingly, to stimulate debate on a sensitive issue about which people may feel personally, deeply and strongly. Any passionate and campaigning theorist, commentator and activist challenging contemporary assumptions about racism will inevitably garner equally passionate critics. If he invokes defamation law to challenge their entitlement to express their own opinions on what he says or how he says it, he has to be ready in the first place to show, by reference to evidence and inherent probability, how his reputation – what people think of him – is seriously harmfully impacted in real life by *their* publications, as distinct from *his*, or indeed anyone else's, or anything else. That is what defamation law requires – demonstration of actual impact, and what difference a publication makes or is likely to make in real life. I have not been given a sufficient evidential basis for inferring that here, or for identifying any material causal connection between the impact of the tweets sued upon and Mr Fox's reputation.
158. In all these circumstances, I am not satisfied Mr Fox has discharged his burden of establishing that the three tweets of which he complains more probably than not caused, or were likely to cause, serious harm to his reputation. His claim accordingly fails.

**(iv) The 'honest opinion' and 'substantial truth' defences**

159. In these circumstances, section 1(1) of the Defamation Act 2013 provides that the publications on which he sues are 'not defamatory'. No tort is committed, and Mr Blake, Mr Seymour and Ms Thorp are not put to defence of their tweets.
160. Miss Skinner KC, their Leading Counsel, put it to me that nevertheless it was in the interests of justice for me to go on to determine the applicability of their pleaded defences. I disagree, for the following reasons.
161. The tort of defamation has to do with the real life impact of what people say about each other, and a scale of impact with which it is proper to engage the legal system and its powers and resources. It is not an opportunity otherwise to pursue the settling of scores, amplify personal grievances, or debate 'points of principle'. There is no doubt that the intention of Parliament in restricting the scope of the tort of defamation to publications which cause or are likely to cause serious reputational harm reflected a policy to focus minds and deter potential defamation litigants from seeking to occupy scarce and precious court time and public resource unless the threshold is crossed.
162. It also reflects a clear policy that, absent satisfaction of the 'serious harm' test, a defendant is, importantly, *entitled* not to be asked by justice system to explain themselves – it enshrines a default to free speech. But even where a defendant is willing to waive that entitlement, the former consideration still applies.

163. Cases turn on their facts. There are certainly examples in the authorities of cases disposed of on alternative bases of failure to establish serious harm and success on a defence. It may for example be that a case can be swiftly and efficiently disposed of where a strong and straightforward defence appears, but where the serious harm element is more complex, by concentrating on the former, even though the latter is a logical precedent stage. But this is not a case of that sort.
164. I am very much aware that Mr Fox would have liked to leave court with a clear determination that he ‘is not a racist’, Ms Thorp with a determination that it is substantially true that he is, and Mr Blake and Mr Seymour with an endorsement that at least they genuinely thought so and an honest person could have thought so too. But the entire case is, in that sense at least, all about *contested* views of what does and does not amount to being ‘a racist’. While there is no doubt an identifiable irreducible core meaning of that term which would be generally if not universally recognised in contemporary Britain (and some of which may be referable to legal definitions, for example in discrimination law), there is also a wide penumbra of meaning which must be acknowledged to be genuinely debatable. Courts do not shy away from difficult assessments of contemporary cultural standards where the law requires them to. But where, as I have concluded, the law does *not* so require, because, by operation of statute and application of the serious harm test, an opinion on such a matter must in law be regarded as ‘not defamatory’, then courts must be properly circumspect about wading unnecessarily into such territory. There is always a potential risk of injustice, or at least of irrelevance, in courts opining about such matters otherwise than by way of precisely determining a question before them; the interests of justice do not pull in that direction at all.
165. Mr Fox’s principal project is to put his views and challenges about racism to the UK electorate in the political arena. That, rather than a court of law, is in any event likely to be the determinative last word in relation to his reputation on such matters, given the path down which he has set. His world view and his politics are not on trial in these proceedings, only the factual impact of what he said, and what was said about him, on this *particular* occasion. My last word, as I am directed by Parliament to give it, is that the tweets of which Mr Fox complains are ‘not defamatory’ because of the lack of a sufficiently established causal connection linking them with any probable serious reputational harm he has suffered or continues to suffer. The rest is for another arena or another day.

### Decision

166. Mr Fox’s labelling of Mr Blake and Mr Seymour as paedophiles was, on the evidence, probabilities and facts of this case, seriously harmful, defamatory and baseless. The law affords few defences to defamation of this sort. Mr Fox did not attempt to show these allegations were true, and he was not able to bring himself on the facts within the terms of any other defence recognised in law. This judgment therefore stands as the beginning of the legal vindication to which Mr Blake and Mr Seymour are entitled, as successful defamation claimants. I await the parties’ submissions on the question of damages and further remedies.
167. The law does not regard the *particular* imputations against Mr Fox that he was a racist, made by Mr Blake, Mr Seymour or Ms Thorp, as defamatory. That is because, although to express such an opinion is certainly of inherently defamatory *tendency*, Mr Fox did



not sufficiently discharge the burden the law places on a defamation claimant to establish that their particular tweets – rather than anything else he himself, or others, did or said – *as a matter of fact and evidence* probably caused or were likely to cause serious harm to his reputation by making readers adversely change their minds about him to that degree.

168. In those circumstances, the law does not require Mr Blake, Mr Seymour and Ms Thorp to be put to any further defence of the opinions they expressed. This judgment accordingly contains no determination of, or any view about, whether or not (a) the opinion that Mr Fox was a racist was one ‘an honest person could have held’ and was indeed genuinely so held or (b) the imputation that Mr Fox was a racist was ‘substantially true’. These are not questions it properly falls to me to resolve within the framework of this litigation, on its own particular facts and evidence.
169. Mr Blake’s and Mr Seymour’s claims succeed. Mr Fox’s counterclaims are dismissed.