Neutral Citation Number: [2024] EWHC 821 (KB)

Case No: QB-2021-002673

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 April 2024

Before:

HH RICHARD PARKES KC
(Sitting as a Judge of the High Court)

Between:

JAMES WILSON	**Claimant**
- and -	
(1) JAMES MENDELSOHN ~~**(2) PETER NEWBON**~~ **(3) EDWARD CANTOR**	**Defendants**

Gervase de Wilde (Direct Access) for the C**laimant**
Liam Walker KC (Direct Access) for the F**irst** and **Third Defendants** for cross-examination of the claimant on 4 December; otherwise the First and Third defendants appeared in person.

Hearing dates: 4 – 7 December 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 12 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

INTRODUCTORY

1. This claim involves, in the main, clever and principled people with very strong views on matters of politics. It particularly involves anti-Semitism, that cruel and ancient hatred, deplorably resurgent in our time, to which all involved in the case would say they are strenuously opposed, and the belief that criticisms of the state of Israel often reveal, or can be understood to be cover for, anti-Semitic attitudes; and it illustrates the profoundly toxic potential of the ill-considered and ill-tempered use of social media.

2. The claimant, James Wilson, is a legal academic and non-practising solicitor in his early 50s. He has been in a relationship with his partner, Sally Smith, for 24 years, and they have three children. She is a practising solicitor. He has in the past taught at the University of Huddersfield, and he now teaches law part-time at Sheffield Hallam University, while also working on a PhD at the School of Law of Sheffield University. He lives in a part of Huddersfield called Birkby with Ms Smith and their family. One of their children has a severe disability associated with a very premature birth, in consequence of which neither Mr Wilson nor Ms Smith is able to work full time. Mr Wilson and Ms Smith have lived in Birkby for over 20 years, their children have been educated there, and of course they know the area and its people very well.

3. It was Mr Wilson's unchallenged evidence that Birkby is an area of acute poverty and high social deprivation, with high levels of violence, largely associated with gangs of drug dealers. There are also periodic 'paedophile' scares which, as he said, create a high and irrational level of vigilance and threats of violence. Mr Wilson describes himself as being politically left wing, in the sense of supporting a social democratic settlement along the lines of the post-1945 welfare state, with public ownership and control of essential services. He says that he was a supporter of Jeremy Corbyn while Corbyn was leader of the Labour Party, and remains an active, although less enthusiastic, member of the Labour Party under the leadership of Keir Starmer. He rejects any allegation that he is an anti-Semite or that he has targeted campaigners against anti-Semitism.

4. Mr Wilson was represented by Mr de Wilde on a direct access basis.

5. James Mendelsohn, the first defendant, is a former solicitor who used to be on the teaching staff at the University of Huddersfield but is now a senior lecturer in law at the University of the West of England, in Bristol. He is what is known as a Messianic Jew, which, he explained, means that he accepts both the Old and the New Testaments. As well as teaching law, he researches and writes about anti-Semitism.

6. The second defendant was Dr Peter Newbon, who was a senior lecturer in the Humanities Department of the University of Northumbria. Dr Newbon taught literature, but evidently spent much of his time writing on social media about anti-Semitism. Mr Mendelsohn never met Dr Newbon, but had regular contact with him through Twitter and Facebook, and regarded him as a friend. Dr Newbon died an untimely death on 15 January 2022. The inquest into his death recorded a verdict of suicide. The defamation claim against him thereupon lapsed, and the other claims were quickly settled by his estate. The terms of the settlement, which were incorporated in a written agreement

dated 15 March 2022, included a contribution to the claimant's costs and a provision for disclosure of documents.

7. The third defendant, Edward Cantor, is a musician and former restaurateur. In common with others in this case, he is (or was) a regular user of Twitter.

8. Mr Mendelsohn and Mr Cantor were represented by solicitors from April and May 2021 respectively, some months before the issue of the claim form on 6 July 2021. In May 2023, Mr Mark Lewis of Patron Law, who by that stage was acting for both men, ceased to act because of a conflict. In June 2023 they were both briefly represented by Chandler Harris LLP. On 12 June 2023 that firm wrote on their behalf an open letter to Mr Wilson offering undertakings designed to remove any need for him to pursue his claim for an injunction. It was said that the offer was made because the defendants had no desire to do any of the things that they undertook not to do. Shortly thereafter, they withdrew their instructions from Chandler Harris LLP, and have since acted in person.

9. In the event, the defendants were unrepresented at trial. However, they instructed Mr Liam Walker KC on a direct access basis to cross-examine Mr Wilson on the first day of trial. By agreement between Mr Mendelsohn and Mr Cantor, who had worked as a team in preparing for trial, Mr Mendelsohn conducted all the questioning of Mr Wilson's other witnesses and the re-examination of the defence witnesses. He was not, however, representing Mr Cantor.

HISTORY

10. Mr Wilson and Mr Mendelsohn were colleagues at the University of Huddersfield between November 2008 and May 2014.

11. Mr Mendelsohn shared an office at the University of Huddersfield with a friend and colleague, a Mr Mark Edwards, who did not get on with Mr Wilson. In 2011, Mr Edwards made wide-ranging complaints against Mr Wilson, which were investigated and in one respect upheld. I refer to the complaints and their investigation and resolution collectively as 'the University Information'. They are said by Mr Wilson to be private and confidential and not to have been made public either within the university or elsewhere.

12. This episode was disinterred many years later by Mr Mendelsohn. On 10 July 2020 he informed Dr Newbon about it. Dr Newbon responded to what he had been told by referring to it publicly on Twitter. Mr Mendelsohn's communication of those matters to Dr Newbon, and Dr Newbon's subsequent airing of them on Twitter, form part of the claim in misuse of private information.

13. At the same time, Mr Mendelsohn also supplied Dr Newbon with some other information about Mr Wilson.

14. On the morning of 3 December 2018, there was an altercation between Mr Wilson and a woman called Rifeth Akhtar, outside the junior school in Birkby, to which both of them sent their children. The altercation resulted in Mrs Akhtar's decision to post a photograph of Mr Wilson, and accompanying commentary, on Facebook ('the

Facebook Post'). As later republished, that post forms the subject of Mr Wilson's claim in defamation and part of his claim in privacy and data protection.

15. Mrs Akhtar was persuaded or instructed by a police officer to delete the Facebook Post the next day (4 December 2018), but not before Mr Mendelsohn had taken a screenshot of it which reproduced the Facebook Post in its entirety ('the Screenshot'). That is admitted.

16. Nineteen months later, on 10 July 2020, Mr Mendelsohn emailed the Screenshot to Dr Newbon. On 12 August 2020 Dr Newbon, in turn, decided to publish the Screenshot on Twitter, with an added commentary.

17. Mr Mendelsohn also gave Dr Newbon some information concerning the difficulties at Huddersfield between Mr Wilson and Mr Edwards. Mr Mendelsohn accepts having told Dr Newbon that Mr Wilson had bullied and harassed a friend of his, that the friend had brought a grievance against him, and that the grievance had been partially upheld. What is in dispute is how far, if at all, the information passed to Dr Newbon was private information.

18. It is not in dispute that Dr Newbon thereupon published on Twitter in a series of tweets both the Screenshot (with commentary) and at least part of the information about Huddersfield that Mr Mendelsohn had disclosed to him, between 12 and 13 August 2020.

19. It is also common ground that Mr Cantor picked up from Dr Newbon's tweets the Screenshot and re-published it, together with a brief caption, on Twitter from 15 August 2020 until about 19 April 2021.

20. There are claims in misuse of private information in respect of the information passed to Dr Newbon about Mr Edwards' complaints and in respect of the Screenshot, and there is a claim in defamation and data protection in relation to the Screenshot. Mr Mendelsohn is said to be liable for the re-publication of private information, and of the defamatory Screenshot, by Dr Newbon and Mr Cantor. In the defamation claim, there are issues as to serious harm, truth and honest opinion.

PRELIMINARY ISSUES

21. It is established that the Facebook Post, which (in its Screenshot form) was published by Dr Newbon and by Mr Cantor, was defamatory of Mr Wilson at common law. That issue, together with the meaning of the Facebook Post and whether it consists of fact of opinion, was determined by Mr Richard Spearman KC sitting as a deputy Judge of the High Court on 30 March 2022.

22. The Facebook Post consisted of a photograph of Mr Wilson together with commentary by Mrs Akhtar.

23. I gratefully borrow the following description of the photograph from the Judge's judgment[1] on the trial of preliminary issues:

[1] [2022] EWHC 715 (QB)

> "[3] The photograph which accompanied these words was taken in daylight and shows a man (the Claimant) facing directly at the camera. He is wearing a short double-breasted navy blue coat which is fully buttoned up, pointing his right arm and hand at roughly shoulder height towards his right hand side, and holding the handles of a shopping bag or small item of luggage in his left hand. The expression on his face seems in keeping with the gesture, and suggests that he is making a point or possibly rebuking someone. Around his neck he has what appears at first glance to be a scarf, or the collar of some inner garment, which is predominantly light grey or white in colour, but which can be seen on closer inspection to be a supporting neck brace or collar. Behind him is a wall, a lamppost or similar post bearing what looks like a camera sign, and several trees."

24. Mrs Akhtar's commentary on the photograph was as follows:[2]

> "Does anyone have any idea who this weirdo is, think he is from the Birkby area of Huddersfield, I was dropping my Daughter off at Birkby Junior School this morning, he has approached me by banging very hard on my car window asking me to turn my car engine off, I replied I am in the drop off zone its raining heavily the windscreen is getting steamed up, I was literally park up for a few minutes, this weirdo then had the nerve to take pictures of my car, of me and my Daughter, he was very rude and I took a picture of him so that I could inform other parents and the school that this freak takes kids pictures. This is harassment he has my Daughters picture in his phone, I am fuming, I want to find out who he is, please share and help me find out who he is. Thanks."

25. I also borrow the Judge's history of the early part of this litigation:

> "[6] The Claim Form is dated 1 July 2021, and was issued on 6 July 2021. The Particulars of Claim are also dated 1 July 2021, and therefore were presumably served at or around the same time as the Claim Form. On 22 November 2021, and by consent, Master Davidson directed the trial of the following preliminary issues in respect of the claim for defamation ("the Preliminary Issues"): (a) the natural and ordinary meaning(s) of the Facebook Post and each of the Tweets complained of in the Claimant's claim for libel; and (b) in respect of each publication complained of (i) whether each meaning found is defamatory of the Claimant at common law; (ii) whether it made a statement of fact or was or included an expression of opinion; and (iii) insofar

[2] Her punctuation and grammar are unchanged.

as it contained an expression of opinion, whether, in general or specific terms, the basis of the opinion was indicated. Master Davidson further directed that, by 4.30pm on 20 December 2021, each Defendant should file and serve a written notice of his case on each of the Preliminary Issues. The Defendants duly complied with that direction."

[7] On 15 January 2022, the Second Defendant sadly died. On his death, the Claimant's cause of action in defamation against him abated, although the Claimant's other causes of action against him survived against his estate. However, the Claimant's pleaded case includes the contentions that the First Defendant (a) is liable "as the 'author' of the Facebook Post for the purposes of section 10 of the Defamation Act 2013" in respect of each of the Second Defendant's Tweets identified in [4] above and also in respect of the Third Defendant's Tweet identified in [5] above and (b) is liable "in damages or compensation for the … reasonably foreseeable … republications" of each of those Tweets (see paragraphs 44.3 and 44.4 of the Particulars of Claim).

[8] In these circumstances, by Order dated 14 February 2022, Nicklin J directed (a) that the hearing of the trial of the Preliminary Issues should go ahead to determine the Preliminary Issues in relation to the claim against the First and Third Defendants, (b) that the remaining parts of the Claimant's claim (being the non-defamation claims) against the Second Defendant should be stayed pending either an application to substitute personal representatives of the Second Defendant's estate or the filing of a notice of discontinuance, and (c) that the status of the claims against the Second Defendant's estate should be reviewed at the aforementioned hearing.

[9] Thereafter, on 15 March 2022, the Claimant and the Second Defendant's widow, acting in her capacity as executrix of the estate of the Second Defendant ("the Estate"), entered into a Settlement Agreement. The main terms of that Agreement are (a) the Estate agrees to make a payment "in reflection of the Claimant's legal costs of dealing with the consequences of [the Second Defendant's] death and the complexity of resolving any matters as to the involvement of the Estate"; (b) the Estate will conduct a disclosure exercise with a view to providing the basis for an Order for Third Party Disclosure to be sought against the Estate; and (c) in consideration for the foregoing, subject to

> certain caveats, the Claimant will not apply to join the Estate as a party to the present claim.
>
> [10] Accordingly, I am now required to determine the Preliminary Issues (and nothing else)…

26. The Judge determined the natural and ordinary meaning of the Screenshot to be as follows:

> "The Claimant objected to a mother leaving her car engine running while dropping her daughter off at junior school, banged on her car window, was very rude to her, and took pictures of her, her car, and her daughter, which he retained on his phone. That conduct was unwarranted and worrying, was the conduct of a weirdo and a freak, and amounted to harassment."

27. It was common ground that the natural and ordinary meaning of each tweet published by Dr Newbon and Mr Cantor was not altered by the commentary added to it. The Judge agreed, and held that the meaning of each tweet containing the Screenshot and commentary, whether published by Dr Newbon or Mr Cantor, was the same as that of the Screenshot itself.

28. It was also determined that the statement contained in the first sentence of the meaning found was a statement of fact; that the statement contained in the second sentence was a statement of opinion; that the basis of that statement of opinion was clearly indicated, and consisted of the sequence of events described in the statement of fact; and that both statements were defamatory at common law.

29. I should mention that it was part of Mr Mendelsohn's case that Mr Wilson was not entitled to bring a claim against him for publication by Dr Newbon in circumstances in which he was able to bring a claim against Dr Newbon (and did so) but that claim abated on Dr Newbon's death. No authority was cited for that proposition, and I cannot see any reason of principle that might justify such a rule. As I understand the law, the death of one person liable for a defamatory publication only affects the liability of that person; it has no bearing on the liability of others who are also responsible for the publication. (See *Gatley*, 13th ed, para 9-013).

THE WITNESSES

30. Mr Wilson gave evidence on the first day of trial, 4 December 2023. I allowed him, without objection, to supplement his witness statement by giving oral evidence in chief in relation to the principal areas of factual dispute, which fall within a fairly narrow compass, and mainly concern Mr Wilson's relations with Mrs Akhtar. He was cross-examined at some length by Mr Walker KC, whose primary concern was to demonstrate that Mr Wilson was a witness whose evidence was not worthy of belief.

31. Mr Wilson was followed on the morning of the second day by his partner Sally Smith, and finally by Dr Paul Richards, the retired head of the law school at Huddersfield University, who was responsible for investigating and reaching a decision on Mr Edwards' complaints about Mr Wilson. The claimant's case closed at noon on the second day of the trial.

32. Apart from Mr Mendelsohn, Mr Cantor and Mrs Akhtar, who were the defendants' last three witnesses, a number of other witnesses were called by the defendants who had no direct evidence to give about Mr Edwards' complaints against Mr Wilson, or about the encounter which Mr Wilson had with Mrs Akhtar. They were Dr David Hirsh, a senior lecturer in sociology at Goldsmiths' College, University of London; Mr Nathan Comiskey, who maintains a Twitter account; Ms Nikki Healey, who works for a firm of solicitors called Levins; and Mr Alex Cleaver, a fire safety officer who regularly uses Twitter. Their function was to support the defendants' plea of truth in respect of the Screenshot by giving evidence of similar facts evidencing 'intrusive and unwarrantedly aggressive and belligerent conduct' on Mr Wilson's part in other circumstances, so as to give rise to an inference as to his propensity for such behaviour. A partly redacted witness statement of Mr Edwards was also before the court.

THE CLAIM IN PRIVACY FOR THE UNIVERSITY INFORMATION

33. Mr Wilson's claim in misuse of private information and breach of confidence is founded in part on events at the University of Huddersfield in 2011. There is little dispute as to the facts.

34. Mr Wilson and Mr Mendelsohn were colleagues at the university. Both taught law. Mr Wilson was a senior lecturer there between September 2008 and January 2014. He shared an office for his first one or two academic years with Mr Mark Edwards. There came a point when the School of Law had to move into temporary offices while building work took place. In 2009 or 2010 Mr Wilson was asked by the Head of the School of Law, Dr Paul Richards, if he would agree to move out of the temporary office that he shared with Mr Edwards, and share an office instead with another senior lecturer, Alan Cockerill, because Mr Edwards was unhappy about sharing an office with him: there was, it seemed, a personality clash. Mr Wilson agreed. He simply swapped with Mr Mendelsohn, who left Mr Cockerill's office and moved in with Mr Edwards.

35. In April 2011, Mr Edwards made a long complaint about Mr Wilson under the university's Dignity at Work procedure.

36. The complaint was lengthy (running to some 45 pages) and raised a number of issues. It alleged bullying and harassment from 2009, with an escalation in 2011, and made further allegations which it is not necessary to repeat. The allegations, which were supported by a statement from Mr Mendelsohn, were investigated by Dr Richards.

37. Having investigated the matter, in June 2011 Dr Richards sent Mr Wilson and Mr Edwards a letter setting out his decision. The outcome was that Dr Richards upheld one of Mr Edwards' complaints, which related to harassment in March 2011 by persistently trying to discuss with Mr Edwards the issue of his support for a strike called by the University and College Union, or UCU. Mr Edwards was a representative of the UCU, and was uncertain whether to join the strike. Mr Wilson had threatened (as what he

described as an ill-conceived joke) to put a notice saying 'cowards' on Mr Edwards' office door, which (even if there was no genuine intent to do so) would have been seen as a hostile gesture. Dr Richards found that Mr Wilson's behaviour, though not intended to have that effect, had been interpreted by Mr Edwards as intimidating or aggressive, and told him not to do it again. Mr Wilson felt that the finding was a little harsh, but decided not to challenge it.

38. Otherwise, the allegations, including those of bullying and harassment on other occasions, were not upheld.

39. Mr Wilson's evidence was that he apologised to Mr Edwards and Mr Mendelsohn later, realising that what he had said had been 'out of order'.

40. Given that the issue here is whether or not Mr Edwards' complaints and their investigation were or were not confidential or gave rise to a reasonable expectation of privacy, it is perhaps not strictly relevant to record Mr Mendelsohn's evidence about the basis of the complaints, but he had been present when the charge of cowardice was made, and described Mr Wilson's manner as 'aggressive'. He also stated that Mr Wilson sent him two aggressive emails, about which he complained to Dr Richards. This, it appears, gave him for the rest of the week a 'sense of dread' about going into work, and he and Mr Edwards felt it necessary to keep their office door shut and locked.

41. Mr Wilson asserts that the whole process of complaint, investigation and decision (cumulatively, the 'University Information') gave rise to a reasonable expectation of privacy, or was confidential. Mr Mendelson rejects that, although Mr Edwards himself seems to have agreed with Mr Wilson in regarding the process as confidential. (Mr Edwards described an exchange between a Mr Sagar and Dr Richards, referred to below, as an indication that Dr Richards had been discussing his complaint with unconnected colleagues, which in his view would have been a breach of confidentiality; and in his witness statement he declines to disclose Dr Richards' decision letter, which he describes as 'personal').

42. Dr Richards was called by Mr Wilson to give evidence. He told the court that he treated the complaint, his investigation and his decision as private and confidential, as both Mr Edwards and Mr Wilson had a right to expect, and as the relevant procedures required. The complaint was not disclosed to third parties. The decision letters were marked 'private and confidential' and sent to the two men.

43. Dr Richards accepted that there was, no doubt inevitably, some office gossip about the complaint, the process of investigation and his decision, but there was no question of their being made public within the university. He qualified that evidence to the extent of accepting that there had been some wider knowledge within the law school of parts of the complaint itself, as opposed to the process that followed, because (for instance) Mr Wilson had asked colleagues whether they felt that Mr Edwards' description of his character was justified, and because it was common knowledge that Mr Wilson believed that Mr Edwards, as a union representative, should have joined a strike called by the union. However, I understand Dr Richards' position to have been that he treated the complaint (as submitted to him), and of course his investigation into it and his conclusions and decision, as being strictly private and confidential to Mr Edwards and Mr Wilson.

44. A partly redacted witness statement by Mr Edwards was included in the trial bundle. Mr Edwards was not called to give evidence, but I was told by Mr de Wilde, for the claimant, that it was not in dispute in its redacted form. Mr Edwards' statement (and that of Mr Mendelsohn) makes clear that there were strong tensions between Mr Wilson and Mr Edwards, relating in part to political matters such as whether or not Mr Edwards and Mr Mendelsohn (as union representatives) should take part in a strike. The statement of Mr Edwards refers to what in his opinion was bullying, aggressive and intimidating behaviour by Mr Wilson. None of that, however, is of any relevance to the question of whether the complaint, investigation and decision were confidential or the subject of a reasonable expectation of privacy on Mr Wilson's part.

45. It was Mr Mendelsohn's evidence in his witness statement (A434 para 31) that Dr Richards came into the room which he shared with Mr Edwards to say that he was sorry he had not given Mr Edwards all that he wanted. Unfortunately, that particular contention was not put to Dr Richards by Mr Mendelsohn, but in fact little separates the parties concerning Dr Richards' visit to the room. Dr Richards' evidence was that Mr Wilson came to see him in response to the decision letter, but that he had heard nothing from Mr Edwards. He therefore called in at his office and asked Mr Edwards, in Mr Mendelsohn's presence, if he had received the decision. Mr Edwards said he was dissatisfied: Dr Richards said that he had a right of appeal. There was no discussion of the content of the complaint, investigation or decision in front of Mr Mendelsohn. Mr Mendelsohn, as I understand him, does not maintain that there was. His case is that Dr Richards did not ask him to leave the room or indicate that the matter was private and confidential. On that basis, he denied that the complaints, the grievance procedure or its outcome were private or confidential. He himself had no recollection of being told that the decision letter was private or confidential.

46. Mr Mendelsohn also relied on an allegation contained in Mr Edwards' statement (see [41] above). This was to the effect that on one occasion when Mr Edwards was present a colleague, a Mr Sagar, had approached Dr Richards and asked if he had spoken to Mr Wilson about any sanction to be imposed on him, to which Dr Richards said 'no'. That made Mr Edwards believe that Dr Richards had been discussing his complaint with colleagues unconnected with it. That exchange was put to Dr Richards by Mr Mendelsohn in cross-examination. Dr Richards explained that although he had no recollection of such an exchange, Mr Sagar would have been aware that there was a process going on. There were no potential sanctions unless the process led to disciplinary procedures, which this process did not, so had Mr Sagar asked whether any sanction might be imposed, he would have been bound to say no. He did not discuss the nature of the complaint with Mr Sagar or anyone else.

47. Finally, Mr Mendelsohn referred in his evidence to his belief that one of his colleagues, one Catherine Stanbury, knew about the complaint and (to some extent) the outcome. He bases that belief on a text exchange with Ms Stanbury, I presume during the course of this litigation, in which he asked her if she remembered Mr Edwards' complaint. Her recollection was that the claim was not made out, and that Mr Edwards had buried the real complaint (of being called a 'scab') in about 70 pages of ranting, so that 'they' (I assume Dr Richards is meant) could not see the wood for the trees. I do not think that demonstrates any real knowledge of the complaint or of the decision beyond the level of office gossip, but Mr Mendelsohn did say that she had been asked by Mr Wilson to

provide a statement in his support in response to Mr Edwards' complaint, so she would probably have had some knowledge at the time of what the complaint was about. For the sake of completeness, I should record Mr Wilson's evidence that it was unfair to characterise Mr Edwards' complaint as '70 pages of ranting', and that he never called Mr Edwards or Mr Mendelsohn 'scabs', a term which he regarded as offensive and which he would never use.

48. Dr Richards took strong objection to the suggestion that he had breached confidence, emphasising that he was very fastidious about process and protocol. In his opinion, Mr Mendelsohn had no business disclosing information about the content of the complaint, the investigation or the decision to third parties. He regarded Mr Mendelsohn's conduct in disclosing the information to Dr Newbon as malicious, unnecessary and calculated to damage Mr Wilson's career. In his view, if Mr Mendelsohn did know more about the matter than simple office gossip, the likely source was Mr Edwards: they shared similar views and were close friends. His surmise was correct, for Mr Mendelsohn confirmed in his evidence that he knew of the outcome of the complaint from Mr Edwards. Mr Mendelsohn accepted that Mr Edwards' disclosure to him would not have affected any expectation of privacy in the process on Mr Wilson's part.

49. I can see no reason not to accept the evidence of Dr Richards, who appeared to me to be an essentially neutral witness, supported as it was by Mr Wilson and Mr Edwards, that the whole process of complaint, investigation and decision was regarded by those involved as private and confidential, except to the extent that Mr Wilson might have asked some colleagues whether they agreed with Mr Edwards' view of him (although Mr Wilson said he did nothing to contribute to office gossip), and except that it was general knowledge in the Law School that Mr Wilson felt that his colleagues Edwards and Mendelsohn should have joined the UCU strike. There is nothing in the evidence of Mr Mendelsohn that contradicts that conclusion.

50. It is well established that the cause of action in issue of private information entails a two stage test: see in particular *ZXC v Bloomberg LP* [2022] UKSC 5; [2022] AC 1158. The first question is an objective one, namely whether a reasonable person of ordinary sensibilities, in the same position as the claimant, would have an expectation of privacy in the information. That is a broad question which requires all the circumstances to be taken into account. Those include the attributes of the claimant, the nature of the activity in which he was engaged, the place where it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher.

51. The second stage of the test involves balancing the claimant's article 8 right to privacy against the publisher's article 10 right to freedom of expression, to determine which should prevail in the particular circumstances of the case.

52. The claim was advanced on the pleadings as in breach of confidence as well as misuse of private information. It is trite that breach of confidence is an equitable claim which depends on the relevant information having the necessary quality of confidence about it, the requirement that the information should have been communicated in circumstances which give rise to an obligation of confidence, and unauthorised use of the information to the detriment of the person who imparted it. It very often overlaps

with privacy claims, where the facts give rise to claims in both of causes of action. I was barely addressed on the law of confidence. Nonetheless, on the evidence, I am certainly able to, and do, find that the University Information was confidential. That is an important factor in weighing both stages of the two stage test: see [60]-[62] below.

53. The actual disclosure by Mr Mendelsohn to Dr Newbon took place in the course of an exchange by (I believe) Twitter direct message about Mr Wilson, and was to this effect:

> Another friend of mine brought a grievance claim against him which was partially upheld. My friend accused him of bullying and harassment. I forget the exact details.

54. The context of this message was an online discussion with Dr Newbon which started with Newbon tweeting about a person whom he described as a 'Corbynite'. Mr Mendelsohn guessed this was Mr Wilson, which Dr Newbon confirmed, saying that a friend of his was being sued by Mr Wilson and that he was trying to find evidence to buttress her case. He then made the disclosure reproduced above, and immediately thereafter sent Dr Newbon a copy of the Screenshot which embodied the Facebook Post.

55. Mr Mendelsohn's evidence was that he shared the information with Dr Newbon because he wanted to show him who he was dealing with and thought it would be useful to the friend who was being sued.

56. Mr Mendelsohn's pleaded case on the University Information is complicated by the way in which it is dealt with piecemeal over a number of paragraphs in different parts of the Re-Amended Defence (RADF). However, as I understand it, he seeks to distinguish between three separate elements of what he admits having communicated to Dr Newbon. He pleads that he told Dr Newbon that Mr Wilson had bullied and harassed a friend of his (which he calls the 'bullying allegation'), that the friend had brought a grievance for bullying and harassment ('the grievance allegation'), and that the grievance had been partially upheld ('the grievance outcome allegation'). He maintains that bullying by Mr Wilson of Mr Edwards was widely known at the university and was not in any sense private (although I do not think he expands on what it entailed), and he distinguishes that public behaviour from Mr Edwards' complaints and Dr Richards' decision about them, but contends that the complaints and the decision were not private either.

57. He argued that if the mention of the grievance and its outcome contained any information beyond the 'bullying allegation', they were trivial or *de minimis* in the context of the bullying allegation.

58. He also argued that to the extent that the information conveyed by him to Dr Newbon was not trivial or *de minimis*, the disclosure was a lawful exercise of his Article 10 rights, and that the disclosures by Dr Newbon were a similarly lawful exercise. Alternatively, the claim in misuse of private information was an abuse of process, there being no real or substantial tort and the claim being out of all proportion to any vindication which Mr Wilson might obtain; in any event it was not a matter which he had complained about in his own tweets or in his letter dated 13 August 2020 to Dr Newbon's university, or which he had tried to keep confidential in the course of the proceedings; and in addition Mr Wilson himself had provided a statement for an article

published on the website Skwawkbox on 31 March 2022, following the judgment of Mr Spearman KC dated 30 March 2022 on preliminary issues, and for another article on 9 February 2023, which referred to his claims in privacy, and had written on his own open Twitter account about those claims.

59. It seems to me that the disclosure by Mr Mendelsohn to Dr Newbon was plainly a disclosure of the University Information. It was not an account of some publicly known bullying. It disclosed that Mr Wilson had been accused of bullying and harassment in a grievance claim brought by his unnamed friend, and that the grievance had been partially upheld.

60. The evidence shows clearly that Mr Wilson (and Mr Edwards and Dr Richards) had a reasonable expectation of privacy in the entire process of complaint, investigation and decision. The contents of the complaint, investigation and decision were, as I have said, plainly confidential, which is well established to be a significant factor in considering whether there was a reasonable expectation of privacy: *ZXC v Bloomberg LP* at [151]ff. The whole process was understood by all those taking part to be a private and confidential process. That was something that they had a right to expect and did expect. That is obvious and requires no elaboration. It makes no difference that the process was to an extent discussed in the Law School or was the subject of gossip. It remained private, certainly outside the confines of the Law School, and should not have been disclosed without a clear entitlement to do so.

61. Mr Mendelsohn relied in that respect on the importance of his Art.10 rights, which fall to be considered in the second stage of the test. There was no evidence about the particular importance in this case of his Art.10 rights, beyond what he said about wanting to inform Dr Newbon and help the friend who was being sued. The argument must be that Mr Mendelsohn's right to inform Dr Newbon, someone with no connection with Huddersfield University or the Law School, about the grievance and its outcome, a long time after it had happened, in the context of an exchange about their joint dislike of Mr Wilson, outweighed Mr Wilson's interest in continued privacy about a difficult and potentially damaging episode of his professional life. In my judgment the proposition only has to be stated to be seen as hopeless.

62. Moreover, there is a public interest in observing duties of confidence, and that public interest forms a significant element to be weighed in the balance at the second stage (*ZXC v Bloomberg LP*, *ibid*).

63. I therefore find that the information disclosed by Mr Mendelsohn to Dr Newbon was private information, and that Mr Wilson has made good his case that the disclosure was a misuse of private information. I do not regard the disclosure as *de minimis* or an abuse. On the contrary: it had the potential, as Dr Richards observed, to cause Mr Wilson real damage. The way in which Mr Wilson later complained of that disclosure, or wrote about it, does not affect that conclusion. In that context, I should say that neither article mentioned by Mr Mendelsohn identified the material said to be private: they were brief accounts of the litigation that simply referred in general terms to Mr Wilson's claim in respect of private and/or defamatory information.

THE CLAIM IN PRIVACY FOR THE FACEBOOK POST/SCREENSHOT

64. Mr Wilson also claims that the Facebook Post and Screenshot contained private information, such that disclosure of the Screenshot by Mr Mendelsohn to Dr Newbon, immediately after he disclosed the University Information, was a further misuse of his private information.

65. The Claimant's case is that the Facebook Post contained information about him ('the Facebook Post Information') in respect of which he had a reasonable expectation of privacy. That information is pleaded as being (a) information about his appearance outside the school that his child attended; (b) information that he had taken a picture of Mrs Akhtar's daughter while seeking to conceal his identity; and (c) information that he had harassed Mrs Akhtar by retaining a photograph of her daughter on his phone. It is his case that the information at (b) and (c) is false.

66. The facts relied on by the Claimant in his Re-Amended Particulars of Claim (RAPC, para 26) for the private nature of this information are as follows:

(1) The Facebook Post Information related or purported to relate to aspects of the Claimant's life which were manifestly private and confidential;
(2) Information about a parent's appearance and conduct at the gate of their child's school is information which forms part of the constellation of interests protected by Article 8 and the tort of misuse of private information;
(3) Purported information about the suspicion of a person's responsibility for criminal conduct is information which forms part of the constellation of interests protected by Article 8 and the tort of misuse of private information;
(4) The Facebook Post was published and disclosed by Mrs Akhtar for only a short time before it was deleted by her and the publication did not result in the dissemination of the Facebook Post Information beyond the immediate area in which the Claimant lived;
(5) The Court will be asked to infer that the Facebook Post Information was disclosed to the First Defendant in confidential and/or private circumstances in that he only became aware of it in circumstances where a former student was attempting quite properly to alert the Claimant to its existence in order to prevent its further dissemination and protect him from the consequences of more extensive disclosure.

67. In Mr de Wilde's skeleton argument, he made these submissions:

(1) At Stage One, the photograph of C in the Screenshot and the information about his conduct is information which relates to his appearance and alleged conduct at his child's school, which is named. These are circumstances which attract a reasonable expectation of privacy: a reasonable person of ordinary sensibilities would not expect to be photographed outside their child's school, or for information about them in those circumstances to be disseminated without their consent. While disclosure is an important element of the tort of misuse of private information, it is also concerned with intrusion and the right to autonomy, and, regardless of the precise information disclosed, it is highly intrusive and an interference with a person's autonomy to retain and disseminate online a photograph of a person taken outside their child's school.
(2) As D1 and Dr Newbon themselves privately acknowledged, and as the Court found, the Screenshot makes an allegation of criminal conduct against C. It is well established, and has now been approved at the highest level, that information

regarding past involvement in criminality attracts a reasonable expectation of privacy. This aspect of the privacy claim is enhanced by the chronology: while the incident took place in 2018, the disclosures for which D1 and D3 were responsible did not take place until two years later.

(3) Initial dissemination of the Facebook Post by Mrs Akhtar was limited as a result of her being asked to delete it by the Police. The disclosures by D1 and D3 resulted in a different character and extent of disclosure, which posed a far greater threat to C's autonomy, to that for which Mrs Akhtar was responsible.

(4) C's case, which is rightly uncontradicted by the Ds, is that disclosure of the information in the Screenshot for which they were responsible was an attack on his autonomy because he had otherwise believed that he had maintained the privacy and confidentiality of the information, and access to it.

(5) At Stage Two, the Article 10 case in relation to the disclosure of the information is, again, exiguous, and lacks any evidential basis to support the proposition that disclosure was lawful.

68. In his closing submissions, Mr de Wilde reiterated the point that the Screenshot showed Mr Wilson outside the named school of his children, and argued that it would be understood as meaning that he was in some way connected to the school as a parent. He made a distinction between the Facebook Post, which was disseminated only for a short time and, he said, locally, and the publication of Mr Mendelsohn's Screenshot, which of course contained the same information but was resurrected from presumed oblivion by Mr Mendelsohn's decision to send it to Dr Newbon nineteen months later. It is that publication, and the consequences that he says flowed from it, that he relies on for his case in misuse of private information.

69. Mr Mendelsohn denied that the information contained in the Facebook Post or Screenshot gave rise to a reasonable expectation of privacy, asserted that his publication of it to Dr Newbon was a lawful exercise of his Art.10 rights, and maintained that the privacy claim arising from the Facebook Post was an abuse of process, there being no real or substantial tort. He says that Mr Wilson's conduct took place in public, and neither the photograph of him nor his behaviour were matters in which he had a reasonable expectation of privacy. Mr Cantor adopts that case.

70. I should explain the reference to the 'former student'. At some point after the Facebook Post was posted, and after it had been deleted (in cross-examination, Mrs Wilson said 'some weeks after the incident'), Mr Wilson bumped into a former student whose children went to the school. She told him that she had seen and been shocked by the post, and had contacted Mr Mendelsohn about it so that he could contact Mr Wilson. It appears from Mr Mendelsohn's evidence that she did not do so.

71. How, then, did Mr Mendelsohn learn of it? Mr Wilson thought it 'inherently highly improbable' that the Facebook post of a Muslim mother and small businesswoman in Huddersfield would appear on the feed of a Jewish academic living in Manchester. That seems a not unreasonable supposition, although Mr Mendelsohn chose to read it as a suggestion that because he was Jewish he was unlikely to have Muslim friends, and he felt able to say that he found such a suggestion 'hurtful and anti-semitic'. A more reasonable reading of Mr Wilson's supposition might have been that Mr Mendelsohn and Mrs Akhtar had on the face of it nothing whatever in common. In fact, it was Mr Mendelsohn's pleaded case (and his evidence) that the post did appear on his newsfeed,

presumably, as he said, 'due to a comment, like or re-share'. Indeed, the contemporary record of his message to Mrs Akhtar shows that he said 'Hello there. You don't know me but I saw your post come up on my feed. I know this man's name. He is called James Wilson'. Mrs Akhtar replied that she already knew. That was on 3 December 2018, days (or weeks) before Mr Wilson says he ran into the former student.

72. It seems clear to me that Mr Mendelsohn did learn of the Facebook Post from his Facebook newsfeed. Had he learned of it from the former student, which plainly he did not, there would have been no reason for him not to have said so. He had worked in Huddersfield for 13 years and had briefly lived there, and he surmises that one of the sixteen people with her on Facebook when she made the post must have been a Facebook friend of his, or a contact of a Facebook friend, who then shared or re-posted her post so that it appeared on his feed.

73. I therefore reject Mr de Wilde's invitation to infer that the Facebook Post was disclosed to Mr Mendelsohn in confidential or private circumstances.

74. I accept, of course, that the Facebook Post was deleted after perhaps 24 hours, but I reject the contention that its publication did not result in dissemination beyond the immediate area where the claimant lived. That is demonstrated by the fact that Mr Mendelsohn, living across the Pennines in Manchester, picked it up on his feed. In any event, I have no way of knowing the extent of dissemination: Mrs Akhtar might have had friends and family, and others who followed her, anywhere in the country. Nor do I know how many people saw it.

75. The claim of reasonable expectation of privacy for the information in the Facebook Post seems to be substantially based on the proposition that it showed Mr Wilson's appearance and conduct at the gate of his child's school, and that it referred to suspicion of criminality (factors (2) and (3) at [66] above). I discount factor (1), which seems to me to be mere rhetoric.

76. In the case of *Murray v Express Newspapers plc* [2009] Ch 481 at [36], the Court of Appeal expressed the particularly relevant factors in these terms, after warning that the question is a broad one which must take account of all the circumstances of the case:

> As we see it, the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher.

77. I turn, then, to the *Murray* factors. There is in fact no information in the Facebook Post which suggests that Mr Wilson is a parent of a child at the junior school referred to, or that he is a parent at all. The highest that Mr de Wilde could put it in argument was that the Facebook Post would be understood to suggest that he was in some way connected with the school 'as a parent'. I am not at all confident that it would be understood to suggest anything more than that Mr Wilson was concerned about air pollution and child health, but even if he was shown as a parent of a child in the school, I am aware of no authority or principle which protects information about the appearance or behaviour of someone outside a school as private simply because he or she is a parent of a child at

the school. There is no obvious reason why the rights of someone who happens to be the parent of a child at the school should be prioritised over those of someone who, for instance, used to have a child in the school, or who even has no child at the school at all. It might well be different, of course, if the child was shown (as in *Murray*).

78. As for the nature of the activity, it seems to me that this is the most important single factor. Mr Wilson was not in any sense performing a private function: even on Mrs Akhtar's highly partial account, he was evidently acting in a role which (although he was self-appointed) was essentially a public one. Had he stood outside the gates of the school carrying a placard decrying parents who left their car engines running, as he might easily have done, there would surely have been no expectation of privacy, and it is not clear to me why his more direct action should be treated differently.

79. The place where the activity was taking place was, it seems, on the public highway, or at least somewhere to which the public had unrestricted access. As I have explained, it seems to me that it is not made clear that it was taking place outside his children's school, but that in any event there is no reason in this case why that should make any difference.

80. It is fairly plain that there was no consent for the picture to be taken. The context makes clear that Mr Wilson had taken pictures too, although (as I shall go on to explain) Mrs Akhtar exaggerates what he took the pictures of. In other words, the information is that each took pictures of the other. However, it is certainly a reasonable inference that had Mr Wilson been asked for permission for the Screenshot to be published to or by Dr Newbon or Mr Cantor, he would have refused.

81. The effect on Mr Wilson of the publication of the Facebook Post, and (twenty months later) of the Screenshot, was primarily on his reputation, and he has made a claim in respect of that damage; although I quite accept that the re-appearance of the Post in Screenshot form in August 2020 will have been an unpleasant surprise. But in so far as he would have found the re-publication of the Facebook Post in Screenshot form unpleasant and offensive, especially given the unattractive way in which Dr Newbon gloated over it, it appears to me that this is one of the factors relevant to the balance to be struck between Article 8 and Article 10, rather than to the antecedent question of reasonable expectation of privacy: see *Murray* at [26].

82. I have dealt with the circumstances in which the Facebook Post came into the hands of the publisher, Mr Mendelsohn: I find that it appeared openly on his Facebook news feed.

83. It appears to me, as I have said, that the single most important factor which militates against any expectation of privacy for the Facebook Post, or thereafter for the Screenshot, is that Mr Wilson was performing a public act in a public place. Given that, I cannot see why the nature of the activity should be viewed in a different light simply because the Screenshot was later weaponised by men who were hostile to him.

84. Mr de Wilde stressed in his argument the importance of intrusion and inference with a person's autonomy. Of course, the law is concerned with human autonomy and dignity,

but that (as Lord Hoffmann put it in *Campbell v MGN Ltd*[3]) is 'the right to control the dissemination of information about one's private life'. In other words, it begs the question.

85. There is another matter to be dealt with. As I have said, Mr de Wilde submitted that the fact that the Facebook Post accused Mr Wilson of criminal or quasi-criminal behaviour gave rise, either on its own or in conjunction with the description of Mr Wilson's appearance and conduct, to a reasonable expectation of privacy.

86. I am unaware of any authority to the broad effect argued for by Mr de Wilde. *ZXC v Bloomberg LP* [2022] UKSC 5; [2022] AC 1158, to which I believe he was referring, does not go so far. The principle confirmed by the Supreme Court in *ZXC*[4] was stated for the first time at appellate level by the Court of Appeal in that case as being that '… those who have simply come under suspicion by an organ of the state have, in general, a reasonable and objectively founded expectation of privacy in relation to that fact and an expressed basis for that suspicion'.[5] The reason for that is the reputational harm that is likely to flow from publicity of the fact of official suspicion, whether or not it has resulted in arrest: see eg per Warby J in *Sicri v Associated Newspapers plc* [2021] 4 WLR 9 at [76].

87. There can be no justification for extending such a principle, clearly founded as it is on the particular weight attached to official suspicion by organs of the state, and the reputational damage likely to be caused by knowledge of that suspicion, to an intemperate allegation by a private person on social media.

88. I conclude, therefore, that Mr Wilson has not satisfied me that there was a reasonable expectation of privacy for the Facebook Post or the Screenshot. That disposes of stage 1, and makes it unnecessary to go on to the balancing exercise required by stage 2. However, I would have given very little weight to the Art.10 rights of Mr Mendelsohn in disclosing the Screenshot to Dr Newbon, a man with no legitimate interest in the information, so long after the event, in the course of a discussion about their dislike of Mr Wilson. I would have given even less weight to those rights in considering the use made of the Screenshot by Dr Newbon and Mr Cantor, which was simply abusive and (at least as repeated time after time by Dr Newbon) amounted to a form of public bullying.

DEFAMATION CLAIM: MR WILSON'S DEALINGS WITH MRS AKHTAR

89. Mr Wilson founds a claim in defamation on the publication of the Screenshot by Dr Newbon and Mr Cantor. To that claim the defendants raise defences of truth and honest opinion. It is therefore necessary to examine the facts of Mr Wilson's encounter with Mrs Akhtar.

90. It is uncontentious that Mr Wilson has long been concerned with issues of social deprivation in Birkby. One of the local problems is air pollution, which is associated

[3] [2004] 2 AC 457 at 51
[4] [2022] AC 1158 at [146], where it was made clear that this expectation was a legitimate starting point, not a substitute for the fact-specific enquiry that is always necessary.
[5] [2020] EWCA Civ 611; [2021] QB 28 at [82]

with poor pregnancy outcomes, including premature birth, and with serious health problems, including respiratory disease, in children. Since his own children started attending the local infants, nursery and junior schools, Mr Wilson and a small number of other concerned parents have approached parents who sit with their car engines idling while delivering or collecting children, to ask them to turn their engines off. Their concern has focused particularly on older vehicles with diesel engines, which, Mr Wilson told the court, are the worst offenders in terms of nitrogen dioxide and particulate pollution.

The altercation - 3 December 2018

91. The altercation with Mrs Akhtar took place on the morning of 3 December 2018. There is a clear and important factual dispute about what took place.

92. Mr Wilson's evidence was that he walked his daughter to school and left her at the school gate. He walked past the school gates, where he saw a dark coloured Mercedes diesel car parked in the school drop off area with its engine running. It remained stationary as he approached it, so it did not appear that a child was simply being dropped off. He said that he stood near the driver's window. The driver, Mrs Akhtar, lowered the window, presumably because she saw that he wanted to talk to her. Mr Wilson smiled and asked her politely to turn her engine off, because of the damage that diesel exhaust pollution can do to children's health. He was standing a little distance from the car because the line of the car's roof was such that he could not otherwise have seen her face. Mrs Akhtar immediately lost her temper, swearing at him and asking what it had to do with him. He tried to reason with her, but she said 'Watch yourself or I'll break your other neck', a threat which, according to Sally Smith, became a joke among their friends. Mrs Akhtar denied having said that, and said that she did not swear at him: she was not brought up to swear.

93. The alleged mention of Mr Wilson's neck appears to have been a reference to the rigid neck support collar that Mr Wilson was wearing. He had suffered a serious cycling accident in October 2018, in which he fractured two vertebrae, and he had been warned to avoid sharp or violent movements that might put strain on his neck. If he did move sharply he suffered stabbing pains in his neck. The suggestion that, in that condition, he would (as Mrs Akhtar claimed) have banged on the windows and windscreen of her car, was in his view absurd. He was focused at the time on avoiding sharp movements. Moreover, Birkby was an area with high levels of violence: banging on someone's car window would have created a risk of violence, whether at the hands of the driver or from the partner of a female driver.

94. Mrs Akhtar took a photograph of him, which she later posted on Facebook. It was Mr Wilson's belief that she photographed him first. He had no wish to take a picture of her, which would have entailed pointing his camera through the open driver's window. What he did do was to go to the front of the car to take one or two pictures of the number plate and bonnet so that he could report Mrs Akhtar's behaviour to the school. I note that in an email to the University of Northumbria dated 13 August 2020 Mr Wilson said both that he took a photo of her car and that he took a photograph of Mrs Akhtar committing a criminal offence. Cross-examined, he explained, as I understood him, that he meant he took a photo of the car, and thereby of her committing a criminal offence,

rather than that he photographed her: had he wanted to photograph her, he said, he would have done so through the car window.

95. When he took the photographs, Mrs Akhtar became very angry, calling him a paedophile for (as she claimed) taking pictures of her daughter.

96. It is common ground that Mrs Akhtar used her photograph of Mr Wilson for the Facebook Post, which she put up later the same day.

97. Mr Wilson was uncertain when or how he learned of the Facebook Post. Another parent might have told him of it; or he might have been informed of it by the police officer who became involved following a further incident with Mrs Akhtar on 4 December.

98. Mrs Akhtar's evidence was that she liked to arrive at school with her daughter earlier than was necessary to avoid traffic, and then to sit with her in the car for 10-15 minutes reading with her. On the morning of 3 December she arrived early, as usual, and parked in an area designated not for parking but for parents to drop their children off. Despite that, she felt that she had parked considerately. It appears that she had not dressed, but was wearing her nightclothes when she brought her daughter to school.

99. It was a rainy day, and the windows had steamed up. She explained that the windows steamed up when the car heater was off, but the car became too hot if the heater was on. She kept the car's engine running while the car was stationary. In her witness statement she did not explain why she did so. In cross-examination, she said that it was so that she could use the windscreen wipers, and see when the school gates opened.

100. According to her witness statement, a man banged loudly and firmly on the driver's window, which she found intimidating. She lowered her window a little, and the man told her to turn her engine off because she was polluting the environment. She asked him, without apparent irony, what it had to do with him, told him to get lost, and wound the window back up. He then moved to the side of the car and banged the windscreen, before shouting 'If you are not going to listen, I will take a picture'.

101. Asked about the allegation that the man banged on the windows, she said that he banged on the windscreen, not the side window. Reminded of her witness statement, in which she said he banged on both, she at once said she was sure that was true. Then she said that it was either the windscreen or the side window. Finally, she said again, as she had in her statement, that he banged twice.

102. According to her statement, the man stood in front of the bonnet, facing the windscreen, and appeared to be taking pictures with his mobile phone. He held his phone up for a few seconds, shifting his body to change his angle, so she supposed that he took more than one photograph, to get shots of her, her daughter and the car.

103. She said that she could not get out of the car because she was in her nightclothes, but wound the window down and took a picture of him when he had moved to the side of the car. That was the picture used later that morning in her Facebook Post. She took the picture through her side window, which (unlike the other windows) was not steamed up because she lowered it.

104. She was asked how he could have taken pictures of the occupants of the car from the front of the car if the windows were steamed up. Her answer was that the windows were not steamed up, because she had put the heater back on. Unless the state of the windows altered in a matter of seconds, that was in direct contradiction of her evidence a moment before, when she said that she photographed him through the driver's window, which she wound down because the windows were steamed up.

105. She went home, changed and returned to the school to ask the head teacher if she knew the name of the man responsible. The head teacher's response was that she was unable to do so because of 'data protection'.

106. Mrs Akhtar said that she was distressed and upset, because the man appeared to have taken a picture of her daughter. She wanted to identify him through Facebook, because everybody used social media. She discussed what had happened with members of her family on their WhatsApp group, and her sister told her that he was a lecturer who had taught at Huddersfield, whose name was James Wilson. At about the same time that she was told Mr Wilson's name, but presumably before she was told, she put up the Facebook post. That was between 0930 and 0945 on 3 December 2018.

The following morning: 4 December 2018

107. The next morning, according to Mr Wilson, as he left his daughter at the school gates, Mrs Akhtar was waiting for him. She confronted him and seized his coat, shouting words to the effect that this was the man who had been taking photographs of children. Holding his coat, she pushed and shoved him around. Although considerably taller than she was, he offered no resistance. A number of parents and staff members were standing around. One staff member told Mrs Akhtar repeatedly that she had to stop her behaviour and let him go. She did so, and Mr Wilson walked away, shaken. He was later contacted by an officer of West Yorkshire Police, who took the view, on the face of it correctly, that he had been the victim of a criminal offence. Mr Wilson said that he did not want her to be prosecuted: the officer said he would speak to her and tell her to delete the Facebook post. He duly did so.

108. Mrs Akhtar agreed that the next day she waited at school. She was not in her car, nor in nightclothes. She said that when Mr Wilson arrived she very calmly approached him and asked to see the phone, since she believed or, as she also said, she knew, that he had taken one or more pictures of her daughter. She said that he simply ignored her, and walked away. She kept walking in front of him, and he would keep changing direction and 'smirking' at her. She became so frustrated that she said she would hit him if he did not show her the picture that he had taken. He told her 'Go on, hit me', and eventually walked away. In oral evidence, she said he was intimidating. In her witness statement she said that she did not attack him. However, she admitted in cross-examination that she had grabbed Mr Wilson's coat. She was later visited by a police officer, who assured her that there was nothing on Mr Wilson's phone, which he had checked. On the basis of that assurance, she agreed to his request to delete the Facebook post.

Subsequent incidents

109. Within a few days of the Facebook post being put up, a car pulled up beside Mr Wilson as he walked home after taking his children to school. The male driver spoke to Mr Wilson in a threatening tone, saying that he had seen Mr Wilson on Facebook and that he was the weirdo who hung around the school taking photos of children. That frightened Mr Wilson, who feared that he might be attacked. On two further occasions within a few days, cars were driven slowly past him as he walked to or from the school, and the drivers stared at him in what he felt was a threatening way. He had never experienced such incidents before the Facebook post. They made him anxious and vigilant.

Further contacts in 2022 and 2023

110. There was further contact between the Wilsons and Mrs Akhtar, which was explored in evidence. It is necessary to give an account of it, at least in broad terms, even though I do not think that it goes to any issue beyond the credibility of the witnesses involved.

111. It is, I think, common ground that despite the altercations of 3 and 4 December and the Facebook post, Mr Wilson and Mrs Akhtar encountered one another at school, at least until her daughter moved to a senior school in September 2022. Mr Wilson would say they were on reasonable terms; Mrs Akhtar would not agree, although there seems to have been no overt hostility. I do not think it necessary to deal with that contact in any detail.

112. However, it is necessary to refer to certain meetings in 2022 and 2023. These proceedings had been commenced in July 2021, and Mrs Akhtar was always likely to be a witness at trial. Mr Wilson offered to discuss the litigation with her, but on his account she said she had been told by the defendants' solicitors that he was not allowed to talk to her and that if he tried to do so she should report him to the police for witness intimidation. I have no means of knowing whether that is correct, although one would have hoped that a solicitor would not have given a witness such obviously inaccurate information.

April 2022

113. It is common ground that on 29 or 30 April 2022, Mrs Akhtar came to the street where Mr Wilson lived, to deliver a television to a house opposite.

114. On Mr Wilson's account, which must have been based on what his daughter told him, she saw Mr Wilson's daughter outside the house on 30 April and came over to ask if she could speak to him. That was also his partner Sally Smith's account: she said that her daughter had been going off to a club but had run back into the house to tell her mother that there was a woman outside who wanted to speak to Mr Wilson. That account is given some slight support by a handwritten note, written by the couple's daughter, which was included in the trial bundle but was not formally introduced into evidence. In that note, the child said that a woman called to her when she was walking off to her dance club, asked if James was her dad, and asked to speak to him.

115. Ms Smith said that when she had her daughter's message she came to the front of the house and asked who she should tell her husband was looking for him: she replied 'he knows who I am'. She fetched her partner, Mr Wilson, who asked her to stay with him

because he was concerned what Mrs Akhtar might do or say. She took a coffee out to the front and sat in the front garden while Mr Wilson spoke to Mrs Akhtar about 10 metres away. She could hear most of what was said.

116. According to Mr Wilson, Mrs Akhtar told him that she was being harassed by the defendants' solicitors to sign a witness statement during the Muslim month of Ramadan, and just before the religion's festival of Eid. No doubt matters were urgent: the defence had to be served by 3 May 2022. Mr Wilson told her about the case and that the legal costs that were building up. She said that she would not sign the witness statement but would come back to see him. In the event, she did not return. They met a week or two later and she told him that she had signed the statement.

117. Ms Smith, sitting in her front garden, observed that Mrs Akhtar seemed calm and did not appear angry or at all afraid of Mr Wilson. The conversation seemed amicable: Mrs Akhtar wanted to know what was happening with the case and said that she was fed up with it. She said she had spoken to the defendants and that she was fed up with being asked for a statement: it was the Muslim festival of Eid, she was busy and the defendants would not leave her alone. The conversation lasted about 5 minutes. It ended with her saying she would come back and have a proper talk with Mr Wilson about it later. She was busy and wanted to get off.

118. Mrs Akhtar's version of the meeting was that she did indeed deliver a television to a neighbour of Mr Wilson, she thought on 29 April 2022, and that as she left the neighbour's house she saw Mr Wilson on the other side of the road. He waved and called out to her, she crossed the road and asked him what he wanted. He asked if she wanted to come in for a cup of tea. She said no, because it was Ramadan and because in any event she did not want to go into his house. He asked if she was going to give a witness statement: she said that she did not know. The daughter's note of what happened was read to her: it was wrong, she said. Mr Wilson approached her: she did not ask the child if she could speak to her father. Nor had she been under any pressure to sign a witness statement.

June 2022

119. Mrs Akhtar said that she encountered Mr Wilson again on 1 June 2022, when he stopped his car by hers and asked her through the driver's window whether she had given a witness statement. She said that she had, although in fact it had not been completed or signed (and was not signed until 10 August 2023). That much is common ground. According to Mrs Akhtar, he asked her why she had done that, and called her a 'silly, silly girl'. She said that he also walked towards her in the school playground on 8 June 2022, but she walked quickly away. Unfortunately, these matters were not raised with Mr Wilson in his evidence, but I find it improbable, having heard and seen him, that he would have spoken to Mrs Akhtar in such a patronising way. She felt this behaviour on his part amounted to intimidation and reported it to the police. She said in her witness statement of 10 August 2023 that she dreaded seeing Mr Wilson and just wanted him to leave her alone.

September 30 or October 2 or 3, 2023

120. In an email to the court dated 28 July 2023, Mr Mendelsohn said that Mrs Akhtar was then unwilling to provide a statement and that there were grounds to suppose that Mr Wilson had tried to intimidate her. In fact, Mr Wilson's evidence was that they had not been in touch since about May 2022. However, on learning from the Mendelsohn email that she might have changed her mind, he visited her at her shop on 30 September 2023, and discussed the possibility of a meeting between the two of them and a Mr Manzoor, who was known to and trusted by them both, to discuss providing him with a witness statement. Mrs Akhtar said he did indeed come to the shop, but not on a Saturday (30 September 2023 was a Saturday): it was a Monday or Tuesday, and she was busy with customers.

October 5, 2023

121. Mr Wilson had an email from Mrs Akhtar on Thursday 5 October 2023, asking him to come to Paddock (the part of Huddersfield where Mr Manzoor's shop is located) at 7pm. They met, but Mr Wilson said that Manzoor was not there. I note that Mrs Akhtar insisted it had been Wednesday 4 October when they met: she had taken a day off work. She was shown her own emails about the meeting dated 5 October, and had to accept that the meeting must have been on that day.

122. According to Mr Wilson, they discussed various matters, including the case. What was particularly significant to him was that she told him she had been promised £5000 by Mr Mendelsohn to come to court to give evidence, and had recorded the conversations in which the promise had been made. There would also be a taxi to London and back and an overnight stay in a hotel. In cross-examination, she denied having told him about any promise of £5000, and denied having made any recordings. On the contrary, she said: Mr Wilson had offered her money.

123. Mr Wilson said that she agreed to sign a statement. Mr Wilson drafted a short statement in which she was to say that she 'refuted' (the intended meaning must have been 'retracted', or 'withdrew') the statement which she had made for the defendants. He brought the draft back to her on 6 October 2022, but on his evidence, she said she would only sign it if he gave her £5000. On his account, she could not understand why he would not pay her, given that the defendants were doing so. It was plain to him that she thought she was being generous, since her evidence was worth more than that.

124. Her evidence was that Mr Wilson offered her £2500 if she agreed not to go to court, which she rejected. She also said that he offered her £1000 on the Thursday (so presumably at the 5 October meeting). Asked why she had not mentioned that in her second witness statement (signed 25 October 2023), she said, remarkably, that she had not thought it relevant. She denied having asked him for £5000.

125. Immediately after that exchange, Mr Wilson reported it to the defendants by email dated 6 October 2023, telling them of her claim to have been promised £5000, and asking (inter alia) that they preserve all communications with Mrs Akhtar. Mr Mendelsohn must have been in touch with her immediately, for at 1237 she texted Mr Wilson to say 'I have had an email from James' [meaning Mr Mendelsohn] 'I will see you in court, thank you very much'.

October 7, 2023

126. Despite that, and notwithstanding her sworn statement that she dreaded seeing Mr Wilson and just wanted him to leave her alone, it is common ground that she came to Mr Wilson's house the very next day, Saturday 7 October 2023, at about 1000. She spoke to Sally Smith, Mr Wilson's partner, who opened the door. She claimed in cross-examination that Mr Wilson was a very intimidating man and that she had wanted to speak to Ms Smith, but it was of course a matter of pure chance that Ms Smith, rather than Mr Wilson, came to the door. Mr Wilson was in the shower, but came downstairs and from near the front door, where Ms Smith was standing, recorded the latter part of the conversation on his telephone. Mrs Akhtar, who listened to the recording outside court, agreed that the recording was accurate. A transcript of the recording was before the court. It was not agreed, but it also appeared to be accurate. All that Mrs Akhtar said in her witness statements about this conversation was that she told Ms Smith that Mr Wilson had lied about her: it is clear that she meant he had lied in the 6 October email to Mr Mendelsohn.

127. Ms Smith gave evidence about the conversation with Mrs Akhtar. She answered the door in her pyjamas. She told Mrs Akhtar that she would have to wait to speak to her partner because he was in the shower, but Mrs Akhtar said she wanted to speak to her. With hindsight, she was not sure whether Mrs Akhtar had really come to speak to her, or had decided on the spur of the moment to speak to her rather than her partner. They spoke for about 10 minutes. Mrs Akhtar was keen to appear friendly. She insisted on passing Ms Smith the milk bottles from the doorstep and that she should put them in the fridge. She invited Mrs Akhtar in, but Mrs Akhtar refused. About two thirds of the way through the conversation, Mr Wilson got out of the shower, came downstairs and apologised to Mrs Akhtar for keeping her waiting. He said he would only be a couple of minutes. Ms Smith shooed him away, saying that Mrs Akhtar wanted to speak to her.

128. Ms Smith could not remember everything that had been discussed, but a number of topics were covered. Mrs Akhtar told her that she had come because she had been upset about Mr Wilson's email to the defendants of the day before, describing what had happened at their meeting. She appeared upset about it, but she did not say that his account was inaccurate, or that he had been unpleasant or threatening: her concern appeared to be that he had 'gone behind her back' and did not have to do that.

129. Ms Smith explained to Mrs Akhtar that her request for money put them in a very difficult position: they could not pay any witness for their evidence, and they had no choice but to tell the defendants. Mrs Akhtar said she was upset that Mr Wilson had told the defendants that she had asked him for £5000, and that the defendants had offered her large amounts of money. She also seemed upset that Mr Wilson had told the defendants of an arrangement that Mr Mendelsohn would come up to see her in Huddersfield on 9 October. It appeared to Ms Smith that the purpose of the conversation was to encourage her to persuade Mr Wilson to speak to Mr Manzoor and arrange a meeting so that they could discuss matters further. Mrs Akhtar said she was willing to sign the statement prepared by Mr Wilson, and that she was a reasonable person. She said that she had only mentioned the sum of £5000 to Mr Wilson because that was what the defendants were offering, and that as a reasonable person, she would accept less. Ms Smith repeated that witnesses cannot be paid: Mrs Akhtar replied that she understood that, but that the defendants had agreed to pay her to shut her shop for several days, to pay for childcare and a London hotel, and a taxi to London and back.

They had offered her £5000, she said, but would have gone higher, to £7000, £8000 or £9000. They would have paid that, she assured Ms Smith: they were desperate.

130. In cross-examination, Mrs Akhtar insisted that she did not refer to thousands of pounds. She correctly pointed out that in the recording reference is only made to '5', and to '7, 8, 9'. She said she meant hundreds, not thousands. She accepted that Ms Smith told her it was wrong to pay people for evidence, but she maintained that what she was talking about was being paid for her travel expenses.

131. Asked what there was to discuss at a further meeting, Mrs Akhtar said that she did not want Mr Wilson to lose his house. He had disabled children, she said (in fact, one child). She insisted (referring to the 3 December 2018 incident) that he had banged on her car window, and he only had to agree that he had done so. She said that she wanted him to 'sort it out and be honest'. I note that soon after the conversation with Ms Smith, which Ms Smith thought lasted about 10 minutes, Mrs Akhtar sent Mr Wilson a text timed at 1041 saying 'Do you want to discuss or leave it as it is'. That, she explained, was because she felt he owed her an apology.

132. Another theme of the conversation, according to Ms Smith, was that Mrs Akhtar wanted to know why the defendants hated Mr Wilson so much. She said several times, with emphasis, that they absolutely hated him, and she could not understand why. She said that Mr Wilson seemed a nice man: Mr Manzoor – whose shop he regularly visited - had said so. Ms Smith tried to respond to Mrs Akhtar's enquiry about why the defendants hated Mr Wilson, but it was a long story and she was on the doorstep in her pyjamas. Mrs Akhtar suggested it was about politics, and Ms Smith agreed. But Ms Smith did say that, as was her view, the defendants were bullies who did not like the fact that Mr Wilson had stood up to them.

133. Mrs Akhtar said she had been told by Mr Mendelsohn that Mr Wilson had called her a 'violent yob', which plainly upset her; and that Mr Wilson did not care about Dr Newbon's death, which upset Ms Smith greatly because she and Mr Wilson both felt it was a complete tragedy, and she thought about his wife and children whenever she thought about the litigation. They also discussed what Ms Smith said was the need for an injunction to stop any further publication of the Facebook post, and Mrs Akhtar said she understood why Ms Smith might be frightened of any further publication.

134. Ms Smith was left with the impression that Mrs Akhtar's main objective was to get her to persuade Mr Wilson to speak to her again, but she felt there was a 'definite sinister overtone' of which Mrs Akhtar could not have been unaware – that she was unpredictable and impulsive, regretted having asked Mr Wilson for money, and wanted to find a solution, but was in effect 'for sale', would give or withhold evidence for money, and might become more hostile to her and Mr Wilson, depending on what falsehoods the defendants told her.

135. It seems to me to be fair, in the circumstances, to set out the whole of the transcript, which of course captures only the last part of the conversation. 'SS' is Ms Smith: 'RA' is Mrs Akhtar.

SS Well, I'll tell him. I'll tell him what you're saying.

RA Yes. There was no need to go. Whatever I've told him which what they've done, he's just gone and told them.

SS I know, I know. But we're just...we're just so worried that.

RA You know, but if he wouldn't, if he wouldn't do, he wouldn't have done that. He would have said, honestly. He would've come to me and said 'Rifeth can we sit down and we can talk?' He knows I'm a rationable (*sic*) person. Manzoor known me. I've known his kids. I think I've known him for about 30 years.

SS You cannot pay witnesses.

RA I know you can't pay a witness. But we said, 'They are'. They're so, they're so lethal. They are prepared to pay. But I know what you mean, it's against the law. But the thing is.

SS You get struck off if you're a solicitor.

RA Yes, I know. Yeah you do. But they're not, they're this wasn't even done... There was no record of it. It was done over the phone. And I said: 'I'll think about it'. What I just said to James, I said, 'You know they're prepared'. I even showed Manzoor. I said, 'They're prepared to pick me up from my house'. They didn't even want me to come on the train with him. Pick me up in a taxi, take me there, book me in the hotel, pick me up, pay for my days off work. Because I've got no-one there that month. My family are all away, so it'll be me. I've got no childcare.

SS And yet can't say. I just don't know what to say.

RA That's whatever. What I told him this is what they've said. And I told Manzoor, I said, "I could have easily said 7, 8 9 but I was only...

SS Do you think they'd have paid?

RA Oh yeah, they would've paid. But I didn't lie to James about it. I just said "James", he could have said "Right listen, I haven't got this much, can we?" You know I said to him, "You don't have to pay me". Even they're giving me 5. I'm really reasonable about that. So I've tried every single way, but not to get this far. But after last night, I'm really, honestly, upset.

SS I know I'm really sorry.

RA No, I know James was upset but he could have spoken to me.

SS Mmmm, I know.

RA I said (*inaudible*] but anyway, it's been nice meeting you.

SS Yeah. And you. Alright. Have a nice day.

RA But if you need to speak, I have spoken to Manzoor this morning because he was at his shop.

SS Yeah. Well, I'll tell James to speak.

RA Yeah. Have a word. I'm still prepared to sort it all out before it gets this far. And as I say, you know, (*unclear*) and just really can. They don't like [unclear). Any kind of way if you put it like that, you know, they just hate us.

SS Okay.

RA But they're ever so sweet to me now. But I'm not. Like, I'm just upset. You know when you confide in someone and I saw how upset James was, he was you know like, I was like 'You wouldn't have said that about a man dying'.

SS So who are you saying hate grooming gangs then?

RA Eh?

SS Who are you saying you hate grooming gangs? James and?

RA Yeah. And obviously I'm.... That's fine. But they said, you know 'He's a heartless man". And he didn't care if James had died, like that. That's why 1 asked him Why do they say this? And he was upset.
SS He's got, he's got children.
RA And he's going...I'm going now. No, I'm going, love. Thank you. Thank you. And yeah but... and I asked him he was genuinely upset. But me [*unclear*] I don't care.
SS It's awful. He's got children. The man's got children.
RA That's what is. The children.
SS Orphans.
RA (*inaudible*) But he said "my wife's scared"... can you imagine, you don't want to be looking over your shoulder, you know.
SS Yeah.
RA But anyway.
SS Alright. Okay.
RA But speak to him.
SS I will do.
RA I didn't want it to get this far. (*inaudible*) But I was more upset that I confided in him. It's like you confide in me about summat and I go to...
SS Yeah, I appreciate that.
RA Thank you.
SS So alright, take care.

136. In my judgment, the transcript tends to confirm Ms Smith's account of what was said during the 8 October conversation. Most importantly, it supports Ms Smith's evidence that Mrs Akhtar was concerned to meet Mr Wilson again, notwithstanding her claims in evidence that he was a very intimidating man and on 8 October had wanted to speak to Ms Smith; and it confirms her account that Mrs Akhtar raised the question of payment for her evidence. It was Sally Smith's evidence that Mrs Akhtar spoke of thousands of pounds, which does not appear from the transcript, but (given Ms Smith's otherwise inexplicable reference to the fact that one cannot pay witnesses) the subject of payment had plainly been raised in the conversation before the recording began. Ms Smith is a practising solicitor, who would have been very much alive to the impropriety of payment for evidence, and I do not doubt the accuracy of her evidence that it was thousands, not hundreds, that Mrs Akhtar mentioned. But even if Mrs Akhtar was correct in saying that she meant hundreds, it seems to me fairly clear from the context that she was talking about some monetary inducement beyond the simple repayment of expenses. She had no way of knowing what a taxi to London and back would cost, or the cost of a London hotel, or how many days of lost work she was to be compensated for: she could not know that £500 would be enough to compensate her for those costs. It might well have been a wholly inadequate amount, if it was meant to compensate her for losses caused by coming to London to give evidence. Moreover, her acceptance that it was unlawful to pay witnesses sits awkwardly with her claim that she was only talking about proper reimbursement of expenses.

137. Additionally, it made no sense for Mrs Akhtar to wish to meet the supposedly intimidating Mr Wilson again if the only purpose of the meeting was for him to acknowledge and apologise for having given a false account of the December 2018 altercation. It appears to me much more likely that the purpose of any meeting would have been to have further discussion about payment for giving evidence.

2019: DEFINITIONS OF ANTI-SEMITISM

138. There is in the trial bundles a substantial amount of material concerning social media exchanges. For an understanding of the context in which the Screenshot was sent by Mr Mendelsohn to Dr Newbon, and re-published by him and Mr Cantor, and to explain a particular area of disagreement between Mr Wilson on the one hand and Mr Mendelsohn and Dr Newbon (and others) on the other, it is necessary to refer to some of that material.

139. Mr Wilson was involved in Twitter exchanges with Mr Mendelsohn in September 2019, concerning a Christian anti-Zionist called the Rev Stephen Sizer, to whose beliefs Mr Mendelsohn was opposed, describing him as a 'Jew-baiter'. The details are not important, except that their exchanges brought out a central area of disagreement between Mr Wilson and Mr Mendelsohn (and no doubt Dr Newbon), which concerned the extent to which criticism of the state of Israel may be understood or even intended as criticism of Jewish people as Jews. For example, Mr Wilson observed at one point "To say that Jews were responsible for 9/11 would be grossly anti-Semitic. To say that Israel was responsible for 9/11 might be bonkers but is not necessarily anti-Semitic". Mr Mendelsohn's response was clear: "No, it's anti-Semitic. It's a disgrace to suggest otherwise".

140. In the course of this exchange, Mr Wilson referred (and made a link) to an article entitled "Defining Anti-Semitism" by Sir Stephen Sedley, the distinguished former appellate judge, in the issue of the London Review of Books ('LRB') dated 3 May 2017. In that article, Sedley criticises the definition of anti-Semitism adopted by the International Holocaust Remembrance Alliance ('IHRA') on a number of grounds, including what is said to be its indefiniteness.

141. The IHRA working definition is this: 'Anti-Semitism is a certain perception of Jews, which may be expressed as hatred towards Jews. Rhetorical and physical manifestations of anti-Semitism are directed towards Jewish or non-Jewish individuals and/or their property, towards Jewish community institutions and religious facilities'.

142. The introductory paragraph of the article gives the flavour of the author's views:

> "Shorn of philosophical and political refinements, anti-Semitism is hostility towards Jews as Jews. Where it manifests itself in discriminatory acts or inflammatory speech it is generally illegal, lying beyond the bounds of freedom of speech and of action. By contrast, criticism (and equally defence) of Israel or of Zionism is not only generally lawful: it is affirmatively protected by law. Endeavours to conflate the two by characterising everything other than anodyne criticism of Israel as anti-Semitic are not new. What is new is the adoption by the UK Government (and the Labour Party) of a definition of anti-Semitism which endorses the conflation."

143. Sedley referred to examples of anti-Semitism given by IHRA, including these:

> "Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that levelled against any other country cannot be regarded as anti-Semitic."
>
> Applying double standards by requiring of (the state of Israel) a behaviour not expected or demanded of any other democratic nation.
>
> Denying the Jewish people their right to self-determination, e.g. by claiming that the existence of a state of Israel is a racist endeavour."

144. To those examples Sedley made this rejoinder:

> "The first and second of these examples assume that Israel, apart from being a Jewish state, is a country like any other and so only open to criticism resembling such criticism as can be made of other states, placing the historical, political, military and humanitarian uniqueness of Israel's occupation and colonisation of Palestine beyond permissible criticism. The third example bristles with contentious assumptions about the racial identity of Jews, assumptions contested by any diaspora Jews but on which both Zionism and anti-Semitism fasten, and about Israel as the embodiment of a collective right of Jews to self-determination."

145. It may be that the IHRA definition and examples of anti-Semitism, and Sedley's critique, serve broadly to illustrate the different standpoints of (on the one hand) Mr Mendelsohn, Dr Newbon and Mr Cantor, and (on the other hand) Mr Wilson, in their Twitter exchanges on the subject. Whether or not that is right, these are matters that informed the exchanges.

DR NEWBON

146. In July 2020, Mr Wilson became involved in exchanges about the cover of the Spanish edition of a book by the journalist Owen Jones, which featured a caricature of a fat capitalist. A Twitter user with the handle @matzoballing made the point that the caricature bore a striking resemblance to a cartoon from Nazi times. Mr Wilson became involved because in his view, while accepting that such caricatures can be anti-Semitic, they are not necessarily so, and to assume that they are, entails assuming that capitalists are Jewish and that their political opponents are not. He created a link to a relevant academic article and the Sedley article from LRB.

147. The response from @matzoballing to Mr Wilson's observations was to publish 'Gifs' (images in Graphic Interchange Format) of a sealion. The term 'sealion', as I understand it, is employed as a label for a social media user who tiresomely pursues and harasses other users with requests for evidence while pretending to be genuinely engaged in a sincere search for information.

148. Mr Wilson disliked that response, which seemed to him to be insult rather than argument, and ended the exchange.

149. However, @matzoballing's tweet using the sealion Gif was 'liked' by Dr Newbon. In other words, he clicked on the 'heart' symbol on Twitter to show that he liked what he had read. Unfortunately, as it may be, Mr Wilson emailed Dr Newbon on 10 July 2020, to ask whether he could really 'like' a tweet that compared the life and work of Stephen Sedley with a large animal, or whether perhaps his account had been hacked.

150. Dr Newbon did not reply, let alone attempt to engage with the point that was being made about abuse as a response to debate. Instead, he published a tweet the same day which repeated the email, or part of it, and sought to ridicule Mr Wilson:

> "A Jewish friend of mine was being sealioned by a Corbynite about AS cartoons. I 'liked' his response to said sealioner – namely a picture of a sealion, and got this now in my email work account. Glorious combination of creepiness, pomposity and inadvertent Partridge."

151. Mr Wilson decided to ignore this. But Dr Newbon's tweet was almost immediately picked up by Mr Mendelsohn, who contacted him the same day by Twitter direct message to ask if the email he had referred to was from James Wilson. Newbon confirmed this, saying that Mr Wilson was 'deeply tedious, pompous and unpleasant', and told Mr Mendelsohn that Mr Wilson was suing one of his friends (a reference to a defamation complaint by Mr Wilson against one Joanne Bell), so he had to 'scope his timeline about a month ago, looking for evidence he gaslights Jews'.

152. Minutes later, Mr Mendelsohn sent a series of messages to Dr Newbon. The first (to which I refer at [53] above) was what I have found to be part of the private and confidential University Information, namely:

> "Another friend of mine brought a grievance claim against him which was partially upheld. My friend accused him of bullying and harassment. I forget the exact details."

153. Mr Mendelsohn then immediately sent Dr Newbon a copy of the Screenshot, with the words 'this is he'. Newbon responded with 'Woah! That's insane!' The exchange continued as follows:

> "[Mendelsohn] He is one of few people I have worked with, who I consider to be a genuine psycho."
>
> [Newbon] He comes over as such. He has the most annoying internet mannerisms. He's also quite abusive to women….
>
> [Mendelsohn] I recall him as old-school hard left. 'Really' unpleasant towards anyone of a different view. Dare I ask, do I know the friend he is suing?

> [Newbon] You probably do, yes. She accused him of gaslighting Jews. He emailed saying she must retract, or he'll sue. So I've been trying to get as much evidence as possible of him gaslighting Jews.
>
> [Mendelsohn] Feel free to make use of this.

154. Mr Mendelsohn followed this up with a link to an earlier exchange between him and Mr Wilson concerning the Rev Stephen Sizer (referred to at [139] above), urging Dr Newbon to read the whole thread.

155. Unfortunately, Mr Wilson allowed himself to get involved several weeks later in a further dispute with Dr Newbon, about the IHRA definition of anti-Semitism. I say 'unfortunately', because he already had experience of Dr Newbon's evident capacity for rudeness in preference to debate, and he might reasonably have expected more of the same.

156. On 12 August 2020, Mr Wilson was following a Twitter debate between two journalists, Jonathan Cook and Jonathan Freedland. He became involved in an exchange with Dr Newbon and Mr Cleaver ('LegendoftheThe'), in which he repeatedly, and perhaps ill-advisedly, referred to Sir Stephen Sedley's LRB article in support of his right to criticise the Israeli state. For his pains, he was treated to abuse by Cleaver and others, and even Dr Newbon, who no doubt had the intellectual heft to engage with him, did not do so, beyond insisting repeatedly that the very first sentence of Sedley's article was wrong, and that if Mr Wilson could not fathom why, he had no business explaining to Jews what anti-Semitism was and was not. Mr Wilson complained that it was the intellectual vacuum of the threads that he disliked. That might have been thought to be a reason not to get involved, rather than to repeat time and again the need for the others in the thread to explain why Sedley was wrong. Dr Newbon, it appears, then 'blocked' him, so that Mr Wilson could not follow his tweets.

157. At around 2230 on 12 August, Dr Newbon unblocked Mr Wilson and started publishing the Screenshot and making other disclosures on Twitter. He did so several times that evening, and the exact order is uncertain and probably unimportant, but appears to have been as follows. (The order set out below differs from that in the RAPC, which is accepted to be wrong, but tries to follow that used at exhibit JW18 of trial bundle B.)

158. The first tweet of the Screenshot, reproducing the full Facebook Post, was captioned 'I see yer Da is doing "community watch" again'. This is complained of in the RAPC as 'the First Tweet'. According to Mr Mendelsohn, who relies on the Urban Dictionary, the expression 'Yer Da' is slang for a 'stereotypically right wing conservative reactionary middle aged British man increasingly baffled and angry (at) the modern world'. Whether that is what Dr Newbon meant is of course not known, but if so, it seems not to have been altogether apt.

159. The second tweet of the Screenshot ('the Second Tweet'), again reproducing the full Facebook Post, was captioned '"this freak takes pictures of kids", apparently'.

160. Mr Wilson was plainly upset by what Dr Newbon had done, and asked whether he had so little faith in his ideas that he was reduced to posting innuendo from Facebook, and asked when Dr Newbon was going to start posting pictures of his children and giving out his address. The thread then continued with Dr Newbon's response ('the Third Tweet' complained of):

> "I can't believe you'd suggest I'd do that. Sounds unpleasant. A bit like the sort of person who might, say, be subject to a workplace inquiry into bullying and harassing a colleague. Perhaps where the allegations were partially upheld. "

161. The thread continued:

> "[Mr Wilson] I can't decide whether to be flattered with the attention? Or whether to find it a bit creepy? A quick thought: might you regret posting all this in the future? You know: because it looks a bit strange?"
>
> [Dr Newbon] I don't know what you're talking about. But I'm sure we can both agree how much of a relief it is that neither of us knows the sort of person who harasses mums on the school run by photographing their children, has been investigated at work for bullying, and trolls Jews. Eh?
>
> [Mr Wilson, quoting a judgment of Sedley LJ] "Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence."
>
> [Dr Newbon] Much as we would, say, want to uphold the right of work colleagues to pursue allegations of bullying and harassment where they felt they'd been victimised, I'm sure we'd all endorse that right most vociferously. Nothing worse than a bully."

162. Dr Newbon then published the Screenshot (and thus the Facebook Post) for a third time ('the Seventh Tweet', as pleaded in the RAPC), this time captioning it as follows:

> "Indeed. Quite so. As when this mother described the man who allegedly photographed her children as a 'freak' – for instance. One much (sic) uphold her right to free expression in what sounds like a situation of harassment."

163. Mr Wilson persisted in asking Dr Newbon whether he would engage with the arguments in the Sedley article about defining anti-Semitism. Dr Newbon replied that he was uninterested in the article, which he regarded as a poor piece. He went on: 'No – all my attention is taken up by my disgust at the sort of man who harasses women on the school run and bullies colleagues' ('the Sixth Tweet' complained of in the RAPC).

164. Mr Wilson asked whether posting a false allegation about him that he went round taking photographs of children together with his photo and details of where he lived might tend to provoke violence against him, and Dr Newbon replied: 'Oh, is that you? I was under the impression it was merely some eccentric individual in the Huddersfield area who allegedly photographs mothers and children on the school run' ('the Fourth Tweet', as pleaded in the RAPC).

165. Dr Newbon then published the Screenshot for a fourth time, again reproducing the full Facebook Post ('the Fifth Tweet'), with the caption: 'Ranting at people is so unattractive, don't you think, eh?'

166. Replying to Mr Wilson's concerns about the risks of violence, Dr Newbon said:

> "Why on earth would you be concerned about violence towards you, James? After all, you give your work location in your Twitter bio, so it doesn't seem to be a perennial concern."

Mr Wilson replied:

> "At the risk of stating the obvious, I'm more concerned about violence against me if people make or repeat false allegations that I take photos of children?'

167. Dr Newbon responded, publishing the Screenshot (and thereby the Facebook Post) for the fifth time, but apparently excluding the photograph of Mr Wilson: 'It's your claim it's a false allegation. Have you taken it up with Ms Akhtar, who appears to allege that you (?) photographer (sic) her and her child?' ('the Eighth Tweet').

168. The sequence of tweets ended with Mr Wilson saying to Mr Mendelsohn at 2344 in the evening of 12 August 2020 that he would email him.

169. The next morning (13 August 2020) at 0942, Mr Wilson sent an email to Dr Newbon's employer, the University of Northumbria, copied to Dr Newbon himself at his work email address. In broad terms, the email complained of Dr Newbon's behaviour in repeatedly publishing the Screenshot containing the Facebook Post and in repeating the allegations that he had bullied a colleague. His stated reason for writing to the university was that Dr Newbon apparently held himself out in his tweets (or at least in his Twitter biography) as a senior lecturer at the university, and that the university appeared to have vicarious liability for its employee's behaviour. It is enough to say that the university's view was that this was a private matter between the two men.

170. It is apparent from the Twitter direct messages exchanged that morning between Dr Newbon and Mr Mendelsohn that at 0959 on 13 August 2020 Dr Newbon forwarded Mr Wilson's letter to him, seeking his advice. Mr Mendelsohn suggested it would be a good idea to delete the tweets, and asked if they had been re-tweeted. Dr Newbon said that they had not been, as far as he knew. He apologised to Mr Mendelsohn, who said there was no need: he should not have passed it on (plainly he meant the Screenshot) in the first place.

171. At 1205 on 13 August, Dr Newbon emailed Mr Wilson to say that he had deleted the tweets, in the interests of bringing a swift close to their dialogue. They had been published on Twitter for around 13-14 hours.

172. In later discussions that day, Dr Newbon conceded that 'Tbf to him, I wouldn't love it if someone posted online saying I took photos of other people's children'. Mr Mendelsohn's response was that there were some people for who he had limited sympathy.

THE THIRD DEFENDANT: EDWARD CANTOR

173. Unfortunately, that was not the end of the matter. Edward (Eddy) Cantor had also been an active user of Twitter for many years. He has been a chef, a music teacher and a carer. His demeanour when sitting in court or addressing the court suggested that he was extremely nervous, but his evidence from the witness box was given with great force and passion. I do not for a moment doubt the genuineness of his views, which include a profound dislike of Mr Wilson.

174. I do not think that he said in terms in his evidence that he was himself Jewish, but that was implicit. He explained that he started to follow the accounts of others who had experiences of anti-Semitism that were similar to his. He described Twitter in oral evidence as a 'vile pit' of anti-Semitism.

175. In Twitter exchanges, Mr Wilson's 'handle' @per_incuriam often appeared, and it was Mr Cantor's opinion that Mr Wilson was seeking out Jews with who to argue, and persistently engaged in 'gaslighting' Jews, insisting that he knew better than Jews about their own experiences. Mr Cantor felt that Mr Wilson was trying to 'bait' his opponents, winding them up so that he could unleash legal threats and lose them their jobs. He disliked Mr Wilson's repeated behaviour, as he saw it, of entangling himself in Twitter discussions between Jews about anti-Semitism, and persistently promoting the same LRB article by Stephen Sedley. It became clear in oral evidence that he regarded Mr Wilson as an anti-Semite, an allegation that he repeated in court.

176. He came across a tweet by Dr Newbon, whom he had never met, which showed the Screenshot. It is not clear which of Dr Newbon's several tweets this was. The Screenshot mirrored his experiences of Mr Wilson, because in his view it showed Mr Wilson to be a weird busybody and control freak.

177. Mr Cantor re-published the Screenshot on Twitter at 1030 on 15 August 2020 by re-tweeting it, captioned 'Define "weird"'. On his account, it was 'liked' once, was not re-tweeted, and attracted no comments.

178. Mr Wilson rapidly noticed the tweet, and asked him to delete it because it was defamatory. Mr Cantor asked: 'In what way?', and Mr Wilson, perhaps unfortunately, did not explain. Mr Cantor responded with crude abuse. The next day he tweeted 'Have you engaged anyone to sue me yet Jimmy?', which Mr Wilson took to be a taunt.

179. According to Mr Mendelsohn, he did not even know who Eddy Cantor was until he received Mr Wilson's pre-action letter on 16 April 2021.

180. It is common ground that Mr Cantor's tweet was not taken down until 18 April 2021, a period of about 8 months. Mr Cantor finally deleted the tweet at the request of Mr Mendelsohn, who told him that he and Dr Newbon did not think Mr Wilson had a case but it would make their lives slightly easier if Mr Cantor would delete it. It was Mr Cantor's evidence that he deleted the tweet only because Mr Mendelsohn asked him to, not because it was not true: he was sure that it was true.

181. No analysis was carried out into the extent of publication of Mr Cantor's tweet, because, as I understand it, once it was deleted that process could not be carried out.

182. Mr Cantor's evidence was that he had only 180 Twitter followers. Analysis of Mr Wilson's tweet asking Mr Cantor to delete the 'Define weird' tweet because it was defamatory, recorded 369 impressions, 72 engagements and 57 detail expands. 'Impressions' are, as I understand it, instances of a user bringing the tweet on to their screen. They record the number of times that a tweet is actually generated on a screen by a viewer of the tweet. 'Engagements' is a term which covers a number of possible actions in response to a tweet, including re-tweeting it, 'liking' it, replying to it, expanding it to see all replies, clicking on a hashtag or the permalink (the tweeter's URL) or clicking on their username. I understand that 'detail expands' are clicks by users on the tweeter's thread to find out more information.

183. Analysis of Mr Cantor's 'In what way?' tweet, which was published less than an hour after the 'Define "weird"' tweet complained of, and shortly after Mr Wilson's request that he delete it, showed that it had received 1048 'impressions', 35 'engagements' and 27 'detail expands'. However, Mr Cantor did not accept that this meant over 1000 people had seen the tweet complained of. He made the point that Mr Wilson and the parties' lawyers would have been responsible for a number of impressions.

THE FIRST DEFENDANT: JAMES MENDELSOHN

184. Mr Mendelsohn is himself Jewish. He is an active user of Twitter, using the 'handle' @jmendelsohn77. Most of his evidence is not contentious, and it has largely been described above. Like Mr Cantor, he is plainly consumed by a profound dislike for Mr Wilson, whom both men regard as a bully.

185. He said that when he read the Facebook Post he felt it was in keeping with what he knew of Mr Wilson. Asked whether he would accept that its publication could have created a risk for Mr Wilson, he accepted only that it had the potential to do so. He had no reason to doubt the truth of Mrs Akhtar's post, although he accepted that he did not check the facts stated. He accepted that Mr Wilson was identifiable from the post, that he was from Birkby and that it could be read as alleging criminal or quasi-criminal behaviour. When asked if there was a public interest in its publication, he replied that there might be, if he was behaving in the manner alleged. However, he insisted that he shared the Screenshot privately with Dr Newbon, and encouraged him (and Mr Cantor) to delete it. Asked repeatedly whether the Twitter thread of publication of the Screenshot by Dr Newbon was in the public interest, he said that context was important, and that Mr Wilson's repeated contributions had been tedious. He did not in terms attempt to justify the repeated Twitter publication as being in the public interest,

ultimately falling back on his pleaded case, stating that his defence said it was and he had signed it.

186. Mr Mendelsohn was asked about his words 'Feel free to make use of this' immediately after sending Dr Newbon the Screenshot, and immediately before sending him the link to the exchange with Mr Wilson about the Rev Stephen Sizer (see [154] above). His evidence was that his words were intended to refer to the Sizer link. He did not expect that Dr Newbon would use the Screenshot, because Dr Newbon knew that Mr Wilson was litigious, and he assumed he did not need to say that Dr Newbon should not re-publish it. He maintained that he did not expect him to do so.

187. If Mr Mendelsohn really did not expect Dr Newbon to make use of the Screenshot to embarrass Mr Wilson, it was remarkably naïve of him. He knew that Dr Newbon was capable of making abusive *ad hominem* attacks on Mr Wilson, and Dr Newbon's response to being shown the Screenshot had been a delighted surprise ('Woah! That's insane!'). There was no suggestion that Dr Newbon should not use any of the material for any purpose that he wished: it was communicated to him by Mr Mendelsohn without any warning or request for discretion. Instead of warning him against re-publishing the material, he instead said 'Feel free to make use of this', which, without explanation, was capable of referring to the material which he had already sent (the Screenshot) just as much as that which followed (the Sizer link).

188. In my judgment, the effect of what he said to Dr Newbon was to authorise him to do what he wished with the material, which he did not doubt was true, and which accorded with what he knew of Mr Wilson. In effect, he was handing the Screenshot and the University Information to Dr Newbon as weapons to be used against Mr Wilson. He knew of Dr Newbon's profound dislike of Mr Wilson, he knew that Dr Newbon was looking for evidence to use against Mr Wilson, and must have thought it at the very lowest entirely possible that Dr Newbon would make use of the information he had freely given him by republishing it on social media.

189. I note also that when Dr Newbon told him that Mr Wilson was threatening litigation over his publication of the Screenshots, Mr Mendelsohn did not suggest that he had not meant him to publish them, or that he had not expected him to do so because Mr Wilson was litigious.

190. As regards Mrs Akhtar's allegations of bribery, Mr Mendelsohn denied having sought to bribe her to give evidence. He said that he had never offered her £5000, and that he only offered her reasonable expenses for travel and child care. The only evidence that he did seek to bribe Mrs Akhtar comes from Mrs Akhtar herself, whose evidence I have found not credible. I do not find that her evidence of being offered a bribe by Mr Mendelsohn was true.

'SIMILAR FACT' WITNESSES

191. According to paragraph 37.3ff of the RADF of the First Defendant, and paragraph 29.3 of the Amended Defence of the Third Defendant, The Defendants relied on similar fact evidence to show a propensity in Mr Wilson to 'intrusive and unwarrantedly aggressive and belligerent conduct'. Four witnesses were called in order to bolster the defence of truth in relation to the publication of the Screenshot, to show such a propensity. They

were Dr David Hirsh, Mr Nathan Comisky, Ms Nikki Healy and Mr Alex Cleaver. I admitted the evidence *de bene esse* without objection from Mr de Wilde, because it seemed to me to be fairly self-contained and unlikely to take very long to hear, even though it had, I believe, previously been the subject of an unresolved strike-out application, and even though I was very doubtful how much probative value it would have.

192. Other instances of similar behaviour were pleaded by the defendants in relation to correspondence which Mr Wilson had with Huddersfield Magistrates Court, a Ms Joanne Bell, a Mr Adam Cailler, a Ms Nicole Lampert and Simon Myerson KC. No witness evidence was put before the court by the defendants in support of those allegations, and I do not think that they were referred to by Mr Mendelsohn until his closing speech, when he did mention Ms Bell, Mr Cailler and Mr Myerson KC and provided the relevant page references in the bundles. I was told by Mr de Wilde that the relevant evidence was undisputed, in that the correspondence did take place. I shall therefore deal with them briefly.

193. Joanne Bell alleged on social media on 25 April 2020 that Mr Wilson harassed and 'gaslighted' Jews and spread false information about them. It is pleaded by the defendants that Mr Wilson had 'since 2020 repeatedly contacted Ms Bell in correspondence which is unwarranted in its belligerence and attempts to intimidate her by means of purported legal concerns'. The correspondence appears to have ended on 21 May 2020 with Ms Bell's agreement to delete the tweet. I have not been shown any correspondence between Mr Wilson and Ms Bell that exceeds the bounds of reasonably courteous complaint about the publication of plainly defamatory material, and certainly nothing that can fairly be stigmatised as 'unwarranted in its belligerence'.

194. As for Adam Cailler, he is a journalist to whom on 29 November 2022 Mr Wilson sent two allegedly 'aggressive, unsolicited' emails to his workplace email address. Mr Wilson also wrote to his employers. In one email Mr Wilson called him an idiot and said that he should 'STFU'; and that in the other he appeared to accuse Mr Cailler of causing distress to Dr Newbon's widow. I have seen the emails. Their context is unclear, although explained in the Reply as concerning tweets that led to Twitter users making 'awful' allegations about Dr Newbon. I can find nothing in the emails which is particularly aggressive or which points to conduct of the kind said to demonstrate the pleaded propensity.

195. As regards Simon Myerson KC, what is pleaded is (so far as at all material) that Mr Wilson sent him a number of emails in April, May and June 2023, despite requests from Mr Myerson to stop doing so. The background to this is that Mr Myerson retweeted a tweet by someone called Tom Doran who himself retweeted a tweet by Mr Mendelsohn which urged support for the defendants' crowdfunding appeal in this litigation. Mr Mendelsohn's tweet referred to Mr Wilson as a 'Corbynista who targets campaigners against #Antisemitism', and Mr Doran retweeted that, writing 'James is a mensch being targeted by the scum of the earth. Don't let them do to him what they did to Pete'. By 'James', I assume that he meant Mr Mendelsohn; by 'scum of the earth' he presumably meant Mr Wilson. Doran's tweet was then retweeted by Myerson. Mr Wilson then emailed Mr Myerson, and there was a lengthy exchange. There is nothing in it which could be characterised as 'unwarrantedly belligerent', but it certainly shows (as does

the correspondence with Bell and Cailler) considerable persistence on Mr Wilson's part.

196. I now turn to the witnesses who were called to give evidence going to Mr Wilson's alleged propensity.

Dr David Hirsh

197. Dr Hirsh is a senior lecturer in sociology at Goldsmiths, University of London. He is the academic director and CEO of the London Centre for the Study of Contemporary Anti-Semitism (LCSCA). He has known Mr Mendelsohn since 2007, and regards him as a friend and a valued colleague in what he describes as 'the fight against campaigns to boycott Israeli universities, against antizionism and against their associated anti-Semitism'. He also regarded Dr Newbon as his friend, although they never actually met.

198. He is a user of Twitter. On 17 February 2023 he tweeted the following message in support of (and linked to) the defendants' crowdfunding appeal:

> 'We should rally round when people get targeted by unjustifiable, frightening and expensive legal processes as a result of speaking out against anti-Semitism. This guy was trying to sue Pete Newbon, he's still after others. Have a read.'

199. Dr Hirsh was of course referring to Mr Wilson. He also put out a tweet via the Twitter account of LCSCA. He has no record of what he said, but it appears to have concerned Mr Wilson's libel claim against Dr Newbon, to the effect that Mr Wilson had pursued Dr Newbon's estate after his death, because it prompted an email from Mr Wilson on the same day, which read as follows:

> "Dear David
>
> Private and confidential
>
> I understand you have some control of the Twitter account that published this tweet (*the URL of the tweet is given*). That tweet states I pursued the late Dr Newbon's estate after his death. The problem with this statement is that it is not true and my understanding is that Dr Newbon's widow, Dr Hewitt and I agree it is not true. I am limited as to what I can say, but during the course of negotiations with Dr Hewitt information was disclosed which contradicts the idea that I pursued the estate. The estate also disclosed a large volume of material from Dr Newbon's IT devices in relation to private communications between Dr Newbon and others in relation to events at Northumbria and more generally. This includes material relating to you and others who encouraged the approach taken by Dr Newbon. My position is that it would be grossly unfair to Dr Newbon's family were the litigation and commentary on it to descend into a protracted dispute about my conduct and Dr Newbon's conduct because it is almost certain that would permanently scar Dr Newbon's posthumous reputation. (*A line or more of text is missing here*) … but I would like to avoid permanently scarring his reputation.

> So – and to be clear this is currently an appeal on the basis of normative rather than legal considerations – please would you consider deleting the tweet. To be clear: I have no objection to you supporting the crowdfunding efforts. That's fair enough, obviously. But I do not want to be put in a position where I have to give an accurate account of events to rebut the presumption that I pursued Dr Newbon's estate or as to the merits of my conduct as against Dr Newbon's. Please let me know if you have any queries.
>
> Best wishes, James Wilson"

200. Dr Hirsh accepted that his tweet must have accused Mr Wilson of pursuing Dr Newbon's estate, but regarded the accusation as true, because the estate did pay a sum in settlement of the litigation. Mr Wilson's position, as I understand it, is that as soon as Dr Newbon's widow, Dr Hewitt, discovered the existence of the proceedings (which he had concealed from her) there were settlement negotiations which were resolved by agreement dated 15 March 2022, two months after Dr Newbon's death, with a £3500 contribution to Mr Wilson's costs, and undertakings to provide disclosure in terms set out in a draft consent order. I note that Mr Wilson's witness statement states that the settlement sum was £5000: however, the written agreement gives it as £3500, plus a further £3500 if the estate should benefit from the sale of certain properties in Spain. It is his evidence that he waived his right to any further contingent payment because he realised that Dr Hewitt had herself incurred substantial costs in the disclosure exercise. It is not necessary to consider whether Dr Hirsh or Mr Wilson was right: no doubt it would depend on whether by settling the litigation against the estate, Mr Wilson could fairly be said to have been 'pursuing' that litigation, if those were the words used. But in the absence of the offending tweet, it is impossible, as well as unnecessary, to express a concluded view.

201. What may be more important is that Dr Hirsh's view was that the email was written 'in a polite, business-like and friendly style', but that he 'did not experience it as polite, business-like or friendly'. That was because Dr Hirsh says that he felt he was being threatened by Mr Wilson with the disclosure of private conversations with a friend, and with involvement in litigation. He accepted that the threat of litigation was founded only on the use of the adverb 'currently'.

202. Ten minutes later, Dr Hirsh received what he regarded as 'a second threatening email'. That read as follows:

> "Dear David"
>
> <u>Private and confidential</u>
>
> Apologies, your own tweet has now been brought to my attention (*URL given*).

> I'll leave the comments below with you. And the observations that the court has decide (*sic*) that my claim is more than arguable. Dr Newbon was not speaking out about anti-Semitism when he targeted me. I was suing Dr Newbon not trying to sue him, and I've never been 'after' anyone. Further, I'd much prefer my claim settles quietly without having to defend my conduct in relation to Dr Newbon. Putting aside the risks to you and me of a protracted dispute, the undoubted 'good' here is that you and me (*sic*) protect Dr Newbon's reputation.'
>
> Best wishes
>
> James Wilson

203. Dr Hirsh read this second email as a threat that 'if his claim did not settle quietly, that is, if he was not paid money, then he would descend into a public campaign against Pete's memory'. He also felt that he was being threatened with litigation, and that the main reason Dr Newbon had been drawn into conflict with Mr Wilson had been that Mr Wilson had disapproved of the public criticisms of anti-Semitism made by Dr Newbon, and on that account sought conflict with him. Shown Dr Newbon's re-tweet of the Facebook Post, headed by Dr Newbon 'this freak takes pictures of kids, apparently', and another which referred to the University Information, and asked whether that was speaking out against anti-Semitism, Dr Hirsh responded, not without reason, that you cannot understand a Twitter thread without seeing all of it.

204. Dr Hirsh's evidence was that at the time he received the emails, and ever since, he was afraid of Mr Wilson. His impression was that he was 'aggressive, unpredictable, persistent and irrational', and that 'these qualities manifested in his record of pursuing various kinds of formal complaints and legal actions against people who he wanted to hurt'.

205. He decided, somewhat to his shame, to delete the two tweets. He seems to have done that on the same day, because he received a third email from Mr Wilson dated 17 February 2023, which read as follows:

> "Dear David
>
> <u>Private and confidential</u>
>
> I understand both tweets have now been deleted. I'm doing my absolute best to try to resolve the litigation without putting any further information about Dr Newbon in the public domain. I am genuinely grateful to you for deleting those tweets. It is a small but important step in protecting Dr Newbon's reputation.

> I've heard and seen a lot over the course of the litigation and formed some fairly settled views on how things ended up as they did. If you ever want to talk things through and hear my views on how things could and should have been very different, I'd be happy to talk to you. I'd certainly be interested to hear your understanding of matters. I expect we've both seen and heard a lot of the same material.
>
> Best wishes
>
> James Wilson"

Nathan Comiskey

206. Mr Comiskey is a user of Twitter, with some 2000 followers. He set his account to 'protected' in 2021, meaning that only followers could interact with him directly. Non-followers would be obliged to request to follow him, or send a message request. That gave him the freedom to choose those with whom he wished to engage. He knew Dr Newbon through social media, and they had several private discussions on a variety of topics. Despite never having met him personally, he also regarded Dr Newbon as a friend, and was shocked and saddened by his death.

207. On 3 November 2022, ten months after Dr Newbon's death, he received a private message request on Twitter from Mr Wilson. It read as follows:

> "Hello Nathan. My name is James Wilson. I'm the person who was suing Pete Newbon. The claim continues against two other defendants. Pete's estate has disclosed quite a lot of information including Pete's Twitter DMs. I can see his DMs with you. Might it be possible to reach an agreement with you that you accept that much of what Pete claimed about me is false and you do not disclose it to third parties?"

208. Mr Comiskey was very surprised to receive the message, which he felt was 'inappropriate, distressing and threatening'. The threat, he felt, was to expose him to some kind of legal jeopardy. He decided not to reply or engage with Mr Wilson in any way. However, his evidence was that Mr Wilson continued to attempt to contact him via private message, and sent requests to follow his Twitter account. He sent Mr Comiskey a further message with the same allegedly threatening tone a month later. This was a message dated 18 December 2022, which read:

> "Hello Nathan. I'm writing again to see if you got the message above. I've attached an extract from Pete's DMs to you so you can see I have the DMs. Are you willing to agree not to disclose the information Pete sent you to anyone else."

209. The attached DMs (direct messages) from Dr Newbon, which Mr Wilson wanted not to be further disclosed, referred to Mr Wilson's threat to sue Northumbria University, and added this about Mr Wilson:

> "He's a total creep – lost his firm through alcoholism, is no longer a practicing (sic) solicitor, has a history of harassing Jews, and got disciplined for bullying when he worked at Huddersfield uni."

210. Asked about Dr Newbon's allegations, Mr Comiskey (whose oral evidence was given remotely by CVP) claimed that he did not regard them as either 'nice' or 'nasty', if they were statements of fact. But he did accept that they would have been very damaging to Mr Wilson if publicly repeated, and that they portrayed someone who was a risk to him and others, because he harassed Jews. However, he found it highly intrusive and upsetting to have his private conversations with Dr Newbon pored over by Mr Wilson, and he felt Mr Wilson's communication with him about private conversations was 'inappropriate'.

211. Mr Wilson, according to Mr Comiskey's witness statement, continued to attempt to follow his Twitter account, making repeated requests to be allowed to do so. He felt 'harassed and targeted' by Mr Wilson. In cross-examination, however, he said that the total number of requests to contact him by following his account was four.

Nikki Healey

212. Ms Healey was an administrative assistant at a firm of solicitors, Levins, based in Liverpool. She says that Mr Wilson telephoned 'quite irate' about the firm's Twitter page in relation to a case involving Mr Wilson and a defendant or defendants whose name she could not catch due to Mr Wilson's shouting and the speed of his speech. He demanded to speak to the person who was tweeting and said it was urgent. He kept talking over her while she sought further information. She explained that no-one was available but that he could best complain by emailing the senior partner, but he kept talking over her, loudly and sternly. He said somebody must be in the office, as they were tweeting live. He kept interrupting her and being 'quite rude', so she ended the call. She immediately sent an internal email to an address called 'Civil shared' so that there was a record of the call. It read as follows:

> A gentleman by the name of Wilson called quite irate about the twitter page in relation to Wilson vs (couldn't catch what he was saying after asking multiple times). Demanded to speak to whoever was tweeting quite urgently. He admitted he was not a client and continued to demand and speak over me. Advised he will need to email; he interrupted saying he had but needed to speak to someone. Told him nobody was available. He insisted there must be as they were tweeting. Again, advised to email, kept interrupting, being rude so I terminated the call. Wasn't able to give him an email address or find out the address he had already emailed.

213. The alleged shouting was not, she accepted, mentioned in the internal email. In re-examination (remotely, by CVP), she was unwisely asked by Mr Mendelsohn if Mr

Wilson had been aggressive. Her answer was that she would not say he had been aggressive.

214. Mr Wilson's own evidence was that he did not shout and was not abusive (which is not alleged), but he accepts, I do not doubt correctly, that he was assertive and persistent.

Alex Cleaver

215. Mr Cleaver was a fire safety officer and a regular Twitter user, with the 'handle' 'legendoftheThe', and associated names that changed from time to time. He had a Jewish grandmother, was strongly opposed to anti-Semitism, and was a supporter of the International Holocaust Remembrance Association (IHRA) definition of anti-Semitism, which he believed to be an important guide to an understanding of the nuances of anti-Semitism.

216. On 12 August 2020 he became involved in a Twitter thread in which the IHRA definition of anti-Semitism was discussed. Dr Newbon and Mr Wilson were involved in the exchanges, and Mr Wilson was opposed to the IHRA definition. Mr Cleaver exhibited the thread, which appears to start with an exchange between Mr Cleaver and Dr Newbon. There are repeated abusive messages from Mr Cleaver to the handle per_incuriam, which belongs to Mr Wilson. Mr Cleaver tells him to go away, calling him an 'inadequate Jew baiter', criticising Mr Wilson for 'talking over Jews when they discuss anti-Semitism'. Mr Wilson's contributions do not appear. Mr Cleaver's evidence was that this was a discussion between Dr Newbon and Mr Wilson. Mr Wilson was opposed to the IHRA definition of anti-Semitism, and Mr Cleaver says that he commented on the thread before 'muting' Mr Wilson.

217. Mr Cleaver accepted having also abused Mr Wilson when Dr Newbon posted the Screenshot, saying he had a beetroot face, and calling him a loser.

218. On 15 August 2021, Mr Wilson appeared outside Mr Cleaver's home in east London, and asked if Mr Cleaver was the person using the handle 'legendoftheThe'. That alarmed Mr Cleaver, who had not given his true identity on Twitter. He initially denied that the handle was his, but then accepted that it was. He said that Mr Wilson observed that it was easy to be tough on Twitter, but less so in real life. He talked to Mr Cleaver about the IHRA discussion and mentioned Mr Mendlesohn and Mr Cantor, and referred repeatedly to Dr Newbon. He also said that Mr Cleaver had been part of a defamatory thread in which he had been called a paedophile. Mr Cleaver went back into his house until Mr Wilson had gone. He then tweeted to friends that a 'Twitter rando' had turned up and that 'it was quite incoherent, he kept shouting Pete Newbon at me'.

219. That summary was not true, as was apparent when Mr Wilson's recording of the conversation was played, nor did Mr Wilson repeatedly refer to Dr Newbon. However, Mr Cleaver claimed that he 'found it incoherent', because he didn't know who Mr Wilson was and didn't understand what he was talking about. He admitted that his tweeted response was hyperbole, and claimed that it was designed to cover up his feeling of being intimidated.

220. Three days later, Mr Cleaver received a four-page hand written letter in the post from Mr Wilson, which he found 'worrying and aggressive'. He exhibited the letter. In so far

as the letter is legible (the copying is poor), Mr Wilson gave his full name and address; informed Mr Cleaver that he had recorded their conversation, which demonstrated that Mr Cleaver had lied about what had happened; and appeared to complain about defamatory material published by Mr Cleaver on Twitter and to threaten him with being brought into this litigation, or at least with being sued.

CONCLUSIONS IN RELATION TO THE WITNESSES

221. I have said that Mr Walker KC's primary concern in cross-examining Mr Wilson was to demonstrate that he was a witness whose evidence was not worthy of belief. Having heard and watched Mr Wilson carefully throughout the day in which he gave his evidence, I cannot accept the proposition for which Mr Walker contended. Mr Wilson was handicapped by a bad cold, which made it difficult for him to speak clearly at all times, but in my judgment he was a witness of truth. He appeared to me to be a man of sincere and strongly held beliefs who strives to act in accordance with those beliefs. It seems clear to me from the evidence as a whole that he has a tendency to be remarkably persistent and stubborn in advancing an argument, and (not unreasonably) he expects others to engage with an argument on an intelligent level and not to resort to *ad hominem* attacks and abuse. It may be that he is unrealistic in expecting such high-mindedness from users of Twitter, which appears not to be an ideal medium for serious or thoughtful debate. He seems to lack the sensitivity to understand when to back off and to accept that those with whom he is exchanging ideas have heard enough and are becoming irritated. That is plainly a source of annoyance to others, and it may be that his persistent expression of strongly held opinions and advocacy of causes that matter to him may be seen by some as bullying and even as aggressive and intimidating, as Mr Edwards alleged in his witness statement. If that is so, I am confident that it is not intended. In my judgment Mr Wilson is fundamentally a decent and straightforward man of palpable honesty. He treated Mr Walker KC's questions with care and courtesy, and I noticed that if confronted with something written by him which mis-stated or exaggerated the true position he was at once prepared to accept his mistake.

222. I was at least equally impressed by the evidence of Ms Sally Smith, who, like her partner, was a careful and thoughtful witness. It was my clear impression that the account that she gave to the court was honest and as accurate as her recollection allowed. It mainly related to the visits that Mrs Akhtar paid to her house on 29 or 30 April 2022 and on 7 October 2023. As regards Mrs Akhtar's earlier appearance in the street on 30 April 2022, Ms Smith's account broadly corroborates that of her partner; and her recollection of the conversation that she had with Mrs Akhtar on 7 October 2023 is substantially confirmed by the recording of the latter part of the conversation made by Mr Wilson on his mobile phone.

223. Mrs Akhtar gave evidence on the third day of trial, having failed to attend in accordance with her witness summons on the first day of trial. That, I am prepared to accept, was the product of a misunderstanding as to the date when she was expected at court. She also made a last minute application to the court by email to be allowed to give evidence by remote video link. I did not allow that application, so I had the benefit of observing her giving evidence at close quarters.

224. In sharp contrast with Mr Wilson and Ms Smith, she was a combative, angry and impatient witness. She became cross very easily when questioned. She spoke very

rapidly in response to questions, without giving any apparent consideration to them before firing out her answer. On more than one occasion, when an inconsistency was put to her she was impatient at being contradicted, but when obliged to give a different answer, she gave that new answer without any apparent concern, and certainly without any expression of regret, that her original evidence had been wrong. I refer in particular to her evidence that Mr Wilson had banged on her car windows, and as to the state of the car's windows when, on her account, he photographed her and her daughter.

225. Moreover, I found her insistence that she found Mr Wilson 'very intimidating', and that (as she claimed in her 10 August 2023 witness statement) she 'dreaded' seeing him, wholly incredible, given that she had, I find, spoken to his daughter on 30 April 2022 to ask her to call her father out of the house so that she could speak to him, and given also that she willingly met him on Thursday 5 October 2023, then went to his house (where it was only by chance that he did not open the door), made it clear to Ms Smith that she wanted to talk to him again, and immediately after the meeting texted him saying 'Do you want to discuss or leave it as it is'. That, she explained, was because she felt he owed her an apology. I do not accept that was the purpose of a further meeting, but whatever its purpose, I regard her evidence that she found Mr Wilson 'very intimidating' as plainly untrue.

226. I also find that she told Mr Wilson (and Ms Smith) that she had been offered £5000 by the defendants to give evidence. I emphasise, however, that it does not follow that I find that either defendant did in fact offer her money (as opposed to proper expenses) for coming to London to give evidence. My finding is simply that she made that claim, possibly in order to obtain payment from Mr Wilson.

227. Having heard the evidence of Mr Wilson, Ms Smith and Mrs Ahktar, I have no hesitation in preferring the account of Mr Wilson and Ms Smith on every matter that was in issue between them. I therefore accept Mr Wilson's account of the altercation on 3 December 2018. He did not bang on the windows of the car, he did not photograph Mrs Akhtar or her daughter, he was not rude to her, and his actions did not amount to harassment. In my judgment, her account of the incident was exaggerated and untruthful. No doubt it was prompted by her irritation at being approached by a stranger and, in effect, chastised for her anti-social behaviour. Having seen and heard her in the witness box, I judge that she is not a person who would take criticism calmly, and that she was infuriated by what happened.

228. The evidence of Mr Mendelsohn and Mr Cantor was in the main not contentious. I need say little about their evidence except to record their evident extreme dislike – it may be that hatred is not too strong a word – for Mr Wilson. It is very regrettable that they should feel so passionately about him, especially since he is a fellow legal academic and a former colleague of Mr Mendelsohn's, and since Mr Cantor did not know him at all beyond the unreal world of social media; but given the acute sensitivities and painfulness of the subject of anti-Semitism, and the opinions which both Mr Mendelsohn and Mr Cantor evidently hold about him, it may not be altogether surprising that feelings should run so high.

229. I did not find the evidence of the 'similar fact' witnesses helpful in determining the truth of what happened outside the school in December 2018. What they showed me is, at most, that Mr Wilson can be stubborn and slow to pick up or respond to social cues

that should tell him to back off, and persistent and on occasion angry in pursuit of anything that he sees to be a wrong.

230. Ms Healey's evidence of the way in which he spoke to her angrily and sternly was the closest in comparability to the incident with Mrs Akhtar, but it seems to me important that her references in evidence to his 'shouting' were not mentioned in the internal memo which she wrote immediately after the conversation. I am confident that this was innocent elaboration on Ms Healey's part. Had Mr Wilson really shouted, she would certainly have recorded the fact for the benefit of her employer, and in those circumstances she would hardly have declined, as she did, to agree with Mr Mendelsohn's highly leading suggestion in re-examination that he had been 'aggressive'. In all the circumstances, I prefer Mr Wilson's evidence that he did not shout, but accept that he was assertive and (probably tiresomely) persistent, to the point that Ms Healey was entitled to regard him as having been rude.

231. In my judgment, Mr Wilson's behaviour towards Dr Hirsh and Mr Comiskey was not unreasonable. He had grounds to seek assurances from both men. It certainly provides no evidence of a propensity to 'unwarrantedly aggressive and belligerent conduct'.

232. As for the evidence of Mr Cleaver, its importance lay not in the account which Mr Cleaver gave, which in my judgment was substantially exaggerated, but in the fact that Mr Wilson had taken the trouble to seek out Mr Cleaver. That demonstrated clearly Mr Wilson's indomitable persistence and, indeed, his capacity to be intrusive, which are plainly characteristics that some find particularly difficult to tolerate. What it does not do is provide an example of unwarrantedly aggressive and belligerent conduct, nor does it assist me in judging the correctness of the competing accounts of what happened on 3 or 4 December 2018.

DEFAMATION CLAIM: SERIOUS HARM

233. The threshold of seriousness which defamation claims must satisfy was introduced by s1, Defamation Act 2013. By s1(1), a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.

234. To succeed on his defamation claim, Mr Wilson must discharge his burden of proving the statements he complains of caused or were likely to cause him serious reputational harm. If, but only if, he does so, then the burden of proof shifts to Mr Mendelsohn and Mr Cantor to establish the defences on which they rely.

235. Mr Wilson sues on the First, Second, Fifth and Seventh tweets published by Dr Newbon, and on the single re-tweet published by Mr Cantor. All reproduce the Screenshot in its entirety.

236. In formulating his claim for serious harm, Mr Wilson aggregates the four tweets published by Dr Newbon rather than considering them one by one. The point was not raised in argument, and it may be unnecessary to mention it, but this aggregation of the four tweets does not, so far as I can see, offend any principle of law. The Court of Appeal in *Banks v Cadwalladr* [2023] EWCA Civ 219; [2023] K.B. 524 (a case of mass publication in two phases) did not state such a principle, save to make clear that each phase of mass publication had to satisfy the s1 threshold, and that the two phases could

not be aggregated for that purpose: a claimant could not rely on the serious impact of phase 1, to which there was a defence, to buttress the seriousness of phase 2, which otherwise would not have surmounted the threshold.

237. In *Amersi v Leslie* [2023] EWCA Civ 1468 Warby LJ stated at [56] that in his view:

> "aggregation of reputational harm caused by separate publications is legitimate or arguably so as a matter of law where the statement complained of is identical, as in the typical case of simultaneous mass publication of the same newspaper article or social media post. I can see that the same might be true where some of the statements complained of differ from one another in ways that are minimal and immaterial to the meaning or imputation conveyed. In such a case it might perhaps be said that the statements are all the same or "substantially the same". That could be so in a case of multiple simultaneous publication or, arguably, in a case where the multiple publications are sequential. In such a case the claimant might be entitled to contend that the defendant published the statement complained of (or substantially the same statement) to numerous individuals and that the "statement" meets the statutory threshold because, whatever might be the position in relation to any individual instance of publication, the overall impact of "its publication" on all these different occasions is to cause serious harm to the claimant's reputation."

238. In this case there were four publications of essentially the same statement – certainly, a statement which meant the same in each case – over a period of little more than an hour. The effect of that repetition was in reality no different (except in terms of aggravation of damage by injury to the Claimant's feelings) from posting one single statement: anyone who logged on to Dr Newbon's feed will have seen the words complained of, and whether they read one statement or four identical ones makes no difference in terms of the damage done. It makes no difference whether I treat them as one or four, so the purposes of the issue of serious harm I propose to treat them as one.

239. The question of whether a statement has caused or is likely to cause serious reputational harm is a matter of fact, which 'can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated': *Lachaux v Independent Print Ltd* [2019] UKSC 27; [2020] A.C. 612 at [14]. It is the impact of the publication that is the touchstone, not the nature of the statement (*Banks v Cadwalladr* [2023] EWCA Civ 219; [2023] K.B. 524 . at [43]).

240. For the uncontentious principles that apply to determination of serious harm I was referred to *Aaronson v Stones* [2023] EWHC 2399 (KB), *Turley v Unite the Union* [2019] EWHC 3457 (QB), *Blake v Fox* [2022] EWHC 2726 (QB), *Sivananthan v Vasikaran* [2022] EWHC 2938 (KB) and *Amersi v Leslie* [2023] EWHC 1368 (KB). (The Court of Appeal's decision in *Amersi* [2023] EWCA Civ was handed down on 7

December 2023, so was not known to the parties or to me during the trial, but permission to appeal was refused and the statements of principle made at first instance, except on aggregation of separate instances of publication, remain valid).

241. To take matters shortly, the relevant principles include these:

(1) The 'harm' of defamation is the reputational damage caused in the minds of publishees, and may be (but does not have to be) established by evidencing specific instances of serious consequences suffered by a claimant as a result of the reputational harm.
(2) Serious harm may be shown by general inferences of fact, drawn from a combination of evidence about the meaning of the words, the situation of the claimant, the circumstances of publication and the inherent probabilities. That brings into play the scale of publication (but serious harm is not simply a 'numbers game'), whether the statement complained of is likely to have come to the attention of anyone who knew the claimant, and the seriousness of the allegations complained of.
(3) It is relevant to consider the risk of percolation of defamatory allegations, especially on social media. It may in such cases be very hard to identify unknown publishees who thought less well of a claimant.

242. Mr Wilson was of course identifiable in each tweet by photograph and by name. His evidence referred to the three alarming incidents summarised at [109] above, following the initial publication in December 2018, in one of which the driver of a car that pulled up beside him said in a threatening manner that he had seen Mr Wilson on Facebook and that he was the weirdo who hung around the school taking photographs of children. In the other cases, drivers of cars drove slowly past him and stared at him in a threatening way. It was not suggested that he knew these people, and he had never experienced such incidents before. He was plainly entitled to, and did, fear for his safety and that of his family.

243. He referred also to the potential impact on his reputation as a solicitor, albeit non-practising, of an allegation that he was guilty of harassment of an innocent woman taking her child to school (potentially a criminal offence as well as a civil wrong), and of what amounted to deeply sinister conduct. The allegation, in short, was very serious.

244. Mr Wilson was also concerned about the damage which might have been caused to his reputation as a university teacher, especially given the fact that higher education in the north of England is a relatively small world, such that in his view it is likely that Dr Newbon had followers who knew him.

245. It is unfortunate that analytical evidence of the extent of publication of the Screenshot by either Dr Newbon or Mr Cantor was not preserved, and that there was, apparently, no attempt to obtain that information from Twitter. Twitter Analytics would have been available to both Dr Newbon and Mr Cantor, and would have allowed them to find out, among other things, how many impressions and engagements their un-deleted tweets received.

246. There was no realistically available means by which Mr Wilson could have discovered the identities of those who had read the tweets complained of.

247. However, it is known that Dr Newbon had around 2500 followers on Twitter. His tweets were available online for about 14 hours.

248. The fact that Dr Newbon had 2500 'followers' means, as I understand it (here and elsewhere I am indebted to Warby J's appendix to his judgment in *Monroe v Hopkins* [2017] EWHC 433 (QB) [2017] 4 WLR 68) that his tweets will have appeared on his followers' timelines, i.e. the reverse chronological stream of tweets from all the users that each person has chosen to follow, which is found on the user's home tab when they log on.

249. Mr Cantor said that he had only 180 Twitter followers. He did not obtain any analytics of the 'Define weird' tweet complained of, which republished the Facebook Post, but did produce some evidence of the extent of publication of two tweets that followed it (see [182]-[183] above). The first was Mr Wilson's tweet, asking Mr Cantor to delete the 'Define weird' tweet because it was defamatory. That recorded 369 impressions, 72 engagements and 57 detail expands. The second was Mr Cantor's 'In what way?' tweet, which was published less than an hour after the 'Define "weird"' tweet complained of, and shortly after Mr Wilson's request that he delete it. That received 1048 impressions, 35 engagements and 27 detail expands.

250. Mr de Wilde submitted, correctly, that the publications both by Dr Newbon and Mr Cantor were general, not to a closed group of known individuals. He relied on the number of followers that Dr Newbon was known to have (some 2500) and submitted that each Newbon tweet was likely to have been seen by thousands of people, or at the very least by hundreds. I assume that in that respect he was accepting that the fact that a tweet appears automatically on a user's timeline does not mean that the user will read it. Nothing is known of the numbers of users who liked or re-tweeted Dr Newbon's tweets, except for his message to Mr Mendelsohn saying he did not think his tweets had been re-tweeted, simply because Dr Newbon did not obtain that information before he deleted them.

251. Mr de Wilde submitted that, given that the less interesting tweet in which Mr Cantor asked Mr Wilson in what way the 'Define weird' tweet was defamatory attracted 1048 impressions, it was likely that the 'Define weird' tweet itself would have attracted more. He suggested 1500. He accepted that the number of impressions recorded in respect of a tweet (ie the number of times it is brought up on a user's screen) is not the same as the number of people who actually read it, but suggested that a discount of 60% on the number of impressions would be fair. He submitted that on that basis, it was reasonable to conclude that around 600 people (1500 discounted by 60%) had read Mr Cantor's tweet during the eight months that it was available online. In fact, of course, it is in the nature of Twitter that most people will read tweets at or close to the time that they first appear on their screens, which will probably have been in August 2020.

252. Mr de Wilde also relied, naturally, on the seriousness of the allegation (as determined by Mr Spearman KC at the trial of preliminary issues) and on the impact of its original publication.

253. Mr Mendelsohn, echoed by Mr Cantor, said that no serious harm was done to Mr Wilson's reputation: it would have been obvious to anyone that the Screenshot

concerned nothing more than a trivial parking dispute (a bold submission given the meaning determined by Mr Spearman KC) and that in so far as it reached beyond that dispute, it was an expression of opinion. That being so, the gravity of the words was not sufficient to cause serious harm without evidence both of substantial publication and of actual impact on Mr Wilson's reputation.

254. Mr Mendelsohn also submitted that the meaning of the tweets was not inherently serious. He suggested that the Newbon tweets resembled the *Sivananthan* case, and involved limited publication. But in *Sivananthan*, publication was to a closed WhatsApp group. As Mr de Wilde rightly submitted, publication of the tweets in this case is general, although no doubt primarily to followers of Dr Newbon and Mr Cantor. Mr Mendelsohn argued that Mr Cantor's tweet was seen by very few users, and was not re-tweeted, showing that there was no percolation (although he accepted that Twitter direct messages from one user to another do not show up on analytics). In fact, of course, I do not think we know whether the actual tweet complained of was re-tweeted: the only evidence relates to the two subsequent tweets, which were not deleted and could therefore be analysed.

255. It was also Mr Mendelsohn's submission that there was no evidence that anyone believed the tweets complained of. That is correct, and follows from the fact that the publishees are not known and cannot be asked. He argued that few people read them or, he suggested, took them seriously. Whether they were taken seriously also cannot be known. But it is not clear why they would not have been taken seriously. If Mr Mendelsohn meant that many publishees who knew Mr Wilson were politically opposed to him or had a hostile view of him from their encounters with him, and would not take the allegations as seriously on that account, that would not be a proper basis on which to reject an inference of serious harm: see *Banks v Cadwalladr* [2023] EWCA Civ 219; [2023] K.B. 524 at [56].

256. Mr de Wilde asked me to draw an adverse inference from the fact that neither Dr Newbon nor Mr Cantor obtained Twitter Analytics evidence before deleting the tweets. I do not think that would be appropriate. I do not think that Dr Newbon was asked to obtain such information, and Mr Cantor certainly was not. Mr Mendelsohn asked him simply to delete the tweet. It appears to me from my reading of the relevant exchanges that the defendants (including Dr Newbon) were concerned simply to limit their possible exposure to a defamation claim, rather than seeking to prevent examination of the true extent of publication. This is not a case like *Vardy v Rooney* [2022] EWHC 2017 (QB) where there was deliberate destruction of relevant material.

257. In my judgment, the relevant factors here are as follows.

258. Firstly, there is the seriousness and compelling nature of the Facebook Post, which had the flavour of a 'wanted' poster, and accused Mr Wilson with photographic support of the unwarranted harassment of a mother as she took her young child to school, by being rude to her, banging on her car windows, taking pictures of her and her daughter, and behaving like a weirdo and a freak. Harassment is of course capable of being a criminal offence, although the offence would not have been established by a single incident. A sinister picture of Mr Wilson was nonetheless created, and I find it significant that he faced three separate incidents of threatening behaviour shortly after the original publication, one of which showed that the driver who spoke to him understood that he

was the weirdo that hung around the school photographing children. I accept, of course, that there were no similar incidents following the republication by Dr Newbon and Mr Cantor.

259. Mr Wilson is a professional man, a solicitor (albeit non-practising) and a university teacher of law, and such allegations are of their nature potentially very damaging to a man in his position and with his responsibilities. Mr Mendelsohn himself accepted, rightly, that the Facebook Post could have created a risk to the safety of Mr Wilson and his family. I accept Mr Wilson's evidence that the higher education sector in the north of England is a small world, and that it is likely that a number of those who followed Dr Newbon on social media will have known him.

260. Secondly, there is the issue of how widely the Screenshot was read.

261. The extent of publication of the Screenshot by Dr Newbon, and its percolation through academia, cannot be known for certain. It is regrettable that no analytics are available, but given the number of Dr Newbon's followers, all of whom will have received the tweet on their timeline, it is likely that a substantial number of his followers will have read it. So too will anyone else who was following the exchanges between Mr Wilson and Dr Newbon at the time. It is impossible to put a figure on that, but it is hard to avoid the conclusion that the number of people who read the Newbon tweets, or at least one of them will have run well into four figures. Indeed, given that despite Mr Cantor's small following of 180, the number of impressions for subsequent tweets was over 1000 (impressions not necessarily, of course, reflecting actual reading), it is surely likely that publication of Dr Newbon's tweets (with a following of 2500) will have been very considerably higher. It is true that the tweets were deleted after only 14 hours, but it is reasonable to infer from the nature of Twitter that most of the publication will have occurred soon after the tweets were published.

262. In the case of Mr Cantor's tweet, I agree with Mr de Wilde that it is reasonable to assume, having regard to the analytics that are available for the subsequent tweets, that several hundred people will have seen it. It is less clear in Mr Cantor's case that those will have included people who knew Mr Wilson, but given Mr Cantor's interest and engagement in the same area of Twitter disputation as Mr Wilson, it seems likely that he will have been known to a substantial number.

263. Thirdly, while it is true that there is no evidence of wider percolation, the reason for the absence of evidence one way or the other is that the tweets were deleted without analytical information being obtained first. It is in the nature of social media that interesting tweets or posts tend to find a wider audience, by forwarding or re-tweeting or simple discussion, than the audience which initially sees them, and some degree of further percolation (especially among university staff and teachers) must be assumed to be likely in the case of all the tweets. Given that the identities of the publishees are unknown, it is of course quite impossible for Mr Wilson to track down those who saw the tweets and to try to undo the damage.

264. Fourthly, it seems to me relevant that without any indication of when the photograph in the Screenshot was taken, those who saw it are likely to conclude that it was recent. That, I think, makes the allegations contained in the Screenshot more immediate in their effect, and therefore more damaging, than if it were plainly a matter of ancient history.

265. In all the circumstances, I conclude that Mr Wilson has satisfied the burden of establishing that the publication of the tweets by Dr Newbon and Mr Cantor caused or was likely to cause serious harm to his reputation.

DEFENCES TO CLAIM IN DEFAMATION: TRUTH AND HONEST OPINION

266. The defendants both plead truth and honest opinion. The burden of establishing those defences lies on them.

267. Sections 2 and 3, Defamation Act 2013 are (so far as material) as follows:

Section 2: Truth

(1) It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true.
(2) Subsection (3) applies in an action for defamation if the statement complained of conveys two or more distinct imputations.
(3) If one or more of the imputations is not shown to be substantially true, the defence under this section does not fail if, having regard to the imputations which are shown to be substantially true, the imputations which are not shown to be substantially true do not seriously harm the claimant's reputation…

Section 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.
(6) Subsection (5) does not apply in a case where the statement complained of was published by the defendant but made by another person ("the author"); and in such a case the defence is defeated if the claimant shows that the defendant knew or ought to have known that the author did not hold the opinion…..

The plea of truth

268. It is necessary to set out the plea of truth in full. It is adopted by Mr Cantor.

269. Unfortunately, rather than plead the entire case under the Particulars of Truth, other parts of the RADF have been incorporated by reference. Those paragraphs of the RADF (paragraph 8, which responds to paragraph 7 of the RAPC, and paragraph 16) are inserted below in italics for ease of reference. The RADF expressly refers at paragraph

35 to the meaning determined by Mr Spearman KC on 30 March 2022, so as to make clear that the plea of truth and honest opinion relates to that meaning. The First Defendant's plea of truth is as follows:

37. Insofar as the words complained of were a statement of fact, they were true or substantially true:

PARTICULARS OF TRUTH

37.1 Paragraph 8 above (and the matters under it) are repeated.

8. As to paragraph 7:

8.1 [Preliminary matters]

8.2 On 3 December 2018, at around or shortly after 8.20 am, Mrs Akhtar stopped her car outside the premises of the Junior School, to drop off her then 8-year- old daughter. The area in which she was stopped was a public location, and not private premises;

8.3 The Claimant, who was alone, banged hard and repeatedly on the driver's side car window. Mrs Akhtar opened her window. The Claimant demanded that Mrs Akhtar turn off her engine. Mrs Akhtar objected to being ordered about by a stranger. The Claimant told her that she was polluting the environment: Mrs Akhtar told the Claimant to "get lost", and then closed her window up to signal her desire to end the encounter. The Claimant moved to the front of the car, banged hard and repeatedly on the windscreen, and shouted words to the effect that if Mrs Akhtar would not listen to him then he would report her conduct and would take photographs. Such was not necessary - Mrs Akhtar's car was very easily identifiable by its make, colour, registration number and the fact that she was clearly dropping a small child off at a junior school.

8.4 Mrs Akhtar was concerned by the Claimant's aggressive demands, shouting and intrusion, particularly as it was in front of her young daughter who was clearly frightened. Mrs Akhtar herself was wearing a nightdress.

8.5 The Claimant proceeded to hold up his mobile phone, in a manner suggestive of a person taking a photograph: Mrs Akhtar reasonably understood that he did take photographs;

8.6 Mrs Akhtar shouted at the Claimant to stop; Mrs Akhtar took a photograph of the Claimant as a response to his taking a photograph of her and to record who it was who had harassed her. Unlike her, the Claimant's identity was not easily identifiable as he was not in a registered car and was not accompanied by a child which might have shown that he was dropping off a child at the School.

8.7 The Claimant shouted back at Mrs Akhtar and then moved away. Mrs Akhtar was very shaken and upset by the incident. She drove home, changed her clothes and returned to the School at about 9 am to speak to the Headteacher to report the incident and to enquire as to whether the Claimant was a parent of a child at the school. The Headteacher did not confirm or deny that.

8.8 Otherwise, no admissions are made.

37.2 The Claimant took a photograph of Mrs Akhtar's car, and of Mrs Akhtar herself "committing a criminal offence", as disclosed to the University of Northumbria on 13 August 2020; paragraph 21(6) above is repeated. (Paragraph 21(6) records that in an email of 13 August 2020 to the University of Northumbria, the Claimant asserted that he had taken a picture of Mrs Akhtar's car, and of Mrs Akhtar herself "committing a criminal offence", but that the allegation that

he had taken a photograph of her daughter was "wholly false"). The First Defendant will say that, in the premises:

37.2.1 it was not possible to take a picture of a car without taking a picture of all its occupants, and/or that such allegation was substantially true; and

37.2.2 that since the Claimant, in his own words, photographed Mrs Akhtar herself "committing a criminal offence", this would necessarily entail retaining any such photographs on his phone as evidence.

37.3 The First Defendant will rely upon similar facts as to evidence of the Claimant's conduct in other circumstances which stands as evidence of his intrusive and unwarrantedly aggressive and belligerent conduct and will invite the court to draw appropriate inferences from the same as to his propensity:

37.3.1 [Deleted by amendment]

37.3.2 In 2015, the Claimant was charged with an offence under the Regulation of Railways Act 1889. This prosecution was dropped. After it was dropped, the Claimant wrote a belligerent six-page letter of complaint to Huddersfield Magistrates Court, which he copied to the Chief Executive of Northern Rail and uploaded to his own blog.

37.3.3 Paragraph 16 above (and the matters under it) is repeated.

16. In and around 2020, the Claimant without invitation repeatedly involved himself in discussions on Twitter between Jews, and others opposed to antisemitism, particularly in the context of the Labour Party. Discussions on Twitter generally, and in particular on antisemitism, are frequently robust and highly contested issues, particularly where those discussions involve individuals with differing views as to Israel, and/or as to the presence of antisemitism in the Labour Party and in left-wing UK politics.
16.1 The court will be asked to infer that the Claimant deliberately entered those discussions to debate the question of antisemitism, Israel and the left with those who held opposing views.
16.2 In relation to a Twitter user, @jobellerina, a woman called Joanne Bell, the Claimant threatened a libel action against her after she described his actions as harassing. In that threat, the Claimant referred to his position as a law lecturer and solicitor. In response Joanne Ball posted a picture of a sealion (a "sealion" being a term used on Twitter to describe someone who harasses others by interposing themselves in other people's discussions).
16.3 Joanne Bell was followed on Twitter by Dr Newbon.
16.4 On 10 July 2020, a different Twitter user with the Twitter handle @lordmatzo ("matzo" meaning Passover bread and the account being operated by a person who comapigns against antisemitism) posted, in response to a tweet by the Claimant, a picture of a sealion. A "sealion" is a term used on Twitter to describe someone who harasses other users by interposing him or herself in other people's discussions: the picture appeared to convey a disparaging view of the Claimant's behaviour. This tweet was "liked" by the late Dr Newbon. In response, the Claimant emailed a complaint to Dr Newbon at his workplace email address. Dr Newbon's workplace email address was not contained on Twitter.

37.3.4 The Claimant has, since 2020, repeatedly contacted Ms Bell in correspondence which is unwarranted in its belligerence and attempts to intimidate her by means of purported legal concerns.

37.3.5 On 15 August 2021, the Claimant was seen by Alex Cleaver, the operator of the account @legendoftheThe, lurking outside his home. The Claimant said to Mr Cleaver words to the effect of, "you lot are really touch on Twitter". Mr Cleaver understood this to be an incitement to physical confrontation but declined to participate. Mr Cleaver had never given the Claimant

his address, and nor is he aware of any friend or associate who would have done so. He infers that the Claimant obtained this from a private investigator.

37.3.6 On 29 November 2022 the Claimant sent two aggressive, unsolicited emails to the workplace email address of Mr Adam Cailler, a journalist with no connection to the instant proceedings. In the first of these emails, the Claimant called Mr Cailler an "idiot" and said he should "STFU", meaning, "Shut the fuck up"). In the second, he appeared to accuse Mr Cailler of causing distress to Dr Newbon's widow. On 12 December 2022, the Claimant sent a letter of compliant to Mr Cailler's employer.

37.3.7 In November and December 2022, the Claimant sent unsolicited and distressing message request, from each of his own Twitter accounts, to a Twitter user called Nathan Comiskey.

37.3.8 On 10 February 2023, the Claimant telephoned the office of Levins Solicitors. The call was answered by a woman called Nikki Healey, at who the Claimant shouted constantly, angrily and rudely, and who he interrupted whenever she tried to speak, prompting her to terminate the call.

37.3.9 On 17 February 2023, the Claimant sent three unsolicited and distressing emails to the workplace email address of Dr David Hirsh of Goldsmiths College, University of London.

37.3.10 On 17 and 25 March 2023, the Claimant sent multiple unsolicited Twitter messages to a journalist called Nicole Lampert; when she blocked him on his @per_incuriam account, he continued to send her messages from his @per_incuriam2 account.

37.3.11 Between 5 and 10 April 2023, and again on 10 May and 22 June 2023, the Claimant sent multiple unsolicited emails to Simon Myerson KC. He continued to send such emails despite repeated and explicit requests from Mr Myerson that he should cease doing so. Further, when Mr Myerson asked for his own response to be put before the court, the Claimant failed to do so.

The plea of honest opinion

270. The First Defendant's plea of honest opinion is as follows:

38. Insofar as the words complained of were a statement of opinion, an honest person could have held that opinion based on facts which existed at the time.

PARTICULARS OF FACTS

38.1 Paragraph 8 above (and the matters under it) are repeated.

38.2 Paragraphs 37.2-3 above are repeated.

38.3 The Claimant was a passer-by, with no authority vested in him by the Junior School, any public body or the proprietor of the premises where Mrs Akhtar was parked.

38.4 The Claimant's actions in assuming the entitlement to direct to a stranger where and how she stopped her car, banging on her car, taking photographs and shouting at her were unnecessary, inappropriate, aggressive and intimidating.

38.5 It was or ought to have been obvious to the Claimant that a lone woman in charge of a young child would have found the Claimant's conduct aggressive and intimidating.

271. The Third Defendant's pleaded case on truth and honest opinion is, I believe, substantially identical to that of the First Defendant. The version of his Defence included in the trial bundle was the Amended Defence, which did not incorporate an order by Collins Rice J at the pre-trial review whereby two paragraphs of the Defences of both Defendants were struck out, but I have no reason to suppose that a Re-Amended Defence was not duly served by the Third Defendant (as it was by the First Defendant).

272. I repeat Mr Spearman KC's conclusion as to the meaning of the words: that the Claimant objected to a mother leaving her car engine running while dropping her daughter off at junior school, banged on her car window, was very rude to her, and took pictures of her, her car, and her daughter, which he retained on his phone. That conduct was unwarranted and worrying, was the conduct of a weirdo and a freak, and amounted to harassment.

273. That was the meaning in which the defendants had to prove the words to be substantially true. Save for the first clause ('the claimant objected ..… junior school'), which has always been admitted, I find, for the reasons given above, that the allegations have not been proved to be true. Mr Wilson did not bang on Mrs Akhtar's car window, he was not rude to her, and he did not take pictures of her or her daughter. In the circumstances, I did not find it helpful to be taken to a series of incidents in entirely different contexts in which Mr Wilson behaved angrily or with stubbornness or persistence or in a thick-skinned manner. Still less can I find that Mr Wilson's behaviour on Twitter, and his persistence in intervening in debates being carried on by others (which some might think the essence of Twitter exchanges), are of any assistance to me in deciding the primary facts of the Akhtar altercation.

274. As for the defence of honest opinion, that is primarily founded on alleged facts concerning the altercation with Mrs Akhtar which I have found to be untrue. As Mr Spearman KC found in his judgment of 30 March 2022, those facts were the stated basis of the opinion (Defamation Act 2013 s3(3)). I am prepared to assume (although there was no evidence on the point) that the Claimant had no authority vested in him by the Junior School, any public body or the proprietor of the premises where Mrs Akhtar was parked. But all he did, on my findings, was to act as a concerned citizen by asking Mrs Akhtar to turn her engine off, and photographing the front of her car and registration plate when she refused, with a view to reporting her. In my judgment, that is a wholly insufficient basis for the opinion that his conduct was unwarranted and worrying, was the conduct of a weirdo and a freak, and amounted to harassment. In other words, an honest person could not have held the stated opinion on the basis of those facts: s3(4)(a).

275. I note that the defendants bring in to the facts relied on for the defence of honest opinion everything pleaded at paragraphs 37.2-37.3 in support of the plea of truth. There are difficulties with that approach. The pleaded function of the 'similar fact' material (RADF paragraph 37.3) is to enable the court to draw inferences from a series of situations as to the claimant's propensity for 'intrusive and unwarrantedly aggressive and belligerent conduct'. The incidents themselves are not, it appears, relied on for the defence of truth (or, it therefore appears, honest opinion); rather, their cumulative effect is said to give rise to an inference as to a propensity for behaviour

which supports the primary case about his altercation with Mrs Akhtar. How those facts, or their cumulative effect, translate to facts which support the plea of honest opinion is not immediately clear, and was not explained.

276. However, I think that the matter can be dealt with shortly. First, the opinion stated was clearly based on the expressed premise of the facts stated in the Facebook Post, facts which I have found the defendants have not proved to be true. That by itself is fatal to the defence. Second, in my judgment an honest person could not have held the stated opinion on the basis of the 'similar fact' material. Third, it appears not to have been Parliament's intention that the defence of honest opinion could succeed even if the facts indicated were false, as long as there was some other fact on the basis of which an honest person could have held the opinion. In other words, there must be some connection between the facts indicated in the statement complained of and the facts that can support the opinion: *Riley v Murray* [2022] EWCA Civ 1146 at [50]ff. There is no such connection between the facts indicated in the Facebook Post and the pleaded 'similar facts'.

277. It follows that the defences of truth and of honest opinion fail.

S3(5): did the Defendants hold the opinion stated?

278. It is pleaded (Reply, paragraph 21) that the First Defendant did not hold the opinion pleaded (s3(5)), and that the Facebook Post was therefore published maliciously. In closing, Mr de Wilde said in terms that no finding was necessary. I assume he meant that he did not seek one. In the light of my conclusion on honest opinion, it is not strictly necessary for me to make a finding. However, I shall deal with it very shortly.

279. The case against Mr Mendelsohn was in essence that he did not seek to investigate the truth of the matters stated in the Facebook Post and passed the Screenshot to Dr Newbon despite knowing that Newbon had an animus against Mr Wilson and was seeking damaging information about him. That might be thought unpromising material from which to invite an inference that Mr Mendelsohn knew that the opinion stated in the Facebook Post was false, or was reckless as to whether it was true or false. The question is whether Mr Mendelsohn did or did not hold the opinion pleaded. His evidence, which I see no reason not to accept, was that he did not ask Mrs Akhtar whether her Facebook Post was true because the behaviour described was what he expected, and had no reason to doubt that it was true. I do not believe that he was cross-examined as to whether he held the opinion stated in the Facebook Post. I see no basis for finding that he did not hold that opinion.

280. There is a similar plea vis a vis Mr Cantor, founded (a) on his not having investigated the veracity of the Facebook Post, and (b) on his admission at an interlocutory hearing that he 'took a risk' when he published the Facebook Post on Twitter. That is said to amount to a candid acceptance that Mr Cantor knew of no justification for the infringement of Mr Wilson's rights by publication, and 'in the circumstances' to follow that he either knew that the opinion stated in the Facebook Post was false or was reckless as to whether it was true or false.

281. That pleaded case does not begin to make good the contention that Mr Cantor, any more than Mr Mendelsohn, did not hold the opinion: he was not even cross-examined on the

point. It seems to me more likely than not that both defendants did hold the opinion, even if only out of confirmation bias. However, the fact is that it has not been proved that they did not.

LIABILITY OF FIRST DEFENDANT FOR REPUBLICATION

282. I dealt with the evidence of the circumstances in which Mr Mendelsohn passed the relevant information to Dr Newbon at [151-154] and [185]-[189] above.

283. Mr Wilson's case is that Mr Mendelsohn is liable for the tortious conduct of Dr Newbon and Mr Cantor. That liability is said to arise (a) as a primary publisher at common law for the publication of the University information and of the Screenshot of the Facebook Post to Dr Newbon; (b) as the author or editor of the Screenshot for the purposes of s10 Defamation Act 2013 in respect of re-publication of the Screenshot by Dr Newbon and Mr Cantor (either by virtue of having created the Screenshot himself or as a result of saving and storing it and disseminating it to Dr Newbon); (c) in damages under the *McManus v Beckham* principle for the reasonably foreseeable disclosures or republications of the University Information by Dr Newbon and of the Screenshot by Dr Newbon and Mr Cantor; and (d) by way of accessory liability for assisting Dr Newbon in the commission of Newbon's tortious conduct in misuse of private information and in defamation, on the footing that Mr Mendelsohn provided Dr Newbon with the relevant materials by way of a combination in pursuit of a common design to harm Mr Wilson and to infringe his rights in the course of a dispute between Mr Wilson and Dr Newbon.

284. Mr Mendelsohn's position is that he was not the author of the Facebook Post, nor of any of Dr Newbon's posts on Twitter, within s10 Defamation Act 2013. Nor was he the editor of publisher of any of Dr Newbon's posts. So far as it goes, that is all correct. He argues that Mr Wilson could have sued Mrs Akhtar but chose not to do so, and as far as the *McManus v Beckham* claim is concerned, says that he had no control over Dr Newbon's tweets and could not have anticipated that he would publish the Screenshot on Twitter. In other words, Dr Newbon's conduct, and (*a fortiori*) the conduct of Mr Cantor, in republishing the Screenshot was not reasonably foreseeable.

285. Defamation Act 2013 s10 is as follows:

> Action against a person who was not the author, editor etc
>
> (1) A court does not have jurisdiction to hear and determine an action for defamation brought against a person who was not the author, editor or publisher of the statement complained of unless the court is satisfied that it is not reasonably practicable for an action to be brought against the author, editor or publisher.
> (2) In this section "author", "editor" and "publisher" have the same meaning as in section 1 of the Defamation Act 1996.

286. By Defamation Act 1996 s1(2), which offers a limited defence for those who are not the author, publisher or editor of a statement, subject to reasonable care and lack of knowledge or reason to believe that what they did caused or contributed to the publication of a defamatory statement, 'author' is defined as the originator of the statement, and 'editor' as a person having editorial or equivalent responsibility for the

content of the statement or the decision to publish it. By s1(3) (so far as arguably material), a person shall not be considered the author or editor of a statement if he was only involved in printing, producing, distributing or selling printed material containing the statement, or in processing, making copies of, distributing or selling any electronic medium in or on which the statement is recorded, or in operating or providing any equipment, system or service by means of which the statement is retrieved, copied, distributed or made available in electronic form.

287. Mr de Wilde asserted shortly that Mr Mendelsohn was the author and originator of the statement complained of, by dint of creating the Screenshot, or alternatively that he was the editor of the Screenshot, because he had (or at least assumed) responsibility for the decision to publish it. He also made the point that the focus of both s10 of the 2013 Act and s1 of the 1996 Act is on 'secondary publishers', such as printers and distributors.

288. It appears to me (albeit without the benefit of sustained argument as to the effect of s10) that Mrs Akhtar was the author of the Facebook Post, but that when he made a screenshot of the Facebook Post, Mr Mendelsohn was the author (because the originator) of the Screenshot, which he then published to Dr Newbon. The Screenshot is the 'statement complained of' for the purposes of s10: Mr Mendelsohn was its 'originator'. He was not in the position of someone merely involved in the kind of process envisaged by s1(3) of the 1996 Act: he was as much the originator of the statement complained of as if (for example) he had photocopied a defamatory letter which he had received about Mr Wilson and distributed the photocopies to third parties.

289. On liability for re-publication, Mr de Wilde referred me to *Terluk v Berezovsky* [2011] EWCA Civ 1534, where at [27]-[28] Laws LJ considered argument on the principles underlying liability, and helpfully set out the opposing contentions, albeit without finding it necessary to resolve them, because in that case the defendant was liable on either basis. The alternative contentions were (a) (Mr Davenport QC) that a party is only liable in defamation for a republication of words uttered by him if he intended or authorised the republication, and (b) (Mr Browne QC) that it is enough if the party ought reasonably to have foreseen the republication. As Laws LJ said,

> "The debate between them was informed by a distinction between two situations in which the legal consequences of a republication may fall to be considered. The first is where, as here, the claimant sues on the republication: that is to say, his cause of action consists in it. The second is where he sues on the original publication only, and relies on the republication as swelling the damages. It is well established that in the latter case the defendant (who ex hypothesi is liable for the original publication) will be responsible for additional damage occasioned by the republication if he should reasonably have foreseen that it would take place: see for example *McManus v Beckham* [2002] 1 WLR 2982. Mr Browne relies in particular on *Broxton v McLelland* [1995] EMLR 485, *Richardson v Schwarzenegger* [2004] EWHC QB 2422 (another decision of Eady J) and *Mahfouz v Brisard* [2005] EWHC QB 2304 to show that in the former case the test is the same: reasonable foreseeability is enough to found liability. Mr Davenport says

> that the learning betrays some uncertainty on the question, and that so much is demonstrated by the leading textbooks…. He submits that "principle and consistency favour [the] higher test... where the claimant seeks to make the original publisher liable as a joint tortfeasor for the separate tort generated by the republication"…

290. Mr de Wilde referred also to *Gatley* at 7-52, where the competing arguments are considered and the authors consider the better view to be that a defendant will only be liable as a publisher of the republication if it is shown that he intended or authorised the republication. However, this conclusion is reached:

> "The question is essentially the same as that in any other tort case where it is sought to make the defendant liable for harm which is directly attributable to the voluntary act of a third person. That is a question of causation but it is not a pure question of fact, and to some extent it is a value judgement: the "reality is that the court has to decide whether, on the facts before it, it is *just* to hold [the defendant] responsible for the loss in question." No doubt it is still true that the starting point is that the defendant is prima facie not liable for the further damage, because it is incumbent on the claimant to show that there is an adequate causative link between the tort and the damage, but subject to that, the defendant will be liable if he is actually aware that what he says or does is likely to be reported or if a reasonable person in his position should have appreciated that there was a significant risk that what he said would be repeated in whole or in part and that that would increase the damage caused by what he said."

291. If that is the test, I do not doubt that a reasonable person in Mr Mendelsohn's position should have appreciated that there was a significant risk that what he said would be repeated in whole or in part, and that any damage to Mr Wilson would be increased as a result.

292. In this case, it is pleaded that Mr Mendelsohn published the Screenshot (and University Information) to Dr Newbon, that Dr Newbon later re-published them both, and that Mr Cantor re-published the Screenshot. Mr Wilson therefore sues both on the original publication and on the republication. If the higher test applies, what must be shown is that Mr Mendelsohn authorised or intended Dr Newbon to republish it. My conclusion, as stated at [188] above, is that the effect of Mr Mendelsohn's messages to Dr Newbon was to authorise him to make whatever use he wished of the material which he supplied to him. He was giving Dr Newbon weapons to use against Mr Wilson. In other words, even if the higher test applies, it is satisfied.

293. That being so, in my judgment Mr Mendelsohn is liable for Dr Newbon's republication of the Screenshot on Twitter. It was not suggested to me that a different test was

appropriate in respect of liability for republication of the University Information, to which in my view the same conclusions apply.

294. Once it is established that Mr Mendelsohn was responsible for Dr Newbon's republication of the Screenshot on Twitter, it was not simply reasonably foreseeable, but almost inevitable, that it would be retweeted. Mr Mendelsohn is therefore liable also for Mr Cantor's re-publication of the Screenshot.

HARASSMENT

295. There is a claim against Dr Newbon in harassment, which is part of the tortious conduct for which Mr Mendelsohn is said to be liable. However, Mr de Wilde asked me not to decide that claim, because, he said, it would be unfair for the court to make findings on harassment against Dr Newbon, who would not be able to respond to them. I therefore say no more about it.

DATA PROTECTION

296. In addition, there is a data protection claim, advanced on the basis that the disclosures by Mr Mendelsohn to Dr Newbon, by Dr Newbon and by Mr Cantor were unlawful processing of Mr Wilson's personal data, contrary to Art 5 of the General Data Protection Regulation. Mr de Wilde submitted that if liability for defamation or misuse of private information were established, the court would not need to go on to decide the GDPR claim, because it would add nothing to the relief that Mr Wilson seeks. That is plainly correct. Given that I have found liability in defamation established against Mr Mendelsohn and Mr Cantor, and in misuse of private information against Mr Mendelsohn, I accede gratefully to that submission.

DAMAGES

297. I now turn to the appropriate level of damages to be awarded to Mr Wilson in respect of the publication of the Screenshot for which Mr Mendelsohn and Mr Cantor are liable, and the publication of the University Information for which Mr Mendelsohn is liable.

298. The purpose of compensatory general damages in defamation is to compensate for injury to reputation, to provide vindication, and to compensate for hurt feelings and distress.

299. The need for damages to provide vindication was explained in the case of *Broome v Cassell* [1972] AC 1027 at p.1071 by Lord Hailsham LC who said: "Not merely can (the libel plaintiff) recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge."

300. That tendency of 'percolation', as it has been called, has been given new force by the internet, which creates the potential for libels to spread rapidly, and perhaps particularly on Twitter, which makes it very easy for users to pass on to others any tweets that they have found interesting. In this case it is very difficult to know how far the libels reached, because the tweets were deleted without any analysis having been made of the extent

of their likely readership. The percolation factor, if it is likely to be present, is a legitimate factor to take into account in assessing damages.

301. It has been said that in some circumstances a reasoned judgment may provide a degree of vindication: see *Purnell v Business Magazine Ltd* [2008] 1WLR 1, where it was held that a prior narrative judgment rejecting a defence of justification was capable of providing some vindication of a claimant's reputation. However, I do not think this a case where most publishees (who will have been users of Twitter) are likely to read a dry and detailed analysis in an analogue medium, so I give little weight to that factor.

302. Factors which may be relevant to the level of general damages include the position and standing of the claimant and the gravity of the allegation, especially insofar as it closely touches the claimant's personal integrity and his reputation. As Sir Thomas Bingham MR said in *John v MGN* [1997] QB 586 at p.607:

> "The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way."

303. There were no apologies from either defendant in this case, until, toward the end of his oral evidence, Mr Mendelsohn said he was sorry for passing on the screenshot to Dr Newbon. There was no apology at all in Mr Cantor's case. I had to warn him, in vain, against using his closing speech for a gratuitous attack on Mr Wilson's character. Nonetheless, he maintained in his closing remarks that Mr Wilson was 'weird' ('the weirdest person I have encountered in 52 years') and a bully who wanted his own way, and in his evidence he called Mr Wilson an anti-Semite. I cannot ignore those attacks,

but nor can I reflect Mr Cantor's uniquely aggravating conduct in the award which I make against the two men jointly.

304. I must take into account the degree of distress caused to Mr Wilson, judged objectively. He said in his witness statement that – having been frightened by the threatening behaviour apparently directed towards him in the aftermath of the original Facebook Post, and relieved by its deletion – he was deeply distressed to learn that Mr Mendelsohn had stored his Screenshot of the Facebook Post, then nineteen months later shared it with Dr Newbon, who, followed by Mr Cantor, re-published it widely. He was again frightened, as he had been in December 2018, that the Screenshot would surface locally once more in Birkby. He had trouble sleeping, and was worried for his safety when he walked round the town. He was worried for his safety when he took his children to and from school, he jumpy and nervous when cars pulled in near him or people stared at him, and he was worried about being attacked. His distress was evidently increased by the effect of the re-publications on his partner, Sally Smith.

305. Moreover, the plea of truth was maintained to the end: the Defendants' counsel, Mr Walker KC, cross-examined Mr Wilson at length on the footing that the defamatory allegations were true. That is a factor which is bound to have increased the distress which Mr Wilson suffered, but I bear in mind that mere persistence in a plea of justification which is run in a reasonable way but fails, even if the court regards it as not only wrong but weak, is not enough to justify an award of aggravated damages: the plea would have to be completely insupportable, which this one was not (see eg *Oriental Daily Publisher v Ming Pao Holdings Ltd* [2012] HKFCA 59, [2013] EMLR 7 at [132], and *Sloutsker v Romanova* [2015] EWHC 2053 (QB) at [81]).

306. The extent of publication of the defamatory tweets is a very important factor. I have dealt with this above in the context of serious harm, and repeat my conclusions. It is likely that Dr Newbon's tweets will have been seen by publishees running well into four figures, and that Mr Cantor's tweet will have been seen by several hundred people. It is likely, particularly in the case of Dr Newbon's tweets, that many of the publishees will have been members of the academic community in the north of England, who will have known Mr Wilson or at least have known of him.

307. Then there is the question of damages for disclosure of the University Information. 'General damages for misuse of private information may be awarded to compensate for distress, hurt feelings and any loss of dignity caused by the wrongful disclosure. Damages may be increased by other conduct of the publisher which is related to that wrongful act and aggravates the injury to the claimant's feelings. An award may also be made for the commission of the wrong itself, in so far as it impacts on the values protected by the right, provided that the purpose of such an award is compensatory, rather than having deterrent or vindicatory in nature. Such compensation reflects the loss or diminution of a right to control private information' (Sicri v Associated Newspapers Ltd [2021] 4 WLR 9 at [138](2), per Warby J).

Plea of aggravated damages

308. Damages (whether in defamation or misuse of private information) may be aggravated by the conduct of the defendant.

> "In assessing damages the court is entitled to look at the whole conduct of the defendant "from the time the libel was published down to the time they give their verdict". The general conduct of the defendant, his conduct of the case, and his state of mind (or how it is perceived by the claimant) insofar as it affects the feelings of the claimant are all matters which the claimant may rely on as aggravating the damages in so far as they bear on the injury to him (*Gatley*, 13th ed., 10-016)."

309. But aggravated damages are not a distinct head of damage. The correct approach was recently explained by Nicklin J in these terms[6]:

> "…. I consider the better course is to fix a single award which, faithful to the principles by which damages in defamation are assessed, is solely to compensate the Claimant. The award can properly reflect any additional hurt and distress caused to the Claimant by the conduct of the Defendants. To speak in terms of whether a claimant is "entitled" to an award of aggravated damages is misleading. Every claimant who succeeds in a claim for defamation is "entitled" to an award of damages which may reflect any proved elements of aggravation. The real question is whether the claimant can demonstrate, by admissible evidence which the court accepts, that the damage to his/her reputation and/or his/her distress or upset has been increased by conduct of the defendant."

310. In this case, Mr Wilson has pleaded an aggravated damages claim which is based on a crowdfunding appeal admittedly launched by the Defendants on 21 February 2023 ('the Crowdfunder') to raise money for their defence of this litigation. As with The Crowdfunder was published on a website which specialises in such appeals (www.crowdjustice.com). It was headed with a Star of David and the words 'Stronger than Hate', and alleged that Mr Wilson had 'form for threatening to sue campaigners against anti-Semitism'. Mr Wilson felt that the effect of this was to convey the impression that to support the defence of the litigation was to be strong enough to overcome his hatred for Jews, and would be a means to combat anti-Semitism. In its original form, according to Mr Wilson, the Crowdfunder also stated he had pursued Dr Newbon's widow, Dr Hewitt, after his death and deprived her of money that should have been used for her fatherless children. That passage was removed at Dr Hewitt's request.

311. Mr Wilson pleaded other complaints about the wording of the Crowdfunder, such as that it did not fully explain what it was about the publication of the Screenshot ('this freak takes kids' pictures', in particular) that he found so objectionable. The Defendants' response, perhaps a little disingenuously, was that it was contradictory for Mr Wilson to object to publication of the Screenshot and at the same time to complain that the Crowdfunder did not spell them out more clearly. They claimed that the 'obvious implication' was that the publications complained of caused him no damage

[6] *Lachaux v Independent Print Ltd* [2021] EWHC 1797 (QB) at [227]

or distress. That, in my judgment, was far from the obvious implication of his complaints about the Crowdfunder.

312. However, Mr Wilson relies also on a tweet by Mr Mendelsohn which linked to the Crowdfunder and was in terms which, Mr Wilson not unreasonably felt, suggested that he had targeted campaigners against anti-Semitism – in other words, targeted them because of their struggles against anti-Semitism, so was himself an anti-Semite. It featured the 'Stronger than Hate'/Star of David motif and said 'In my next life, I will try to avoid being sued by a Corbynista who targets campaigners against #Antisemitism. In this life, please donate to my Crowdfund …' That tweet was retweeted more than 50 times and viewed more than 18,000 times. I have no evidence that Mr Cantor was responsible for that tweet or its effects.

313. The tweet was picked up by a Twitter user called Doran, whose contribution was as follows: 'James is a mensch being targeted by the scum of the Earth. Don't let them do to him what they did to Pete'.

314. The 'scum of the earth' plainly meant Mr Wilson. It well illustrates the crude and abusive level of so many of these exchanges, and the irony (apparently lost on Mr Doran) of hurling abuse of the same dehumanising kind as was used of Jewish people by the Nazis in the 1930s. The tweet also suggested that Mr Wilson was in some way responsible for Dr Newbon's suicide. Nonetheless, it was retweeted by various others, including a senior barrister, Mr Myerson (prompting Mr Wilson's approach to him), and reached the attention of a television presenter called Rachel Riley, who gave further publicity to the Crowdfunder, suggesting again that Mr Wilson targeted the defendants because they campaigned against ant-Semitism.

315. Of course, Mr Mendelsohn did not cause Doran and others to write as they did. Mr Wilson's point is that such attacks on him were fuelled by their reading of Mr Mendelsohn's tweet.

316. The Crowdfunding page was taken down in June 2023 when Mr Wilson amended his pleading to rely on these matters in aggravation of damages.

317. The Defendants responded in their Defences to the aggravated damages claim at very considerable length. Their response illustrates the way in which claims for aggravated damages can develop into disproportionate disputes about matters which have little to do with the main issues in the action. It has to be remembered that an aggravated damages claim is concerned only with the question of whether the Defendants' conduct of the case has aggravated the injury to the Claimant's feelings which has been caused by the matters complained of. I do not intend to deal with every point raised by the Defendants in answer to the aggravated damages plea, not least because Mr Wilson's evidence about its effect on him, to which I refer below, was not challenged in cross-examination. I shall mention what may be the three main themes.

318. The Defendants suggest that by three public statements after the trial of preliminary issues he had brought the case to a much wider audience. On one level that is true, but not in the sense that he caused wider publication of the defamatory words or of the private information. All three were short accounts of the state of the litigation, as seen by the Claimant, but none identified the matters complained of.

319. They claim that Mr Wilson's claims in those statements, and in a letter to Master Davison, that the action could have been settled at the beginning for a simple offer to delete the tweets and undertake not to re-publish them, were false. It is unclear to me how that contention could, even if correct (and I decline any invitation to decide it), have any bearing on the issue of aggravated damages.

320. They deny that the Crowdfunder meant anything more than that Mr Wilson had targeted campaigners against anti-Semitism on a number of occasions, and then repeat at length their case on Mr Wilson's exchanges with the 'similar fact' witnesses, which was earlier introduced as a somewhat tangential aspect of the plea of truth. This time, the exchanges are said to demonstrate that Mr Wilson deliberately entered discussions and debates initiated by, and targeted, those who campaign against anti-Semitism. In other words, there is what amounts to a plea of truth in respect of a publication (the Crowdfunder) which is not complained of as giving rise to a cause of action, but only as affecting Mr Wilson's distress at the publications which are complained of. That demonstrates very clearly how this kind of ancillary dispute can end up as a tail wagging the dog, by which I mean the issues which go to establish or refute the actual cause of action. I decline to be led down that path.

321. What Mr Wilson actually said about the effect of the Crowdfunder was that he found the allegations made in the Crowdfunder and subsequently 'completely horrifying and extremely distressing'. As I have said, that evidence was not challenged. I see no reason not to accept that Mr Wilson will have been caused further distress by the Crowdfunder, which at the very least could have been understood as imputing anti-Semitism to him, and by Mr Mendelsohn's tweet, which plainly inflamed feeling against him and led to him receiving disgraceful abuse. I shall therefore include an element in my awards that reflects that aggravation.

Submissions on quantum of damages

322. Mr de Wilde relied as against Mr Mendelsohn on publication of the private information to Dr Newbon as well as by Dr Newbon. In respect of the claim in defamation, he relied on publication of the Screenshot by Dr Newbon and Mr Cantor, caused by Mr Mendelsohn. I have found against Mr Wilson on the privacy claim in relation to the Screenshot, so that falls out of the picture at this stage.

323. He invited me not to make a joint award against Mr Mendelsohn and Mr Cantor. I do not think that course is open to me. Mr Mendelsohn caused the publication by Mr Cantor. They are joint tortfeasors in respect of that publication, and the conventional view is that there must be one verdict and one award of damages for a joint libel.

324. Mr de Wilde accepted that the privacy claims were low value claims compared with the defamation claim, and cited *Burrell v Clifford* [2016] EWHC 294 (Ch); [2017] EMLR 2. He invited me to make a global award in respect of the privacy and defamation matters. Given that it would be difficult to separate the distress caused by the defamation from that caused by the misuse of private information, I think that is a sensible course. It applies only to the Newbon publications.

325. Mr Mendelsohn submitted that damages should be very small. In relation to the workplace complaints, he said that the information he gave to Dr Newbon was very general, and that only some of Dr Newbon's tweets referred to that information.

INJUNCTION

326. The Claimant seeks an injunction to restrain further publication of the Screenshot or of his private information.

327. I do not think that is opposed. The grant of an injunction is a discretionary remedy, but it would follow naturally from the decision of the Court, unless a satisfactory undertaking is offered.

328. On that subject, I should say that undertakings were offered by the Defendants through their then solicitors on 12 June 2023, but the solicitors' instructions were very shortly thereafter withdrawn. The question arose whether the undertakings remained open. In Mr Cantor's view they did not. In his evidence, Mr Mendelsohn did not suggest that the offer of an undertaking remained open: his approach was to make the point that Mr Wilson had always sought more than an undertaking. That may be right, although not a strong reason for not making clear that one was on offer. In oral evidence, he maintained that the offer of an undertaking had not been withdrawn, but could not recall whether it had been left open. I think that the true position is that Mr Wilson assumed, reasonably, that the offered undertakings had been withdrawn, no doubt inferring that the withdrawal of instructions had something to do with disagreement over the offer of the undertaking. It certainly appears that nothing more was said about them by either Defendant.

329. It seems to me that the terms of any injunction are best considered once the parties have considered the Court's judgment. It may be that, despite that history, agreement may be reached as to the terms of a final undertaking to the Court.

CONCLUSION

330. This claim succeeds in respect of the claim in defamation (against both Mr Mendelsohn and Mr Cantor) and in respect of misuse of private information (the University Information) against Mr Mendelsohn. It fails in respect of the claim that the publication of the Screenshot to and by Dr Newbon (and Mr Cantor) was a misuse of private information.

331. I award Mr Wilson damages of £22,500 against Mr Mendelsohn in respect of the disclosure by Mr Mendelsohn of the University Information to Dr Newbon and in respect for his liability for the republication of the Screenshot and of the University Information by Dr Newbon, and I award him £7,500 damages against Mr Mendelsohn and Mr Cantor as joint tortfeasors in relation to Mr Cantor's republication of the Screenshot.

332. I invite Mr de Wilde and the Defendants to agree a form of order. I will hear submissions on any matters on which they are unable to agree, and on any other outstanding issues, on a date, after hand down of the judgment, which is convenient to the parties and the Court.