



[2023] EWHC 2847 (KB)

Claim No: KB-2023-000955

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 November 2023

Before :

MR JUSTICE GRIFFITHS

Between :

TAHIR ALAM

Claimant

- and -

GUARDIAN NEWS AND MEDIA LIMITED

Defendant

Mark Henderson (instructed by Rahman Lowe Solicitors) for the Claimant
David Glen (instructed by Guardian Editorial Legal Services Department) for the Defendant

Hearing date: 6 November 2023

Approved Judgment

Mr Justice Griffiths:

1. This is the trial of a preliminary issue to determine:
 - i) The meaning of the article complained of in these defamation proceedings (“the Article”);
 - ii) Whether or to what extent the Article constitutes a statement of fact or opinion; and
 - iii) Whether, in that meaning, the Article is defamatory of the claimant at common law.

The Article

2. The Article was published in the *Observer* newspaper in print, online and on the defendant’s app, on Sunday 20 February 2022.
3. The text was identical in all publication formats save that one paragraph was broken into two in the online and app versions but not in print; it is agreed that nothing turns on that.
4. The print version was in the “Focus” section of the *Observer* newspaper, under a “Viewpoint” strapline. It was headlined: “The Trojan Horse Affair: how Serial podcast got it so wrong”. The sub-head and byline of the author, underneath that, read “A major series blaming Islamophobia for the 2014 Birmingham schools controversy is one-sided and risks opening old wounds, argues *Sonia Sodha*”. Above it is a large collage photograph including images of three people: the presenters of the Serial podcast (two men called Hamza Syed and Brian Reed, who are not connected with the claimant) and the claimant Tahir Alam. No other person is in the collage. The caption names the three men in the collage, describing the claimant as “the hero of their podcast The Trojan Horse Affair”. The text of the Article covers 7 columns of the print edition. At bottom right, much smaller than any image in the collage, is a picture of Michael Gove, described in the caption as “education secretary in 2014” who “intervened on fears violent extremism was blossoming”.
5. The web version on the *Guardian* website has the same headline: “The Trojan Horse Affair: how Serial podcast got it so wrong”. The byline of the author, Sonia Sodha, is under the headline with a small photograph of her, and there is then a sub-head essentially identical to the print version: “A major series blaming Islamophobia for the 2014 Birmingham schools controversy is one-sided and risks opening old wounds”. The collage heads the web version text, just as it does the print version text, showing the two podcasters and the claimant. Between paras 7 and 8 of the text of the Article, on the web there is a large photograph of the claimant (which is not in the print version, except that it is identical to the picture of him in the collage) captioned: “Tahir Alam is presented by the podcast as a hero”. Between paras 13 and 14 of the text of the Article, on the web there is a large picture of Michael Gove, captioned “Michael Gove, education secretary in 2014”. There are no other images in the web version.
6. The app version is the same as the web version, except that it is formatted in the narrower width of a mobile phone, as compared with the broader width of a PC screen,

which makes the lines of text shorter and the photographs (although still covering the full width, as they do on the web) proportionately smaller.

7. Neither party suggested that the small differences between the presentation of the print, web and app publications of the Article (the wording of the body of the Article being identical in each) had any effect on its meaning.
8. There are some hyperlinks in the web and app versions, but it is common ground that they too are irrelevant to meaning in this case and that the material linked to by the hyperlinks need not be taken into account when determining meaning.
9. The text of the Article (with paragraph numbers added only for ease of reference in these proceedings) is as follows, with the passages identified in para 5 of the Particulars of Claim as defamatory in bold (again, only for ease of reference in the proceedings; the original text not being differentiated in this way):

“1. Serial is one of the most downloaded podcasts in the world. Its first season, a true-crime whodunnit that became an instant hit had me hooked on its release eight years ago. So I was excited to tune into its new offering with the *New York Times*, *The Trojan Horse Affair*, an eight-part series that promises to tell the real story of the anonymous letter sent to Birmingham city council in 2013, that alleged a plot to take over and run local state schools according to strict Islamist principles.

2. But this latest series skewers the art of narrative journalism Serial is widely considered to have pioneered. Long-form podcasts have more blockbuster potential than straight-up reporting, but are laced with danger: the temptation to cherry-pick facts in service of a gripping story.

3. The Trojan Horse Affair presents a one-sided account that minimises child protection concerns, misogyny and homophobia in order to exonerate the podcast’s hero, a man called Tahir Alam. In doing so, it breaches the standards the public have the right to expect of journalists, with cruel consequences for those it uses and abuses along the way.

4. What happened in Birmingham in 2014 is a story of two parts. Part one involves the anonymous letter that was quickly established as a hoax, and how it got caught up in an intra-Whitehall fight between the then-education and home secretaries, Michael Gove and Theresa May. Gove held it up as evidence that violent extremism was blossoming unchecked by the Home Office; May claimed the issues later uncovered were a product of Gove’s academy reforms, which removed schools from the oversight of local councils and put them in the hands of privately run trusts.

5. Part two is the story of what was subsequently uncovered by several Ofsted reports, an Education Funding Agency

review, two separate inquiries by the Department for Education and Birmingham council, and multiple court judgments. There was no organised plot. But according to these bodies, a small cluster of Birmingham schools, including three run by an academy trust chaired by Alam, suffered from a range of issues: poor governance, including a lack of child protection safeguards; people in leadership positions who espoused or failed to challenge extremist views; cultures in which homophobia and misogyny, including from teachers, were allowed to flourish and young people were encouraged to become intolerant of diversity. At one school, pupils were taught creationism as science and, in one sex education lesson, that a woman cannot refuse her husband sex. Teachers made homophobic comments on a shared Whatsapp group; one referred to gay people as “animals” and “satanic”. At the same school, speakers with extremist views were invited to address assemblies.

6. Alam, the most prominent of the small group of socially conservative men identified as being at the heart of the affair, has fought back, alleging the various bodies that made these findings were driven by Islamophobia. He is right that the way some in government and the media seemed to obsess about finding violent extremism where there was none was deeply unsavoury. The letter was indeed used as justification to drive controversial reforms in counter-terrorism policy.

7. But his claim that multiple agencies and individuals exaggerated their findings for nefarious reasons has been dismissed as conspiracy thinking by the courts. (Alam told me, “not a single actual child protection or safeguarding issue has been cited in any of the reports”.)

8. That has not stopped Serial’s presenter duo running with a similar story. One half of it, a Muslim journalist from Birmingham called Hamza Syed is explicit about his mission from the beginning: he wants to prove his suspicion that a female Muslim headteacher wrote the Trojan letter for her own parochial reasons, because he thinks it would show “everything that comes after doesn’t matter”.

9. The podcasters fail in this, but that doesn’t stop them accusing her of playing “racist judo” by faking resignation letters from Muslim members of her staff, a claim dismissed as false by an employment tribunal judge. They doorstep her at work to try to get her to talk, even though by that point she has seen a letter from Syed declaring he thinks she is lying.

10. Syed and his American co-presenter Brian Reed also try to discredit the findings about what went on in the schools Alam was responsible for, including the misogyny and homophobia

they tellingly lump into a “grab bag of Islam-adjacent allegations”. Reed secured an interview with two whistleblowers independently assessed as “credible” and “fair”. They understood it would be a general conversation about their experiences. Instead, Reed and Syed subjected them to a seven-hour interrogation on their testimony that they have described in a complaint to the *New York Times* as “torture”, leaving them feeling “beaten into submission, held hostage in our own home”.

11. Even though Reed and Syed later concede the accuracy of the female whistleblowers’ account — that pupils were taught that wives cannot refuse their husbands sex — the journalists use three sources to try to undermine other aspects of the women’s testimony. But they fail to reveal pertinent information about the sources which raises serious questions about their credibility. And the whistleblowers are named in the podcast, even though they had understood they would be contributing anonymously.

12. Next, Reed and Syed head to the offices of Humanists UK, which acted as liaison for these whistleblowers. They question Richy Thompson, a director, on how Humanists UK verified the whistleblower accounts before publishing them on its website. Thompson had no forewarning of the forensic questions about events that happened years ago, and was hazy on detail in the interview, but the Observer has seen correspondence in which he made clear to the presenters before the podcast aired that the Humanists independently corroborated the whistleblower accounts with other sources before publication. Yet the presenters allege they published the claims without checking them.

13. The impression listeners are left with is that both the whistleblowers and the Humanists were motivated by Islamophobia, and so we should ignore what they have to say. Never mind the fact that the several inquiries into Trojan Horse draw on a multitude of other whistleblowers, including Muslim women. (The Humanists have also exposed the teaching of creationism in orthodox Jewish schools and issues with sex education in Catholic schools.)

14. This grossly understates the risks children were exposed to, with real consequences. One teacher implicated in the sex education lesson was later convicted for sexually abusing a 14-year-old girl he referred to as his “wife”.

15. Powerful men and institutions are adept at throwing around accusations of racism or anti-faith bigotry to undermine the credibility of people speaking up about child protection: see the treatment of those who tried to flag child sexual abuse in the Catholic church, or the Rotherham inquiry’s finding that nervousness about cultural

sensitivities impeded the exposure of child sexual abuse by predominantly Asian grooming gangs. The kindest interpretation here is that Syed and Reed are reporting a story about child protection without knowing the first thing about it. How else to make sense of their indignation that the government wheeled out no child witnesses in the relevant teacher disciplinary hearings?

16. Another thing Syed and Reed appear to have little understanding of is the personal costs involved in Whistleblowing. A DfE official who visited one of the schools said she had never seen so many distressed, frightened and crying members of staff. A female Muslim whistleblower told me about the abuse and intimidation she has faced as a result of speaking out. Shaista Gohir, chair of the Birmingham-based Muslim Women’s Network UK, was approached by Muslim females from these schools and articulated their concerns at the time. It led to people threatening to harm her children.

17. The silencing of Asian women trying to call out the sexism of certain Asian men is a common theme that comes up when I write about these issues. “The issue is not just how Muslims are treated by other people, but how Muslim women and girls are being treated by men in their own community,” Gohir told me. “Being accused of stoking up Islamophobia is the price I pay for raising concerns about child safeguarding and misogyny.”

18. The idea that conservative men like Tahir Alam represent British Islam is plain wrong: surveys show the majority of British Muslims reject the ultra-conservative form of Islam that was found to be influencing these non-faith state schools. Conflating the defence of Alam with the defence of Islam does no one any favours. Syed’s apparent determination to make the facts fit his precooked narrative is paired with Reed’s meditations on race, which seem to use Syed’s experience of racism to excuse his questionable approach to journalism: the soft bigotry of low expectations.

19. The *New York Times*/Serial told the Observer that it had considered complaints received from the whistleblowers and Richy Thompson and had concluded the podcast fairly and accurately represented the contents of their interviews and that Syed and Reed have produced “the most comprehensive account to date of a matter of huge national importance and debate”.

20. Ultimately, one false narrative — that there was a problem of violent extremism in these schools — is never improved by another: that beyond Islamophobia there was nothing much to see here at all.

21. As journalists, our work has real-world consequences beyond the entertainment value of a gripping story. By all accounts, these communities have been healing and the schools recovering, but the people I spoke to fear this podcast series will reopen old wounds and sow new divisions. The *New York Times* owes them an apology.”

The law on meaning

10. The principles to be applied when determining meaning were summarised by Nicklin J in *Koutsogiannis v Random House Group Ltd* [2020] 4 WLR 25, [2019] EWHC 48 (QB) at para 12, approved by the Court of Appeal in *Millett v Corbyn* [2021] EMLR 19 at para 8.

“i) The governing principle is reasonableness.

ii) The intention of the publisher is irrelevant.

iii) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.

iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.

v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.

vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.

vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.

viii) The publication must be read as a whole, and any 'bane and antidote' taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic "rogues' gallery" case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning

that the words would bear if they were read in isolation (e.g. bane and antidote cases).

ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.

x) No evidence, beyond publication complained of, is admissible in determining the natural and ordinary meaning.

xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication's readership.

xii) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.

xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant's pleaded meaning)."

11. I was also referred to what Lord Reid said in *Lewis v Daily Telegraph* [1964] AC 234 at 258:

"What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning. Here there would be nothing libellous in saying that an inquiry into the appellants' affairs was proceeding: the inquiry might be by a statistician or other expert. The sting is in inferences drawn from the fact that it is the fraud squad which is making the inquiry."

12. I was also referred to what Lord Morris said in *Jones v Skelton* [1963] 1 WLR 1362 at 1370-1371:

"The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used

can be a part of the ordinary and natural meaning of words. See *Lewis v Daily Telegraph Ltd* [1964] AC 234. The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words.”

13. Neither party suggests any innuendo meaning in this case. The dispute is about the natural and ordinary meaning, including the ordinary and natural meaning in the wider sense discussed by Lord Reid and Lord Morris in these passages.
14. On the other hand, I was also warned against the sort of editorialising which was rejected by Nicklin J in *Tinkler v Ferguson* [2018] EWHC 3563 (QB) at paras 37-38, where a number of adjectives and adverbs had been inserted into the claimant’s meaning which were not in the text and which were not, as the judge decided in that case, either stated, or implied, or part of the natural and ordinary meaning of the words in the text.
15. The boundary between what the reader may think which is not part of the ordinary and natural meaning, and what is implied although not stated and which is, therefore, part of the ordinary and natural meaning, is one for the judge to recognise and correctly place: see also *Swan v Associated Newspapers Ltd* [2020] EWHC 1312 (QB) per Warby J at para 26(2).

The rival cases on meaning

16. According to the claimant, the meaning of the passages in bold in para 9 above (read, of course, in the context of the Article as a whole) is:

“The Claimant abused his powerful position to maliciously utilise accusations of racism/Islamophobia in order to obstruct exposure of child sexual abuse in his school community, applying the tactic used to obstruct exposure of child sexual abuse by Asian Muslim grooming gangs in Rotherham and within the priesthood in the Catholic Church.

He further instigated and/or promoted misogynist and homophobic mistreatment of school pupils.”

17. Notable features of this proposed meaning are:
 - i) The allegation of malice, as opposed (for example) to negligence. This is linked to the attribution of specific intent conveyed by “utilise” and the phrase “in order to” obstruct exposure. This meaning proposes that the claimant acted deliberately “to obstruct exposure of child sexual abuse in the school community”. The language of “applying the tactic” reinforces the positive action to achieve a desired end on the part of the claimant spelled out in this proposed meaning.
 - ii) The reference, specifically, to child “sexual” abuse.

- iii) The reference to the claimant using (in context, mis-using) accusations of racism/Islamophobia as a tactic to prevent exposure rather than because of a genuine belief: “applying the tactic used to obstruct exposure of child sexual abuse by Asian Muslim grooming gangs in Rotherham and within the priesthood in the Catholic Church”.
- iv) In argument, the claimant’s Counsel pointed to the sexual abuse element of the grooming gangs in Rotherham and in the allegations made against Catholic priests as linking the claimant to child abuse of that nature.
- v) The suggestion that there was misogynist and homophobic “mistreatment” of school pupils, which might mean that the pupils were themselves victims of misogyny and homophobia, as opposed to being led towards holding viewpoints themselves which were misogynistic and homophobic.
- vi) The assertion that misogynist and homophobic mistreatment of school pupils was actually “instigated and/or promoted” by the claimant, as opposed merely to happening on his watch.

18. According to the defendant, the meaning is:

“(1) As chair of an academy schools trust in Birmingham, the Claimant allowed an ultra-conservative Islamic viewpoint to influence the provision of education to students and enabled a culture in which the schools for which he held responsibility:

- i. Suffered from poor governance, including child protection and safeguarding concerns.
- ii. Employed people in leadership positions despite the fact they espoused or had failed to challenge extremist views.
- iii. Had cultures in which homophobia and misogyny, including from teachers, were allowed to flourish and young people were encouraged to become intolerant of diversity.

(2) When challenged by multiple agencies and individuals about these matters, the Claimant alleged the agencies and individuals in question were driven by Islamophobia, making unfounded claims that they had sought to exaggerate their findings for nefarious reasons.”

19. Notable features of this proposed meaning are:

- i) The claimant is here allowing and enabling, rather than instigating or promoting. He holds responsibility but is not said to be malicious, or acting deliberately.
- ii) An “ultra-conservative Islamic viewpoint” is allowed by him “to influence the provision of education to students” and “enable a culture” in “the schools for which he held responsibility”. He is, therefore, at one remove from the points itemised in i, ii and iii. This is reinforced in ii (which attributes the espousal or failure to challenge extremist views to people he employed, as opposed to

- himself). It is also an element of iii, in which teachers are included, the claimant not being a teacher.
- iii) There is reference to “child protection and safeguarding concerns” but no explicit reference to child sexual abuse.
 - iv) There is no reference to “misogynist and homophobic mistreatment of school pupils”, which is in the claimant’s meaning. The closest is the defendant’s reference to “cultures in which homophobia and misogyny, including from teachers, were allowed to flourish and young people were encouraged to become intolerant”.
 - v) There is no reference to the association with what the claimant is said to have done with the actions of Asian Muslim grooming gangs in Rotherham and within the priesthood in the Catholic Church.
 - vi) The claimant’s response to challenge from agencies and individuals is to allege they are “driven by Islamophobia” and to make “unfounded claims” but this is not said to be (as in the claimant’s meaning) a deliberate tactic. He is not acting “in order to obstruct exposure” (as the claimant’s meaning has it). He is saying something he is wrong about (“unfounded claims”), but which he may nevertheless believe to be true.
20. In the claimant’s case on meaning, the defendant specifically challenges the following (defendant’s Statement of Case para 7):
- a) That the claimant sought to “obstruct the exposure of child sexual abuse in his school community”
 - b) That the claimant “abused his powerful position to maliciously utilise accusations of racism/islamophobia”
 - c) That the claimant “instigated and/or promoted misogynistic and homophobic mistreatment of pupils”.

Discussion and decision on meaning

21. It is clear from the headline, and the photograph and its caption, that the author of the Article is going to be critical. But it is only in the body of the Article that what is actually being said against the claimant is made clear.
22. Para 1 targets, not the claimant, but the podcasters, who are not said to have anything to do with him.
23. The claimant is reached in the first sentence of para 3, which is the first sentence said in this case to be defamatory. The attack is still on the Trojan Horse Affair podcast, but the criticism of the podcast is that it “minimises child protection concerns, misogyny and homophobia in order to exonerate” the claimant. That means that the claimant is implicated in “child protection concerns, misogyny and homophobia” of which, if not wrongly minimised, he will not be exonerated.

24. Para 4 then spotlights politicians (not the claimant) who run arguments based on “a hoax”, in the form of a letter. That paragraph is saying that concerns are being expressed by politicians when there is nothing to support them, except the hoax. That is described by the author as “Part one”.
25. Para 5 is presented as a contrast. This is “Part two”. Part two is not a hoax. Part two is real. What is real? What is real is “what was subsequently uncovered by several Ofsted reports, an Education Funding Agency review, two separate inquiries by the Department for Education and Birmingham council, and multiple court judgments.”
26. What was that? “There was no organised plot”. So that is the hoax, which is put aside and certainly not (for example) pinned on the claimant. But what there is, is “a small cluster of Birmingham schools, including three run by an academy trust chaired by Alam” suffering from “a range of issues”. What are the issues? The Article says they are:
 - i) “poor governance, including a lack of child protection safeguards;”
 - ii) “people in leadership positions who espoused or failed to challenge extremist views;”
 - iii) “cultures in which”
 - a) “homophobia and misogyny, including from teachers, were allowed to flourish”
 - b) “and young people were encouraged to become intolerant of diversity.”
27. What is the claimant’s link to these issues? They are issues in schools which include three run by an academy trust which he chairs.
28. Para 6 conveys that he is not merely in post at these schools when these things are happening; he is “at the heart of the affair”; he is “the most prominent” of “the small group of socially conservative men” identified as being at the heart of the affair. Para 18 returns to the description of the claimant as “conservative” and links that conservatism to “the ultra-conservative form of Islam that was found to be influencing these non-faith state schools”. So he is responsible in some way.
 - i) Being chair of the trust puts him directly in the frame for the “poor governance”, which is paired with (as an example, given the word “including”) a lack of child protection safeguards.
 - ii) As chair of the academy trust which ran three of the schools, he is definitely in one of the “leadership positions”. The direct implication is therefore that he was one of those who “espoused or failed to challenge” extremist views in those schools. That is part of the meaning; it is not merely innuendo.
 - iii) The reference to his social conservatism in para 6 reinforces the suggestion that, when “homophobia and misogyny... were allowed to flourish” (as stated in para 5), he was one of those “allowing them to flourish” in the schools whose trusts he chaired. That has already been implied by reference to homophobia, misogyny and young people being encouraged in intolerance of diversity

“cultures” in which these things operated. In context, the claimant as chair of the trust which “run” these schools is at least partly responsible for that culture; indeed, responsible in large part as “the most prominent of the small group of socially conservative men identified as being at the heart of the affair”.

29. All three of these points are blamed on him, therefore, in his leadership and supervisory role as chairman of the trust. There is also the reference, in para 10, to “what went on in the schools Alam was responsible for”, as opposed to anything he himself was personally doing. He is not a teacher, or even a head teacher. Therefore, conduct attributed to teachers is not being attributed to him as conduct by him, as opposed to conduct for which as the chair of the trust which allowed it he must take responsibility. What is not directly attributed to him includes (from para 5 of the Article):
- i) Homophobia and misogyny from teachers.
 - ii) Young people being encouraged to become intolerant of diversity. It is teachers who have contact with the young people in schools; not the trustees who govern the school.
 - iii) Pupils being taught (by teachers) creationism as science.
 - iv) A sex education lesson (obviously given by a teacher, not a trust chair) in which it was taught that “a woman cannot refuse her husband sex”.
 - v) Teachers making homophobic comments on a shared WhatsApp group, including the one who referred to gay people as “animals” and “satanic”.
 - vi) At the same school, speakers with extremist views being invited to address assemblies. The placing of this point after the previous points reinforces the understanding of the ordinary reasonable reader that assemblies would be organised by teachers, not by governors, trustees or chairs of trustees.
30. These are things that the claimant made possible by poor governance, espousing or failing to challenge extremist views, and in the culture of his schools. But the Article does not accuse him of personally directing, perpetrating, or instigating these things; either expressly or by implication. Indeed, some of the examples are single instances in unnamed schools, which may or may not, therefore, have been among the three schools which his trust ran. These issues are said to have arisen in “a small cluster of Birmingham schools” only three of which were his.
31. The claimant’s proposed meaning that the claimant “instigated and/or promoted misogynist and homophobic mistreatment of school pupils” is not, therefore, the meaning of the text as it would appear to the ordinary reasonable reader. The correct meaning is expressed in the defendant’s formulation, that the claimant “allowed an ultra-conservative Islamic viewpoint to influence the provision of education to students and enabled a culture in which the schools for which he held responsibility.”
32. As to the particular problems which he enabled, they are set out in paras i – iii of para 26 above, which quotes directly from the Article. But there is a dispute about what those words themselves mean. What is meant by “child protection”? What is implied by

homophobia and misogyny being allowed to flourish, and young people being encouraged to become intolerant of diversity?

33. It is common ground, and I agree, that these meanings are to be drawn from the context of the Article as a whole. That includes the passage at the end of para 5 beginning “At one school”, and the final sentences of paras 14 and 15.
34. I will consider, first, the implications of the reference to “child protection”. The examples given in the remainder of para 5 are of an unnamed teacher at an unidentified school teaching in a sex education lesson that “a woman cannot refuse her husband sex”; and other teachings which encourage intolerance of diversity, and cultures in which homophobia and misogyny were allowed to flourish. Creationism is also mentioned. There is no mention in para 5 of physical child abuse (or child sexual abuse in the form of sexual contact with children); the allegation is that children are being exposed to “extremist views”. The ordinary reasonable reader would see that as an issue of child protection, given not only the age of children in schools but also their impressionability in a school environment which is entrusted with teaching them. I do not think that the ordinary reasonable reader would jump from the context given in para 5 to understanding that “child protection” must also suggest a risk of “child sexual abuse” as stated in the claimant’s proposed meaning.
35. Para 14 of the Article returns, however, to “the risks children were exposed to, with real consequences”. A single example is given: “One teacher implicated in the sex education lesson was later convicted for sexually abusing a 14-year-old girl he referred to as his “wife”.” This is not stated to be in one of the claimant’s schools, and it is a “later” conviction. It is more indicative of an extremist, misogynistic point of view being held by a teacher, which later spilled into his personal dealings with a 14-year old girl, than of a suggestion, express or implied, that this happened at a school, or that the girl was a pupil at one of the claimant’s schools. I do not think it suggests “child sexual abuse in his [that is, the claimant’s] school community”, as it is put in the claimant’s proposed meaning. There are child protection issues, because children are being taught these things; and there are implications for those with whom they have dealings in their own lives, during or after their schooldays. This might include a failure to recognise the principle of consent, or the principle that no consent can be given by a child, to sexual activity, but that does not go so far as to imply that there was child sexual abuse going on in the claimant’s schools which he was responsible for or trying to cover up. That might or might not be the case. But the Article does not say or suggest it to have been the case. That would not be the meaning conveyed by the Article to the ordinary reasonable reader. “Child sexual abuse” (words in the claimant’s proposed meaning which are not in the Article itself) suggests physical sexual abuse of children; or physical sexual contact or sexual activity with children. That is not something which the ordinary reasonable reader would understand the Article to accuse the claimant of allowing or covering up in his schools.
36. Para 15 is associating the claimant (who in para 6 is said to have “fought back” with allegations that adverse findings “were driven by Islamophobia”) with other “Powerful men and institutions”. Although he is not named in para 15, the Article has already identified as him as a powerful protagonist in the matters covered by the podcast: he is “the podcast’s hero” (para 3), chair of the trust running three of the implicated schools (para 5), one of the “people in leadership positions” (para 5), “the most prominent of the small group of socially conservative men identified as being at the heart of the

affair” (para 6), and these are “schools Alam was responsible for” (para 10). The link between para 15 and the claimant is also made by the subject matter of para 15, which is “accusations of racism or anti-faith bigotry” being used “to undermine the credibility of people speaking up” (para 15), which comes after the reference to the claimant himself “alleging the various bodies that made these findings were driven by Islamophobia” (para 6) and making the claim “that multiple agencies and individuals exaggerated their findings for nefarious reasons” (para 7).

37. Para 15 therefore associates the claimant with the “Powerful men and institutions” whose conduct is described in that paragraph. But the conduct with which he is associated is “throwing around accusations of racism or anti-faith bigotry to undermine the credibility of people speaking up about child protection” (para 15 again). Two examples of others doing this are given: “the treatment of those who tried to flag child sexual abuse in the Catholic church, or the Rotherham inquiry’s finding that nervousness about cultural sensitivities impeded the exposure of child sexual abuse by predominantly Asian grooming gangs”. But what is linked to the claimant here is “the treatment” of accusers, not the nature of the accusations being made in those other cases. It is how the cover-up is being approached rather than what is being covered up which is important in para 15. The claimant is associated with the powerful men using these methods to undermine people speaking up, but it does not follow that anyone is speaking up, in the claimant’s case, about behaviour which is the same as or even similar to the behaviour being covered up in the cases of child sexual abuse by grooming gangs or in the Catholic church. I do not think the ordinary reasonable reader would understand, or infer, that. There are obvious differences between the claimant and these other people: he is certainly not a member of the Catholic church, for example. I do not think that the ordinary reasonable reader would equate him with them, except for the purpose which the Article does suggest, which is about how racism or anti-faith bigotry is alleged in order to undermine accusers, rather than what the accusers are alleging in the particular case. The previous paragraphs have particularised the “child protection” issues set out as being the allegations in question. There were no allegations of grooming, or child sexual abuse allegations among them. There is a lack of child protection; but that would be understood by the ordinary reasonable reader in the limited sense that I have explained.
38. I turn next to the question of what is implied by homophobia and misogyny being allowed to flourish at the claimant’s schools, and young people being encouraged to become intolerant of diversity. I consider these words to speak for themselves. The meaning is that young people are being educated to be intolerant of diversity, and taught in a culture which is homophobic and misogynistic. The young people in question are being schooled in homophobia, misogyny and intolerance of diversity as perpetrators. It may follow, if the schooling is allowed to take effect uncorrected, and does so, that others will suffer from their homophobia and misogyny, and their victims may be inside as well as outside the school, and during their schooldays as well as afterwards. But that would be a speculative thought that may or may not come into the mind of some readers; it is not one that would in the mind of the ordinary reasonable reader be conveyed as the meaning of the text itself. The text is about forming perpetrators or potential perpetrators; not about the sufferings of victims within the schools including the claimant’s schools.

39. In summary, therefore, I reject the phrase in the claimant’s proposed meaning “child sexual abuse in his school community” and a meaning stating that the claimant “instigated and/or promoted” misogyny or homophobia; or that there was misogynist and/or homophobic “mistreatment” of school pupils, as opposed to a lack of child protection and exposure to cultures in which homophobia and misogyny, including from teachers, were allowed to flourish and young people were encouraged to become intolerant of diversity.
40. Drawing this together, I have decided on the following meaning, based on the defendant’s proposed meaning, but with some modifications in line with the discussion in this judgment so far, as follows:

“(1) As chair of an academy schools trust running three schools in Birmingham, the claimant allowed an ultra-conservative Islamic viewpoint to influence the provision of education to students and enabled a culture in which the schools for which he held responsibility:

- i. Suffered from poor governance, including a lack of child protection safeguards.
- ii. Employed people in leadership positions who espoused or failed to challenge extremist views in the schools.
- iii. Allowed homophobia and misogyny, including from teachers, to flourish.
- iv. Encouraged young people to become intolerant of diversity.”

41. I now turn to the rival positions on the claimant’s reaction to accusations about what was going on.
42. This topic is first broached in para 6 of the Article, in which the claimant “has fought back alleging the various bodies that made these findings were driven by Islamophobia”. The author of the Article starts by saying “He is right” about government and media obsessing “about violent extremism when there was none” – which harks back to the hoax based on the anonymous letter. The author, however, continues with a “but” – the “but” which opens para 7 - and says:

“But his claim that multiple agencies and individuals exaggerated their findings for nefarious reasons has been dismissed as conspiracy thinking by the courts. (Alam told me, “not a single actual child protection or safeguarding issue has been cited in any of the reports”).”

43. Only the first of these two sentences is said to be defamatory, but context is always relevant. The first sentence is in its own terms clear: the claimant’s claim of what the previous paragraph has identified as Islamophobia as the motive for the accusations “has been dismissed as conspiracy thinking by the courts”. It is therefore not a correct claim. It has been dismissed by the courts. But what is one to make of the second

sentence? Taken on its own, it is the claimant stating his own point of view and countering the allegations: he is quoted as saying “not a single actual child protection or safeguarding issue has been cited in any of the reports”. However, it is not on its own. It is included in a paragraph of only two sentences, in which the first sentence has dismissed his point of view by reference to the courts, and this second sentence is in brackets. Both these things seem to relate the second sentence to the first. The second sentence, in context, seems to be discredited by the first sentence, rather than standing against it. The implication is that what the courts have dismissed includes the claimant’s exculpation in the second sentence. There is a child protection and safeguarding issue after all, because the claim “that multiple agencies and individuals exaggerated their findings for nefarious reasons” has been “dismissed as conspiracy thinking by the courts”. The second sentence therefore reinforces the point that the claimant’s allegation of Islamophobia as the motive and explanation for the allegations is wrong.

44. That does not in itself, however, resolve the issue between the parties, which is whether the claimant is wrong in the sense of misguided, or wrong in the sense of acting in bad faith, making an allegation which he himself knows to be false.
45. At first, the Article does not elucidate this, moving in paras 8-13 to examine and criticise the actions of the podcasters, rather than the claimant.
46. It is in para 15 that the Article’s attention returns to the claimant, given my finding that para 15 refers to the claimant as one of the “powerful men” (para 36 above). Para 15 means that the claimant is one of those “throwing around accusations of racism or anti-faith bigotry to undermine the credibility of people speaking up about child protection”. It compares what happened to those flagging child abuse in the Catholic church, but that comparison does not in itself say much about motive, although it reinforces the point made strongly throughout the Article that Islamophobia does not explain away the allegations about the claimant’s schools. The second part of the comparison is more instructive on motive: “the Rotherham inquiry’s finding that nervousness about cultural sensitivities impeded the exposure of child sexual abuse by predominantly Asian grooming gangs”. The use of the word “nervousness” conveys a genuine, albeit misguided, concern, rather than a deliberate false weaponisation.
47. Paras 16-19 of the Article focus on the podcasters again, with no criticism of the claimant. Para 20 then says this:

“Ultimately, one false narrative — that there was a problem of violent extremism in these schools — is never improved by another: that beyond Islamophobia there was nothing much to see here at all.”
48. This sums up the Article: it is not true that there was “nothing much to see here at all”. But, equally, “that there was a problem of violent extremism in these schools” was also a “false narrative”. This ties in with the opening dismissal of the “hoax” that was accepted by politicians (para 4). But it does not say more than that the claimant was wrong; it does not say whether he knew he was wrong. If anything (and this is very slight, at best), by linking back to the politicians, who are never suggested to have known the letter they based themselves on was a hoax, it supports him being, like them, wrong but in good faith.

49. From these thin pickings on motive, the strongest point made against the claimant, therefore, is the phrase (in para 15) “throwing around accusations of racism or anti-faith bigotry to undermine the credibility of people speaking up about child protection”. That does seem to imply that because they are doing it “to” undermine credibility, they are doing it for that purpose rather than because it is true. But the implication is not very strong, and it is contained, moreover, in a paragraph which does not name the claimant or refer to him except as one of a number of “powerful men and institutions”. In his favour, and much more strongly expressed, is the trenchant observation (in para 6) that “He is right” that Islamophobia drove a false narrative of violent extremism. Although he is wrong, according to para 7, in claiming “that multiple agencies and individuals exaggerated their findings for nefarious reasons”, this is based on a dismissal of this by the courts “as conspiracy thinking”. Conspiracy thinking is unfounded, but it is “thinking” rather than invention; it is misguided rather than cynical or dishonest.
50. The meaning of the Article taken as a whole does not support the claimant’s proposed meaning that he “maliciously” utilised accusations of racism/Islamophobia, or that he did so “in order to obstruct exposure of child sexual abuse”. It is closer to the defendant’s proposed meaning that his claims were “unfounded”.
51. The meaning of this aspect of the Article is:
- “(2) When challenged by various bodies (several Ofsted reports, an Education Funding Agency review, two separate inquiries by the Department for Education and Birmingham council, and multiple court judgments) about these matters, the claimant alleged that their findings were exaggerated and driven by Islamophobia. That was unfounded, and rightly dismissed as conspiracy thinking by the courts.”

Fact or opinion

52. The claimant argues that all of the defamatory passages are statements of fact, not statements of opinion. The defendant (in paras 4-5 of its Statement of Case for the Preliminary Issue Trial) identifies the words underlined in its proposed meaning as statements of opinion, the balance being accepted as statements of fact:
- “(1) As chair of an academy schools trust in Birmingham, the Claimant allowed an **ultra-conservative** Islamic viewpoint to influence the provision of education to students and enabled a culture in which the schools for which he held responsibility:
- i. Suffered from **poor governance**, including child protection and safeguarding concerns.
 - ii. Employed people in leadership positions despite the fact they espoused or had failed to challenge **extremist** views.
 - iii. Had cultures in which **homophobia** and **misogyny**, including from teachers, were allowed to flourish and young people were encouraged to become intolerant of diversity.

(2) When challenged by multiple agencies and individuals about these matters, the Claimant alleged the agencies and individuals in question were driven by Islamophobia, making unfounded claims that they had sought to exaggerate their findings for nefarious reasons.”

53. The question of whether the statement complained of is fact or opinion is to be determined on the basis of the Article, not on the basis of my précis of the meaning of the Article: *Millett v Corbyn* [2021] EWCA Civ 567 at para 17.

54. However, transposing, for convenience, the underlined words from the defendant’s proposed meaning into the ordinary and natural meaning I have decided upon, they appear as follows:

“(1) As chair of an academy schools trust running three schools in Birmingham, the claimant allowed an **ultra-conservative** Islamic viewpoint to influence the provision of education to students and enabled a culture in which the schools for which he held responsibility:

i. Suffered from **poor governance**, including a lack of child protection safeguards.

ii. Employed people in leadership positions who espoused or failed to challenge **extremist** views in the schools.

iii. Allowed **homophobia** and **misogyny**, including from teachers, to flourish.

iv. Encouraged young people to become intolerant of diversity.

(2) When challenged by various bodies (several Ofsted reports, an Education Funding Agency review, two separate inquiries by the Department for Education and Birmingham council, and multiple court judgments) about these matters, the claimant alleged that their findings were exaggerated and driven by Islamophobia. That was unfounded, and rightly dismissed as conspiracy thinking by the courts.”

55. Context has often, rightly, been said to be key, which engages the whole Article, but the focus will be on the statements in the Article itself (emboldened in the quotation in para 9 above) which are said to be defamatory (because it is only those in respect of which the honest opinion defence in section 3 of the Defamation Act 2013 may come into play).

56. The following points were derived from previous authority by Nicklin J in *Koutsogiannis v Random House Group Ltd* [2020] 4 WLR 25, [2019] EWHC 48 (QB) at para 16, approved by the Court of Appeal in *Millett v Corbyn* [2021] EMLR 19 at para 14:

“(i) The statement must be recognisable as comment, as distinct from an imputation of fact.

(ii) Opinion is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.

(iii) The ultimate question is how the word would strike the ordinary reasonable reader. The subject matter and context of the words may be an important indicator of whether they are fact or opinion.

(iv) Some statements which are, by their nature and appearance opinion, are nevertheless treated as statements of fact where, for instance, the opinion implies that a claimant has done something but does not indicate what that something is, i.e. the statement is a bare comment.

(v) Whether an allegation that someone has acted “dishonestly” or “criminally” is an allegation of fact or expression of opinion will very much depend upon context. There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact.”

57. The key principle of law is that the answer to the question of whether a statement is of fact or of law “must always be the one that would be given by the ordinary reasonable reader”; “This is a highly fact-sensitive process that focuses on the particular statement at issue. It is obvious that the court cannot be bound or guided by findings made in other cases, about different words” per Warby LJ in *Millett v Corbyn* [2021] EMLR 19 at paras 18 and 19.
58. I am also familiar with and apply the principles summarised by Nicklin J in *Blake v Fox* [2022] EWHC 3542 (KB) at paras 28-35, by Warby J in *Yeo v Times Newspapers Ltd* [2014] EWHC 2853 (QB) at paras 88-97 and by the Court of Appeal in *Butt v Secretary of State for the Home Department* [2019] EWCA Civ 933 at paras 25-39. *Butt* includes (at paras 34-35) approval of the classic observation of Cussen J in *Clarke v Norton* [1910] VLR 494 at 499 that comment is “to be taken as meaning something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, judgment, remark or observation”. Inferences of fact may be comment (paras 37-38). However, the “ultimate determinant... is how the statement would strike the ordinary reasonable reader” (para 39 of *Butt*). *Zarb-Cousin v Association of British Bookmakers* [2018] EWHC 2240 (QB) per Nicklin J at para 26 is also relevant.

Discussion and decision on fact/opinion

59. The Article is in the opinion section of the printed newspaper and the thrust of the Article is that it is comment rather than news reporting. However, that does not mean that facts are not stated as the basis of the opinion. The question is what is said; not where it is said, although where it is said may influence the understanding of the ordinary reasonable reader about whether what is said is fact or opinion. Opinionated people may and usually do base their opinions on stated facts, and those facts are not

rendered mere matters of opinion by the expression of an opinion as a consequence of them.

60. The first sentence of para 3 of the Article is an opinion, not a statement of fact. It is evaluative, stating that the podcast (“The Trojan Horse Affair”) “presents a one-sided account” that “minimises” certain matters “in order to exonerate” the claimant.
61. Paragraph 5 reads as a series of statements of fact. It is true that it is based on the findings of others (which, in itself militates it being the expression of an opinion by the author, who has conducted no enquiry of her own), but both the number and the status of the sources cited strongly convey to the reader that these are ascertained facts, not merely matters of opinion. These bodies are said to have “uncovered” matters, rather than made subjective findings about them, and they are identified as “several Ofsted reports, an Education Funding Agency review, two separate inquiries by the Department for Education and Birmingham council, and multiple court judgments”. The range, number, official status, independence and impartiality of these bodies, and the indication that they all spoke with a single voice on these matters, with no range of conclusions or difference between them identified, means that these are facts, objectively established facts, not subjective opinions. The language which follows is in line with that, starting with the next sentence, which reads as a fact: “There was no organised plot”. Whilst the sentence after that is qualified by “according to these bodies”, the impression that these are reliable, definitive, findings of fact, is not dispelled by that.
62. The findings include the findings that the three schools run by an academy trust chaired by the claimant:

“...suffered from a range of issues: poor governance, including a lack of child protection safeguards; people in leadership positions who espoused or failed to challenge extremist views; cultures in which homophobia and misogyny, including from teachers, were allowed to flourish and young people were encouraged to become intolerant of diversity.”
63. The defendant argues that “poor governance”, “extremist” views, “homophobia” and “misogyny” are evaluative and, consequently, statements of opinion rather than fact. The context is, however, against them being used in a subjective or evaluative way, leaving room for the reader (or other reasonable people) to conclude that governance was not poor, views were not extremist, or that homophobia and misogyny were labels applied to a situation which other reasonable people might view differently, or even that it might be a matter of opinion whether any of these things were so.
64. On the contrary, the whole thrust of the Article is that the lack of governance has allowed every bad thing identified in the Article to take place, and nothing is said about the detail of governance, or about what might be said in its defence, to allow the reader to conclude that the description of governance as “poor” was only a matter of opinion. Poor governance is presented as a fact.
65. Similarly, the examples given leave no room for argument about whether the views in question were “extremist”, or about whether that might be said to be a matter of opinion.

The examples include creationism taught as science and a sex education lesson teaching that a woman cannot refuse her husband sex.

66. Words like “homophobia” and “misogyny” are like the word “racist” in that whether or not they will be taken by the ordinary reasonable reader to be statements of fact or opinion will depend on the context. Like “racist”, however, they are at least capable of having a factual, objective, non-opinion meaning. In para 5 of the Article, examples of what is meant by homophobic are given: a teacher referring to gay people as “animals” and “satanic”. No-one would read that as anything but unambiguously homophobic; that description cannot be characterised as a matter of opinion only. The example of the sex education lesson teaching that a woman cannot refuse her husband sex is sexist in the same objective way; and since it denies women the right to give or withhold consent it dehumanises women in a way that links to the earlier epithet of misogyny, of which it is presented an example, in the very next sentence. In context, both words are presented, with their examples, as statements of fact, not expressions of opinion.
67. Of the words singled out by the defendant as statements of opinion rather than fact, this leaves “ultra-conservative”. The first description of the claimant along these lines is in para 6 of the Article, where he is described as “socially conservative”. In para 18, again, he is “conservative”. In the meaning I have adopted, “the claimant allowed an ultra-conservative Islamic viewpoint”, and so it is the viewpoint which is described as “ultra-conservative” rather than the claimant. That is what para 18 of the Article says: “...surveys show the majority of British Muslims reject the ultra-conservative form of Islam that was found to be influencing these non-faith state schools”.
68. The details given in para 5 of the Article – extremist views, cultures in which homophobia and misogyny were allowed to flourish, intolerance of diversity, creationism taught as science, and married women not entitled to refuse sex – are the only basis upon which the epithet “ultra-conservative Islamic viewpoint” can be judged by the reader, and they leave no room for doubt that it is being used in a factual way, rather than as an expression of opinion.
69. I have therefore concluded that all the statements in issue are statements of fact, not opinion.

Whether the Article is defamatory of the claimant at common law

70. The defendant conceded at the hearing that, whichever party’s meaning I might settle closest to, it would be defamatory of the claimant at common law.
71. The concession was rightly made and I think it is clear that the meaning I have found is defamatory of the claimant.

Conclusion

72. To recap, the meaning I have decided is as follows:

“(1) As chair of an academy schools trust running three schools in Birmingham, the claimant allowed an ultra-conservative Islamic viewpoint to influence the provision of education to

students and enabled a culture in which the schools for which he held responsibility:

- i. Suffered from poor governance, including a lack of child protection safeguards.
- ii. Employed people in leadership positions who espoused or failed to challenge extremist views in the schools.
- iii. Allowed homophobia and misogyny, including from teachers, to flourish.
- iv. Encouraged young people to become intolerant of diversity.

(2) When challenged by various bodies (several Ofsted reports, an Education Funding Agency review, two separate inquiries by the Department for Education and Birmingham council, and multiple court judgments) about these matters, the claimant alleged that their findings were exaggerated and driven by Islamophobia. That was unfounded, and rightly dismissed as conspiracy thinking by the courts.”

73. This meaning is defamatory of the claimant. It is a statement of fact, not an expression of opinion.