Neutral Citation Number: [2026] EWHC 551 (KB)

Case No: KB-2025-003209

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/03/2026

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE DBE CB

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Between :

Mr SETU KAMAL	**Claimant/ Respondent**
- and -	
(1) TAX POLICY ASSOCIATES LTD	
(2) Mr DANIEL NEIDLE	**Defendants/ Applicants**

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The **Claimant** appeared in person (by remote video link)
Mr Greg Callus & **Ms Hannah Gilliland** (instructed by Good Law Project) for the **Defendants**

Hearing date: 10th February 2026

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Approved Judgment

This judgment was handed down remotely at 12:00pm on 11th March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON. MRS JUSTICE COLLINS RICE DBE CB

Mrs Justice Collins Rice :

A. Introduction

1. Mr Dan Neidle was formerly head of tax at leading international law firm Clifford Chance LLP. He is now an award-winning journalist and tax blogger. He set up and runs Tax Policy Associates Ltd as a not-for-profit organisation to comment, advise and campaign on tax policy.

2. On 26th February 2025, he published a substantial online article or report ("the Article"), headlined '***TikTok tax avoidance from Arka Wealth: why the Government and the Bar should act***'. A version appears at **Annex A** to this judgment. Its subheading went as follows:

> A firm called Arka Wealth have widely promoted a tax scheme which they claim avoids all corporate tax, income tax, capital gains tax and inheritance tax – not just in the UK but across Europe. They work with a barrister called Setu Kamal, who they say is 'one of Europe's leading tax barristers'.
>
> Arka Wealth's claims on TikTok and elsewhere are nonsense. Mr Kamal's arguments have been repeatedly rejected by the courts. In our view, anyone using the scheme will fail to save tax and instead incur large up-front tax liabilities. Nobody should be going near this scheme, and nobody should hire unqualified and unregulated firms like Arka Wealth and their related company Benedictus Global.

3. The barrister referred to, Mr Setu Kamal, practises in tax law in the UK, but is resident overseas (in the UAE and Cyprus). Mr Kamal has filed a libel claim, and an alternative claim in malicious falsehood, against Tax Policy Associates Ltd and Mr Neidle ('the Defendants'), as publishers of this Article.

4. The Defendants now bring an application for a ruling terminating Mr Kamal's claim without a trial. They say it is defectively and in some respects irremediably pleaded, and on that ground alone the malicious falsehood part of the claim should be struck out in its entirety. They say Mr Kamal has no real prospect of defeating an 'honest opinion' defence to the libel claim, and they should therefore be given summary judgment on the claim. And they say the whole claim is a statutory SLAPP – '*strategic litigation against public participation*' – and should be struck out on that ground. Alternatively they seek at least partial strike-out, and security for costs should the claim be permitted to proceed in any form.

B. The Defendants' partial strike-out application

(a) Strike-out - legal principles

5. The Court's well-established powers to strike out a statement of case are contained in Civil Procedure Rule 3.4 as follows (I consider the newly-added SLAPP provision separately below):

> (1) In this rule … a reference to a statement of case includes reference to part of a statement of case.
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> (2) The court may strike out a statement of case if it appears to the court –
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> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
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> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
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> (c) that there has been a failure to comply with a rule, practice direction or court order.

6. A court will strike out a claim or part of a claim under R.3.4(2)(a) if it is 'certain' that it is bound to fail, for example because pleadings set out no coherent statement of facts, or where the facts set out could not, even if true, amount to a claim recognisable as such in law. That calls for an analysis of the pleadings without reference to evidence; the primary facts alleged are assumed to be true (unless demonstrably and indisputably false). It also requires a court to consider whether any defects in the pleadings are capable of being cured by amendment and if so whether an opportunity should be given to do so (*HRH the Duchess of Sussex v Associated Newspapers Ltd [2021] 4 WLR 35 at [11]*; *Collins Stewart v Financial Times [2005] EMLR 5 at [24]*; *Richards v Hughes [2004] PKLR 35*).

7. Steyn J put it this way in *Bridgen v Hancock [2024] EWHC 623 (KB)*:

> [24] An application under CPR 3.4(2)(a) is not evidence-based. The application falls to be determined on the assumption that the pleaded facts in the Particulars of Claim are true. An application to strike out should not be granted unless the court is certain that the claim is bound to fail: see *Richards (t/a Richards & Co) v Hughes [2004] EWCA Civ 266, [2004] PNLR 35* , Peter Gibson LJ, [22] (citing *Barrett v Enfield London Borough Council [2001] 2 AC 550* at p.557 per Lord Browne-Wilkinson); and the White Book 3.4.2.
>
> [25] Where a statement of case is found to be defective, the court should consider whether that defect might be cured by amendment and, if it might be, the court should refrain from striking it out without first giving the party concerned an opportunity to amend: see the White Book 3.4.2. As Tugendhat J put it, in *Kim v Park [2011] EWHC 1781 (QB) at [40]* ,

> "where the court holds that there is a defect in a pleading, it is normal for the court to refrain from striking out that pleading unless the court has given the party concerned an opportunity of putting right the defect, provided that there is reason to believe that he will be in a position to put the defect right".

(b) The libel pleadings

8. In addition to the rules and practices of court which govern the generality of High Court claims, there are special requirements for pleading libel claims. They appear in Practice Direction 53B, and include the following:

> **Statements of case**
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> **2.1** Statements of case should be confined to the information necessary to inform the other party of the nature of the case they have to meet. Such information should be set out concisely and in a manner proportionate to the subject matter of the claim. …
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> **2.2** A claimant must in the particulars of claim give full details of the facts and matters on which they rely in support of any claim for damages. (Rule 16.4(1)(c) requires a claimant seeking aggravated or exemplary damages to include in the particulars of claim a statement to that effect and the grounds for claiming such damages.)
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> **…**
>
> **4.1** In a claim for libel the publication the subject of the claim must be identified in the claim form.
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> **…**
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> **4.2** The claimant must set out in the particulars of claim –
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> (1) the precise words of the statement complained of, save where the length of the statement makes it impracticable to do so, in which case the words may be set out in a schedule annexed to the particulars of claim, or otherwise identified;
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> (2) when, how, and to whom the statement was published. If the claimant does not know to whom the statement was published or it is impracticable to set out all such persons, then the particulars of claim must include all facts and matters relied upon to show (a) that such publication took place, and (b) the extent of such publication;
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> …

> (4) the imputation(s) which the claimant alleges that the statement complained of conveyed, both –
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> (a) as to its natural and ordinary meaning; and
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> (b) by way of any innuendo meaning…;
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> (5) full details of the facts and matters on which the claimant relies in support of the claim for damages. …

9. The Defendants make a number of complaints about the pleading of Mr Kamal's libel claim. They say it fails to comply with PD53B in several key respects. They identify that the claim form refers unspecifically to '*online publications*', which does not comply with the requirement to specify '*the publication(s)*' which are the subject of the claim. They complain that the claim form and particulars of claim fail adequately to identify the '*occasion of publication*' (Hunter v Cooper *[2020] EWHC 1105 (QB)* at [53]-[57]) – the '*precise words complained of*', and '*when, how and to whom*' the statement was published.

10. Just by reading them, I can agree that Mr Kamal's particulars of claim, on their face, do not comply with the requirements of pleading a libel claim in these respects. And they are crucial respects. Libel is a tort concerned with the effect of a publication or publications. It is essential to plead out the precise publication, the precise language objected to, and as precise details as possible of the date and time of publication and its extent – its readership or audience. That is because the tort does concern itself with this level of detail, and it matters – it can affect liability one way or the other. Unless libel is compliantly pleaded, it does not sufficiently specify a case which it is fair to expect a defendant to address. In the present case, much of this essential detail is missing; it is either pleaded at too vague or general a level, or not pleaded at all. This is a significant problem.

11. The Defendants do not, however, say all of these deficiencies are necessarily irremediable, and I can agree with that too. I had no formal proposal from Mr Kamal about the amendment of his pleadings so as to render them compliant in these respects. I understood him to be indicating in the course of his submissions that he now had in mind a claim based on a number of publications and republications, and was expecting to have an opportunity in the future to amend his particulars of claim accordingly. These indications themselves lacked material detail and clarity. But in any event significant repleading of the particulars of publication would be *necessary* before this claim could be expected to be formally defended.

12. However the Defendants do not apply for strike-out on the ground of these deficiencies of particularity. Instead, they apply for strike out of three paragraphs of Mr Kamal's particulars of his libel claim only, on ordinary strike-out principles. I consider each in turn.

(i) The defamatory words – the rule in Charleston

13. Mr Kamal's particulars of claim identify at [3] that on or about 26th February 2025 the Defendants published an article at https://taxpolicy.org.uk/2025/02/26/tiktok-tax-avoidance-from-arka-wealth-why-the-government-and-the-bar-should-act/. This is identified as 'the Article'. The particulars continue:

> [4] The defamatory words appeared in the URL slug of the article, which read: https://taxpolicy.org.uk/2025/02/26/tiktok-tax-avoidance-from-arka-wealth-why-the-government-and-the-bar-should-act/. The slug, visible to readers via search engines, social media previews, and browser address bars, includes the unqualified and defamatory phrase: 'failed-tax-avoidance-from Arka wealth and Setu Kamal'. This phrase is capable of being read independently of the article's content and context, and it conveys to the ordinary reader the assertion of fact that the Claimant was responsible for failed tax avoidance. This is the primary defamation in itself.

(The reference to a 'slug' is to the part of a URL website address which identifies a specific page by way of ordinary language – so for example 'tiktok-tax-avoidance-from-arka-wealth-why-the-government-and-the-bar-should-act/'). The next paragraph of the particulars then sets out that '*in addition*' the body of the Article describes a tax scheme attributed to Arka Wealth and (it says wrongly) to him.

14. Mr Callus, counsel for the Defendants, puts it to me that [4] is impermissible pleading. He says that even on its own terms, it is not a coherent proposition. The claimed '*primary defamation*' is said to be constituted by a phrase ('failed-tax-avoidance-from Arka wealth and Setu Kamal') which does not in fact appear in the Article complained of, nor in its URL. The URL for the Article itself is not said to contain the phrase complained of (or to refer to Mr Kamal at all), and no clear explanation is given for how it is said to be either a part of the Article or possibly a further publication for which the Defendants are said to be responsible. But Mr Callus also says that the pleading of a website address, or a slug, as '*capable of being read independently of the article's content and context*' is bad in law in any event.

15. That is because it is said to offend the 'rule in *Charleston*' (*Charleston v News Group Newspapers [1995] 2 AC 65*), confirming a '*long and unbroken line of authority*' that '*the whole publication must be taken together*'. The House of Lords in *Charleston* rejected a proposition that there is any '*principle of severance*' whereby '*in appropriate circumstances, it is possible and legitimate to identify a particular group of readers who read only part of a publication which conveys to them a meaning injurious to the reputation of a plaintiff and that in principle the plaintiff should be entitled to damages for the consequent injury he suffers in the estimation of this group*'. The leading judgment of Lord Bridge is emphatic (page 73): '*the proposition that the prominent headline, or as here the headlines plus photographs, may found a claim in libel in isolation from its related text, because some readers only read headlines, is to my mind quite unacceptable*'.

16. The rule in *Charleston* has been consistently applied in the decided cases as just that – a rule (see, for example, *Monks v Warwick DC [2009] EWHC 959 (QB)* at [12]-[14], and the extended review of the authorities and analysis in *Vince v Associated Newspapers [2024] EWHC 1806 (KB)*). So, says Mr Callus, it is settled law that a libel

claim cannot be founded on a headline, independently of the article to which it refers; and a URL slug is simply a form of headline (in the case of the Article sued on, literally so, since the slug simply repeats the headline). The fact that a slug *is capable* of being read independently from the Article is nothing to the point. That is not the presumed approach of a hypothetical ordinary reasonable reader on which libel law is predicated.

17. Mr Kamal did not give any clear explanation for citing the slug 'failed-tax-avoidance-from Arka wealth and Setu Kamal' nor where it came from. I understood his answer to the point made against him about the rule in *Charleston* to be that it was irrelevant because he was suing on the whole Article in any event.

18. However I agree with Mr Callus that I am bound as a matter of law to apply the rule in *Charleston* to Mr Kamal's *pleadings*. The last two sentences of [4] of his particulars of claim, whatever he intended by them, read as plainly and irremediably inconsistent with the rule. I do not consider they can survive a strike-out application. They are bad in law. As such, they disclose no reasonable grounds for bringing a libel claim in those terms and are certain to fail.

19. And the remainder of [4], I agree, lacks coherence. It is simply not made clear where the expression '*failed tax avoidance from Arka wealth and Setu Kamal*' comes from, nor how it relates to the publication (the Article) which is said in the particulars of claim to be complained of. Conceivably, that might be capable of repleading consistently with libel law (although Mr Kamal did not provide any explanation of how). But this is only one aspect of the problems I have noted in relation to the pleading of the publication and its contents. In my judgment any repleading of the remainder of [4] would have to be part of a thorough-going repleading of the publication(s), the occasion(s) of publication and the precise words complained of *as a whole* to render this libel claim compliant with PD53B. In these circumstances, I am prepared to grant the Defendants' application to strike out the whole of [4] of Mr Kamal's particulars of claim.

(ii) The defamatory words – professional misconduct

20. Mr Kamal's particulars of claim pleads as follows at [5(b)]:

> The Article also falsely attributes legal or regulatory failure to the Claimant and directly associates his name with misconduct. It falsely states as a fact that a court had found that the Claimant had breached his duties to the court. Whereas in *R (Apricot Limited) v HMRC* CO/2772/2023, the judge did not make a finding of breach and he simply referred the matter for possible review under the Hamid procedure, which is used when there's possible misuse of the court's processes in judicial review applications. The referral was precautionary, not a final determination; the Hamid process was duly concluded by the Bar Standards Board in March 2025 without any finding of disciplinary action which necessitated further measures other than a fine of £600. The Defendant's suggestion that a judicial finding of breach was made is therefore false and misleading.

21. The Defendants' objection to this is not that it is defectively pleaded as a matter of law, but that it is flagrantly untenable on facts which are a matter of public record; therefore, it may be inferred, this pleading is an abuse of the court's process or otherwise likely to obstruct the just disposal of the proceedings.

22. The principal record to which he draws my attention is the judgment of the Divisional Court *in the matter of referrals under the Hamid jurisdiction, and in the matter of Setu Kamal, a barrister* *R (OAO Apricot Umbrella Limited v HMRC* published with neutral citation number *[2024] EWHC 665 (Admin)*. The judgment dealt with a number of referrals, and is usually cited under the name of the first of those listed, *R(OAO Qazim Tota) v SSHD*. The judgment of the Divisional Court was given by the President of the King's Bench Division.

23. That judgment opens by setting out what the *Hamid* jurisdiction is (at [2]-[4]). It is described there as '*a facet of the court's power to regulate its own procedures and to enforce the overriding duties owed to it by legal professionals*'. It extends to all cases. Any High Court Judge may for this purpose refer a legal professional to the Divisional Court. The professional may be asked to show cause why their conduct should not be considered for referral to their relevant regulatory body, or the Court may consider making a wasted costs order against the professional.

24. Mr Kamal was referred to the Divisional Court under the *Hamid* jurisdiction by Chamberlain J. The relevant history is given in the judgment of the Divisional Court as follows (in the circumstances in which Mr Kamal puts the matter in issue in his pleadings in the present case, I set it out in full):

> *(3) R (on the application of Apricot Umbrella Limited) v HM Revenue & Customs*
>
> *R (on the application of ABC Umbrella Limited) v HM Revenue & Customs*
>
> *R (on the application of Dalespay Limited) v HM Revenue & Customs*
>
> **The facts giving rise to the Hamid referral**
>
> [48] At the time we are concerned with, Setu Kamal was counsel with the conduct of each of the above claims. The claims are in materially similar terms. Mr Kamal is in chambers at Old Square Tax Chambers, Lincoln's Inn, London and was called to the Bar in 2004.
>
> [49] The claims each challenge a decision of HM Revenue & Customs to publish the claimant company's name and address, and the name of a director of the claimant, as persons suspected of promoting or being a person connected with a tax avoidance scheme. The power to publish such information derives from section 86 of the Finance Act 2022.

[50] On 25 July 2023, Mr Kamal made an application for urgent consideration to the Administrative Court on behalf of Apricot Umbrella Ltd. This required the application (form N463) to be considered in 24 hours; it also required the application for interim relief to be considered within 7 days. On 26 July 2023, Mr Kamal made two further applications for urgent consideration in similar terms on behalf of Dalespay Ltd and ABC Umbrella Ltd respectively.

[51] The applications were, in substance, identical. The underlying claims challenged a decision of HM Revenue & Customs (the defendant to each claim) communicated by letter of 13 July 2023 and said to have been received on 17 July 2023. That letter gave reasons for the decision in each case, to publish the claimant company's name and address and the name of its former director as persons suspected of promoting or being a person connected with a tax avoidance scheme. The letter said that the information would be published "no earlier than 14 days from the date of this letter", i.e. no earlier than 28 July 2023. HM Revenue & Customs decision to publish the information had been indicated in a letter dated 15 February 2023, to which the claimant responded on 30 March 2023 and again on 7 July 2023.

[52] The claim forms were supported by Grounds settled by Mr Kamal. The Grounds advanced challenges to section 86 of the 2022 Act. These challenges were based on the free movement of capital, which was said to apply as a directly effective EU Treaty right (Ground 1); the EU and United Kingdom General Data Protection Regulation (Ground 2); and article 1 of Protocol 1 and article 6 of the European Convention on Human Rights. The Grounds also contended that the defendant had no power to publish the name of the claimant because it was acting as agent for a Cypriot company, ADYE Ltd (Ground 4).

[53] In each application, the claimant sought:

> "an urgent interim injunction which forbids the defendant from publishing the name of the claimant until such time as the compatibility of [section 86] (and, in particular, as it applies in the case of the Defendant) with the laws of the EU and, in particular, Article 63 TFEU and GDPR and the ECHR has been determined.."

[54] In each case the claimant maintained that if its name was published, then its business was "likely to be lost".

[55] All three applications for interim relief were refused by Chamberlain J. He considered that each disclosed possible abuses of the court's procedures. In particular, he said:

i) The claimant in each case failed to explain the delay in making the application, and then sought urgent consideration within 24 hours.

ii) Although Mr Kamal made reference to a legal challenge to the publication of information pursuant to section 86 in a case referred to as Veqta Limited he did not give the full name or reference for the case – R (on the application of Veqta Limited) v HMRC – or mention that permission for judicial review was refused on paper, and then refused by Ritchie J after an oral hearing on 28 June 2023: see [2023] EWHC 1659 (Admin) . The Grounds in that case overlapped substantially (if not entirely) with the Grounds in each of these cases, and they were either withdrawn or held to be unarguable. Mr Kamal was counsel in the Veqta Ltd case, and therefore well aware of Ritchie J's decision. The failure to draw this recent decision to the court's attention anywhere in the papers appeared to be: (a) a breach of counsel's duty to the Court; and (b) a breach of the claimant's duty to make full and frank disclosure of relevant matters.

iii) The submissions made in support of interim relief did not refer to the relevant test for injunctive relief to prevent a public authority from publishing information which it is obliged or empowered to publish. Injunctive relief is only granted in such cases "for the most compelling reasons" or in "exceptional circumstances": see e.g. R (Governing Body of X School) v Office for Standards in Education [2020] EWCA Civ 594 . The relevant test was not set out, and no explanation was provided as to why it was met.

iv) Each application failed to explain the assertion that "the Claimant's business is likely to be lost".

[56] On 11 August 2023 a show cause letter was sent to Mr Kamal asking him to explain the matters referred to by Chamberlain J. Mr Kamal responded in a signed witness statement dated 22 August 2023. The explanation he has provided, as far as we can understand it, is as follows.

i) On delay, Mr Kamal says that the reason was that he was on holiday in Turkey. Although the applications were prepared and filed by 20 July 2023 the correct documents were not submitted to the court and were not hyperlinked. They were therefore rejected by the court. He says that "the hyperlinking needed time and the application was resubmitted on 25 July 2023".

ii) On counsel's duty to the court to make full and frank disclosure of all relevant matters, Mr Kamal says that the primary position of the applicant was that the publication

should not occur at all for the reasons given in the Grounds. The reference to Veqta Limited was only made as an alternative position. As the same points were to be considered by another court at around the same time, then it would be prudent for the superior court to go first. He says that his understanding was that the decision of Ritchie J did not have precedential value; that if the applicants applied to the European Court of Human Rights they would need to show that they had exhausted all alternative remedies; that whilst there was a considerable overlap between the cases, there was a Ground alleging breach of United Kingdom and EU GDPR which had been abandoned before Ritchie J for reasons which were particular to that case but that Ground was now pursued; and that in Veqta Limited "the publication referred to the readers onto Spotlight 60" whereas it was Spotlight 35 in the 3 applications before Chamberlain J. The former appears to make a value judgment and the latter to a statement of fact, so that the applicants' cases were stronger than in Veqta.

iii) On the failure to draw the court's attention to the correct test for injunctive relief, Mr Kamal referred to the authorities which he had cited in his Grounds; he said the right to free movement of capital was being invoked; and the authorities to which he referred were more pertinent than the established caselaw cited at paragraph 16.6.3 of the Administrative Court Guide, to which Chamberlain J had referred as stating the correct test.

[57] Mr Kamal's witness statement contains no apology for his omissions, nor acknowledgment that he failed to comply with his obligations to the court in making an urgent application to the Administrative Court. Rather, he says:

"More generally, I would add that with an injunction, one can get flustered. There are often weeks on end during which one has to be on standby – as one never knows when exactly a hearing might occur. On top of that, as will be seen from the context I am representing five different injunctions on the matter of publication alone. I am also travelling and outside the country as the time is set by HMRC and not me. In light of these circumstances, I would submit that a sympathetic treatment ought to be meted out by the court to those who fight to reach them".

[58] Mr Kamal failed to attend the hearing. After he was notified (on 14 February 2024) of the date it was due to take place, he asked to attend by CVP. He was directed to make an application by 4pm on 23 February 2024 which provided a clear and detailed explanation of why he was not able to attend in person, given that his chambers are in Lincoln's Inn. On 29 February 2024 he made the application, supported by a

> witness statement which argued that he had a right to remain silent and not to incriminate himself, but that he was waiving that right to the extent that he was prepared to attend remotely. The first paragraph of this witness statement said that he had been based in Cyprus since 2017 but had spent most of 2023 in the UAE. However, he did not explain why he could not attend a hearing in the UK other than to say that it would be expensive to fly here and a strain on his time and resources as a practitioner. He also maintained that he had made an application to attend remotely in September 2022, but has since accepted that he did not do so. Though Mr Kamal further indicated he could produce further evidence if desired, he has not provided it, though told that his application would not be granted in the absence of such evidence. He has referred to issues with his health in an email dated 4 March 2024. However, he has provided no detail and no medical evidence.

25. The decision of the Divisional Court was as follows:

> [59] In these circumstances, we have considered this Hamid referral in the absence of any further representations from Mr Kamal, apart from those made already in his witness statements and emails to the court. We do not consider those representations provide an answer to the points made by Chamberlain J, and this matter should now be referred to the Bar Standards Board.
>
> [60] Mr Kamal gave reasons for the delay but not for the failure to explain those reasons to the court when making the applications for urgent consideration. The applications were in each case made without notice in the urgents procedure, and on the papers, and there was therefore a heightened duty of disclosure. As Chamberlain J pointed out, Mr Kamal was counsel in Veqta . Though he referred to that case in his Grounds (but without giving the reference) he did not indicate that it had been decided or mention that permission for judicial review was refused on paper, and then refused by Ritchie J after an oral hearing on 28 June 2023. Nor did he disclose that the Grounds in that case overlapped substantially (if not entirely) with the Grounds in the three cases we are considering, and that the Grounds in Veqta had either been withdrawn or held to be unarguable.
>
> [61] The decision of Ritchie J and its implications for the cases being presented to Chamberlain J, should plainly have been drawn to the Court's attention. The failure to do this was breach of counsel's duty to the court and to make full and frank disclosure of all relevant matters. In short, regardless of any arguments now raised as to its materiality, the court should have been told about the case, and what it decided. Similarly, the court

> should have been told of the test applicable to applications for urgent injunctive relief to restrain publication by a public body pursuant to statutory powers and duties; and this was the position even if, which we do not accept, there were reasons to doubt its applicability.

26. A meeting of the Bar Standards Board's independent decision-making panel considered the Divisional Court's referral on 5th March 2025. Its decision was communicated to Mr Kamal on 11th March 2025. It decided:

> there was sufficient evidence, on the balance of probabilities, of a breach of the Handbook and that enforcement action should be taken, but that the breach was not so serious as to warrant disciplinary action. The Panel therefore decided to impose an administrative sanction in the form of a formal administrative warning and a fine.

27. The terms of the warning were that he was '*reminded of his duty to comply with the rules of court and to bring the appropriate matters to the court's attention*'. A fine of £650 was imposed.

28. Here is what the Article Mr Kamal complains of says about all this:

> …In defending these and other schemes in court, Mr Kamal has a history of pursuing arguments that we regard as hopeless. This culminated in him being referred by the High Court to the Bar Standards Board for a disciplinary hearing.
>
> A short summary:
>
> In June 2023, Mr Kamal acted for two tax avoidance schemes called Vision HR and Veqta. HMRC planned to list the schemes on its website; the promoters sought judicial review to stop that. Mr Kamal ran the surprising argument that EU law overrode domestic UK law even after Brexit. The court described this as "unarguable" – we believe almost all EU law and constitutional law advisers would agree. Three other of his arguments were held to be "unarguable". Mr Kamal also failed to answer the Judge's questions as to how the scheme worked (although, having devised the scheme, we expect that he knew the answers). The promoters were found to have breached the "duty of candour". Judicial review was refused.
>
> A month later, Mr Kamal acted for another tax avoidance scheme, Apricot, on very similar facts; and Mr Kamal made almost identical legal arguments. His application referred to another similar legal challenge "underway in the case of Veqta".

> However he failed to disclose that the Veqta challenge had failed, and his arguments had been rejected. The Judge said this prima facie constituted a breach of a barrister's duty to the court, and made a "Hamid" referral to the High Court to consider whether Bar disciplinary proceedings should be brought against Mr Kamal.
>
> The Hamid referral was heard by the High Court in March 2024. The judgment indicates that Mr Kamal made no apology for his omissions, nor any acknowledgment that he failed to comply with his obligations to the court (although he said he had been "flustered"). He failed to attend the hearing, initially claiming he had made an application to attend remotely, but then admitting he hadn't done so. The Court found that Mr Kamal had breached his duty to the court, and referred the matter to the Bar Standards Board. Mr Kamal has told us that the investigation by the Bar Standards Board concluded on 5 March 2025, he was fined £650, and no further disciplinary action was taken against him, but he has so far refused to provide evidence that the BSB did in fact reach this conclusion.

29. Returning to Mr Kamal's particulars of claim, Mr Callus makes the point that the pleading at [5b] that the Article '*falsely states as a fact that a court had found that the Claimant had breached his duty to the court*' is impossible to square with the first two sentences of the Divisional Court's judgment at [61], including the finding, in terms, that '*the failure to do this was a breach of counsel's duty to the court*'. Indeed, Mr Callus points out that [5b] appears to omit the crucial part played by the Divisional Court altogether, going straight from the referral (by Chamberlain J) to the BSB's decision. Mr Callus also points out that the BSB decision itself is somewhat economically set out in the pleading, relying as it does on the technicality of a distinction between the imposition of an 'enforcement' and a 'disciplinary' sanction by the regulatory body. In any event, he says the pleading that '*the Defendants' suggestion that a judicial finding of breach was made is therefore false and misleading*' is in the circumstances wholly untenable and must be struck out.

30. Before me, Mr Kamal proposed that, although the President had found he ought to have brought the earlier refusals of permission for judicial review to the attention of Chamberlain J at the time, '*her decision was simply a* prima facie *decision, with the final determination being left to the BSB. That is how the Hamid referral system works.*' I pursued with Mr Kamal the sense in which he was submitting that the finding of the Divisional Court that '*the failure to do this was a breach of counsel's duty to the court*' was a '*prima facie* decision'. I remain unpersuaded that proposition is even arguable. It is not how the *Hamid* system works, as the Divisional Court's decision itself makes plain. It is not arguable that the Divisional Court had done anything other than make a clear finding of breach of duty, one to which the BSB was legally required to defer. It is not arguable that the Divisional Court was otherwise than fully entitled to do so in the exercise of its inherent jurisdiction to regulate the proceedings of the High Court and the professional conduct of litigation before it.

31. In the circumstances, the pleading that it was '*false and misleading*' to suggest that a judicial finding of breach of duty had been made against him is incapable of forming a part of the just disposal of Mr Kamal's libel claim. The attempt to do so is an abuse of the court's processes. I grant the Defendant's application to strike out [5(b)] of Mr Kamal's particulars of claim.

(iii) Remedial apology

32. The pleading of the libel claim in Mr Kamal's particulars of claim concludes as follows:

> [14] And the Claimant claims a published correction and apology; and submits that an apology is appropriate and justified in the circumstances. While discretionary, an apology is a recognised remedy in defamation cases where false and damaging allegations have caused serious harm. The publication by the First Defendant and Second Defendants were made without proper investigation, repeated after notice of falsity, and widely disseminated. An apology would serve the public interest in rectifying reputational harm and upholding accountability, and is a proportionate remedy to mitigate the ongoing impact of the publication.

33. Mr Callus objects that is wholly bad in law. A court has no power to order the publication of an apology in libel proceedings. A defendant's apology can feature in a libel remedy only where made voluntarily – for example, as part of the 'offer of amends' procedure (sections 2-4 of the Defamation Act 1996) or by way of an approved statement in open court, or by being taken account of in an assessment of damages. But there is no basis in statute or caselaw for a proposition that a court has any power to direct an apology, much less that it is a 'recognised remedy' in defamation. On the contrary, there is the emphatic statement of Tugendhat J in *Hamaizia v Metropolitan Police Commissioner [2013] EWHC 848 (QB)* at [65]: '*A statement in open court is not a remedy a court can order. It is something which a court can only permit. Nor can a court order an apology*'.

34. Mr Kamal did not engage with the substance of this objection before me. Mr Callus is undoubtedly right as to the law. To order an apology would be a form of compelled speech which clearly engages the Article 10 ECHR rights of defendants. There would have to be an identifiable basis in law for a court to be able to do it. There is none. A court has no such power.

35. I grant the Defendants' application to strike out [14] of Mr Kamal's particulars of claim (and the equivalent parts of the claim form). It is bad in law and certain to fail.

(c) The pleading of malice

36. Claims advancing allegations of falsehood or malice are subject to special rules of pleading, developed by the authorities in the caselaw following the decision of the House of Lords in *Horrocks v Lowe [1975] AC 135*. A succinct modern summary of

the law relating to malice appears in the judgment of Nicklin J in *Huda v Wells [2017] EWHC 2553 (QB)* as follows:

> *Malice*
>
> [70] Malice means publishing a statement that the defendant knew was false, or was reckless (in the sense of complete indifference) as to its truth or falsity. It is tantamount to dishonesty: *Alexander v Arts Council of Wales [2001] 1 WLR 1840* [18]. It is that state of mind that justifies depriving a defendant of a defence of qualified privilege or makes it just to allow recovery for the publication of a falsehood. The classic exposition of malice is from the speech of Lord Diplock in *Horrocks v Lowe [1975] AC 135* , 149-150.
>
> [71] I do not understand the Claimant's case in malice to have been advanced on this basis, but for the sake of completeness, I should note that (in theory) malice can also be established by proving that, in publishing the words complained of [a defendant] acted with a "dominant intention" to injure the claimant. This species of malice may still have a legitimate role in malicious falsehood claims (particularly trade libel) but it has a dubious justification when advanced in answer to a well-founded plea of qualified privilege. It has been expressly excluded as a basis for proving malice in answer to a fair comment/honest opinion defence: *Albert Cheng v Paul [2001] EMLR 777* . In 2002, Eady J noted that he could not recall an instance of "dominant intention" malice having been proved and described this form of malice as an "endangered species" in relation to qualified privilege: *Lillie & Reed –v- Newcastle City Council [2002] EWHC 1600 (QB)* [1093]. I am not aware of any such case in the 15 years since.
>
> [72] As malice is a serious allegation – the equivalent of fraud – "*it must be pleaded with scrupulous care and specificity. ... [I]t is quite inappropriate to proceed on the basis that something may turn up (whether on disclosure of documents or at trial)*": *Henderson v The London Borough of Hackney [2010] EWHC 1651 (QB)* [40] *per* Eady J.
>
> [73] Each of the particulars relied upon by the Claimant is required to be indicative of this dishonest state of mind order to be sustainable. Each particular has to raise a "*probability of malice*" and each particular has to be "*more consistent with the existence (of malice), than with its non-existence*": *Turner v MGM [1950] 1 All ER 449* , 455a-e *per* Lord Porter; *Telnikoff v Matusevitch [1991] 1 QB 102* at 120 *per* Lloyd LJ. As made clear in *Turner* "*each piece of evidence must be regarded separately…[I]f the result is to leave the mind in doubt, then that piece of evidence is valueless as an instance of malice whether*

> *it stands alone or is combined with a number of similar instances*" (455b-c).
>
> [74] The Court will scrutinise the statement of case in order to discern whether the malice plea has any prospects of success: *Branson –v- Bower [2002] QB 737* [16] *per* Eady J.

37. Malice was recently considered in the context of an application for a terminating ruling in the decision of the Court of Appeal in *Iqbal v Geo TV Ltd [2024] EWCA Civ 1566*. Giving the judgment of the Court, Warby LJ said this:

> [93] The law takes a particularly strict approach to the pleading and proof of allegations of malice, treating them as akin to fraud. The principles have been established for over 150 years and repeatedly reaffirmed. Eady J summarised them in *Seray-Wurie v Charity Commission for England and Wales* [2008] EWHC 870 (QB) at [33]-[35]:
>
> > "The facts relied on by the claimant, whether in a pleading or in a witness statement, must be capable of giving rise to the probability of malice, as opposed to a mere possibility … in order to survive, allegations of malice must go beyond that which is equivocal or merely neutral. There must be something from which a jury, ultimately, could rationally infer malice … mere assertion will not do. A claimant may not proceed simply in the hope that something will turn up if the defendant chooses to go into the witness box …".
>
> An allegation of malice must be pleaded with "scrupulous care and specificity": *Henderson v The London Borough of Hackney* [2010] EWHC 1651 (QB) [40], also a decision of Eady J.
>
> …
>
> [97] The judge [in the decision under appeal] concluded, however, that it was not appropriate to determine the malice issue on a summary judgment application:
>
> > "93. The court will, however, need to consider what the defendant knew, or should have known, in respect of the allegations made by Ms Sharif about the claimant, when considering the test in 15(3). As noted above, the defendant has not said much about these issues in its evidence, and it has said even less in evidence in response to the suggestion of malice. In this case there is a degree of overlap as between matters relevant to s.15(3) and any case on malice (when pleaded), and so they should be considered at the same time."

> [98] I agree with the judge that many of Geo's objections were plainly sound. There is evidence of historic animosity between Geo and ARY and their respective principals. The *Rahman v ARY* case [2017] 4 WLR 22 I have mentioned attests to that, but there is more. It is, however, clear law that none of this can support a plea of malice. Simply stated, the fact that someone dislikes or even hates another person does not make it probable that anything they say about them is malicious in any sense recognised by defamation law. Nor do any of the propositions identified in the judge's [87(c), (d), (e) or (f)] disclose a reasonable basis for alleging malice. These are at best allegations of careless or irresponsible journalism. None of them is capable of establishing a probability of malice.
>
> [99] … So the decisive issue is whether Mr Iqbal has a real prospect of establishing that Geo reported Mr Sharif's allegations in the knowledge that they were false, or with reckless indifference as to their truth.

38. The Defendants apply to strike out all of the pleading of malice in Mr Kamal's particulars of claim and, in consequence, the entirety of the claim in malicious falsehood. The passages specifically objected to are as follows:

> [11] The Second Defendant acted with malice. In particular:
>
> (a) The Article is not an isolated incident and the Second Defendant has repeatedly published adverse commentary about the Claimant in apparent pursuit of a personal or ideological vendetta. He has re-posted the Article on LinkedIn and posted negatively about the Claimant in a series of posts on Threads.com dated the 26th March 2025;
>
> (b) Insofar as the Article is concerned, the Second Defendant knew or ought to have known that the allegation that the Claimant had provided failed tax avoidance was untrue or grossly misleading, as there is no decision cited by the Defendant in the Article in which tax advice provided by the Claimant to his clients was held to be inefficacious;
>
> (c) The Second Defendant could not have concluded that the Scheme had been created or opined on by the Claimant simply on the basis that Arka mentioned the Claimant on their site;
>
> (d) The Article highlights cases in which the Claimant was unsuccessful but ignores cases in which the Claimant was successful;

(e) The Article states that the Claimant relies on EU laws post-Brexit. The Second Defendant has made similar comments on Threads.com on the 26th March 2025.

(f) The Second Defendant refused to amend the Article even after it was pointed out to him that the Scheme had not been created or opined on by the Claimant. This was done through sharing by the Claimant with the Second Defendant on the 25th April 2025 an application made by the Claimant to the ICO in reliance on the Right to Be Forgotten under Article 17 GDPR ('ICO Application') and then again by the Claimant writing to the Second Defendant on 9th May;

(g) The Second Defendant has refused to amend the Article even after it was pointed out to him that the Claimant has only relied on EU laws post-Brexit only to the extent that they were retained by the UK or else in reliance of the VCLT in relation to periods during membership. This was explained to the Second Defendant by the Claimant on the 25th April (through the sharing of the ICO Application) and his email of the 9th May 2025;

(h) The Second Defendant stated to the Claimant that he would publish all correspondence from the Claimant to the Second Defendant in the interests of transparency. When the Claimant wrote to the Second Defendant on the 2nd April 2025, the Second Defendant published that reply alongside his reply on LinkedIn. In his reply, he took the opportunity to make fresh pejorative statements about the Claimant. That post has been reacted to by 1,781 people. This had the effect of discouraging the Claimant from engaging with the Second Defendant for some time.

(i) However, when the Claimant sent him on the 25th April 2025 the Claimant's application to the ICO under Article 17 GDPR (which rebuts all his points in full) and more robust letters on the 9th May 2025, the Defendant did not publish those;

(j) The Second Defendant refused to publish clarifications provided to him by the Claimant. The Article refers to the fact that disciplinary proceedings were being conducted in relation to the Claimant. The Second Defendant was informed by the Claimant on the 25th April 2025 that the Bar Standards Board had concluded the Hamid proceedings with no finding of misconduct or disciplinary action, yet the Second Defendant failed to update or correct the Article. When the point was raised again to the Second Defendant by the Claimant on the 9th May 2025, the Second Defendant asked for the BSB decision – something which he had not asked for before. That belated query demonstrates a lack of genuine interest in the

truth and supports the inference that the Second Defendant acted in bad faith. Furthermore, the Claimant was not obliged to provide the decision as a matter of law – the burden is on the publisher;

(k) The Second Defendant has also ignored clarifications previously made to him. The body of the Article states that the Claimant was criticised by a judge for failing to provide the details of a tax scheme he was defending. However, the argument raised by the Claimant in that case, *Rao Vision HR Solutions Limited v HMRC* [2023] EWHC 1659 (Admin), was based on a claimed infringement of EU laws. It therefore did not require the scheme to be explained as even a national measure which is liable to dissuade constitutes an infringement for those purposes. This point had already been made to the Second Defendant in a post he made on Twitter in 2024 and which the Claimant had seen by the time of the publication of the Article (as the Article makes reference to it);

(l) The Second Defendant's tone has an element of mockery – when the Claimant objected to the 'failed tax avoidance' in his Pre-Action Letter of the 9th May 2025, the Second Defendant offered to replace it with 'hopeless tax avoidance', avoiding the point being made that the Scheme had not been designed or opined on by the Claimant.

(m) The Second Defendant further demonstrated malice on the 9th May 2025 by mischaracterising the Claimant's legal position, asserting that ridicule or selective publishing is not an actionable cause of action, thereby suggesting that the Claimant's complaint was misconceived or baseless. This was a distortion of the Claimant's actual position, which relied on malice as a ground for defeating defences and supporting aggravated damages.

[12] The Second Defendant's conduct was high-handed, calculated to damage, and lacked any genuine public interest justification or any other defence.

[13] The Claimant claims:

…

(b) Aggravated damages (to be assessed by the Court having regard to the Defendant's conduct and the evidence disclosed) on account of the Defendant's malice and failure to correct falsehoods despite notice;

…

> Malicious Falsehood
>
> [15] Further and in the alternative to the claim for defamation, the words complained of constitute malicious falsehoods, in that:
>
> …
>
> (b) The Defendants published them maliciously, in that:
>
> - They knew the statements were false, or
> - They were reckless as to whether the statements were true, and
> - They published them with the dominant intention of injuring the Claimant in his professional reputation and causing loss.
>
> …

39. Mr Callus put it to me that, by reference to the legal principles and authorities on the pleading of malice, '*this is a paradigm case of an unsustainable malice plea*'. He reminded me in particular that I am required to test a malice pleading by reference to (a) the requirement for malice, being a serious allegation, to be '*pleaded with scrupulous care and specificity*', a matter to which '*the law takes a particularly strict approach*': (b) the requirement (bearing in mind the manner in which the authorities have confined the potential relevance of '*dominant intention*') for malice pleading to articulate a dishonest state of mind in a publisher amounting to knowing untruth or complete indifference to truth or falsity – as distinct from negligence or sloppy journalism on the one hand, or personal spite and animus on the other; (c) the requirement for the pleaded facts to be capable of establishing that state of mind *at the time of publication*; (d) the requirement for *each* particular of malice relied on to be indicative of this dishonest state of mind – an aggregate approach to pleading malice is impermissible; and (e) the requirement for each particular to articulate a *probability* of malice – that is that each particular must be *more* consistent with the existence of malice than its non-existence; mere consistency with malice, or the possibility of malice, is insufficient.

40. Applying those principles to Mr Kamal's pleading, Mr Callus advances the following objections.

41. First, he says [12] and [13(b)] are unspecific assertions, advancing no facts from which an inference of the necessary dishonest state of mind in the Defendants (or, specifically, Mr Neidle) could be inferred even on the assumption that all the matters advanced were true.

42. Second, he says [11 (f), (g), (h), (i), (j) and (m)] all plead post-publication conduct that is incapable of establishing Mr Neidle's state of mind at the time of the original publications. These pleadings (and others, including [11(k)]) also complain of

instances of refusal to accept 'corrections' or to publish Mr Kamal's correspondence or views. But there are many possible honest reasons for such refusal – a publisher may not believe or accept the facts being advanced, or agree with the opinions. A refusal to publish such material is not capable, without more, of indicating the *probability* of malice in the publication complained of (the Article) – that is, that it is *more* consistent with malice than a possible honest explanation. Mr Callus says the same of the pleading in [11(j)] of a belated request for a copy of the BSB decision as demonstrating dishonesty; that, he says is simply incapable of indicating a *probability* of malice even if true.

43. Third, he says [11(b) and (c)] fail to plead the necessary dishonest state of mind, instead pleading that Mr Neidle '*knew or ought to have known*' something was not true, or '*could not have concluded*' something on a particular basis. These, says Mr Callus, do not plead the necessary subjective dishonesty – the former pleads negligence and the latter irrationality, neither of which is equivalent to malice. This, he says, is the sort of pleading rejected in *Iqbal v Geo TV* as being inherently equivocal as to a publisher's dishonesty, and incapable of properly constituting a malice plea.

44. Fourth, Mr Callus says the allegations of unfairness, imbalance, incompleteness, spite or mockery in [11(a), (d), (l) and (m)] all miss the target of *dishonesty*.

45. Mr Kamal objected to the piecemeal nature of Mr Callus's criticisms. He urged me to consider the *cumulative* case for malice which he says is disclosed by the pleadings. But I have to agree with Mr Callus that the authorities by which I am bound do not allow me to do that. I have to look at each pleaded particular of malice advanced and apply to it the test of whether – on the assumption that the facts it cites are true – it is capable of establishing dishonest falsity (intentional or reckless) as being more probably than not demonstrated. I can quite see that a cumulative narrative could be capable of producing mounting suspicion of a defendant's state of mind. But malice cannot be pleaded additively. A series of examples that do not, individually, pass the probability test cannot be made to do so by aggregation. And even if they could, they would not in this case plead the necessary probability of dishonesty.

46. I am unable to conclude, in these circumstances, that Mr Kamal has successfully pleaded malice in accordance with the guidance of the authorities. The authorities do not support anything other than a strict approach to this. That is of course consistent with the rigour with which malice must be handled at every stage of proceedings which engage a defendant's Art.10 rights. To allege malice in this sort of context is to allege tortious behaviour of quasi-criminal gravity. It is not a matter on which a court can be expected to permit the subjection of defendants to trial otherwise than on the basis of pin-sharp articulation of a factual case against them of which evidence is then capable of making good the charge as so framed. The framing of the charge here is insufficient, including in all the particulars Mr Callus identifies. Mr Kamal advanced no clear basis enabling me to see how it could be amended to produce a statement of case recognisably consistent with what the authorities demand. So I must accept the case advanced for it to be struck out for irremediably defective pleading.

B. The Defendants' application for summary judgment

47. The Defendants apply for summary judgment on the whole claim – both malicious falsehood and libel.

48. The grounds advanced in relation to the malicious falsehood component of the claim are in essence the same as those advanced for striking out the claim, and neither party proposed to me otherwise than that the strike-out and summary judgment applications stand or fall together in relation to malicious falsehood. I proceed on the simple basis, therefore, that the claim in malicious falsehood stands struck out, alternatively that, for the reasons I have already given, the Claimant has no real prospect of succeeding on it and the Defendants are entitled to summary judgment.

49. As regards the libel claim, the Defendants apply for summary judgment on the whole claim on the basis of succeeding on a defence of honest opinion. This is an early stage in the proceedings for an application of this sort. There has been no (judicial) determination of the 'defamation preliminary issues' in this case – that is, including (a) the single natural and ordinary meaning of the publication complained of, (b) whether, in that meaning, it amounts to an allegation of fact or an expression of opinion (the defence being available only in the latter case) or (c) to the extent that it is an expression of opinion, whether the publication indicated the basis of that opinion. And no defence has yet been pleaded.

50. In these circumstances, Mr Callus invites me to proceed on the basis of the preliminary issues *pleaded* by Mr Kamal, the *evidence* available to me at this interlocutory stage, and the prospects of further material evidence becoming available for the purposes of any trial. The present evidence consists of three witness statements on behalf of the Defendants (one from Mr Neidle and two from his solicitor); and, although Mr Kamal has filed no evidence directed to the present application, the Defendants make no objection to his relying on a witness statement he made for the purposes of an application for injunctive relief at an earlier stage in these proceedings.

51. I set out first the legal framework governing this application. I then consider the basis on which I am asked to deal with the defamation preliminary issues for present purposes. I conclude by applying the legal tests to the pleading and evidence before me.

(a) Legal framework

(i) Summary judgment

52. Civil Procedure Rule 24.3 provides as follows:

> The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—
>
> (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial.

53. The proper approach of a court on an application for summary judgment was summarised in *Easyair v Opal [2009] EWHC 339 (Ch)* at [15] as follows:

i) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success;

ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable;

iii) In reaching its conclusion the court must not conduct a 'mini-trial';

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents;

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because

> something may turn up which would have a bearing on the question of construction.

54. In considering the test of 'no real prospect of success' the criterion is not one of probability, it is absence of reality. The test will be passed if, for example, the factual basis for a claim is entirely without substance, or if it is clear that the statement of facts is contradicted by all the material on which it is based. On the other hand, if reasonable grounds exist for believing a fuller investigation into the facts would add to or alter the evidence available to a trial judge, or if a factual dispute is unlikely to be able to be resolved without reference to further (and especially oral) evidence, then a case should proceed to trial (*Three Rivers DC v Bank of England [2003] AC 1*; *Doncaster Pharmaceuticals v Bolton [2007] FSR 63* at [18]).

(ii) The defamation preliminary issues

'Single natural and ordinary meaning'

55. Where it is required to do so, a court must approach the determination of '*the single natural and ordinary meaning*' of a publication by considering the meaning a hypothetical ordinary reasonable reader would understand it to bear. The legal principles for doing so are well established, and are summarised at [11] and [12] of the judgment of Nicklin J in *Koutsogiannis v Random House [2019] EWHC 48 (QB)*.

56. The governing principle in determining 'meaning' is reasonableness. The intention of the publisher is irrelevant in law: the test focuses on how words are read, not how or why they came to be written. It is an objective, not subjective, test. Each publication must be considered as a whole, in the context in which an ordinary reasonable reader would have read it. That reference to 'context' was explained by Nicklin J in *Riley v Murray [2020] EMLR 20* at [15]-[17]: it can, and where relevant should, take account of: (a) matters of common knowledge – facts so well known that, for practical purposes, everybody knows them; (b) matters to be treated as intrinsic to the publication – for example via a hyperlink; and (c) any other material that could reasonably be expected to have been known or read by *all* the readers of the publication complained of. But otherwise, no *evidence* beyond the publication complained of is admissible as to what it means. And natural and ordinary meaning does not rely on a reader having any *special* knowledge.

57. A court determining meaning is guided away from over-elaborate or lawyerly analysis of text. It must avoid both literalism, and any strained or forced interpretation. It can and must determine the single meaning the court itself considers correct, and is not bound by the meanings advanced by the parties (so long as it does not alight on something more injurious than a claimant's pleaded meaning). It will keep in mind, as guided, the perspective of an ordinary, reasonable reader of each article complained of, reading it once through as it appears, and forming an impression of what it conveys on its face. The reasonable reader is neither naïve nor suspicious; is able to read between the lines and pick up an implication; and is allowed a certain amount of loose thinking without being '*avid for scandal*'.

'Fact/opinion'

58. Guidance is also provided by *Koutsogiannis* at [16] and [17], and *Millett v Corbyn* [2021] EWCA Civ 567, in considering whether the words complained of contain allegations of fact or expressions of opinion. The test for the difference between fact and opinion is an objective one. That comes back to how the words would strike the ordinary reasonable reader; a court determining this preliminary issue has to look at the substance, not the intention of the writer or any label the writer may, or may not, have attached.

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

60. While 'meaning' and 'fact/opinion' are distinct preliminary issues, the authorities counsel against trying to determine them in too linear or compartmentalised a fashion. A court has to bear in mind whether in the case of a particular publication the questions of 'meaning' and 'fact/opinion' might throw light on each other, such that it would be wrong to tackle them in a sequence which proves to be a trap of false logic.

'Defamatory tendency'

61. The test at common law for whether a (natural and ordinary) meaning is defamatory is well-established: whether it substantially affects in an adverse manner the attitude of other people towards a claimant, or has a tendency to do so. Some recent authorities put it in terms of identifying that a claimant has breached the common, shared values of our society (*Millett v Corbyn*). This is not about actual impact at the preliminary issues stage, it is about the meaning of the words themselves and their inherent tendency to damage someone's reputation. 'Substantially' imports a threshold of gravity or seriousness (*Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414).

(iii) The honest opinion defence to libel

62. Section 3 of the Defamation Act 2013 replaced the common law libel defence of 'fair comment'. It provides as follows:

> **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.
>
> …

63. The way it works was recently summarised by Nicklin J in *Sussex v Associated Newspapers [2023] EWHC 3120*:

> [38] The defence of honest opinion is well recognised in the authorities as a bulwark of free speech. Reflecting that, most recently, in *Corbyn -v- Millett [2021] EMLR 19* [16], the Court Appeal held that the defence of honest opinion:
>
> "… must not be whittled away by artificially treating comments as if they were statements of fact. On the other hand, if a person could use this defence as a means of escaping liability for a false defamatory allegation of fact, the law would fail to give due protection to reputation. That is why the statutory defence only applies to a statement which is one of opinion."
>
> [39] But where the defence is available, the necessary latitude to protect freedom of expression is afforded principally in two ways.
>
> (1) First, the opinion that the objective "honest person" could express under s.3(4) is recognised to be extremely wide. The original name of the defence at common law — "fair comment" — was recognised to be a misnomer. To benefit from the defence, the commentator did not have to be fair; s/he simply had to be honest.
>
> (2) The classic statement of the test is that of Lord Keith in *Telnikoff -v- Matusevitch [1992] 2 AC 343,* 354 "whether any man, however prejudiced or obstinate, could honestly hold the view expressed by the defendant". Similarly, the critic "need not be mealy-mouthed in denouncing what he disagrees with. He is entitled to dip his pen in gall for the purposes of legitimate criticism": *Tse Wai Chun -v- Cheng [2001] EMLR 31* [20] approved in *Joseph -v- Spiller [2011] 1 AC 852* [3]. The ultimate test is honesty, not rationality; whether the defendant did hold the opinion, not whether (on the evidence available to her/him) s/he should have done: *Carruthers -v-*

Associated Newspapers Ltd [2019] EWHC 33 (QB) [30]. A defendant does not have to persuade the Court to agree with his/her opinion; nor should s/he need to demonstrate "that honestly expressed opinions fall within some elusive nebulous margin of what is 'reasonable' or 'fair'": *Branson -v- Bower [2002] QB 737* [26].

(3) Second, if established, the defence can only be defeated under s.3(5) if the claimant proves that the commentator did not hold the opinion expressed. Prior to codification of the defence in statute, in *Cheng* [79], Lord Nicholls held that "honesty of belief is the touchstone " of the defence:

> "Actuation by spite, animosity, intent to injure, intent to arouse controversy or other motivation, whatever it may be, even if it is the dominant or sole motive, does not of itself defeat the defence. However, proof of such motivation may be evidence, sometimes compelling evidence, from which lack of genuine belief in the view expressed may be inferred." (emphasis in the original)

[40] As to the scope of the supporting facts:

(1) The fact(s) relied upon by the defendant for the purposes of s.3(4)(a) must be proved true: *Riley -v- Murray [2023] EMLR 3* [49].

(2) In general, a defendant does not need to prove the truth of every fact relied upon; one will do, provided it is logically and sufficiently supportive of the defamatory opinion expressed: *Riley -v- Murray [2022] EMLR 8* [93]-[99] .

(3) On a literal construction, the words "any fact" in s.3(4)(a) would appear to suggest that proof of any fact will do. That broad construction of s.3(4)(a) has been doubted, including recently (without deciding the point) by the Court of Appeal in *Riley -v- Murray [2023] EMLR 3* [50]-[59] , where two particular constraints were raised.

> (i) The first is the need for some nexus to be shown between the subject matter of the statement complained of and additional facts which a defendant seeks to rely on in the pleading: [57].
>
> (ii) Second, where an opinion is expressly and exclusively premised on the truth of a single factual allegation, it cannot be defended if that express basis was " wholly untrue " (so-called 'single-fact' cases): [59] and [61]-[62] (see also *Dyson -v- MGN Ltd [2023] EWHC 3092 (KB)* [97]-[99]).

> (4) The omission of a highly relevant fact may undermine the supporting facts to the extent that they are no longer "true facts". A "truly exculpatory" fact in that sense may well defeat the defence: see the example given by Eady J in *Branson -v- Bower* [37]. However, extraneous facts, otherwise relied on by a claimant are irrelevant to the second, objective, question of whether an honest person could hold the opinion based on those facts. As Eady J put it, in *Branson -v- Bower* [38]:
>
> > "…that is because the objective test for fair comment is concerned with whether the defendant is able to show that a hypothetical person could honestly express the relevant comment on the facts pleaded and/or proved by the defendant " (emphasis in the original).
>
> Adding, a little later [54]:
>
> > "The right to comment freely and honestly is not to be whittled away by detailed and subtle arguments as to how a different commentator might have viewed the facts or given them a different emphasis".
>
> See also *Carruthers -v- Associated Newspapers Ltd [2019] EWHC 33 (QB)* [28]-[31].

(b) The defamation preliminary issues

64. Mr Kamal's particulars of claim plead as follows, at [6]:

> The words complained of referred to and were understood to refer to the Claimant, and conveyed to the ordinary reader the defamatory meaning that:
>
> (a) the Claimant was professionally involved in unlawful or discredited tax avoidance schemes;
>
> (b) the Claimant provided advice that was reckless, unethical or incompetent;
>
> (c) the Claimant poses a risk to clients and to the public;
>
> (d) disciplinary or regulatory action ought to be taken against the Claimant.

65. Mr Callus tells me the Defendants do not *for present purposes* wish to join issue with the single natural and ordinary meaning of the publication complained of. They do not ask me to determine it at this stage; indeed they positively ask me *not* to do so.

66. By their application for summary judgment on the entirety of the libel claim, however, they necessarily ask me to determine that it would be *unreal* to expect a court to conclude that Mr Kamal's *pleaded* meaning is anything other than a series of expressions of opinion, or that the Article does *not* indicate the bases of these opinions, or that an honest person could *not* hold these opinions on those bases or the basis of any other subsisting fact, or that Mr Neidle did *not* in fact hold those opinions. That is the necessary premise for a summary judgment application on the whole libel claim here – in effect, that there is *no real prospect* that Mr Kamal could resist an honest opinion defence to the single natural and ordinary meaning that *he* himself pleads, and that such a defence would dispose of the entire claim.

67. The draft order the Defendants seek does, however, ask me to go a little further than that. It asks me to *determine* that Mr Kamal's pleaded meanings '*are each statements of opinion*', for the purposes of section 3(2) of the Defamation Act 2013, that the Article complained of indicates the bases for each statement of opinion for the purposes of section 3(3), and that an honest person could hold those opinions on the basis of true and/or privileged facts existing at the time of publication for the purposes of section 3(4). They ask, in other words, for a preliminary issues determination on the matters of fact/opinion and basis of opinion; for a determination of the 'honest person' test in section 3(4); and then for the application of the summary judgment test to the counter-defence at section 3(5).

68. I discussed with Mr Callus at the hearing some of the questions which seemed to me to be raised by the approach he was asking me to take. (I had already taken the precautionary step of adopting the established standard preparatory approach to the determination of defamation preliminary issues (approved by the Court of Appeal in *Tinkler v Ferguson [2019] EWCA Civ 819* at [9]): I read the whole Article quickly through once, without reading any of the case papers, making some notes recording my first impressions of the defamation preliminary issues.)

69. There is no obstacle in principle to a court's determining defamation preliminary issues on a summary judgment application, because where a judicial *determination* of the defamation preliminary issues is undertaken, then it is undertaken inquisitorially and no evidence is required or admissible. But a judge is never bound by the parties' pleadings (save that a meaning cannot be determined which is worse than that advanced by a claimant) and the authorities in particular warn against the determination of meaning, and of fact/opinion, in a compartmentalised or isolated manner. So the proposed combination of assuming Mr Kamal's pleading on meaning *provisionally*, but then *determining* other preliminary issues inquisitorially on that premise, looked difficult to reconcile with the authorities.

70. Of course, a judicial *determination* of the defamation preliminary issues is necessary only to the extent that any dispute exists between the parties about one or more of them. I can see that if the parties had *agreed* that the single natural and ordinary meaning of the Article complained of was indeed in the terms pleaded by Mr Kamal, then I could have been asked to *determine* any dispute about the remaining preliminary issues accordingly. But the parties had not agreed; on the contrary, Mr Callus told me the Defendants reserved their position on meaning. I have difficulty in seeing how I can be expected to *determine* preliminary issues such as fact/opinion when the premise of *meaning* is at the same time to be reserved on a provisional basis. Should I do anything other than agree with them on their summary judgment application, the Defendants

potentially faced a prohibitively difficult challenge of dealing at trial with a fact/opinion *determination* (potentially adverse to them) at the same time as possibly contending for a single natural and ordinary meaning different from that on which that determination had been predicated. I do not think that works.

71. Mr Callus proposed a second 'way through'. In his skeleton argument, and in his submissions before me, Mr Kamal sought to expand somewhat on his pleaded meanings, proposing they each be divided into factual and opinion components as follows:

> Insofar as the meaning of the Original Publication as a whole is concerned, the Claimant submits that it is that the Claimant:
>
> (a) as a matter of fact, provided the tax scheme and that the scheme was, as an attached matter of opinion, 'hopeless', a 'disaster' and likely to result in tax being charged upfront and also to result in a criminal investigation and that the Claimant was an unreliable lawyer, was associated with discredited tax planning that he posed a risk to the public and that supervisory action ought to be taken against him;
>
> (b) as a matter of fact, that the Claimant's litigation success rate is 20% and that 'accurately' represents the Claimant's competence more generally (including as a consultant) and, as a statement of opinion, that the Claimant is an unreliable lawyer;
>
> (c) as a matter of fact, that a court had found that the Claimant had been in breach of his duties to the court and, as an attached matter of opinion, was an unreliable lawyer, was associated with discredited tax planning that he posed a risk to the public and that supervisory action ought to be taken against him; and
>
> (d) as a matter of fact, that the Claimant had relied on EU laws for UK clients in relation to periods after the departure of the UK from the EU and as a matter of opinion, that that position was hopeless and that the Claimant was an unreliable lawyer, was associated with discredited tax planning, that he posed a risk to the public and that supervisory action ought to be taken against him.

72. What Mr Callus says about this is that, taking Mr Kamal's case at its conceivable highest as it may be appropriate to do on a summary judgment application, I can at least proceed on the undisputed basis that, on the single natural and ordinary meanings pleaded (or as subsequently expanded), I have acknowledgment of a substantial opinion component; that can and should enable me to proceed on the basis that the 'first condition' in section 3 of the Defamation Act 2013 is met at least in respect of *them*. He then says that in light of Mr Kamal's submitted position I can proceed on the basis that the defamatory content of the pleaded natural and ordinary meaning subsists *only*

in the respectively identified *opinion* components. That, he says, is because the *factual* components advanced in the first, second and fourth meanings suggested in submissions (that Mr Kamal provided a certain tax scheme, that Mr Kamal's litigation 'win' rate is 20%, and that he had relied on EU laws post-Brexit), if shorn of their opinion overlay, are not defamatory at all; and the factual component advanced in the third meaning (a court had found Mr Kamal in breach of his duties to the court) is indisputably true, as a matter of the court record.

73. To reach that point, I would have to *determine* whether the factual components advanced in the first, second and fourth expanded meanings – on the assumption that they *were* factual but without so finding – were '*of defamatory tendency at common law*' and, again, to determine that in the Defendants' favour if they are not to be potentially fixed with an adverse finding in advance of engaging on the issue of meaning itself. I do not think this can work as a *starting* point. It also has the problematic feature that it demands determination of preliminary issues on the premise of a single natural and ordinary meaning which has drifted away somewhat from the single natural and ordinary meanings Mr Kamal has actually pleaded in his particulars of claim. *Pleaded* meanings at least give a measure of clarity as to the case I am being asked to examine on a summary judgment application; the drafting of submissions *about* meaning is a less necessarily precise matter.

74. My conclusion in these circumstances is that Mr Callus is over-ambitious in seeking for the Defendants the formal *determination* of some of the defamation preliminary issues (in their favour) while otherwise reserving their position on the principal preliminary issue of single natural and ordinary meaning. I do not think that can be made to work in a way which is internally logical and fair to both parties in the case. A simpler approach is needed.

75. On a summary judgment application in relation to an as yet unpleaded honest opinion defence I can, as invited, take as my starting point (a) the Article by way of relevant context for the preliminary issues but without determining any of them, and (b) the case on single natural and ordinary meaning Mr Kamal has pleaded. Mr Kamal's pleading would not bind a judge determining meaning save that no *more injurious* meaning may be found; but that restriction is itself a meaningful legal premise on which it is fair to begin examination of a summary judgment application, taking Mr Kamal's *pleaded* case at its highest. Pleading does matter in relation to defamation preliminary issues, not least for the purposes of that important limitation on the inquisitorial process. I can take Mr Kamal's pleaded meaning as the high water mark of the single natural and ordinary meaning of the Article, on the basis that there is *no real prospect* as a matter of law that a court would determine anything worse.

76. To that pleading, I can apply the summary judgment test to the following sequence of issues: (a) is the prospect of a court determining that the defamatory meaning as pleaded amounts (in whole or in part) to assertions of fact rather than expressions of opinion anything other than fanciful – constrained as a court would necessarily be not to find a more injurious meaning than that pleaded? (b) to the extent that that prospect *is* fanciful, is there no real prospect of the Defendants failing to establish that the basis of opinion is indicated in the Article complained of? (c) if so, is there no real prospect of the Defendants failing to establish that an honest person could have held the relevant opinions on the basis of any fact existing at the time of publication? (d) if so, does Mr

Kamal have any non-fanciful prospect of establishing that Mr Neidle did not hold the relevant opinions? I deal with each issue in turn.

(i) Fact/opinion

77. Taking Mr Kamal's pleaded meanings for the Article then, the first question I have to consider is whether there is a real, as opposed to fanciful, prospect that a court (from the viewpoint of an ordinary reasonable reader of the Article as a whole) would identify in any of them defamatory statements of fact as opposed to expressions of opinion.

78. Here is what Nicklin J said at [16] in *Koutsogiannis* about the approach a court would be expected to take:

> …the Court will be guided by the following points:
>
> 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.

79. The exercise of distinguishing between fact and opinion is accordingly *highly* context-specific and a court in the present case would expect to conduct it by reference to the Article's genre, tone and argument as a whole. I am unpersuaded there is room for any realistic argument other than that we are dealing here with a piece of forthrightly-expressed op-ed journalism, published on a website characterised as such more generally, and located within the field of tax law and policy. More narrowly, there is a focus in the Article on a particular scheme, of which Mr Neidle disapproves, and says so in a thorough-going manner. That an ordinary reasonable reader would understand that much is, in my view, beyond realistic challenge. That is the relevant general context.

80. I turn then to the individual pleaded meanings. Taking them in reverse order, a meaning that '*disciplinary or regulatory action ought to be taken against the Claimant*' bears on its face all the hallmarks of an expression of opinion: the key word here is '*ought*'. Mr Kamal's submissions to me were in the nature of advancing a realistic prospect of a court's perceiving *within that meaning* an allegation that there is a factual basis for the opinion – that is, for the purposes of section 3(2) and not just section 3(3). I do not think I can entertain that as a realistic prospect. This meaning as pleaded is *different* from meanings such as '*there is reason to suspect the Claimant of disciplinary or regulatory misconduct*', or even '*there are grounds for investigating whether the Claimant is guilty of disciplinary or regulatory misconduct*'. Those are meanings containing (or constituting) underlying allegations of fact, but as such they are worse or *more injurious* than the meaning pleaded here. It is unreal therefore to expect that a court would do otherwise than identify this pleaded meaning as an expression of pure opinion.

81. In my judgment, a similar analysis applies to '*the Claimant poses a risk to clients and to the public*'. That reads as '*deduction, inference, conclusion, criticism, remark, observation*' – that is to say, an expression of opinion. Mr Kamal fairly recognised as much in his written and oral submissions to me. Again, however, he suggests that there is a realistic prospect of a court's perceiving an allegation of factual basis *within the meaning* as pleaded. But again, the pleaded meaning is in a form which is recognisably different from, and less injurious than, forms of meaning expressed by reference to underlying facts. So I see no realistic prospect of a court finding this to be, or contain within itself, an allegation of fact.

82. I turn next to '*the Claimant provided advice that was reckless, unethical or incompetent*'. Here, Mr Kamal rightly accepts that '*reckless, unethical or incompetent*' are expressions of opinion, but suggests there is a realistic prospect of a court's finding '*the Claimant provided advice*' to be an assertion of fact to which the opinion is attached. I agree with that. But here at least I also agree with Mr Callus that the whole of the defamatory sting in this meaning is contained in the opinion component. It is fanciful to expect a court to find that saying a lawyer '*provided advice*' – that advice being wholly unspecified in the pleaded meaning – could in itself be of defamatory tendency at common law. The defamatory sting is wholly contained in the '*deduction, inference, conclusion, criticism, remark, observation*' that Mr Kamal provided advice that was '*reckless, unethical or incompetent*'. There is no real prospect of a court's finding a *defamatory* allegation of fact within this meaning.

83. Finally, I turn to '*the Claimant was professionally involved in unlawful or discredited tax avoidance schemes*'. Here again, Mr Kamal accepts that whether any schemes he was professionally involved in were '*unlawful or discredited*' must in context stand as expressions of opinion. That being so, it seems to me that a similar analysis must apply: it is in these expressions of opinion that the entirety of the defamatory sting is to be found. There is no real prospect of a court's finding a defamatory allegation of fact within this meaning.

84. I have thought particularly hard about this last point because, in his written and oral submissions to me, Mr Kamal laid great emphasis on his principal objection to the Article being its association of him with the Arka Wealth scheme it critiques. He says he did not devise or advise on *that* scheme, and the Article suggests he did. I can see that Mr Kamal *might* have pleaded (I do not necessarily say as to any particular

outcome) not only the generalised meaning he in fact pleaded at [6(a)] but also a factual allegation setting out that (as he complains) he invented, promoted or advised on a specific scheme and an associated expression of opinion that *that* particular scheme was unlawful or discredited. That would be a *worse* meaning than he has in fact pleaded, so there can be no real prospect a court would find such a meaning.

85. Mr Kamal *might* have pleaded single natural and ordinary meaning in a number of respects which are worse than he has in fact pleaded (professionally-advised libel claimants tend to plead meanings which are as high as they consider plausible short of extravagance, precisely because they know they set a ceiling on a court's determination). A court is meaningfully limited in law by a claimant's pleaded meaning. Mr Kamal has made choices about the claim he is asking the Defendants to address and the court to consider. His pleading of meaning in his particulars of claim is not technically deficient as such – it does not *require* remedial amendment in order to set out a case it would be fair to ask a defendant to defend. But it does delineate the claim he himself has chosen to advance. I can consider the claim he has pleaded. I cannot on a summary judgment application consider speculatively different claims he might have pleaded but did not.

86. My conclusion therefore is that the meanings Mr Kamal pleads as being defamatory at common law have no realistic prospect of being held by a court to be anything other than expressions of opinion. Had I been to any degree in two minds about that, I would have resolved the matter in favour of the Defendants for two reasons.

87. The first is the point of principle that, their Art.10 rights being engaged, courts ought not to strive officiously to impute factual allegations to defendants where, informed by the context of a publication read as a whole and by the ceiling imposed by a claimant's own pleading, it is straightforward to recognise that an ordinary reasonable readership would have no difficulty in understanding they were receiving defendants' opinions. A court '*should be alert to the importance of giving free rein to comment and wary of interpreting a statement as factual in nature, especially where as here it is made in the context of political issues*' (*Yeo v Times Newspapers Ltd [2015] 1 WLR 971* at [97] per Warby J (as he then was)). The subject matter of the present Article is not (party-)political in the narrow sense, but it does avowedly enter the sphere of public policy debate and law reform. In any event, the scheme of the statutory defences in the Defamation Act 2013 is itself a recognition of the respect due to free speech in the form of expression of opinion, the protection of which should not be '*whittled away by artificially treating comments as if they were statements of fact*'.

88. The second reason lies in the structure of section 3 of the Act itself. The issue of *basis* of opinion is something different from the prior question of fact/opinion, and courts necessarily have to be careful not to elide the two. It is to the issue of basis of opinion (section 3(3)) that I turn next.

(ii) Basis of opinion

89. Is there a realistic prospect of a trial court finding that the Article complained of did *not* indicate, whether in general or specific terms, the basis of the (defamatory) opinions Mr Kamal has pleaded? Again, this is a matter of construction rather than evidence, and susceptible therefore to interlocutory assessment. And Mr Callus says not, relying on what the Article cites (including by way of hyperlinks) as to (a) the content of Arka

Wealth's scheme and how they have described it on their website and on social media, (b) why, according to the analysis in the Article, that scheme and others like it do not work, (c) what is set out by Arka Wealth about its relationship with Mr Kamal and most especially (d) what is set out about Mr Kamal's background and history, including matters set out as facts in privileged publications, namely court orders and judgments.

90. I did not understand Mr Kamal materially to dispute the simple fact of the Article's recital of bases for the opinions it expresses (as opposed to the quality of those bases, which he does dispute). The Article presents itself as a piece of serious investigative journalism and expert commentary and analysis. It is extensively reasoned, sourced, and cross-referenced by hyperlink and footnote. The basis of all the various opinions it expresses, including but not limited to those potentially defamatory of Mr Kamal, is indicated in both general and specific terms.

91. In relation specifically to Mr Kamal and what it says about him, as pleaded, I hold in mind his central objection to what he says is the linkage the Article makes between him and the specific Arka Wealth scheme described. There is no such specific link in the meaning as pleaded. The Article sets out more generally that it bases its opinions of Mr Kamal on, for example, (a) the public record of the courts he has appeared in (or not appeared in), in relation to *other* schemes, the arguments he has run there and with what results; (b) the positions already taken by regulatory bodies and other expert commentators in relation to those other schemes; and (c) what Mr Kamal himself had previously said either publicly or to the Defendants about the legal positions he has taken on other schemes (and/or the extent to which he has declined to address criticisms made of him despite being given the opportunity to do so). To the extent (if it is relevant notwithstanding the pleadings) that the Article connects him with the Arka Wealth scheme, it explains that it does so on the basis of what Arka Wealth itself says about its reliance on Mr Kamal's tax advice and his record, the videos it hosts on its website featuring Mr Kamal and his recommendations, and its promise that every client of Arka Wealth receives a legal opinion from him.

92. The Article references and explains its opinions. That suffices for the test; evaluation of the reasons is not required. In the circumstances, I am unpersuaded there is any realistic prospect that a court would find the condition in section 3(3) unfulfilled. I did not hear Mr Kamal to be actively suggesting otherwise.

(iii) The 'honest person' test

93. The 'honest person' test in section 3(4) has a number of components. First, there is the evaluation of whether an *honest* person *could* have held the opinions expressed at all. Second, there is the identification of a supporting contemporaneous *factual* basis. And third, there is the identification of a *nexus* between the factual basis and the opinion.

94. As Nicklin J noted in Sussex v Associated Newspapers, the scope of opinions an honest person *could* hold is '*extremely wide*'. An *honest* person is recognised by the authorities to be capable of holding opinions which are unfair, prejudiced, unreasonable, irrational, spiteful, ill-intentioned, ill-informed, stupid, exaggerated, obstinate or immoderately-expressed. The only real limitation on this limb of the test is that it cannot be predicated on the theoretical opiner being otherwise than *honest*.

95. The opinions pleaded in Mr Kamal's particulars of claim are that there were tax schemes he was professionally involved in that were unlawful or discredited, that he provided advice which was reckless, unethical or incompetent, that he posed a risk to clients and the public, and that disciplinary or regulatory action ought to be taken against him. These are strong, highly critical and vehemently-expressed opinions. Mr Kamal can and does argue that they are unfair, unreasonable, ill-founded and personally and professionally hostile. Even if they are, they are not *thereby* necessarily predicated on dishonesty or incompatible with honesty. A journalistic critic or commentator does not, even arguably, have to command any degree of persuasiveness, or even respect, for their evaluation of a professional performance on pain of falling outside the ambit of what an *honest* person could think. A critic may '*dip his pen in gall*' without forfeiting the prospect of making good the defence.

96. So the principal limitation on the section 3(4) test is its referability to *facts* – facts demonstrable as at the time of publication either by way of evidence of their truth or by being contained in contemporaneous privileged documents. This is an important, but at the same time narrow, limitation. Any fact will in theory do, whether or not set out as a basis of opinion in the publication complained of, provided that it has a sufficient nexus to the opinion to be capable of sustaining the opinion as being a matter of *honesty*. The burden is on a defendant to establish that these components of the test are present, but a defendant is free to assemble whatever facts and evidence they choose in order to make the case. And the defendant is not by these means being put to proof of the *quality*, much less the *truth*, of their opinion beyond its referability (or 'tethering'), as a matter of consistency with honesty, to potentially sustaining fact.

97. The facts on which the present Defendants rely for the purposes of the section 3(4) test are set out in the first witness statement of their solicitor Mr Matthew Gill at [101]-[134] and the documents to which he refers. Mr Neidle's own witness statement also deals relevantly with the factual elements of the section 3(4) test. Salient among the matters advanced here are the following:

    a) The judgment of the High Court in *R (OAO Vision HR Solutions Ltd v HMRC [2023] EWHC 1659 (Admin)* quoted in part in the Article. Mr Kamal had acted for the claimant promoter of the Vision HR tax scheme in an application for judicial review of HMRC's decision to list that scheme as an ineffective tax avoidance scheme. The Court described all his arguments as variously '*unarguable*', having '*no realistic basis*' and '*plainly hopeless*'; and was apparently not satisfied that Mr Kamal had given a sufficient account of how the scheme worked. The judgment concluded '*I do not consider that any of the grounds put forwards has an arguable prospect of success for the reasons given above so permission is refused. I also consider that the Claimants have failed to comply with the duty of candour and so should not be permitted to pursue this claim*'.

    b) The fact that both the Vision HR scheme, and a scheme called Veqta for which Mr Kamal had also acted, were added in 2023 to HMRC's published list of '*named tax avoidance schemes*'. HMRC states that it publishes this information '*to help anyone considering using these schemes to make more informed choices and steer clear of them*' and '*encourage those already involved in these schemes to leave them*'. In

both cases Mr Kamal is named as being responsible for the design of the scheme.

c) The judgment of the High Court in *R (OAO Apricot Umbrella Ltd) v HMRC (unreported)* in which Mr Kamal acted for the Apricot Umbrella scheme promoters, making almost identical arguments to those which had failed in relation to the Veqta scheme without disclosing that to the court; the *Hamid* judgment of the Divisional Court to which that led; the subsequent decision of the Bar Standards Board; the addition of Apricot Umbrella to HMRC's list of '*named tax avoidance schemes*'; and a ruling of the Advertising Standards Agency that the same scheme misled people.

d) The judgment of the High Court in *Oculus Ltd v HMRC [2024] EWHC 1102 (Admin)* in which Mr Kamal acted for the promoter of a scheme considered by HMRC to bear at least two of the distinguishing features of a tax avoidance scheme. Mr Kamal again ran a number of arguments rejected by the court as being unarguable.

e) The facts that (a) Arka Wealth had publicly identified Mr Kamal as its legal adviser or '*legal partner*', providing each client with a legal opinion; (b) Arka Wealth's website hosts videos in which Mr Kamal recommends its trust arrangements; (c) the detailed scheme promoted by Arka Wealth and the fact that a range of tax experts had described it as unworkable, putting users at serious risk of substantial tax liabilities.

98. These are all matters of public record. The question on this application is therefore whether Mr Kamal has any real prospect of succeeding in defeating the Defendants' case that these are facts to which the opinions he pleads could in all honesty be tethered. The central thrust of Mr Kamal's argument before me was, as I have noted, that he did not in fact design or promote the Arka Wealth scheme. But that does not address the necessary target here. The meanings he pleads do not themselves specifically reference the Arka Wealth scheme. And the Defendants do not, and do not have to, rely on or establish a 'fact' that Mr Kamal authored that scheme. What is relied on by the Defendants is (a) a series of judgments of the courts holding Mr Kamal to be repeatedly advancing unarguable propositions challenging HMRC positions that several of the schemes he had been representing were unworkable tax avoidance schemes that, rather than avoiding tax, exposed users to expense and the risk of increased tax liabilities and penalties; (b) findings of courts and his professional regulator that he had breached his professional and ethical duties to the courts in the course of representing the interests of these schemes; (c) findings of HMRC and other regulators that these schemes were ineffective and misleading, and/or ought to be avoided, and the existence of a corpus of expert opinion to the same effect; and (d) the facts of the Arka Wealth scheme, and the stated connections Arka Wealth itself made with Mr Kamal more generally.

99. Certainly, the opinions as pleaded are an emphatic and, at least arguably, ungenerous judgment on Mr Kamal based on these facts. But Mr Kamal did not go as far as to suggest that they are, even arguably, untethered to them or that they are incapable of sustaining an *honest*, even if disputable, opinion that *some* schemes he had been professionally involved in were not legally effective or credible, that his support of them had been executed without due regard to his legal and professional duties and

competences, that he accordingly exposed his clients and the public to unwarranted legal and financial risk or that he merited (further) disciplinary or regulatory action accordingly.

100. I do not, in these circumstances, consider it arguable with a real prospect of success that a court would find the section 3(4) test otherwise than satisfied.

(iv) The counter-defence

101. Section 3(5) provides that the honest opinion defence may be defeated if a claimant can prove that the honest opinion advanced by a defendant was not in fact genuinely held. This test *is* a matter of fact and evidence.

102. Mr Neidle has provided unambiguous, and reasoned, evidence in his witness statement that he genuinely and honestly held the opinions pleaded by Mr Kamal when he published the Article, and that the bases for those opinions are those set out in the Article. He says this, in his witness statement:

> [28] I had not heard of Mr Kamal until one of our team noticed the 22 March 2024 judgment of the *Hamid* court concerning Mr Kamal: *R (on the application of Apricot Umbrella Ltd) v Revenue and Customs Commissioners [2024] EWHC 665 (Admin)*. We started to investigate the schemes which had been the subject of the *Hamid* referral and approached Mr Kamal for initial comment in June 2024. However, the investigation ended up being delayed by other matters and then joined what is a large list of half-completed investigations.
>
> [29] Almost a year later, I received a tip-off about the Arka Wealth scheme and started to investigate it. Arka Wealth was promoting a tax avoidance scheme on social media and its TikTok page had attracted millions of likes and tens of thousands of followers…
>
> [30] I often see tax avoidance scheme promoters claiming their schemes are backed by barristers, sometimes including photographs of the barrister. I typically email the barrister, and the barrister invariably responds with shock at being named by the promoter and takes steps to require the promoters to stop using their name. In those cases, we never name the barrister as associated with the scheme. This case was different: when we wrote to Mr Kamal it became clear that he was closely connected to Arka Wealth.
>
> [31] I had, and continue to have, deep concerns about the tax avoidance schemes Arka Wealth and Mr Kamal were promoting and felt that they were encouraging people to use a tax avoidance scheme which would cause their clients harm. It was redolent of the schemes promoted by Paul Baxendale-Walker (a former solicitor who had been struck-off and later convicted of fraud). Those schemes had caused misery to a large number of people.

> [32] As should be clear from the February Report [ie the Article] and the evidence I share in it, I honestly believe what I and TPAL published about Mr Kamal.
>
> [33] In preparing the February Report, my intention was to express my opinion on the problems with the tax avoidance scheme Arka Wealth was promoting, my concerns about Mr Kamal's involvement in that tax avoidance scheme, the risks to the public, and what HMRC, the government and the BSB should do to combat schemes such as that promoted by Arka Wealth.
>
> [34] I and our team researched Arka Wealth extensively, reviewing its website and social media pages in detail, including watching over a hundred of the videos it published promoting the scheme, some of which featured Mr Kamal. We also extensively researched Mr Kamal's involvement in other tax schemes, including the legal arguments he had made in several court cases. I then applied my knowledge of tax law to the legal arguments advanced by Mr Kamal and the tax avoidance scheme as Arka Wealth was promoting it to reach my conclusions. The February Report provides hyperlinks and footnotes to explain each of our conclusions.
>
> [35] I am a very experienced tax lawyer, and when I was practising I would have described myself as a leading expert in some of the areas of law relevant to the Arka Wealth scheme (such as DOTAS, the sham doctrine, tax treaties, royalties, corporation tax). I would still have always discussed points with colleagues before reaching definitive views. I continue to do that now, speaking to a range of other tax experts. This is all the more important for those aspects of the Arka Wealth scheme which were outside my direct expertise (or related to foreign law). I therefore involved a range of other lawyers and tax accountants who I credit for their contributions at the end of the February Report…
>
> [36] Like most of our investigations, the February Report was the product of a team, but I believed its content to be correct and take full responsibility for it.
>
> [37] I also offered Mr Kamal a pre-publication right of reply, but he declined to do so…

103. This is evidence of a genuinely held opinion which a court is entitled to accept. Mr Kamal has not furnished the court with contrary evidence nor indicated what relevant evidence in rebuttal he might be able to provide in future. In submissions, he made some suggestions going to the credibility of Mr Neidle, but these seemed largely to address issues such as whether the Defendants knew enough about the Arka scheme, or

the details of his own litigation practice, to be able to pass judgment on them. These are not to the point. Mr Kamal has provided no evidence or indication in response to the present application as to the basis on which he would expect to be able to counter Mr Neidle's evidence, or otherwise discharge the burden he would carry of establishing that Mr Neidle did not after all hold the opinions, as pleaded by him, and professed by Mr Neidle in his evidence, should this case proceed to trial. The mere hope that something will turn up to undermine Mr Neidle's evidence will not do. Mr Kamal's malice pleading stands struck out and he has suggested no other basis of pleading or evidence for alleging that Mr Neidle might not be a witness of truth as to the holding of the opinions to which he has testified. He advances no basis for an argument that the opinions professed were not genuinely held but were merely 'adventitiously appropriated' for some other collateral purpose, and none appears in prospect from the materials before me at this interlocutory stage.

104. In all of these circumstances, I am unpersuaded that Mr Kamal has a real prospect of making good the section 3(5) counter-defence.

105. The Defendants are, for these reasons, entitled to have summary judgment entered in their favour on Mr Kamal's claim.

C. The Defendants' SLAPP application

(a) The statutory SLAPP regime

106. Section 195 of the Economic Crime and Corporate Transparency Act 2023 provides as follows:

> **195. Meaning of "SLAPP" claim**
>
> (1) For the purposes of section 194 a claim is a "SLAPP claim" if—
>
> (a) the claimant's behaviour in relation to the matters complained of in the claim has, or is intended to have, the effect of restraining the defendant's exercise of the right to freedom of speech,
>
> (b) any of the information that is or would be disclosed by the exercise of that right has to do with economic crime,
>
> (c) any part of that disclosure is or would be made for a purpose related to the public interest in combating economic crime, and
>
> (d) any of the behaviour of the claimant in relation to the matters complained of in the claim is intended to cause the defendant—
>
> (i) harassment, alarm or distress,

(ii) expense, or

(iii) any other harm or inconvenience,

beyond that ordinarily encountered in the course of properly conducted litigation.

(2) For the purposes of determining whether a claim meets the condition in subsection (1)(a) or (c), any limitation prescribed by law on the exercise of the right to freedom of speech (for example in relation to the making of defamatory statements) is to be ignored.

(3) For the purposes of this section, information mentioned in subsection (1)(b) "has to do with economic crime" if—

(a) it relates to behaviour or circumstances which the defendant reasonably believes (or, as the case requires, believed) to be evidence of the commission of an economic crime, or

(b) the defendant has (or, as the case requires, had) reason to suspect that an economic crime may have occurred and believes (or, as the case requires, believed) that the disclosure of the information would facilitate an investigation into whether such a crime has (or had) occurred.

(4) In determining whether any behaviour of the claimant falls within subsection (1)(d), the court may, in particular, take into account—

(a) whether the behaviour is a disproportionate reaction to the matters complained of in the claim, including whether the costs incurred by the claimant are out of proportion to the remedy sought;

(b) whether the defendant has access to fewer resources with which to defend the claim than another person against whom the claimant could have brought (but did not bring) proceedings in relation to the matters complained of in the claim;

(c) any relevant failure, or anticipated failure, by the claimant to comply with a pre-action protocol, rule of court or practice direction, or to comply with or follow a rule or recommendation of a professional regulatory body.

(5) For the purposes of subsection (4)(c) a failure, or anticipated failure, is "relevant" so far as it relates to—

(a) the choice of jurisdiction,

(b) the use of dilatory strategies,

(c) the nature or amount of material sought on disclosure,

(d) the way to respond to requests for comment or clarification,

(e) the use of correspondence,

(f) making or responding to offers to settle, or

(g) the use of alternative dispute resolution procedures.

(6) In this section—

"court" has the same meaning as in section 194;

"economic crime" has the meaning given by section 193(1);

"the right to freedom of speech" means the right set out in Article 10 of the European Convention on Human Rights (freedom of expression) so far as it consists of a right to impart ideas, opinions or information by means of speech, writing or images (including in electronic form).

(7) In the definition of "the right to freedom of speech" in subsection (6) "the European Convention on Human Rights" means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950 as it has effect for the time being in relation to the United Kingdom.

107. The definition of a SLAPP in section 195 is set out for the purposes of the preceding section. That section, section 194, imposes a duty to make certain rules of court. That duty has been discharged by way of two new rules of court.

108. The first of these appears at Civil Procedure Rule 3.4(d) as follows:

The court may strike out a statement of case if it appears to the court –

…

(d) that, in the case of a claimant's statement of case -

(i) the claim is strategic litigation against public participation, being a SLAPP claim within the meaning

> of section 195 of the Economic Crime and Corporate Transparency Act 2023; and
>
> (ii) the claimant has failed to show that it is more likely than not the claim would succeed at trial.

109. The second appears at Civil Procedure Rule 44.2(9) and (10) as follows:

> (9) In respect of a SLAPP claim, a court may not exercise its discretion so as to order a defendant to pay a claimant's costs except where, in the court's view, misconduct of the defendant in relation to the claim justifies such an order.
>
> (10) For the purposes of paragraph (9), a SLAPP claim is strategic litigation against public participation being a SLAPP claim within the meaning of section 195 of the Economic Crime and Corporate Transparency Act 2023.

110. All of these provisions were commenced last year. This is the first occasion on which the High Court has been asked to consider applying them.

(b) Preliminary

111. The decisions I have made to (a) strike out Mr Kamal's malicious falsehood claim and parts of his libel claim and (b) give summary judgment for the Defendants on the whole claim, mean it is not strictly necessary for me to determine the Defendants' application to strike the entire claim out as being a SLAPP. It was, and is, an alternative application in relation to the disposal of the claim.

112. The Defendants, however, also seek declaratory relief in relation to this application. The statutory SLAPP regime gives some prominence to the role of a court in determining *whether or not* a claim is a SLAPP. That is a necessary first stage decision which, as a matter of law, is capable of affecting the court's discretion in relation to the two matters for which the new Rules of Court expressly provide: strike-out and costs. It is also, at least in principle, a decision capable of having consequences other than those, including potentially in relation to professional regulatory matters. Mr Callus made full submissions to me on the point, and the Defendants' application is accompanied by substantial evidence, including of the litigation history in this matter. And Mr Kamal of course has had a full opportunity to respond (although as I have noted he did not provide a witness statement tackling the factual and evidential issues potentially arising on a SLAPP application).

113. In these circumstances, I consider the Defendants' application on its merits. Doing so perhaps illustrates some of the complexity of the present statutory regime.

(c) The 'right to freedom of speech'

114. At the heart of the statutory definition of a SLAPP is the concept of a claimant (improperly) '*restraining the defendant's exercise of the right to freedom of speech*' (section 195(1)(a)). We know from subsections (6) and (7) that this is to be understood by reference to the fundamental right expressed in Art.10 ECHR – but, importantly, only to part of it.

115. Article 10 says this:

> **Freedom of expression**
>
> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

116. Subsection (6) confines the meaning of the right in the SLAPP definition to that part of the Art.10 right which '*consists of a right to impart ideas, opinions or information by means of speech, writing or images (including in electronic form)*'. Plainly, it is the *imparting* element of the right which is intended to be captured in the statutory term '*freedom of speech*', distinctly from the wider right to '*freedom of expression*'.

117. As drafted, the relevant *imparting* is defined by reference to '*ideas, opinions or information*'. These are all terms used in Art.10(1), but for distinct purposes. Art.10 protects '*freedom to hold opinions*' and the right to '*receive and impart information and ideas*'. Subsection (6) refers to a right to '*impart ideas, opinions or information*'. The statutory intention is apparently to make compendious reference to all three concepts used in Art.10.

118. That statutory definition, however, sits a little awkwardly with subsection (1)(b) of the definition of a SLAPP. That specifies that the relevant restraint of a defendant's exercise of the right to freedom of speech is on the *disclosing* of *information* that '*has to do with economic crime*'. For '*disclosed*', it must be straightforward, if not perfectly elegant, to understand '*imparted*'. Rather less straightforward is the singling out of '*information*' from the definition '*ideas, opinions or information*'.

119. Mr Callus put it to me that the reference to '*information*' in subsection (1)(b) must nevertheless, in context, be understood compendiously – and in particular as *including*

opinion information, notwithstanding its selectivity in relation to the specific definition of freedom of speech. That is a crucial point for a case such as the present in which the pleaded claim in defamation relates entirely to the Defendants' expression (disclosure, imparting) of opinion (on the basis, as I have found, that there is no real prospect of a court's finding otherwise in the relevant circumstances).

120. I agree that on balance Mr Callus must have the better argument on this point. Read as a whole, the apparent Parliamentary intention is that subsection (1)(b) is intended to be a limitation on subsection 1(a) *solely* in relation to '*has to do with economic crime*' and *not* (inadvertently) in relation to '*information*'. The fact that subsection (1)(b) opens compendiously with '*any of the information*' assists that interpretation. There is no indication that the definition of a SLAPP is intended to be limited to restraint of the imparting of factual information to the exclusion of opinion information; on the contrary, had that been Parliament's intention it would certainly be expected to have been expressed much more clearly as such.

121. A further important part of the statutory definition of '*the right to freedom of speech*' is set out in subsection (2). For the purposes of identifying *both* whether the question of restraint of a defendant's exercise of the right is engaged by the claimant's behaviour (subsection (1)(a)) *and* of identifying the purpose of the exercise of the right if so (subsection (1)(c)) – but *not* for the purpose of identifying the nature of the speech itself (subsection 1(b)) – subsection (2) provides that '*any limitation prescribed by law on the exercise of the right to freedom of speech (for example in relation to the making of defamatory statements) is to be ignored*'.

122. The right to freedom of expression set out in Art.10 is a qualified right, and Art.10(2) makes extensive provision for circumstances in which it may be abridged (provided that that is prescribed by national law). The torts of defamation and malicious falsehood, and a further range of what might be termed communication torts (for example breach of confidence, harassment by publication, misuse of private information and breach of statutory data protection duties) constitute abridgments of the Art.10 rights prescribed by law in this jurisdiction. Our criminal law also contains prohibitions abridging freedom of expression (for example in relation to incitement to violence).

123. For the purposes of deciding whether a claim is a SLAPP, however, these abridgments are '*to be ignored*'. The purpose of that is plain enough. It is to remove from the process of identifying a SLAPP any possibility of a claimant's arguing that their claim or conduct cannot constitute a restraint of a defendant's exercise of the right to freedom of speech because it seeks to restrain only speech which is by definition speech to which the defendant does not have a legal right. A defamation claimant, for example, is not able to say their claim and its conduct cannot be a SLAPP because the publication complained of is unlawfully defamatory, so it is not an exercise of *lawful* speech to which the defendant has any *right* at all. Subsection (2) removes that element of circularity from the exercise.

124. The consequence of that is, of course, that most if not all claims in defamation, malicious falsehood or the other communication torts will inevitably pass the test in subsection (1)(a) of the definition of a SLAPP because, *ignoring* the right to restrain speech advanced in the claim itself as subsection (2) requires a court to do, their claims are '*intended to have the effect of restraining the defendant's exercise of the right to*

freedom of speech'. The '*right to freedom of speech*' so defined, in other words, includes speech to which a defendant may turn out to have no right at all.

125. Mr Kamal brings a claim in defamation and malicious falsehood, seeking to restrain the Defendants' publication of the Article and its contents. He thereby disputes their legal right to do that, of course, but that must be ignored for the purpose of subsection 1(a). So the test in subsection 1(a) must be taken to be satisfied.

(d) 'Information … to do with economic crime'

126. The limiting condition on the definition of a SLAPP set out in section 195(1)(b) is a product of the technical scope of the 2023 Act, being '*an Act to make provision about economic crime and corporate transparency*'. Having '*to do with economic crime*' is not intrinsic to the concept of a SLAPP, merely the necessary result of the particular legislative vehicle in which the definition has (so far) passed into law. Satisfying the condition nevertheless remains a key step in applying the statutory test. That is the boundary Parliament has set on what may constitute a SLAPP, and it must be respected.

127. '*Economic crime*' is stated in subsection (6) to bear the meaning given by section 193(1). That definition goes as follows:

> "economic crime" means an act which—
>
> (a) constitutes an offence listed in Schedule 11 ("a listed offence"),
>
> (b) constitutes an attempt or conspiracy to commit a listed offence,
>
> (c) constitutes an offence—
>
> (i) under Part 2 of the Serious Crime Act 2007 (England and Wales and Northern Ireland: encouraging or assisting crime) in relation to a listed offence, or
>
> (ii) under the law of Scotland of inciting the commission of a listed offence,
>
> (d) constitutes aiding, abetting, counselling or procuring the commission of a listed offence, or
>
> (e) would constitute a listed offence or an offence specified in paragraph (b), (c) or (d) if done in the United Kingdom

128. The Defendants bring the present application by reference to two 'listed offences'. The first is the common law offence of cheating the public revenue (paragraph 1 of Schedule 11). The second is the statutory offence of failure to prevent the facilitation of UK tax evasion offences contrary to section 45 of the Criminal Finances Act 2017 (paragraph 18 of Schedule 11). I did not receive legal submissions on the definition of either offence from either party. Neither has an altogether straightforward definition.

129. Cheating the public revenue appears to be an offence which may be committed by acts, words or omissions with dishonest intent to defraud the revenue by diverting money from it and depriving it of money to which it is entitled, although *causation* of loss to the public revenue may not be a necessary element of the offence (*R v Mavji [1987] 2 All ER 758, 84 Cr App Rep 34*; *R v Redford (1988) 89 Cr App Rep 1*; *R v Hunt [1994] Crim LR 747*; *R v Godir [2018] EWCA Crim 2294*.). The comprehension within the *actus reus* of this offence of *omissions* as well as acts is significant; it characteristically features failures to declare a true and complete financial picture to the revenue for the purposes of tax assessment. The definition of '*economic crime*' in section 193(1) is by reference to '*an act*'. The 'listing' of offences not only capable of, but *characterised* as, being committed by omissions appears to require the reading-in of '*or omission*' into section 193(1) in order to achieve coherence for these purposes.

130. Section 45 of the Criminal Finances Act 2017 provides as follows:

> **Failure to prevent facilitation of UK tax evasion offences**
>
> (1) A relevant body (B) is guilty of an offence if a person commits a UK tax evasion facilitation offence when acting in the capacity of a person associated with B.
>
> (2) It is a defence for B to prove that, when the UK tax evasion facilitation offence was committed—
>
> (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
>
> (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.
>
> (3) In subsection (2) "prevention procedures" means procedures designed to prevent persons acting in the capacity of a person associated with B from committing UK tax evasion facilitation offences.
>
> (4) In this Part "UK tax evasion offence" means—
>
> (a) an offence of cheating the public revenue, or
>
> (b) an offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.
>
> (5) In this Part "UK tax evasion facilitation offence" means an offence under the law of any part of the United Kingdom consisting of—
>
> (a) being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by another person,

> (b) aiding, abetting, counselling or procuring the commission of a UK tax evasion offence, or
>
> (c) being involved art and part in the commission of an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.
>
> (6) Conduct carried out with a view to the fraudulent evasion of tax by another person is not to be regarded as a UK tax evasion facilitation offence by virtue of subsection (5)(a) unless the other person has committed a UK tax evasion offence facilitated by that conduct.
>
> (7) For the purposes of this section "tax" means a tax imposed under the law of any part of the United Kingdom, including national insurance contributions under—
>
> (a) Part 1 of the Social Security Contributions and Benefits Act 1992, or
>
> (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
>
> (8) …

131. The following section, section 46, makes similar provision in relation to failure to prevent facilitation of foreign tax evasion offences.

132. Subsection 195(1)(b) of the 2023 Act requires that it is *the information* which has to do with economic crime – that is to say, the information a claimant is restraining or intending to restrain a defendant from imparting in the exercise of free speech. In the present case, that must be (or at least include) the information contained in the publication complained of – the Article, in other words.

133. Subsection (3) then gives what appears to be a complete definition of when such information '*has to do with economic crime*'. *Either* (a) the information must relate to behaviour or circumstances which a defendant *reasonably believed* to be *evidence* of the commission of an economic crime, *or* (b) the defendant must have had *reason to suspect* that an economic crime *may have* occurred *and believed* disclosing/imparting the information would *facilitate an investigation* into *whether* such a crime had occurred.

134. This is therefore a definition of two alternative limbs, each of which contains multiple elements. Both limbs contain subjective and objective components going to a defendant's state of mind. The first limb requires the defendant's (subjective) *belief* that the information is evidence of the commission of an economic crime, and that belief must be (objectively) *reasonable*. The second limb requires the defendant's (subjective) *belief* that 'disclosure' or publication of the information would facilitate an investigation into *whether* an economic crime has occurred, and he must have had

(objective) *reason to suspect* that an economic crime *may* have occurred. The subjective state of mind of a defendant is quintessentially a matter of fact and evidence. Its reasonableness is an evaluative question. Neither limb requires any economic crime to have been demonstrably committed.

135. Mr Neidle provides evidence about his state of mind in his witness statement. I set out the relevant paragraphs in full (omitting cross referencing and footnotes), because the complexity of the definition in subparagraph (3) requires some close attention of the detail of what must be evidenced.

> [9] We published an article in February 2025 ('the February Report') which described a tax avoidance structure promoted by a firm called Arka Wealth; Arka Wealth said everyone implementing the structure would receive a legal opinion from their 'legal partner', Setu Kamal. Mr Kamal appeared in videos promoting Arka Wealth.
>
> [10] We have published numerous investigations of tax avoidance scheme promoters and others engaging in fraud. It is usually our aim to prompt HMRC and other authorities to investigate the schemes. Usually, that is a civil investigation; occasionally it is criminal.
>
> [11] It is often hard to see what effect our report has had, because HMRC investigations are confidential. Sometimes we see the promoter cease their business and we can infer there was HMRC civil or criminal action (for example in the case of the 'B2B Tradecard' scheme we reported on). Sometimes the promoter's clients keep us updated so we know civil action was taken (for example in the cases of the 'Less Tax for Landlords' and 'Property118' schemes we reported on). Only on occasion are we sure that arrests followed our investigation (for example in relation to the 'Green Jellyfish' R&D firm, where we said there were grounds to suspect a conspiracy to commit tax fraud, and according to HMRC 11 of those involved were subsequently arrested).
>
> [12] I concluded that the Arka Wealth structure is in the grey area where it might or might not be criminal depending on how it was reported by Arka Wealth's clients. The scheme offered by Arka Wealth involves creating a trust over income so that an individual or company's income becomes the income of an offshore trust. The client therefore ceases to declare taxable income to HMRC.
>
> [13] If an Arka Wealth client fully discloses the structure to HMRC on their tax return, then no question of tax evasion would arise. The scheme would still fail (in my view, and that of the tax counsel and solicitors I discussed the structure with) and HMRC would recover tax plus potentially civil penalties.

[14] However, my view is that people designing a structure like this know full well that HMRC will challenge it and they will lose. So, it is not disclosed to HMRC under the laws requiring disclosure of tax avoidance schemes (even though it should be) and I expect nobody will tell the taxpayer to disclose the structure on their tax return. Plausibly, they will advise the client not to disclose it.

[15] At that point we are in potentially criminal territory. Cheating the revenue means knowingly and dishonestly failing to pay tax that is due. *Mavji* is authority that this does not require a positive step – failing to report something is sufficient. 'Dishonesty' requires more than recklessness, but wilful blindness is probably sufficient (*Godir*).

[16] Cheating the revenue, as well as conspiracy to cheat the revenue and failure to prevent the facilitation of UK and foreign tax evasion, are among the '*economic crime offences*' listed in Sechedule 11 of the Economic Crime and Corporate Transparency Act 2023.

[17] At the point that we published our report, I did not know for a fact that those offences had been committed, but I suspected they may have been, and I believed that the February Report would facilitate a criminal investigation, as well as a civil tax investigation (whilst Arka Wealth was an Estonian company, the people behind it were all based in the UK). Whether any prosecutions would be against Arka Wealth clients (e.g. for failing to disclose), Arka Wealth (e.g. for telling clients not to disclose) or even Mr Kamal would depend on what an investigation uncovered.

[18] We concluded our report by saying that we believed HMRC should investigate and close down Arka Wealth. The strength of the evidence we had found was such that I believed such an investigation would be likely to happen.

[19] I believed that publishing the February Report served the public interest in tackling economic crime, including cheating of the public revenue, by calling on HMRC to investigate Arka Wealth and highlighting steps the government, HMRC and the BSB should take to deal with tax avoidance schemes like that promoted by Arka Wealth.

[20] Since we published the February Report, Arka Wealth has closed its website. I do not know if this is because of an HMRC civil or criminal investigation, or for some other reason.

[21] It is notable that since we published the February Report, on 4 September 2025, the Claimant was added to the HMRC's '*Current list of named tax avoidance schemes, promoters,*

enablers and suppliers' ('HMRC's tax avoidance list'). The Claimant is the first practising barrister to be added to HMRC's tax avoidance list.

[22] HMRC's tax avoidance list sets out tax avoidance schemes which HMRC considers do not work. The schemes HMRC has said it suspects Mr Kamal was involved in are different schemes to the Arka Wealth scheme, but they were each mentioned in the February Report. The timing is such that I doubt the February Report caused HMRC to investigate the Claimant's involvement with these schemes; I expect HMRC were already pursuing an investigation.

[23] HMRC took the unusual step of also issuing a press release:

> "*It is HMRC's view that Setu Kamal, who has 20 years' experience as a barrister, designed four tax avoidance schemes and created contract templates that are essential to how these arrangements operate.*
>
> *These schemes promoted by MLG Pay Limited, The Umbrella Agency Limited, Veqta Ltd, and Vision HR Solutions Ltd typically promise workers they can keep more of their pay by avoiding Income Tax and National Insurance contributions.*
>
> *HMRC's position is that these arrangements do not work and that users of the face tax bills, interest and potential penalties.*"

[24] Arka Wealth marketed their structure across Europe, and the French, German, and Italian tax lawyers I spoke to expected that anyone implementing the structure would be the subject of a criminal investigation. Their readiness to say so in my experience is less about substantive differences in the law around tax evasion in these countries, but is more of a cultural/procedural difference – in my experience, HMRC will only refer a matter for criminal investigation if the structure is something a jury will be able to understand, and the time/cost of a prosecution is justified from a policy perspective. Procedurally a criminal investigation can also complicate and potentially delay HMRC civil investigations. On the other hand, in many civil law countries a criminal investigation tax prosecution is triggered in parallel with a civil investigation as a matter of course – there are no procedural bars to doing so. Most significantly, the absence of juries means that complexity is no barrier to prosecuting tax offences.

[25] That is why the February Report said that we expected the tax authorities in France, Germany, and Italy to commence

> a criminal investigation of anyone using the structure but did not say that for the UK.
>
> [26] The effect of the interim injunction Mr Kamal applied in August 2025, and the injunction he is seeking now, would be to remove the February Report.

136. This is a carefully-worded statement. Nevertheless, it is not entirely straightforward to apply the language of section 195(3) to it.

137. In relation to the first limb of the definition, for example, it is not simple to read it as clear evidence that Mr Neidle had *believed* the information contained in the Article to constitute *evidence* of the commission of an economic crime. What the Article principally *'relates to*' is the marketing of tax avoidance schemes that Mr Neidle and others (including HMRC) consider not to work in the terms they promise: if an honest customer buys into such a scheme, and fully declares it in their tax return, they will not save any tax, are exposed to penalties, and accordingly will be worse, rather than better, off as a result.

138. Mr Neidle does not say he believed this to be a fraud *on the customers* (perhaps he might have done – conspiracy to defraud is listed as an economic crime at paragraph 2 of Schedule 11 to the 2023 Act). He does not quite say that he believed there had necessarily been any fraud *on the revenue* either, nor that he believed the content of the Article to be *evidence* of it as such. On the contrary, he takes some pains to explain why he necessarily had to be in some uncertainty about that. The relevant criminality is not said to inhere in the schemes themselves, but in their *undeclared* use. Mr Neidle does not quite say in his evidence that he *believed* that to have occurred and does not quite advance the content of the Article as *evidence* that it had.

139. Mr Neidle's evidence is, instead, substantially preoccupied with setting out matters going more pertinently to the second limb of the definition. He says, in effect, that he had reasonable grounds to *suspect* that fraud on the revenue – including in all its inchoate, auxiliary and extra-jurisdictional forms as included in the definition in section 193 – *may* have occurred, whether on the part of the promoters of the avoidance schemes or their less than honest customers – *and* that he *believed* publishing the Article would facilitate an investigation into *whether* it had.

140. The relevant subjective belief attested to is that by publishing the Article he would facilitate an investigation – that is to say assist or prompt an investigation by HMRC it (section 195(3)(b) does not on a natural reading suggest that an investigation must already have been on foot at the time) with the information contained in it – an investigation which was *capable* of establishing whether fraud on the revenue had been committed by scheme promoters (for example by advising clients not to declare the schemes) or by clients (dishonestly failing to do so).

141. That belief is attested to at [17] of Mr Neidle's statement. The definition does not require it to be a reasonable or justifiable belief in itself – that is, as to the publication's actual potential for facilitation of an investigation. The fact of the belief is what satisfies the subjective element of the test. But the reasons Mr Neidle gives for his belief, and

the factual matters set out by way of context including as to the evidence that HMRC does in fact undertake such investigations, are on the face of it compelling in themselves. The Article claims for itself that it is a piece of serious and expert investigative journalism, piecing together a basis for an opinion that HMRC should investigate and take action potentially resulting in a criminal outcome.

142. Mr Kamal has made no challenge to this evidence of Mr Neidle's beliefs. He made no application to cross-examine Mr Neidle, and offered no alternative evidence of his own. I am given, and can see, no basis to do otherwise than accept it in this respect. I do so.

143. The test also requires Mr Neidle to have had *reason* to suspect that an economic crime *may* have occurred. Suspicion itself is a relatively low threshold; and the object of the suspicion is also expressed as a low threshold – simply the possibility that a crime may have occurred. Mr Neidle attests to both in his statement (see in particular [12], [14] and [17]).

144. The test requires there to have been *reason* for the suspicion. As Mr Neidle explains, his expert assessment, and that of others he had consulted, was that the Arka Wealth scheme was ineffective. Mr Neidle explains that in his informed experience the promoters of ineffective tax avoidance schemes, who are on notice that HMRC does or may consider their schemes to be ineffective, give grounds for suspicion that they market them in that knowledge. In his experience of investigating such schemes, their promoters never comply with the rules requiring them to be notified up front to HMRC. They give grounds thereby for suspicion that they will be motivated to discourage clients from drawing participation in a scheme to the attention of HMRC since it will not be in their own interests for that to happen. If clients have any measure of sophistication themselves, they may have their own motivations in the direction of not declaring scheme participation.

145. Mr Neidle testifies to the reasons he had for his suspicion. They are on their face rational, supported and adequately explicative in their own terms. The test does not require them to be right, or beyond dispute. It does not attach qualifiers such as 'compelling' or 'good' to them.

146. In all these circumstances, I conclude that the part of the test for a SLAPP set out in section 195(1)(b) is met. At least some ('*any*') of the information in the Article complained of has to do with economic crime, because Mr Neidle had reason to suspect at the time of publication that cheating the revenue (as compendiously defined with the assistance of section 193) *may* have occurred in connection with what he considered to be ineffective tax avoidance schemes and he believed at the time that publishing the Article would facilitate an investigation into whether it had. The Article called for such an investigation on its face, on the basis of the analysis it set out.

(e) The purpose of the publication

147. Section 195(1)(c) sets out a third part of the test for a SLAPP, namely that any part of the exercise of a defendant's freedom of speech the claimant would restrain '*is or would be made for a purpose related to the public interest in combating economic crime*'. It is, in other words, a requirement for a qualifying *purpose* of a publication (here, the Article). The purpose in question may be inferred to be the purpose of the defendant – that is, here, the publishers.

148. It is sufficient for *any part* of the publication to be made for the qualifying purpose. So the Article need not be assessed against this criterion in its entirety. And it is sufficient if *a* purpose of publishing that part is the qualifying purpose – it need not be the only or principal purpose.

149. The qualifying purpose itself must be one that is *related to* the public interest in combating economic crime. Importantly, this is not, as drafted, a 'public interest' test straightforwardly applied to either the publication or the publisher. '*The public interest in combating economic crime*' is instead posited as a general public good, and the purpose of the publication need only be *related to* it (it may be inferred, nevertheless, that the relationship would be expected to be a broadly aligned one).

150. At least one purpose discernible on the face of the Article in the present case is its call for HMRC to investigate and close down the Arka Wealth scheme discussed and others like it; and its calls for law reform, including new deterrent offences and increased penalties for those responsible for ineffective tax avoidance schemes, and for regulatory reform. These in themselves are recognisable on their face as purposes *related to* the public interest in combating economic crime, by creating an improved industry context in which the criminogenitive conditions the Article identifies as created by ineffective tax avoidance schemes, which are conducive to fraud and tax cheating, are effectively tackled.

151. Mr Neidle confirms in his evidence (at [19]) that that was indeed a purpose of the Article, and one of his purposes in publishing it. That evidence is not challenged. The purpose declared on the fact of the Article is consistent with it.

152. I conclude in all these circumstances that the test imposed by section 195(1)(c) is met on the present facts.

(f) Claimant's behaviour and intention

(i) Preliminary

153. The tests set out in section 195(1)(a)-(c) are all merely by way of preliminary delineation of the *scope* of a SLAPP application. Meeting these tests is necessary for an application to succeed, but does not in itself imply or suggest in any way that a claimant has done anything untoward.

154. Article 10 guarantees freedom of expression only where it is not qualified in law. Our substantive laws have a long history of striking careful balances between protecting free speech and protecting other fundamental rights and interests of citizens, including the protection of personal autonomy, integrity, safety, privacy and reputation. These balances are always contestable in policy terms, and have been struck by the law in different places at different times. But wherever they are struck, the courts must protect and enforce those balances. Litigants who invoke that duty of the courts, on either side of the balance, are entitled to have their arguments tested and adjudicated upon in a justice system which seeks scrupulously to respect the precise balance Parliament has struck at any one time.

155. Libel claimants are entitled to seek redress for tortious reputational harm according to the law. To do so is always to challenge defendants' entitlement to say whatever they

want about claimants. The substantive law of libel strikes a complex and nuanced balance between the competing rights and values in issue. A libel claimant is fully entitled to test that through litigation, whether or not the publication challenged has to do with economic crime or was made for a purpose related to the public interest in combating it. The substantive law of libel and the procedural rules of courts applying to libel litigation do not yield to any of those tests.

156. What converts a claim into a statutory SLAPP, however – its distinguishing feature and the public policy basis for Parliament's intervention in the matter – is contained in the definition set out at section 195(1)(d). The SLAPP test is all about *how* litigation is conducted. It is a test of several parts, but with two striking features. The first is that it is made to depend on the *intention* of the claimant – it is a subjective test. The second is that that intention must relate to the causing to the defendant of various adversities or inconvenience '*beyond that ordinarily encountered in the course of properly conducted litigation*'.

157. The intention of a claimant in this respect must be established by a defendant to the satisfaction of a court on a SLAPP application. In relation to the present application, the Claimant, Mr Kamal, has not chosen in response to it to give any evidence about his intentions. He is entitled not to do so. In the result, of course, he has not had to submit to the possibility of cross-examination on the matter. The Defendants are left to seek to discharge their evidential burden by other means.

158. What Mr Callus asks me to do in the circumstances is to infer Mr Kamal's intentions from the evidence of his conduct and its results: to find that his behaviour in relation to the present dispute between the parties has in fact been irregular, oppressive and improper to a degree incompatible with ordinary, properly conducted litigation, and to discern a manifest intention in that to cause precisely those effects.

159. The structure of section 195 gives me some encouragement to do that. Although subsection (1)(d) sets out a subjective formula ('*the behaviour of the claimant is intended to cause the defendant…*'), the intention which is relevant is at least *constrained* by its having to be manifested in behaviour which relates to the claim and its conduct. A court is also guided to apply the test of intention by reference to subsections (4) and (5).

160. Subsection (4) opens with the preamble '*in determining whether any behaviour of the claimant falls within subsection (1)(d) the court may take into account….* Strictly speaking, whether *behaviour* falls within subsection (1)(d) is a matter of considering whether it is behaviour *in relation to the matters complained of in the claim*. That is the only limitation placed on its definition by that subsection. But the matters set out in subsection (4) go to some wider contextual and, crucially, evaluative issues the relevance of which appears to be to the demonstration of the animus of a claimant. These include three factors in particular.

161. The first is *disproportionality* in the conduct of the claim, including (but not limited to) disproportionality between the costs of a claim and the remedy sought. That latter sort of disproportionality is familiar from the context of strike-out on grounds of abuse of process. It is not a crude financial calculus, especially in relation to torts such as libel which seek important non-financial remedies (reputational vindication is the proper objective of a libel claimant, and injunctive relief to restrain publication is usually the

key remedy sought). The leading case on 'disproportionality' abuse of process in a libel context is the decision of the Court of Appeal in Dow Jones v Jameel *[2005] EWCA Civ 75*, with its famous catchphrase ([69]) that abuse of process may be found where '*the cost of the exercise will have been out of all proportion to what has been achieved. The game will not merely not have been worth the candle, it will not have been worth the wick*'.

162. A claim does not have to be a *Jameel* abuse of process to qualify as a SLAPP. But section 195(4)(a) appears to suggest that this sort of disproportionality, being a matter a court may take into account in applying the test for a SLAPP, may potentially be *relevant* to the process of determining the *intention* of a claimant (that is, by inference) from circumstances which may amount to the claim *in fact* being beyond that ordinarily encountered in the course of properly conducted litigation.

163. The second factor is a claimant's *selection* of a defendant on the basis of inequality of resource (subsection (4)(b)). In policy terms, at any rate, a clear marker of a potential SLAPP is a claim brought by a wealthy and powerful suspected malefactor against the valiant but modestly financed lone journalist seeking to expose their wrongdoing, rather than against the well-resourced media organisation that published the journalist's report. As a matter of law, subsection (4)(b) enables a court to consider whether a claimant has *chosen* to create a David and Goliath contest in resource terms, again presumably from the point of view of inferring the relevant animus of the claimant.

164. This is an unusual matter for a court to have to consider: wealthy claimants have as much entitlement (albeit enhanced means) to protect their rights as any other claimant, and impecuniosity is no defence to defamation. Courts strive every day to dispense justice to rich and poor alike. And a claimant is in principle entirely free to choose their defendant if there is a viable basis for doing so. An inequality of financial means is not by itself capable of evincing an intention by a claimant to subject a defendant to something '*beyond that ordinarily encountered in the course of properly conducted litigation*'; the proper conduct of litigation is not governed by charitable principles. Nevertheless, Parliament guides a court on a SLAPP application to consider any *choices* a claimant has made about the defendants to the claim; if they have targeted a less well-resourced opponent *for that reason* then that *may* be relevant to the imputation of something which might be identified as an oppressive animus – an intention to cause *unnecessary* harassment, expense and harm to a disadvantaged defendant when they might have achieved outcomes objectively as good or better for themselves by making other choices.

165. The third factor a court is guided to be able to take into account – to some extent – is actual failure by a claimant to comply with the rules and principles governing properly conducted litigation. Subsection (4)(c) provides that a court *may* take into account *relevant* past or anticipated future failure by a claimant to comply with pre-action protocols, rules of court or practice directions or professional regulatory rules or recommendation. Again, this must presumably be understood to be a part of the court's assessment of whether these failures were *intentional*.

166. Subsection (4)(c) must, however, be read together with subsection (5). This is drafted in a form which is unclear as to whether it is intended to be a *complete* definition of when a failure is a *relevant* one. The better view must be that it is not. Subsection (4) itself is permissive and non-exclusive ('*the court may, in particular, take into account*

–'), and subsection (4)(c) is general ('*any relevant failure*'). The better view is that the list of items set out in subsection (5) is to be read as being *included* in the definition of '*relevant*', for the avoidance of any doubt as to their potential relevance otherwise.

167. The list sets out (non-exhaustively, therefore) a number of aspects of a claimant's conduct capable of saying something about the intentions with which the claim has been conducted. These are examples of the exercise of choice by a claimant as to how litigation has been conducted, and what that might tell a court about the sort of impact intended to be gratuitously inflicted on a defendant. Broadly speaking, they prompt a court to ask itself questions about whether jurisdictional choices, '*dilatory strategies*', excessive demands for disclosure, responsiveness to requests for comment or clarification, the use of correspondence, and approach to alternatives to litigation, have a bearing, on the facts of any individual case, on the intentionality test for a SLAPP.

168. Subsection (5) does not expand the scope of what constitutes a '*failure*' for the purposes of subsection (4)(c); it operates on what constitutes a '*relevant*' failure. But as already noted, subsection (4) is permissive, and explanatory rather than definitive of what a court may take into account for the purpose of the key subsection (1)(d) statutory test. Subsections (4) and (5) assist in the application of that test by inviting a court to have regard to choices about how a claim has in fact been conducted, particularly where that has been in breach of the ordinary rules, protocols and standards of litigation, in order to decide whether a claimant has *intended* to cause a defendant harassment, alarm, distress, expense or any other harm or inconvenience *beyond* that ordinarily encountered in the course of properly conducted litigation.

169. On that basis, I am content to accept Mr Callus's invitation to consider the litigation history of this claim for that purpose. I set out the history itself first. I then consider the evidence I have about its impact on the Defendants. I conclude by addressing the test of what Mr Kamal intended by his conduct.

(ii) Litigation history

170. The Defendants make a large number of complaints about Mr Kamal's conduct of this dispute. What follows is some of the more salient features. I do not understand the bare facts (as opposed to the inferences to be drawn from them) to be disputed; they appear in the main from the contemporaneous documentation.

171. The Defendants sent Mr Kamal the Article as soon as it was published in February 2025, together with an invitation to notify them of any errors, which would be fixed immediately. Mr Kamal replied on 24th February saying '*I am trying to respond but I need access to the subscriber base*'. Mr Neidle responded immediately that '*that is not how either journalism or defamation law work. I have no obligation to 'give you access to my subscriber base"*.

172. Mr Kamal made no substantive response until he sent an email on 2nd April 2025 stating (in its entirety) '*I ask that you remove the link with my name associated with failed tax avoidance at once and that you retract your statements and commit to compensating me for any damages caused. If not, I shall proceed with legal action COB* [close of business] *today.*' Mr Neidle replied two hours later to the effect that he inferred, no corrections having been identified, that Mr Kamal simply found the facts in the article

inconvenient and did not like the opinions expressed, and asserted he had no right of action because honest opinion was a complete defence to libel.

173. No further action from Mr Kamal being apparent to the Defendants, Mr Neidle emailed again on 25th April 2025, indicating that the Article would shortly be updated and repeating the offer to make any factual corrections notified. Mr Kamal however intimated that he had instead applied to search engines Google and Bing to delist the Article, and made data protection complaints to the Information Commissioner and to the Cyprus Data Protection Office. He sent his ICO complaint of 4th April to Mr Neidle; it is a substantial document some 13 pages long. Mr Neidle did not agree with its contents, save to the extent of making a correction to the Article to the effect that Mr Neidle *no longer* relied on certain EU lines of argument.

174. Mr Kamal emailed a formal letter before action to Mr Neidle on 9th May 2025. It sets out that within the Article complained of were false and defamatory statements about him, it disputes that an honest opinion defence would be available, and it seeks the following remedies: (a) retraction of the claim that Mr Kamal was involved in failed tax avoidance, (b) amendment or take-down of the Article and associated references, (c) a published apology and clarification, its terms to be agreed, (d) an undertaking not to repeat the allegation complained of and (e) payment of damages and legal costs. It asked for a satisfactory response within 7 days, otherwise Mr Kamal would commence proceedings in defamation, and potentially in malicious falsehood and breach of the UK GDPR.

175. Mr Neidle replied the same day, explaining why he continued to believe Mr Kamal had no cause of action. He offered to consider any proposal to amend the Article's headline, and to reflect the content of any BSB decision with which he was provided. Otherwise, he required that Mr Kamal '*properly comply with the pre-action protocol*' specifically by dealing with the substance of Article, identifying the precise statements complained of rather than demanding unspecified amendment (or take-down) and providing details of the nature and value of his claimed financial loss. He finished by stating '*Any legal action will be contested robustly, in both the legal and the public sphere. I suggest you think very carefully before proceeding down this path.*' He had previously said this, about Mr Kamal's request that Mr Neidle publish his ICO complaint: '*However, if you believe that publication of your letter will improve your reputation then you are mistaken: I expect your actions will be widely seen as an improper attempt to silence your critics.*'

176. Mr Kamal replied later that day. He emphasised that the core of his objection was that the Article imputed to him that had designed or promoted the Arka Wealth scheme when he had not. He considered the tone and content of the Article, and Mr Neidle's refusal to take it down or publish his side of the story, to constitute '*a targeted attempt to discredit me professionally*'. Mr Kamal required five steps to be taken within seven days: (a) '*publication of a clear and public confirmation of your sincere belief that I am the leading barrister in the field of taxation in this country, as previously stated, and a sincere apology for your misleading and disparaging remarks*', (b) retraction or substantial amendment of the headline and body of the Article so as to remove its defamatory implications, (c) publication of his ICO letter and acknowledgment of the outcome of the BSB investigation, (d) written confirmation that Mr Neidle '*shall apply higher editorial standards in future*' and publish no '*false or misleading references to any persons*', and (e) to pay 80% '*of any amounts which my regular or historic clients*

represent to you, in writing, as amounts they would have paid to me under an engagement with me, but did not do so because of your publications'.

177. It appears from the Court records that Mr Kamal tried to file an application on 25th May 2025 for a pre-action interim injunction against Mr Neidle. The filing was rejected as having been incorrectly filled out and without the correct fee having been paid. Mr Kamal appears to have made a second attempt on 18th June 2025 and a third on 24th July 2025 (he explains that he had on each occasion wished to secure a refund of the fee he *had* paid on each occasion in order to make a fresh application), each of which was rejected for the same or similar reasons.

178. It appears that Mr Kamal finally succeeded in issuing an application for injunctive relief (with solicitor assistance) on 14th August 2025. The Court record indicates that it was made as an urgent pre-action application, on notice. The order sought recited a Court's satisfaction of the *American Cyanamid* test for an injunction (serious issue to be tried, balance of convenience, damages not an adequate remedy). It sought removal, from all platforms and websites under their control, of (a) the slug '*failed tax avoidance from Setu Kamal*' and (b) the slug '*the Court found that Mr Kamal had breached his duty to the Court*'.

179. It was accompanied by a witness statement in which Mr Kamal traces the outline of his case at it subsequently appeared in his particulars of claim. It stated that there was no viable defence open to the Defendants because the particular scheme mentioned in the Article had not been devised or opined on by him, and because the BSB investigation had found that '*whilst there may have been a breach it was not sufficient so as to occasion any disciplinary proceedings*'. It also said this:

> I have lost a contract with an employment agency under which I was expected to earn £1 million a year. I met with the employment agency, who flew to Dubai to meet me twice in January 2025 and the project was ready to be launched just prior to publication. After the publication, they ceased to be in touch with me. My general practice has also been decimated since the publication too.

180. The application was dealt with and dismissed on the papers by Steyn J, sitting in the vacation on 22nd August 2025. She stated her reasons as follows:

> (a) In circumstances where the Applicant filed the Application seeking an on notice hearing to restrain publication of the articles published on 26 February 2025 and 23 May 2025, there is no justification for the Application being made prior to the issue of proceedings. The procedure for seeking interim relief in respect of intended proceedings should only be used where the application is so exceptionally urgent that there is no time to issue the claim prior to making the application. This is manifestly not such a case.

> (b) I also note that on an application to restrain publication of an allegedly defamatory statement the Applicant would have to show that the threatened publication (or, here, publications that he seeks to have removed) is unarguably defamatory both at common law and within the meaning of s.1 of the Defamation Act 2013 (i.e. it would unarguably cause or be like[ly] to cause serious harm to his reputation); and, at the interim stage, if the defendants say that they will defend the publications as protected by any of the defences at common law or any of the statutory defences, the Court will not grant an injunction to prevent the publication of defamatory words unless the claimant can demonstrate that the claim is bound to succeed.
>
> (c) The Applicant's witness statement states that '*there is no viable defence open to the Defendants on the face of the current pleadings*' but there are no current pleadings and he has not put before the Court any correspondence with the Defendants' representatives. The Application does not address the test to which I have referred.
>
> (d) Moreover, in the absence of a pleaded claim, there is a lack of clarity as to precisely what words the Applicant complains of or what meaning he contends the words to bear.
>
> (e) In my judgment, given the defects in the procedure pursued and the defects in the Application which I have identified, the appropriate course is to dismiss the Application without a hearing. This does not preclude the Applicant from bringing a claim and (at the same time or subsequently) making a fresh application for an interim injunction. But he should note that for an interim injunction to be granted to restrain (continued) publication of allegedly defamatory statement, any such fresh application would have to meet the very high threshold I have identified.

181. Mr Neidle received a sealed copy of Steyn J's order from the court office on 26th August 2025. The Defendants' solicitors wrote to Mr Kamal on 29th August 2025 to say that this was the first they had heard of an injunction application, and that they had not received copies of the application or any of the documents filed with the court. The letter asked Mr Kamal to provide by return copies of all documents filed, and to set out what steps had been taken to serve them on the Defendants.

182. Mr Kamal replied the same day: '*That order has to do with the interim injunction. In relation to the main claim, I am still awaiting a sealed claim form. In the meantime, may I understand the provisions under which your request is made?*' The solicitors replied on 2nd September 2025, citing CPR 25.6 and setting out that, given the lapse of time between the publication of the Article in February 2025 and the application in August, there was no '*good reason*' not to put the Defendants on notice of the application in the first place, and that, having made the application, he was now required

to serve copies of all the documentation. The letter also noted that, since Steyn J's order recited that the application *had* been made on notice, Mr Kamal may have misled the Court. It repeated the request for the documents, and for an account of the steps taken to effect service.

183. Mr Kamal replied the same day. He enclosed the application papers. His email included the following:

> I note your point concerning CPR 25.6. To clarify: when the Application was filed, it was my understanding that it was being made 'on notice', in the sense that it was not being sought ex parte or in secret. This was done in reliance of Stephens Scown LLP, who were engaged to assist with the filing. The Court's recital that the Application was 'on notice' reflects that understanding.
>
> For completeness, I should add that I had previously exchanged correspondence directly with Mr Neidle in relation to the publications complained of. It was on that basis that I understood the Application to be 'on notice': that the Respondents were aware of the substance of the allegations and the relief sought.

184. Proceedings having got under way with the filing and service of Mr Kamal's particulars of claim, and the Defendants' acknowledgment of service, but before the Defendants had filed any defence, Mr Kamal made a formal 'Part 18' request for further information dated 26th October 2025 (the Defendants' present application for a terminating ruling was made on 20th October 2025). It asked the Defendants to state whether, after the publication of the Article in February 2025, either Defendant had contacted '*any third party (including but not limited to Mr Justin Webster)*' for information or comment about Mr Kamal, any scheme attributed to him, or the subjected matter of the Article. If so, it sought details of each person contacted and copies of all relevant correspondence and records. In particular, it asked whether either Defendant had asked Mr Webster to provide an opinion or comment on the scheme, whether Mr Webster had declined to do so, whether he had said that seven or eight other barristers had provided or were able to provide '*opinions to the same effect*' and if so to provide full details.

185. The Defendants' solicitors replied on 3rd November 2025 to the following effect:

> The Defendants are not required to provide the information sought and will not be doing so.
>
> The information you seek does not and may never relate to '*any matter which is in dispute in the proceedings*' (CPR 18.1(a)). The Defendants have not yet filed a defence and the information sought does not relate to any issue in the Defendants' strike out application.

> Further, the Defendants are not '*required to provide further information about the identity of the[ir] sources of information*' pursuant to section 10 of the Contempt of Court Act 1981 and CPR 53.6.
>
> Some of the information requested will also be covered by legal advice and/or litigation privilege.
>
> Accordingly, your request for information is wholly misconceived.
>
> Should you proceed to make an application for the further information requested, the Defendants will seek an order that you pay their costs of the application on the indemnity basis.
>
> The Defendants also intend to draw the request for further information to the court's attention, it being another indicator that you intend to cause the Defendants harassment, alarm, distress, expense, harm or inconvenience beyond that ordinarily encountered in the course of properly conducted litigation.

186. On 30th January 2026, the Defendants wrote to Mr Kamal seeking inspection of two documents mentioned in the witness statement he had filed in support of his injunction application: copies of (a) the BSB report and (b) the £1m a year '*contract with an employment agency*' he had mentioned. The BSB report was supplied; the contract was sent through on 6th February 2026.

(iii) Impact on the Defendants

187. The Defendants' evidence, and Mr Callus's submissions, draw this history together as a narrative of behaviour by Mr Kamal constituting an experience for the Defendants of being harassed and alarmed, caused expense, and subjected to a disconcerting and unwarranted degree of aggressive, eccentric and improper pressure on their journalism beyond that ordinarily encountered in the course of properly conducted litigation.

188. They highlight the attempts in a litigation context to gain access to their subscriber base, and to compromise the powerful protection for journalists' sources to which the law rightly attaches fundamental importance. They point to what they characterise as an abuse of the urgent injunction application procedure and the resultant criticisms of Steyn J – conduct all the more reprehensible, they say, in a barrister recently criticised by the Divisional Court in the ***Hamid*** referral procedure and exacerbated by (a) the assertion that the Defendants could have no defence to his claim, without disclosing to the Court that they had already asserted otherwise and (b) a faint (unevidenced and unparticularised) attempt to lay the blame for failure to put the Defendants on notice at the door of his solicitors. They point to failure to comply with the pre-action protocols and with the rules of pleading, together with attempts to put documents before the court otherwise than by way of duly sworn evidence. They point to what they describe as Mr Kamal's stubborn persistence (including before me) in challenging their descriptions of the outcome of the ***Hamid*** referral in the face of the plain wording of the Divisional

Court's judgment; and his stubborn adherence to the claim that he had nothing to do with Arka Wealth's scheme despite the facts of the plain language (and videos) on the website of his 'business partner' that he was closely involved in all their work and with every client.

189. At a more granular level, the Defendants object to the variety of different addresses, in different jurisdictions, Mr Kamal has used on his claim form, particulars of claim, application notices and witness statement. They object to his imposition of arbitrary and oppressive deadlines for responses after long periods of delay. They object to a range of features of his correspondence including misapplying the '*without prejudice*' designation to letters containing no settlement proposals, and the deployment of AI-generated 'hallucinatory' references to non-existent cases causing unnecessary effort in cross-checking (there being already a growing jurisprudence of court deprecation of this phenomenon, including in exercise of the *Hamid* jurisdiction – see *R (Ayinde) v Haringey LBC [2025] EWHC 1383 (Admin)*).

190. They also place particular weight on the variety of instances of 'compelled speech' he has demanded – apologies, declaration of his status as the country's leading tax barrister, publication of documents or statement provided by him – which engage the Defendants' Art.10 rights, to which he had no legal entitlement, and which constitute 'remedies' a court has no power to award. And they object emphatically to the financial value Mr Kamal put on his claim – first by way of what they call his '*bizarre*' demand for an undertaking to pay 80% of the value of 'lost work' based on the estimates of his clients, and especially the pleading in his particulars of claim of an £8m valuation of the claim based on a lost contract worth £1m a year and expected to last for eight years.

191. Mr Callus took me through the detail of the contract document, which Mr Kamal had disclosed shortly before the hearing. It was a form of agreement dated in November 2024 between Mr Kamal (at, and stated to be expected to operate 'through', the chambers he was to leave within a matter of weeks in order to practise as a sole practitioner) and a company called Umbrella Link Limited. It sets out that Mr Kamal had devised a confidential tax concept which he would disclose to the company on terms. Those included a one-off fee of £50,000, together with monthly fees based on the turnover of the company in each month. Mr Callus calculated that the company would have to be turning over in excess of £200m per year to be worth £1m to Mr Kamal on these terms, for which there was no remotely plausible basis apparent or offered. The Defendants had also established from public sources that (a) this company had been added to HMRC's published list of tax avoidance promoters even before the Article was published in February 2025, (b) an application had been made in November 2025 for the winding-up of the company, and (c) the company had in fact been wound up in December 2025. The contract was incapable of lasting for eight years.

192. The Defendants' evidence also sets out their researches into the steps they understand Mr Kamal to have taken to 'protect' his assets by placing them in offshore trusts, and the conclusions they draw about the difficulty they would have in seeking to enforce any award of costs in their favour against him.

193. It is this financial exposure – both as to a claim for damages of an order of magnitude greater than any award of libel damages ever awarded in the UK, and as to the risk of being unable to enforce costs – that Mr Neidle particularly emphasises in his witness statement. He describes his (and his family's) '*alarm*' at the financial exposure

involved in the trial of such a claim, however confident they might be of its eventual success on the question of liability and quantum.

194. Mr Neidle also describes the chilling effect of Mr Kamal's 'threats' on the Defendants' journalism. He sets out that they had been working on a project identifying the causes of what they considered a tripling of the small business tax gap during the last 20 years (the difference between theoretical liability and the amount actually paid to HMRC). They had come to the view that:

> one potential reason was the industrial-scale use of structures like Veqta, Vision HR and Apricot which Mr Kamal had been involved in. After speaking to remuneration tax specialists and retired HMRC officials, I was convinced that these structures had no proper legal basis, and that those involved were engaged in a conspiracy to cheat the revenue. They knew the opinions they obtained from Mr Kamal were wrong (i.e. they would lose in court), but mere possession of the opinions would (they thought) give them a practical defence against any criminal prosecution HMRC might bring.
>
> I and the TPAL team therefore started researching these schemes and their impact on overall corporation tax revenues. A reliable source had told me they estimated £3-5bn/year of tax was lost from the schemes (not just the schemes in which Mr Kamal is involved, but all similar schemes across the market) and I started a twin-track project where one team was analysing the numbers in detail, and another was looking at the legal analysis of the Veqta etc structures.
>
> If we reached the conclusion I expected – that these schemes were in fact leaving HMRC out of pocket to the tune of £3-5bn/year of tax – then I intended to call for a criminal investigation of the promoters running these schemes and the barristers advising them (including Mr Kamal). I believed this would facilitate an investigation. That investigation would be in the public interest in combating economic crime, in particular conspiracy to cheat the revenue.
>
> However, it was around this time that Mr Kamal sent me a number of legal threats, he told me he had written to Google, Bing, Cyprus Data Protection Office and the ICO to try to get the February Report delisted, and indicated that he was going to bring proceedings against me for defamation. I and TPAL considered whether we could continue this work against that backdrop but concluded this would be unwise given Mr Kamal's disproportionate response to the February Report. We therefore had to put our work on hold, and haven't published our findings.

(iv) Mr Kamal's intention

195. Mr Callus puts it to me that, in all the circumstances, '*if there were ever a case that was going to satisfy the statutory test for a SLAPP, this is it*'. He suggests that the respects in which, in most of its components and as a whole, Mr Kamal's course of conduct, and its impact, diverge from '*that ordinarily encountered in the course of properly conducted litigation*' would be deeply serious if they had been effected by an unqualified litigant in person; but gain further traction from having been undertaken by a barrister of 20 years' call with a practising certificate in this jurisdiction.

196. The only respect in which Mr Callus concedes that this is not a paradigm SLAPP is that this is not a case in which there is evidence of disparity of wealth or other resource. I agree with him as to that point. Not only is there no evidence at all about the parties' respective financial positions, but Mr Neidle does not suggest that he is anything other than at least Mr Kamal's equal in terms of articulacy, online presence and influence, legal expertise and available resources of advice and information. In any event, there is no suggestion that Mr Kamal had *chosen* to proceed in defamation against the Defendants when he might have been able to proceed against any other better-resourced publisher in respect of the content of the article. So I leave section 195(4)(b) to one side.

197. Section 195(4)(a) guides me to consider the potential relevance of any *disproportionality* discernible in Mr Kamal's behaviour, as a reaction to the matters he complains of in his claim. There is certainly no disproportionality visible between his costs incurred and the remedies he seeks (the scale of those remedies being itself a matter to which the Defendants specifically object, and which I consider further below). More generally, it is perhaps necessary to make the following observation about the ratio of costs to remedies apparent in this claim.

198. Mr Kamal having elected to provide no sworn evidence in response to this application, the Defendants are entitled to make objection to my entertainment of unsworn and untestable 'evidence' given in the course of his submissions. That would indeed be unfair. On the other hand, Mr Kamal is entitled to contest by way of *submissions* the *inferences* it would be fair to draw from his conduct. So I have considered carefully all of Mr Kamal's representations and seek to discriminate as fairly as possible between what I consider to be permissible submissions and impermissible evidence.

199. On that basis, it is relevant that Mr Kamal has not armed himself with an expensive legal team to advance his claim, but has been acting in person. From one perspective, that inevitably constitutes an overhead for any represented defendant in shouldering the burden of assisting the court to manage the litigation fairly, but from another perspective, it relieves a defendant of any intimidatory costs jeopardy. I consider below some of the issues raised by the fact that Mr Kamal is a legal professional, but at least in relation to the issue of *disproportionality* I bear in mind that he is for present purposes a litigant in person conducting litigation against expertly represented defendants.

200. Taking Mr Kamal's grievance at its statable highest, his professional reputation – his livelihood and his future prospects – had arguably been put in issue by the Defendants' publication expressing a low opinion of his practice, and calling for formal action in relation to it, in a potentially influential manner. He can be inferred to have had a rational basis for considering that there was a considerable amount at stake for him personally in this matter. That being so, there are limits to what can fairly be inferred as to disproportionality – and as to any intentions to be inferred from disproportionality

– where defamation litigants in person may perceive themselves to be fighting for their entitlement to respect and self-respect as well as their career. An evaluation of disproportionality cannot leave the human dimension out of account.

201. Of the specific particulars of disproportionality advanced by the Defendants, I am not persuaded to infer disproportion from Mr Kamal's pursuit of regulatory routes (via the industry or independent bodies) in addition to legal proceedings. That is a not uncommon feature of litigation based on the communication torts and does not, without more, raise any inherent presumption of impropriety. Indeed, 'self help' measures of this sort as a principal route for challenging publications are in principle to be encouraged if not expected. On the other hand, I can and do recognise in particular Mr Kamal's demands by way of 'compelled speech', and his attempts to compel revelation of the Defendants' subscriber-base and journalistic sources, to have been disproportionate to his claim. What may be inferred from them as to his intentions I consider further below.

202. The key consideration for the present case is, however, plainly the matters set out in section 195(4)(c) (read together with subsection (5)). Defamation litigation is characteristically, because of the reputational issues at its core and the contest of fundamental rights and values it engages, highly adversarial and strongly felt. Libel defendants (and claimants) can and do '*ordinarily encounter*' levels of stress, distress, personal exposure and '*inconveniences*' of many kinds beyond that experienced in the course of other litigation *even when* it is conducted in rigorous compliance with all the attendant rules, protocols and professional standards.

203. It is, however, inescapable that, considered objectively, Mr Kamal's conduct of the present proceedings has been a history of compliance failures. I can see from the contemporaneous correspondence that the standard pre-action protocols were not complied with, even after prompting from the Defendants' side. After several months of attempting to get an 'urgent' injunction application on foot at all, it was judicially dismissed for a catalogue of procedural and substantive failings. (In fairness to Mr Kamal, it appears that he may have been actively trying to issue his claim contemporaneously with the August 2025 injunction application, a fact of which Steyn J may have been unaware from the Court file. But there had been plenty of time for him to have issued a claim properly, *in advance* of finally making his application, as he ought to have done in the first place, there being no reason of urgency not to.) The most egregious failure of that exercise was the failure to put the Defendants on notice, a matter which may indeed have misled the Court, and for which no remedial steps appear to have been taken on Mr Kamal's own initiative.

204. The claim as eventually pleaded, as I have already explained, failed to comply with the relevant rules and Practice Direction and was irremediably defective in its own terms in a number of key respects. The deployment in inter-partes correspondence of generative AI hallucinations was unacceptable. The unsustainability (and impropriety) of the remedies asserted and of the valuation of the claim were oppressive and not in accordance with proper litigation standards.

205. I have no hesitation in recognising all this as adding up to a dispute history in which Mr Kamal's behaviour is not recognisable as '*properly conducted litigation*'. I have no hesitation in identifying the elements of disproportionality and compliance failure that make it so, as well as the additional matters that could merit being described as further

poor practice. I can easily accept the Defendants' evidence that this entire course of conduct in fact caused them at the very least unwarranted and extra-ordinary '*inconvenience*' as a result (it is a conspicuously low threshold). But that does not make it a SLAPP. The question on this application is what all of this fairly enables me to infer about Mr Kamal's *intention*.

206. The statutory test is not satisfied simply by an objective assessment that litigation has not been properly – or competently – conducted. Defamation litigation is a highly specialised, technical and complex undertaking, daunting and sometimes counterintuitive for non-experts – even for legal professionals outside the specialism. It was not Mr Kamal's area of expertise, as he accepted. His unfamiliarity with the torts on which he sued, and with their associated procedural requirements, was quite apparent to me from the pleadings, evidence and submissions before me. Inexpert libel claimants, whether or not legally qualified, cannot easily be inferred to *intend* to expose their opponents to their inexpertise and its inconvenient consequences for the purposes of the statutory test.

207. Mr Kamal was, however, if not a defamation expert, nevertheless a qualified and experienced practitioner, including it would appear in the conduct of High Court litigation. In this at least he must be understood not to be comparable to lay libel litigants in person who are unfamiliar with *any* sort of litigation and have no previous awareness of what is or might be expected of them or, often, of how to research and plan proceedings. He was, moreover, a practitioner who had been through the salutary and mind-focusing experience of a *Hamid* referral, an adverse Divisional Court ruling that he had breached his duties to the court, and subsequent professional proceedings resulting in a fine.

208. It is his conduct of this litigation to the extent that it does *not* engage libel specialism which, in these circumstances, begins to raise more acute questions about his intentions. He had been given by the *Hamid* process a pointed lesson about urgent injunction procedure, and *especially* about the importance of the duty to be fully candid with the Court in that procedure. Mr Kamal's injunction application was not candid about the Defendants' position, in particular about their assertion of the availability to them of a complete defence. He had made an ostensibly on-notice application without putting the Defendants on notice or taking any visible steps to do so before or afterwards until that was demanded of him by the Defendants. He blames his solicitors for that to some extent – although he does not waive privilege or provide any evidence about this. He says also (alternatively, it might be thought) that he was awaiting a sealed claim before serving the application papers, but that is not an explanation that speaks for itself; he could have sent the claim on afterwards. Notwithstanding the three preceding failed attempts to issue the application at all (which can hardly themselves support an inference of intentionality), this is at least not easy to account for as a simple mistake, as Mr Kamal suggests it could have been.

209. I have reflected also on the inter-partes correspondence in the aftermath of Steyn J's order being issued. This shows Mr Kamal asking on what basis the Defendants considered themselves entitled to ask for the application papers. It is conceivable he was in ignorance of his basic duty to serve application documentation '*save where an applicant reasonably believes that there is good reason for not giving notice*' (which he does not suggest applied); he suggests he believed the Defendants were sufficiently 'on notice' because of his complaints to them about the Article, and he complied

promptly when CPR 25.6 was pointed out to him. But that possible explanation does not sit at all easily with his accounts that he had intended to put them on notice *of the application* and either (a) thought his solicitors had already done so or (b) was waiting for a sealed claim form in order to do so on his own initiative. In any event, comprehensive ignorance of the very procedure which had led to the *Hamid* referral is not on its face an obviously more ready inference from the facts of the matter than that Mr Kamal was at some level consciously seeking to injunct the Article on his own terms, and without telling either the Court or the Defendants all that he was aware he needed to tell them. Mr Kamal's conspicuous resistance to accepting the plain finding of the Divisional Court or acknowledging its gravity, up to and including before me (he also told me the BSB had accepted he '*had not done anything wrong*', another unsustainable proposition on any plain reading of its decision), is also an uncomfortable fit with a simple explanation of misunderstanding and mistake.

210. Then there is the distinctly troubling matter of the £8m claim valuation and the contract on which it was purportedly based. Mr Kamal told me at one point in his oral submissions that he was going to deal with Mr Callus's analysis of this document, but he did not do so. The spectacularly inflated figure can to at least some extent conceivably be attributed to Mr Kamal's ignorance of the law of libel damages and the basis on which they are assessed. Before me he asserted a reserved position on his quantum of (special) damages; he said he had not yet fully pleaded his losses, and at this early stage in the litigation that is not uncommon. But the document in its own terms, and the publicly available information about the company, do not come close to supporting an £8m figure, even without any reference to libel principles. That cannot plausibly be attributed to mistake. It is plain on the face of it that Mr Kamal had inflated the value of his claim, in his sworn particulars of claim, beyond anything he knew he had a realistic prospect of sustaining.

211. Mr Kamal accepts he made some mistakes (although other missteps he resists acknowledging at all, or attributes to the failings of others). He also knows how unfamiliar he is with libel litigation. If he is asking me to resist a conclusion that he *intended* more inconvenience to the Defendants than is ordinarily encountered in properly conducted litigation, on the ground that mistakes, oversights and unfamiliarity with the area of practice make a better and more likely explanation for what actually happened, I am prepared to do that to some extent, and perhaps even to quite a large extent. I do not agree with Mr Callus that (leaving aside the issue of deliberate disparity of resource), we are in paradigm SLAPP territory in this case. The necessary intentionality does not obviously *characterise* this history; and mere faults, even serial faults, whether of poor practice, carelessness, negligence, ignorance, incompetence, hubris, self-deception or faults of tone powered by a vehement sense of grievance, do not by themselves necessarily render a litigation exercise a SLAPP.

212. However, I am not in the end persuaded that the better view of such evidence as I have about Mr Kamal's behaviour is that unintentionality of whatever species can be the *whole* story. And applying the statutory SLAPP test must be done at a granular level. A claim is a SLAPP *in its entirety*, on the application of the section 195(1)(d) test to the evidence, if a court can properly conclude that *any* of a claimant's behaviour was undertaken with the intention of subjecting a defendant to (at least) *inconvenience* beyond that ordinarily encountered in the course of properly conducted litigation.

213. I am not in the end prepared to accept that making an ostensibly on-notice application for an interim injunction, without putting the Defendants on notice, and without discharging an applicant's duty of full and candid disclosure to the court at the time, was, in all the relevant circumstances of this case, behaviour of unintentional unmindfulness by Mr Kamal. The attempt may have failed for the reasons set out by Steyn J, and those reasons are themselves compatible with unintentionality (Mr Kamal made no further attempt in light of her order). But Mr Kamal undoubtedly intended the attempt to succeed at the time.

214. Had it not been dismissed on the papers, then in practice the likely next step would have been the listing of an on-notice hearing to determine the application, but that could well have been at short notice (on the assumption the Defendants were already in the picture) and would in any event have come as a complete surprise to them, leaving them little time to prepare, or facing the alternative of a variation application. An *urgent* hearing was what the application notice asked for; Mr Kamal cannot have been in any doubt that that was unsustainable on the chronology, and that would have been intended inconvenience enough. But the draft order attached to the application (and professionally prepared) told a slightly different story: it recited a substantive decision on the papers without hearing the Defendants at all, and set a compliance date within a few days of the issue of the application. I am satisfied in all the circumstances, not least among which was that this was conduct in the relatively recent aftermath of the *Hamid* judgment, and that Mr Kamal has not given a consistent or evidenced account of it, that, more probably than not, this attempt to injunct the Article was behaviour by Mr Kamal which met the test in section 195(1)(d).

215. I am not prepared either to accept that the deployment of the £8m contract valuation in the context of this litigation was behaviour more likely than not attributable to simple inexpertise, particularly when considered together with the other unjustifiable and unsustainable 'compelled speech' remedies demanded. It may be that the Defendants viewed this behaviour with a degree of scepticism because of its very extravagance, and the expertise and advice available to them might well have encouraged that scepticism. But it is plain enough on the face of the documentary evidence that Mr Kamal intended his demands to be taken most seriously and to have a serious impact, and it appears that, to at least some extent, that was borne out in practice.

216. I accept Mr Neidle's (unchallenged) evidence that it had a chilling effect; that is not surprising, and I can straightforwardly infer that was more likely than not so intended. And however sceptical they might have been, the Defendants were not to know until they finally had sight of the contract shortly before the hearing of this application that Mr Kamal's even *arguable* contractual entitlements fell far short of his assertions (even before the challenges of causation and mitigation they would undoubtedly have faced at trial). In these circumstances, I am satisfied that, more probably than not, this overstatement of his contractual entitlements was behaviour by Mr Kamal which met the test in section 195(1)(d); it was intended to, and did, have a chilling effect on the Defendants' journalism beyond that ordinarily encountered in properly conducted libel litigation.

217. It is plain also that Mr Kamal intended to interfere with the Defendants' journalism beyond his arguable entitlements as a defamation claimant to the extent of purporting to require access to their subscriber base and, more seriously, using formal litigation procedures to try to compel access to information about their journalists' sources.

These attempts were of course robustly repelled. They were not persisted in. But they had to be dealt with. And Mr Kamal's intention that they should succeed is a readily available inference on the facts. In this respect also I am satisfied Mr Kamal's behaviour met the test in section 195(1)(d).

218. The test does not require that the behaviour of a claimant should in fact have succeeded in producing the effects intended. It is not a test of cause and effect, it is a test of intention. On the findings I have made in all the circumstances of the present case, the test is passed. The Defendants are in these circumstances entitled to a declaration that Mr Kamal's claim is a statutory SLAPP. It is not a matter about which I have a discretion at large; it is a matter of fulfilling all parts of the statutory test on the facts.

219. I have made findings of intentionality in the present case on the evidence before me. That evidence goes to the very specific circumstances of this case, including as they do that this litigation was conducted by a legal professional litigant in person who had more cause than is usual to be knowledgable about and mindful of the requirements of properly conducted litigation.

220. I might also perhaps observe that the intentionality which is at the heart of the statutory SLAPP scheme occupies a space between negligence or incompetence on the one hand and calculated (or 'strategic') dishonesty on the other: the former is insufficient, and the latter unnecessary and I make no findings about it. There may well be cases where what the conduct of a claimant evinces is best expressed as something like a reckless or wilful disregard for, or blindness to, the requirements and expectations of properly conducted litigation and the impact of their behaviour on a defendant. The specific behaviour of Mr Kamal which I have identified as satisfying the test of intentionality is certainly capable of being understood in at least those terms. It may be that that suffices for SLAPP intentionality without more, at least in an appropriate case (and perhaps a case involving a legal professional claimant is a candidate for being an appropriate case). However in the present case I have made a finding of intentionality on the specific facts at a rather higher and more conscious level than that, whether or not it is strictly necessary, so this is not the occasion for attempting a definitive resolution of that matter.

(v) The SLAPP strike-out power

221. Civil Procedure Rule 3.4(2)(d) gives a court a distinct power to strike out a statement of case if it appears to the court that the claim is a SLAPP. The Defendants ask me to exercise that discretion. Two points arise.

222. The first is that the power has a second limb preventing its use if a claimant discharges a burden of showing it to be more likely than not that the claim would succeed at trial. In the present case, Mr Kamal has made it exceptionally difficult for himself to attempt to discharge that burden because he has advanced no sworn evidence to support it. Not only has he filed no witness statement, but the statement of truth under which he has signed his particulars of claim does not conform to the requirements of CPR Practice Direction 22.2, and Mr Callus draws my attention to CPR Rule 22.2(1) and the consequence that its contents may not be relied on as evidence for present purposes. In any event, in view of the deficiencies in pleading I have identified and the partial strike-out consequences I have imposed, Mr Kamal's pleadings as they stand are incapable of evidencing a prospect of success being a more likely than not prospect. Nor did his

submissions engage at the necessary level of detail, or by reference to the necessary authorities, with the matters that would otherwise have been essential to discharging that burden, including on the issue of the causation of serious reputational harm and the defences additional to honest opinion which the Defendants could have been expected to advance at trial.

223. I need not, however, deal with Mr Kamal's submissions in any further detail here. The decisions I have already made that (a) parts of his claim (including his entire pleading of malice) should be struck out as, variously, disclosing no reasonable grounds for bringing it, constituting an abuse of process, or on grounds of non-compliance with rules of pleading and procedure, and (b) the Defendants are entitled to summary judgment on his whole claim as having no real prospect of success, are incompatible with finding him to have discharged the CPR 3.4(2)(d) burden. For the reasons I have given for those decisions, I am bound to conclude that the conditions for the exercise of the power to strike out a claim as being a SLAPP are met.

224. The second point arising is that Mr Callus puts it to me that this is a discretionary power to be exercised on ordinary broad merits-based principles, having regard to compliance with rules and orders, and to the overriding objective, but mindful that, although a claimant's case is defined in CPR 3.4(1) as including a *part* of a statement of case, a SLAPP claim is really an all-or-nothing affair: a claim is either a SLAPP in its entirety or not at all.

225. I am not persuaded it would be right to take an approach to the SLAPP strike-out power which necessarily presupposed an all-or-nothing answer. That a claim is a SLAPP is a precondition for the power's arising, not a guide to or a constraint on its exercise. That precondition is not, as I have noted, itself a matter of discretion. Its fulfilment certainly imports no presumption or expectation that strike-out is appropriate; an otherwise sound SLAPP claim may in principle proceed to trial, subject of course to the accompanying constraints on the possibility of a claimant's recovery of costs. But I do agree that the CPR 3.4(2)(d) power has to be approached from a perspective that gives it a coherent place in the overall scheme of powers to make terminating rulings.

226. The Defendants make the present application on the basis that if, contrary to the conclusions I have reached, (a) Mr Kamal's pleading had been considered potentially remediable, or otherwise to have survived the other tests for strike-out, and (b) his claim had otherwise been strong enough to survive the test for summary judgment but had fallen short of the test of 'more likely than not to succeed' – then I would have had to consider assessing the merits of his claim more broadly. Mr Callus suggests that would logically be an assessment along a spectrum running from 'only just survived' a terminating ruling on other grounds, to 'only just failed' the 'more likely than not to succeed' test – as well, of course, as having regard to the overriding objective of dealing with a case justly and at proportionate cost.

227. I see the logic, at any rate in a case in which an application for a terminating ruling under CPR 3.4(2)(d) is coupled with an application for a terminating ruling on other grounds (as is perhaps likely to be the norm). It is a logic which suggests dealing with the other applications first. In the present case, for the reasons I have already given, my decisions on both (partial) strike-out and summary judgment were not borderline. On the counterfactual that I had nevertheless been able to find some fair basis for permitting this claim to go to trial, I cannot envisage that that would have been

otherwise than on the narrowest of margins. I have been given no basis to make an assessment approaching anything near the 50% mark of the likelihood of this claim succeeding at trial.

228. In a case like the present, I would also have to take into account, beyond what is technically required to fulfil the definition of a SLAPP ('*any of the behaviour*'), the nature and seriousness of a claimant's course of conduct, and in particular of litigation compliance failures, *as a whole*. Mr Kamal's claim has been declared a SLAPP on account of my findings of intentionality in three respects in particular. But his conduct of this claim has been unsatisfactory in the many other respects I have identified, whether intentionally or not. I have been given no basis for an expectation that that is unlikely to continue, or that the cumulative effect, intentionally or not, is likely to be otherwise than oppressive for the Defendants. The claim itself would as a minimum require comprehensive repleading in order to progress, and I have been offered no clear prospectus for the successful accomplishment of that task. No other good reason to permit it to proceed to trial has been advanced beyond those I have already dealt with in this judgment. It is not consistent with the overriding objective to contemplate permitting this case to go to trial in these circumstances. I would have exercised the power to strike out Mr Kamal's claim on the alternative basis that it was a SLAPP, had it not been unnecessary to do so.

E. Decision

229. The Defendants' applications for partial strike-out and for summary judgment succeed. The Defendants are also entitled to a declaration that Mr Kamal's claim is a statutory SLAPP.

230. It is in the circumstances unnecessary for me to deal with the Defendants' alternative application for an order for security for costs.

Annex A

The 26 February 2025 article as originally published. The current version of the article, including comments, can be found at: https://taxpolicy.org.uk/2025/02/26/tiktok-tax-avoidance-from-arka-wealth-why-the-government-and-the-bar-should-act/.

TikTok tax avoidance from Arka Wealth: why the Government and the Bar should act

Dan, 26 February 2025, 8:00 am, 2 Comments, dotas, tax avoidance, trusts

A firm called ***Arka Wealth have widely promoted a tax scheme which they claim avoids all corporate tax, income tax, capital gains tax and inheritance tax – not just in the UK but across Europe. They work with a barrister called Setu Kamal, who they say is "one of Europe's leading tax barristers".***

Arka Wealth's claims on TikTok and elsewhere are nonsense. Mr Kamal's arguments have been repeatedly rejected by the courts. In our view, anyone using the scheme will fail to save tax and instead incur large up-front tax liabilities. Nobody should be going near this scheme, Arka Wealth, or their related company Benedictus Global.

We believe closing down schemes like this should be a policy imperative, to protect the public purse – but also to protect the public from buying hopeless tax schemes.

We make specific policy proposals at the end of this report:

- The law should change to make life much more difficult for the promoters profiting from the schemes. That means imposing personal civil liability and – in some cases – criminal liability.
- The schemes are enabled by a small number of barristers. Chartered accountants, chartered tax advisers and solicitors are prohibited from facilitating abusive tax avoidance schemes. Barristers are not. The Bar Standards Board should bring the Bar in line with the ethical standards of the rest of the legal profession.

Arka Wealth's promises

Here's one of the almost 200 videos promoting the scheme (originally found on TikTok:[1]

[Video from Arka Wealth's TikTok]

The scheme is explained in more detail on their website[2] and in this webinar (with a transcript[3] here).

The idea is:

1. Your company transfers all its intellectual property to a Cyprus trust.
2. When your company trades, it's using the trust's intellectual property, so it pays over the company's profits over to the trust.
3. Your company is therefore "broke on paper" and has no taxable profits. You are, they claim, now "working for your trust".
4. Or you can put other assets – your house, cryptocurrency, etc – into the trust, leaving you personally "broke on paper".
5. When you want to purchase a sizeable asset (house, car, etc) the trust buys it for you and lets you use it.
6. For everyday living expenses you take a loan or investment from the trust.
7. The trust is then exempt from all tax, and you and your company don't own anything, so aren't taxed.

They promise 0% corporation tax, income tax, capital gains tax and inheritance tax.[4] And they say their legal protection acts as an insurance policy, so you are fully legally protected.

The webinar makes a succession of other outlandish claims – including that Angela Merkel has an offshore trust[5]

The structure is widely promoted across social media: LinkedIn, Facebook, YouTube and Instagram, as well as TikTok (where they have made an impact, and have over 220,000 followers).

The UK tax reality

We discussed the structure with our usual panel of experts, and several other leading tax lawyers. The immediate response of James Quarmby, one of the UK's leading private client tax and trusts lawyers, was: "it's nuts". A tax KC with expertise in trusts taxation told us that the claims made were "legally illiterate". Another senior tax/trusts barrister told us simply: "it stinks".

In short:

- There are rules requiring people selling tax tax avoidance schemes to disclose them to HMRC. We understand this scheme wasn't disclosed. Arka Wealth will likely have incurred penalties of up to £1m.[6] And a very bad consequence for their clients: the usual HMRC time limits are extended, so HMRC has 20 years in which to pursue the tax.

- Arka Wealth says that a UK trust is subject to inheritance tax, but a Cypriot trust is not.[7] That's incorrect: there is an immediate 20% "chargeable lifetime transfer" if a UK resident puts property into an offshore trust[8], and then an ongoing 6% charge every ten years or on exit. So the transfer of the intellectual property into the trust will create an immediate inheritance tax charge.
- Arka Wealth say the trust is not subject to capital gains tax.[9] That's incorrect: if you put property into an offshore trust then you are personally taxed on the trust's capital gains.
- Arka Wealth also believe that, unlike UK trusts, Cypriot trusts don't pay income tax.[10] That's again incorrect. The trust will be taxed at 45% on its UK source income. The client will also be directly taxed on the trust's income under the "settlements" rules or the "transfer of assets abroad" rules.[11]
- The claim is that the client will "own nothing, control everything"[12]. It therefore may not even be a trust from a UK tax perspective.[13] This is likely the best outcome for a user of the scheme because, whilst they'd fail to obtain any tax benefit, they'd also probably escape up-front tax liabilities caused by the structure.
- The company's payments to the trust for the use of the IP will be subject to 20% royalty withholding tax.[14]
- The company will likely not be able to deduct the royalty payment to the trust.[15]
- There are potential additional problems, and complex interactions, with the benefits in kind and disguised remuneration rules, plus the potential for a market value stamp duty land tax charge and ATED on any real estate moved into the trust.
- The claim that a barrister's insurance provides clients with full protection is often made by tax avoidance scheme promoters. The problem is that the barrister may be insured, but that's for his protection, not his clients. If his advice is negligent, you will have to sue him and/or Arka Wealth – and win. The insurers will then typically take over the defence; only if you win do they pay out. And the cover could be as low as £500,000.

This is a tax **disaster**.[16] Like other schemes we've investigated, it won't just fail to obtain any tax benefit for the clients. It will likely trigger large up-front tax liabilities, and then leave them trapped in an expensive structure.

The courts have struck down almost every[17] tax avoidance scheme they've seen in the last 25 years. A sign of the consistent failure of such schemes is that a "general anti-abuse rule" was created in 2013 to counter avoidance schemes. The courts haven't needed to use it even once; all the schemes considered since it was enacted have

failed under normal taxation principles. No reputable adviser would let their client go near a scheme like this.

The European reality

Arka Wealth claim the structure works in 30 European countries as well as the UK.[18]

This is an implausible claim on its face: even the most innocuous commercial structure will usually have different tax consequences in different countries. A tax avoidance scheme is an extreme case.

We spoke to French, German and Italian tax lawyers, none of whom thought the scheme would work, and all of whom thought it would likely result in a criminal investigation.[19] The structure will also likely be disclosable many to tax authorities across the EU under the rules often called "DAC 6".[20]

Who is behind Arka Wealth?

Arka Wealth is an Estonian company.[21] – its CEO of Arka Wealth is James Verite-Shephard; the Chief Operating Officer and "Wealth Specialist" is Jeremy Vaughan. Mr Verite-Shephard also owns the company. Neither appears to have any legal, tax or accounting qualifications, or indeed any experience with trusts or the private wealth sector.

The same two individuals are also CEO and COO and owners of another unregulated wealth manager called Benedictus Global.

Given that Benedictus Global and Arka Wealth appear to be run by people with no qualifications or experience, and who make transparently false claims, we would suggest that anyone looking for tax advice goes elsewhere.

We put our criticisms to Arka Wealth and asked them for comment. They didn't respond to any of our specific points, but said they would now be conducting a review of their materials and how they presented their marketing. We responded that the priority should be to comply with UK and EU tax avoidance scheme disclosure laws. We didn't hear back. The email thread is here.

Messrs Verite-Shephard, Vaughan and two junior employees of Arka Wealth are members of a UK limited liability partnership called Fair Share Legal LLP. The other member is a barrister called Setu Kamal, who also controls that LLP.

Mr Kamal is listed as the legal adviser for Arka Wealth and Benedictus Global as their "legal adviser".[22]

Setu Kamal

Arka Wealth refer extensively to their reliance on the advice of Setu Kamal.
He's promoted on Arka Wealth's website as having a 100% win record, with the claim

that "neither HMRC or ECJ have disagreed with his analysis, or been successful in challenging it.":[23]

[Screenshot of a profile of Setu Kamal from the Arka Wealth website]

Mr Kamal's actual win rate is closer to 20%.[24][25] As far as we are aware, Mr Kamal has never appeared before the CJEU.[26].

A barrister's win rate is a crude measure of their ability, because some excellent barristers take on very difficult cases. However in Mr Kamal's case, we believe that most of the cases relate to tax avoidance schemes that he helped devise. His win rate is an accurate reflection of the success of these structures (indeed it flatters it, because his wins were on valuation and procedural points).

Whilst the Arka Wealth scheme is targeted at wealthy individuals, many of the other schemes Mr Kamal has advised on are "contractor schemes", targeted at people on modest or low earnings. They think they are signing up for normal agency work, but (thanks to complex documents they are asked to sign without advice) end up participating in complex and contrived tax avoidance schemes. Scheme users typically have no idea of the nature of the scheme they are signing up to, and often end up with large tax liabilities as a result. The risks are very high, but rarely if ever disclosed. There's a good Computer Weekly article on these schemes here.

Three of the contractor schemes that we believe were created with Mr Kamal's help have been listed by HMRC as tax avoidance schemes and, we expect, will in due course either lose in front of a tribunal, or vanish before HMRC can pursue them. The Advertising Standards Agency ruled that the same three schemes misled people.

In defending these and other schemes in court, Mr Kamal has a history of pursuing arguments that we regard as hopeless. This culminated in him being referred by the High Court to the Bar Standards Board for a disciplinary hearing.

A short summary:

- In June 2023, Mr Kamal acted for two tax avoidance schemes called Vision HR and Veqta. HMRC planned to list the schemes on its website; the promoters sought judicial review to stop that. Mr Kamal ran the surprising argument that EU law overrode domestic UK law even after Brexit. The court described this as "unarguable" – we believe almost all EU law and constitutional law advisers would agree. Three other of his arguments were held to be "unarguable". Mr Kamal also failed to answer the Judge's questions as to how the scheme worked (although, having devised the scheme, we expect that he knew the answers). The promoters were found to have breached the "duty of candour". Judicial review was refused.

- A month later, Mr Kamal acted for another tax avoidance scheme, Apricot, on very similar facts; and Mr Kamal made almost identical legal arguments. His application referred to another similar legal challenge "underway in the case of *Veqta*". However he failed to disclose that the *Veqta* challenge had failed, and his arguments had been rejected. The Judge said this prima facie constituted a breach of a barrister's duty to the court, and made a "*Hamid*" referral to the High Court to consider whether Bar disciplinary proceedings should be brought against Mr Kamal.

- Despite the *Hamid* referral, in March 2023 Mr Kamal acted in another judicial review, *Oculus*, against HMRC's decision to force disclosure a promoter who hadn't disclosed their avoidance scheme under DOTAS. He again ran EU law, GDPR and ECHR arguments which the court described as "unarguable".

- The *Hamid* referral was heard by the High Court in March 2024. The judgment indicates that Mr Kamal made no apology for his omissions, nor any acknowledgment that he failed to comply with his obligations to the court (although he said he had been "flustered"). He failed to attend the hearing, initially claiming he had made an application to attend remotely, but then admitting he hadn't done so. The Court found that Mr Kamal had breached his duty to the court, and referred the matter to the Bar Standards Board. We don't believe the BSB has heard the matter yet.

- In August 2024, Mr Kamal acted on a failed attempt to challenge the loan charge as contrary to EU law (which is a non-sequitur post-Brexit) and contrary to the ECHR (which the Court of Appeal had already ruled against). Mr Kamal made an application in which he claimed that two judges were biased and there was an appearance of "institutional corruption". The court rejected the application, saying it was "frankly scurrilous" and "lacking in any merit". [27][28]

- It seems Mr Kamal's backing for the Arka Wealth scheme may rest upon the argument that failed in the three judicial reviews: that, even after Brexit, EU law can override UK tax law. [29]

Mr Kamal appears to honestly believe the eccentric legal positions which he takes. Arka Wealth's staff probably don't understand them. We expect, however, that may other promoters know these arguments will fail; their aim is to slow down HMRC, and let the promoters extract more money from their clients/victims before their schemes are (inevitably) closed down. In the case of Oculus, that meant that workers continued for a further year before being notified that they were participating in a tax avoidance scheme (we expect they were low-paid and had no idea what was going on) .

Despite the claim in the webinar (at 00:31:29) that Arka Wealth "use the foremost tax chambers within the UK", Mr Kamal is no longer a member of a Chambers.

We wrote to Mr Kamal giving him an opportunity to comment on the Arka Wealth structure. He declined to respond unless we gave him "access to our subscriber base" – when we said this didn't make sense, he stopped responding. The email thread is here (read from the bottom up):

[Copy of email thread]

We had previously written to Mr Kamal last year, following his referral to the Bar Standards Board. For reasons which aren't clear, he copied his response into two twitter posts. In short he accused us of a "medieval witchhunt", and provided more detail of his legal positions (which we regard as highly eccentric).

The policy implications

We believe there are three.

1. DOTAS needs to be strengthened, with civil and criminal penalties for the people promoting undisclosed schemes

Every tax avoidance scheme we've investigated has two things in common. It should have been reported to HMRC under DOTAS, the rules requiring up-front disclosure of tax avoidance schemes. But it wasn't.

Arka Wealth's scheme follows the same pattern.

The reason is simple: having to market a scheme that's been disclosed to HMRC as a tax avoidance scheme is **hard**.[30]

So DOTAS is widely ignored. Often, promoters obtain an opinion from a tax barrister which takes implausible, but highly convenient, positions. An example of such an opinion, and a tribunal's dismissive attitude to it, can be found in the recent Asset House case. Nevertheless, it's often the case that the fact an opinion was obtained means that penalties can't be charged (and Setu Kamal has advocated for precisely this result).

We suggest two responses.

- DOTAS penalties should be increased[31] and a promoter's directors/owners should **always** be joint and severally liable for the penalties. Right now it's too easy for them to walk away from their company.[32]
- Breach of DOTAS should be a criminal offence for the individuals responsible[33] with strong protections to prevent innocent mistakes being penalised.[34]

2. It should be an offence for an unregulated person to advise on or promote a tax avoidance scheme

The last Government consulted on regulating the tax profession, but only for advisers who act as agents for taxpayers in their dealings with HMRC. Most tax avoidance scheme promoters do not do this – they provide advice behind the scenes.

We are therefore pleased to see that the present Government's response to the consultation states that there will be proposals issued soon dealing specifically with cases where an adviser facilitates a taxpayer's non-compliance.

We would suggest this brings within the scope of regulation anyone who provides tax advice for an arrangement which has a main benefit of obtaining a tax advantage.

3. The Bar Standards Board should bring barristers up to the same standards as solicitors and accountants

A solicitor, chartered accountant or chartered tax adviser is bound by the rules of the Professional Conduct in Relation to Taxation (PCIRT). These rules include:

[Screenshot of rule on 'Advising on tax planning arrangements']

This protects the public, because any tax structures falling within this paragraph are very unlikely to work.

However there is no such restriction on barristers – they are free to create and promote aggressive and abusive tax avoidance schemes which have no realistic prospect of their success. What's worse is that such barristers usually act for scheme promoters, not the end-users of the scheme. So when – inevitably – the scheme goes wrong, the end-users were not the client, and will not be able to sue the barrister for negligence.

This is nothing to do with the "cab rank" rule, which obliges a barrister to take on any appropriate case with a paying client. It would be unfair and unreasonable to criticise a barrister for (for example) defending a person accused of tax avoidance or tax evasion. However that is very different from the case where a barrister devises and/or promotes an aggressive tax avoidance scheme. That was the barrister's choice and, in our view, an indefensible one.

Thanks to the PCIRT, few of the schemes we have investigated involve a solicitor or accountant; but many of them have involved barristers. A small number of barristers are actively damaging the integrity of the tax system – and everyone in the tax world knows who those barristers are.

It is over ten years since Jolyon Maugham wrote an article about the problems caused by barristers issuing impossible opinions without consequence. Nothing has changed.

We will be asking the Bar Standards Board to reconsider its position, and make the PCIRT binding on barristers.

Thanks to James Quarmby, C, K, T and L for their UK tax technical input, to P, J and D for the French, German and Italian tax commentary, and to T and G for the international arbitration advice. Thanks, most of all, to A for the original tip.

1. We have also archived a copy of Arka Wealth's TikTok channel, which as at 25 February contained 186 videos. If the channel goes down, please get in touch if you would like access to them.
2. There's an archived version here
3. AI generated, so not necessarily accurate
4. See 00:13:35 in the webinar.
5. See 00:28:43. The whole video is well worth watching. Amongst the other claims: that European Union company law is based on trust law (00:40:10), that you can avoid rental withholding tax using a UK holding company (01:13:50), that they work with barristers in the "EU" (00:17:18). For fairness, we should add that a minority of our panel agreed with the claim (at 00:29:33) that "a barrister is always considered an expert in law where a lawyer or a solicitor is not". And their many other videos make other wild claims, including that billionaires use this structure (we would be surprised if any do; billionaires are generally (but not always) very well advised).
6. Because the main benefits of the structure include obtaining a tax advantage, Arka Wealth is making it available for implementation, and the scheme will (we expect) use standardised documentation. We also expect there will be a premium fee. The references in the webinar to not wanting to disclose their "secret sauce" suggests the confidentiality hallmark applies as well.
7. See 11:54 in the webinar.
8. To the extent the property exceeds the nil rate band
9. See 20:55 in the webinar.
10. See 11:54 in the webinar.
11. With a credit for income tax paid by the trust.
12. See 01:10:29 in the webinar
13. Either on general principles (it's just not a trust) or under the sham doctrine (see e.g. paragraphs 72 and 73 of the *Northwood case*)
14. Arka Wealth seem to think the UK/Cyprus treaty will help. They're wrong: a non-taxable trust can't be resident in Cyprus for treaty purposes (and the trust in practice is probably resident in the UK anyway). The trustee may be a company resident in Cyprus, but a trustee isn't the beneficial owner of the trust property. Even if the trust were taxable in Cyprus, treaty relief likely still wouldn't be

available. We expect the promoters are either completely ignorant of royalty withholding, or are relying on the (very eccentric) idea that, even post-Brexit, EU law can override domestic UK law – and the almost equally eccentric idea that EU law would prohibit a withholding in these circumtances.

15. Either on the basis that it is not "wholly and exclusively" for the purposes of the company's trade, or on the basis that it was undertaken solely for fiscal purposes and so has been "denatured". Note that the likely clients are small companies, and so transfer pricing and the diverted profits tax probably won't apply.
16. We of course do not know the details of how the structure works. The webinar refers to Arka Wealth's "secret sauce", which we expect means likely additional steps designed to disguise the nature of the arrangement (see 01:05:17). We discussed these kinds of structures in our previous article on the Minerva structure. However, all of the trust tax specialists we spoke to regarded the claims made as essentially impossible to achieve. It's been a long time since artificially inserted steps were able to save a tax avoidance scheme.
17. The exceptions: the SHIPS 2 case, essentially because the legislation in question was such a mess that the Court of Appeal didn't feel able to apply a purposive construction, and *D'Arcy*, where two anti-avoidance rules accidentally created a loophole. The GAAR was in large part created to prevent cases like SHIPS 2.
18. The full list is: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the UK.
19. The Italian tax authorities tend to treat all tax avoidance, and even many technical tax disputes, as criminal tax evasion – so this response will not surprise many tax practitioners. The French and German responses are less usual.
20. i.e. under the A2 tax-geared fee, A3 standardised documentation or C1 deductible/non-taxable payment hallmarks.
21. As an aside, the Estonian company registry is in our view the best in the world in its openness, and user interface.
22. Mr Kamal says he is advising the "BW Network" and notorious tax avoidance scheme promoter Paul Baxendale-Walker. The similarity between the Arka Wealth structure and the Baxendale-Walker/Minerva structures may not be a coincidence.
23. In case that link goes down, there is an archived link here.
24. We conducted a quick review of decided tax cases where Mr Kamal acted for the taxpayer. We found 14 tax judgments – of which he won one (Bower, a valuation case), won in part in another (Elphysic, losing on the main point), and lost the remaining 12 (Apricot, Cajdler, Conegate, England, Kondrat-Wilk, Labeikis, Oculus, Opus Bestpay, Phizackerley, Rapid

Brickwork, Veqta/Vision HR, Whight). Mr Kamal also won a tax-related insolvency case.

25. *The Telegraph* suggested Mr Kamal was involved in SDLT avoidance schemes. These schemes have a dismal record of failure in the courts, but we are unaware of any specific reported cases where Mr Kamal acted.
26. The name changed from "European Court of Justice" to "Court of Justice of the European Union" in 2009, following the Lisbon Treaty.
27. Mr Kamal now says he's seeking ways of challenging the loan charge via an international arbitration. None of the international arbitration lawyers we spoke to believed such a challenge would be possible.
28. Mr Kamal acted for similar claimants in a parallel judicial review, which appears to be unreported, but is mentioned in passing in the *Labeikis* case. One of the claimants is the Trustees of the Setu Kamal Action Man Trust 2022, so it appears Mr Kamal has himself used a loan/trust tax avoidance structure of some kind.
29. The idea that EU law would have assisted prior to Brexit seems a highly optimistic interpretation of the *Trustees of* the *P Panayi Accumulation & Maintenance Settlements* case, which applied the pre-existing prohibition of exit charges to a trust. A tax avoidance structure is highly unlikely to achieve the same result (quite aside from the insuperable problem of running such arguments post-Brexit).
30. Promoters have lied about this in the past; some claiming that DOTAS is a sign of HMRC approval; others that it was a normal process for investigating novel structures.
31. Currently they are £600 per day or (if that is insufficient), £1m. This is an insufficient deterrent when a promoter can make millions of pounds of fees in a few months. The penalty should instead be geared to the fees received by the promoter (say 200% of fees) or, where a promoter does not adequately disclosure the fees received, such amount as is just and reasonable under the circumstances.
32. i.e. expanding HMRC's existing powers by removing conditions B and D – HMRC should simply be able to pursue directors/participators as soon as a DOTAS penalty is issued.
33. This should be a different test from the usual "directors, shadow directors and participators" formulation, so that directors with no knowledge of the activity are not liable, but an employee who was directing the activity is responsible.
34. We would adopt the approach in the GAAR: the offence should only apply if the failure to comply with DOTAS cannot reasonably be regarded as a reasonable course of action. Merely obtaining legal advice should not be sufficient for a person to taken to be acting reasonably; we've seen in Asset House and other cases that some barristers take unreasonable positions. Everyone in the tax world knows who these barristers are. A consequence of criminalising DOTAS is

that a rational person looking to protect their position will instruct a barrister whose opinions haven't repeatedly been contradicted by courts and tribunals.

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