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Case No: KB-2020-002381

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/11/2022

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

Between :

DR ARUJUNA SIVANANTHAN

Claimant

- and -

MR THURAIRAJAH VASIKARAN

Defendant

Mr Jonathan Price (instructed by **Preiskel & Co LLP**) for the **Claimant**
Mr Nicholas O'Brien (instructed by **Nag Law**) for the **Defendant**

Hearing dates: 24th-27th October 2022

Approved Judgment

This judgment was handed down remotely at 12pm on 18 November 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MRS JUSTICE COLLINS RICE

Mrs Justice Collins Rice :

Introduction

1. Dr Sivananthan and Mr Vasikaran have much in common. Both belong to the UK Tamil community. Each tells movingly of his family history, fleeing persecution and terror in Sri Lanka. Each has an obvious passion for the cause of Tamil people, here in the UK and elsewhere. Both have expressed this in community and political activism, working untiringly and generously, advocating the cause over many years. Both have done so as active and committed members of British Tamil Conservatives (BTC), a political organisation affiliated to the Conservative Party, to which they have dedicated much time, talent and energy.
2. But this case is about their differences. In spite of, or perhaps because of, the intensity of the commitment they share to the Tamils' cause, there is a years-long history of animosity, disputation and grievance between them. And now they are parties to a High Court libel action.

Background

(a) Tamil political activism in the UK

3. The Tamil heritage is that of a civilisation with ancient roots and a distinctive classical culture and language. Tamils today form minority ethnic populations in Sri Lanka, southern India and elsewhere in south Asia. The history of the Sri Lankan Tamils in the second half of the twentieth century is one of great tragedy. Anti-Tamil pogroms led to armed resistance groups and a 25-year civil war on the island. Violent atrocities were committed, including against civilians. A hundred thousand lives were lost, and many hundreds of thousands of Tamils fled the island, many to India, Australia and the UK.
4. The UK Tamil diaspora cause has several strands. As well as promoting the welfare and cultural interests of Tamil people, it finds expression in some shared political aspirations. These include the dream of an autonomous self-governing homeland for Tamils in Sri Lanka (Eelam - 'the two-state solution'); bringing to international justice the perpetrators of past human rights violations and war crimes; and the imposition of trade sanctions on the present government in Sri Lanka to persuade it to take positive action on Tamil issues.
5. UK Tamil activism operates across the spectrum from grassroots efforts, through local and national campaigning, to Westminster lobbying. A notable milestone was the founding of the All-Party Parliamentary Group for Tamils (APPGT) in 2007. APPGs are informal cross-party groups, run by and for Parliamentarians (MPs and Peers) to pursue a particular topic or interest; there are hundreds of them, and their themes are many and varied. The APPGT's declared purpose is *to promote in Parliament peace with justice and dignity for Tamils in the Island of Sri Lanka and advance their development so as to recognise their legitimate socio-political ambitions*. I was told the APPGT was the only such group devoted to a particular sub- or cross-national ethnicity; whether or not that is so, the APPGT was seen as a major breakthrough for

the UK Tamil cause, giving it a political profile at the highest level, and of course giving Tamil activists access to senior politicians and their influence. As well as BTC, the other major UK political parties have affiliated Tamil interest groups. These work closely with each other, and with APPGT members, particularly of course those of their own political party.

6. In addition to national campaigning, the UK Tamil cause focuses on the work of the United Nations Human Rights Council (UNHRC) in Geneva. It seeks to achieve international justice for Tamils there, and the holding to account of the perpetrators of human rights violations against them. UK Tamil activists encourage APPGT members and other senior UK politicians to attend UNHRC sessions and visits, to promote the cause.
7. UK Tamil activism is not exclusively party-political, of course. The British Tamils' Forum (BTF) is the leading established non-partisan organisation '*which represents and gives voice to a large Tamil community in the United Kingdom in political and socio-economic spheres*'. Mr Vasikaran was an active BTF member. For a number of years, BTF had provided a secretariat for the APPGT and taken a lead in organising Parliamentarians' visits to Geneva.
8. Perhaps it is a universal experience that all voluntary groups committed to a cause find their ambitions limited by their resources. Fundraising, recruitment, time-commitment and leadership were key preoccupations for the UK Tamil activists as they sought to advance their cause.

(b) *The parties' history*

9. The parties came into each other's orbit after Dr Sivananthan joined BTC in late 2009. He is a businessman with a finance background, a successful man of means, highly educated and articulate (his doctorate is in economics). He made a powerful impact at the time and since. One community leader spoke of him as a 'saviour' of the UK Tamil cause. Having heard several hours of his oral evidence, I recognised him as someone of great drive and conviction, an experienced and effective advocate at the highest levels. It is not surprising to hear that he rose quickly to be Chair of BTC, and was recognised by all, including Mr Vasikaran, as a high-impact operator who achieved much. It is also not surprising to see evidence that some found him daunting and his leadership style more directive than inclusive.
10. Tensions arose between the parties in early 2016 over the running of BTC. On Mr Vasikaran's account, Dr Sivananthan had had concerns about the suitability for executive roles of people with backgrounds involving either financial problems or campaigning for other political parties, and had attempted to expel BTC members on these sorts of ground. Mr Vasikaran thought it more important to welcome new contributors even if they had 'made mistakes' in the past. The disagreement escalated to a 'constitutional' issue about the power to make such decisions.
11. Dr Sivananthan had in any event had concerns that the BTC constitution had become unfit for purpose. BTC is an unincorporated association, its constitution a contractual instrument subject to the oversight of the Conservative Party. It was heavily 'entrenched'- there were express restrictions on the ability of BTC to change it. Dr Sivananthan commissioned a three-person working group, led by close colleague and

BTC Secretary Mr Gajan Rajasekaran, to prepare a new draft constitution, which was circulated to members and submitted to Conservative Campaign Headquarters (CCHQ) in late 2016 for approval. An amended version was adopted unanimously by those present (not the full membership, however) at the BTC AGM in December 2016. A very late amendment included the removal of some restrictions on the possible length of tenure of BTC office holders. Dr Sivananthan was thereby able to remain as Chair longer than he would otherwise have done. He said it was a minor adjustment to the constitution of no particular significance. Mr Vasikaran saw it as an illegitimate – and untransparent – power grab. He also considered the entire constitutional change process illegitimate in overriding the entrenchment provisions without membership unanimity.

12. On Mr Vasikaran's account, however, it was in 2018 that his view of Dr Sivananthan took a distinct turn for the worse. He had proposed two individuals for executive roles, and Dr Sivananthan blocked them from standing. He had been continuing to protest about constitutional issues up to and including at the BTC AGM at the end of 2018. He still felt Dr Sivananthan was acting unconstitutionally, particularly over exclusionary policies and lack of transparency (including not holding sufficient meetings). He was vocal at that AGM.
13. Another development around the same time made him angrier still. The flashpoint was the role of BTF in providing the APPGT secretariat. It seems Dr Sivananthan had been taking an increasingly dim view of BTF's effectiveness in that role. Then BTF had been involved in litigation over the course of 2017: a discrimination case brought against it which it lost. The judgment at the end of 2018 included criticism of the culture, and factionalism, within BTF, and in some respects criticised Mr Vasikaran and his evidence. BTF was landed with substantial financial liabilities in damages and costs.
14. Several things happened quickly at about the same time. The APPGT removed BTF from its secretariat function in January 2019. BTC was in touch with other party-political Tamil groups to propose a new corporate secretariat structure run by a board of directors, one from each party. Dr Sivananthan registered a new company called APPGT Secretariat Ltd, with himself and BTC Secretary Mr Rajasekaran as directors. The draft APPGT secretariat structure was then amended to permit two directors from each party. BTC may not have kept BTF in the loop with all of this.
15. On Dr Sivananthan's account, it was just a sensible response, driven by APPGT itself, to problems with the effectiveness, financial viability and indeed probity of BTF. It came as a bombshell to Mr Vasikaran when he discovered what had happened. He viewed it as another self-serving power grab by Dr Sivananthan – going behind BTF's back, denigrating it unfairly to senior politicians, and seeking to gain for himself personally not only prime access to the APPGT and the Westminster scene, but also an enhanced profile for his private business ventures. It appears that from February 2019, BTF engaged with the APPGT, and in due course Dr Sivananthan's proposals for a new secretariat structure were not accepted, his company played no role in it, and BTF was ultimately restored to something like its previous role. But Mr Vasikaran was now incensed on behalf of BTF and began to consider Dr Sivananthan someone who put his private interests above those of the Tamil community; in context, serious criticism indeed.

16. A further point of grievance arose in March 2019. Dr Sivananthan was in contact with a journalist on the Colombo Telegraph, known to be critical of BTF, which resulted in a hostile article about it being ‘booted’ off the APPGT secretariat.
17. The parties’ animosity was at a sufficient pitch, and sufficiently well-known among their colleagues, that on 29th April 2019, after a Westminster event, a senior BTC member brought them together, with other colleagues, in a local pub to try to get them to talk matters through and put their differences behind them for the common good. But they were not reconciled; each felt the other was acting unreasonably and with insufficient regard to the interests of the organisation and the community as a whole.

(c) *The events of July 2019 and subsequent history*

18. On 3rd July 2019, an event took place in the House of Commons as part of Mr Boris Johnson’s ‘Back Boris’ campaign to become leader of the Conservative Party and Prime Minister. It was a reception for Conservative-affiliated groups to meet him. BTC was invited. From the accounts I heard it was to those present a thrilling occasion. Dr Sivananthan was delighted to be there – and to have been able to get himself into someone else’s selfie with Mr Johnson. The picture shows him beaming next to the future PM.
19. Dr Sivananthan posted that picture the same day, above the caption ‘*The #BackBoris campaign team at the Westminster launch today raising Tamil issues today*’, to a WhatsApp group. This was a group of around 24 people (mostly but not exclusively BTC members), hosted by another BTC member, which had been set up for the May 2018 local elections campaign, and which had continued as an occasional discussion space since then. Both Dr Sivananthan and Mr Vasikaran were members, and from reading such of the posts from the first half of 2019 as are not in Tamil, there are visible signs of the tension and grievances between the parties in the chat, including terse contributions from each. By the end of June, Mr Vasikaran’s critique of Dr Sivananthan’s leadership of BTC was taking the form of visibly angry posts. An exchange on 29th June showed Mr Vasikaran resorting to capitalisation in lamenting that BTC was falling behind other groups, and failing to learn their lessons, in achieving results for Tamils, and blaming Dr Sivananthan (‘Aru’) and Mr Rajasekaran (‘Gajan’) for that: ‘*We are MISERABLY failing on DELIVERY Aru*’; and ‘*You know I have TRUSTED Aru & Gajan for last few years and supported their leadership since they came forward. They may have convinced you and few others but many people from our community are frustrated instead*’. Another group member asked him to calm down – ‘*your language and behaviour are becoming inappropriate*’.
20. Mr Johnson’s team followed up the 3rd July event with letters to the organisations who had attended. These were in standard form, containing generic political messages encouraging support for Mr Johnson’s candidacy and his vision for the Conservative Party in government. But they were personally addressed (‘*Dear Aru and members of the British Tamil Conservatives*’), signed by Mr Johnson, and contained two sections individually tailored to each recipient group. The first piece of bespoke text followed ‘*A great example of how you have worked with parliamentarians is when...*’. The second followed ‘*After we have left the European Union we can take back control of our trade policy for the first time in decades, including deepening ties with countries such as...*’.

21. The ‘great example’ in the BTC letter was ‘*you took a number of MPs last year to the UN Human Rights Council in Geneva. This resulted in a House of Commons debate, so I know first-hand just how effective the BTC are in campaigning. When I was standing to be Mayor of London, your campaigning efforts were phenomenal all across London – most memorably in Kingston, Sutton and Barnet*’. The ‘deepening ties’ text finished with ‘*countries such as Sri Lanka*’.
22. BTC received their letter on 12th July and Dr Sivananthan posted it to the WhatsApp Group the same day, without comment. Within ten minutes, Mr Vasikaran responded:

BTF taken MPs to UNHRC not you. Please stop claiming credit for someone else’s hard work!

Deepening ties with Sri Lanka? Is this your delivery to the Tamil Community Aru? We are really disappointed in you.

Aru, it would have been better if you could have asked Boris to hold Sri Lanka to account for the Warcrimes, Crimes Against Humanity & Genocide of Tamils instead of DEEPENING ties with Sri Lanka.

You have wasted and reversed the Tamil Community’s hard work and lobbying the Conservative Party for over a decade. We are really disappointed in you, Aru. How could you do this to our Tamil Community?

Hi Gajan, now you and Aru are running APPGT Secretariat Ltd and it seems like you haven’t done your PROFESSIONAL BRIEFING to Boris this time. What happened to you?

It seems he got no reply.

23. Two days later, on 14th July, another group member (Ragu Anna – ‘Anna’ is an honorific title for an older man) picked up the previous theme of learning from other organisations, with some long posts gently challenging Mr Vasikaran’s anger and frustration and advocating patience, co-operation and mutual support instead of division. It finishes ‘*I know how hard working and valuable contributions Vasi makes everywhere and some people distract him due to their personal grudges. Please let the people work. They sacrifice their family life, time and money with good intentions for a good common cause. If you think better go along with them guide them if they are wrong in your opinion. We are all human after all*’.

24. Mr Vasikaran replied:

Ragu Anna,

We were (incl yourself) isolated and managed by Aru when he done nasty things to number of BTC members and now he started to damage Tamil organisations including BTC, BTF, APPGT & UNHRC process.

I was like you, trusted Aru & Gajan but when you involved & work with them closely you will realise how bad they can be. Gajan is playing a key role with Aru and sadly Paul Anna is keeping quiet for some reasons.

As you know, I have been working since early 90s and I can see their damages to the Tamil Community.

You were heavily involved with BTC work previously and I hope you can see the damage that the current leadership of BTC causing to the Tamil Community.

I am giving my time and resources for the Tamil Community but not for any individuals like Aru & Gajan.

25. And then, under a picture of two birds, he continued:

You should have labelled these two birds Aru & Gajan as only these two individuals are reverse lobbying the Tamil Community's hard work.

Boris was MISLEAD by the BTC leadership to 'Deepening ties with Sri Lanka' and we know when Aru & Gajan registered the APPGT on their name.

Please wake up Ragu Anna.

Well said Ragu Anna '...every one together and support each other' but its only Aru & Gajan micro managing & misleading BTC to damage the Tamil Community and the organisations.

26. The conversation continued at some length over the next couple of hours. Ragu Anna said he was sorry to hear this and asked for more explanation. He gave an account of the work all the good-hearted and committed people in the community were doing with few resources, and pleaded for everyone to sit down and talk things through instead of engaging in damaging dispute. He respected Mr Vasikaran's feelings, but was anxious that matters should now be resolved privately between the parties for the good of the organisation as a whole.

27. Mr Vasikaran responded with a long account of his concerns about what he saw as the BTC's lack of success in UK and UNHRC advocacy, about how colleagues had been treated, about past efforts to resolve things which had got nowhere, about the matter of the APPGT secretariat and about his concerns over unconstitutionality in the management of BTC. He continued:

Ragu Anna, the 3rd evidence, please CAREFULLY read Boris's letter to Aru. You can see how Boris was misled or misinformed.

Do you agree with the contents?

I am really disappointed in Aru and Gajan for misleading the future PM of this country as the Tamil Community's hard work and resources are being wasted by these two individuals.

28. Ragu Anna asked what Mr Vasikaran thought Aru and Gajan would get out of that and why a meeting could not be set up to clear up any misunderstanding. Mr Vasikaran said he had tried that, but that Aru and Gajan had been misusing their positions and breaching the BTC constitution for some time, so it was not a matter of 'misunderstanding'. He finished:

Seriously Ragu Anna,

Do you agree that Boris has been misled and misinformed? Can you knock on the Tamils doors with that letter? Don't you realise that the letter will turn many people away from Conservative to vote Labour? The chairman and secretary of BTC must take full responsibility for misleading the future PM of UK.

29. The matter remained there, and the WhatsApp chat continued sporadically on other topics until someone posted on 14th October 2019 a remark that another Conservative-affiliated group, the Conservative Friends of China, had been formed six years ago and already had two PPCs (a form of digital messaging) while the Tamils were still handing out paper leaflets. Mr Vasikaran added:

...and claiming credit for others achievements, BACKSTABBING other organisations including APPGT, isolating contributors and breaching the BTC constitution for their own personal interests. Its really sad.

30. The WhatsApp group was closed shortly afterwards. But the parties' animosity has played out in the ensuing years, generating some factionalism. There was an incident over BTC reports that the Conservative Party manifesto ahead of the December 2019 general election said the Party officially supported the two-state solution in Sri Lanka when it did not. The BTC 2019 AGM was acrimonious and 'very heated' on the constitutional issues. Complaints about Dr Sivananthan were made to CCHQ, including collective letters in the summer of 2021, and there were resignations from the BTC the following autumn. Concerns continued to be raised ahead of this year's AGM in May.
31. Dr Sivananthan had meanwhile commenced these proceedings. They are themselves controversial within the community. He has stood down from the Chairmanship of the BTC and taken a step back from Tamil advocacy to focus more on his business interests. He remains a BTC member, and is still actively involved in the Tamil cause, particularly with the UNHRC effort. But he told me he felt that organisational and personal rivalries had led him to prefer a narrower advocacy focus rather than a leadership role.

The present proceedings

32. Dr Sivananthan brings defamation proceedings against Mr Vasikaran, complaining of the WhatsApp items indicated in **bold** above, which Mr Vasikaran posted in July and October 2019.
33. From a preliminary issues ruling earlier this year (*Sivananthan v Vasikaran* [2022] EWHC 837):

[41] My conclusion as to the natural and ordinary meaning of the words complained of is that they mean:

Mr Sivananthan misled or misinformed Mr Johnson, causing Mr Johnson to refer in his letter to ‘deepening ties’ with Sri Lanka. *That in turn will have the effect of undermining or reversing the hard work, and wasting the resources, others in the Tamil community have put in to promoting a very different foreign policy towards Sri Lanka and/or attracting support for the Conservative Party.*

Mr Sivananthan also, actively or by omission, takes the credit given in the letter to the BTC for taking parliamentarians to the UNHRC in Geneva, when it was the BTF that did so. *This, and other behaviours, also undermines others in the Tamil community.*

Mr Sivananthan has acted in breach of the BTC constitution *in order to advance his own interests.*

[42] Allegations amounting to statements of opinion are indicated in italics. The allegations otherwise amount to statements of fact.

In those meanings, these statements were held to be of defamatory tendency at common law.

34. I also observed as follows:

[47] The purpose of this preliminary ruling has been to clarify the basis on which the parties can decide how most efficiently to proceed, if so advised, and how best to marshal the written and oral witness evidence they would need, to advance their respective positions. ...

[48] I remind the parties that, should this litigation continue, it will be for Dr Sivananthan to establish that the posts complained of are not only of defamatory tendency at common law, but also pass the threshold set out in section 1 of the Defamation Act 2013 – that they have caused or are likely to cause serious harm to his reputation. That requires looking beyond the intrinsic meaning of the words and considering the facts and evidence about their impact.

[49] It would then be for Mr Vasikaran to establish that the factual allegations are substantially true (section 2 of the 2013 Act), the opinions are justifiable in accordance with section 3 of the Act, or that any other available defence is made out.

35. Following a pre-trial review, Nicklin J gave directions, by Order sealed on 7th October 2022, for Dr Sivananthan to file and serve further particulars of his case on serious harm by reference to the evidence served.
36. The parties agreed a list of issues for trial. Dr Sivananthan is put to proof of serious reputational harm. Mr Vasikaran raises statutory defences of truth, honest opinion and publication on a matter of public interest. Many detailed questions are raised about the possible application of these statutory defences to the publications in question.
37. In addition to the witness statements on both sides, and the material exhibited to them, I had the benefit of listening to oral testimony from Dr Sivananthan and his colleague, BTC Secretary Mr Gajan Rajasekaran, and from Mr Vasikaran. I also heard from a further BTC witness for the Claimant and a BTF witness for the Defendant.

The Claimant's case

38. To succeed on his claim, Dr Sivananthan must discharge his burden of proving the statements he complains of caused or were likely to cause him serious reputational harm. If, but only if, he does so, then the burden of proof shifts to Mr Vasikaran to establish the defences on which he relies.

(a) *Serious harm - the law*

39. Section 1 of the Defamation Act 2013 opens as follows:

Serious harm

- (1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.

This is a distinct factor for defamation claimants to establish, additional to the common law requirement to demonstrate the inherently defamatory tendency of the words in question. It has to be satisfied in respect of each individual statement complained of.

40. The leading authority on this provision is the judgment of Lord Sumption in *Lachaux v Independent Print Ltd; Lachaux v Evening Standard Ltd* [2019] UKSC 27. Lord Sumption noted there that Parliament's reforms in the 2013 Act, including s.1, were an exercise in rebalancing the law of defamation in favour of greater freedom of expression. As such, it did two things: introducing a new threshold of seriousness or gravity in the reputational harm with which defamation law was now to be exclusively concerned, and requiring the application of that test to any publication '*to be determined by reference to the actual facts about its impact and not just to the meaning of the words*'.

41. He also said this, at [14]:

The reference to a situation where the statement ‘has caused’ serious harm is to the consequences of the publication, and not the publication itself. It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated. The same must be true of the reference to harm which is ‘likely’ to be caused. In this context, the phrase naturally refers to probable future harm.

42. The ‘harm’ of defamation is the reputational damage caused in the minds of publishees, rather than any action they may take as a result. Nevertheless the existence, and seriousness, of reputational harm are factual questions, and facts must be established by evidence. The relevant facts *may* be established by evidencing specific instances of serious consequences inflicted on a claimant as a result of the reputational harm. But they do not always have to be.
43. Particularly where a general readership rather than identified publishees are involved, the test may also be satisfied by general inferences of fact, drawn from a combination of evidence about the meaning of the words, the situation of the claimant, the circumstances of publication and the inherent probabilities. Relevant factors may then include: the scale of publication of the statement complained of; whether the statement has come to the attention of at least one identifiable person who knew the claimant; whether it was likely to have come to the attention of others who either knew him or would come to know him in the future; and the gravity of the allegations themselves.
44. Aspects of the inferential evidential process have been explored in more detail in other leading cases. The well-established ‘grapevine’ or ‘percolation’ tendencies (*Slipper v BBC* [1991] 1 QB 283; *Cairns v Modi* [2013] 1 WLR 1015) of defamatory publications, particularly online and through social media, may in an appropriate case be factored into inference about scale of publication. Allowance may then be made for the inherent difficulties of identifying otherwise unknown publishees who thought less well of a claimant, since they are unlikely to identify themselves and share that with him. And the likely identity, as well as the numbers, of at least some of a class of publishees may be relevant to the assessment of harm, for example where some individuals may be particularly positioned to lose confidence in a claimant or take adverse action as a result. But these are highly fact-specific matters; the inferences which may properly be drawn in any individual case depend entirely on the circumstances of that case.
45. Section 1(1) uses the language of causation prominently (‘*caused or is likely to cause*’). The ‘serious harm’ component of libel therefore contains an important causation element, as with any other tort or civil wrong. The starting point is that defendants are responsible only for harm to a claimant’s reputation caused by the effect of each *statement* they publish in the minds of the readership of *that* statement. A claimant therefore has to establish a causal link between each item he sues on and serious harm to his reputation, actual or likely.
46. The causation element has a number of aspects of particular application to repeated statements. Since *each* publication must satisfy the serious harm test, it is not possible

to aggregate or cumulate injury to reputation over a number of statements or publications in order to pass the serious harm threshold (*Sube v News Group Newspapers* [2018] EWHC 1961 (QB)). If a statement has been repeated or republished by a defendant, and a claimant has elected to sue on a subset of those publications, he cannot rely on the effects of statements he has not sued on to establish harm caused by those he has (although they may be relevant to aggravation). Where multiple publishers have published the same statement, an individual defendant is responsible only where harm is caused by their own publication in the minds of their own readership. But at the same time, if such causation is established, it is not possible for a defendant to diminish the *seriousness* of the harm caused by pointing to the same publication by others, or else the claimant risks falling between the various stools (see the explanation of the so-called ‘rule in *Dingle*’ set out in *Wright v McCormack* [2021] EWHC 2671 from paragraph 149 onwards).

47. I invited the parties to address me, if they chose to do so, on a judgment which I handed down earlier this year, *Lee v Brown* [2022] EWHC 1699 (QB), in which I made some observations and findings about the nature of the serious harm test and the evidence required to satisfy it, on facts which have at least some parallels to the present case. That case illustrates the particular issues the serious harm test poses for claimants suing on publications (a) to a limited number of identified or identifiable publishees, (b) by way of examples of an extended course of conduct and re-publication by a defendant, and (c) to partisan or polarised audiences in the context of a protracted and public history of animosity between the parties.

(b) *Dr Sivananthan’s case on serious harm*

48. In the short further particulars of his case filed on 12th October 2022 in response to Nicklin J’s directions, Dr Sivananthan explains he does not seek to demonstrate serious harm by evidencing any actual examples of adverse impact. He says this is not a case where it would be appropriate to ask individual publishees, in so far as they can be identified (seven of the 24 members of the WhatsApp group have not been identified), to give evidence of the impact of the publications complained of on their view of him. He says to do so would risk further embarrassment and division:

The publication of the statements complained of occurred against a backdrop of division within the UK Tamil political community. Approaching witnesses – whether in any camp or neutral – would be likely to be inflammatory, and their evidence on serious harm would in any event be coloured by the political dispute in the background. That does not detract from the probability – or reduce that probability below the civil standard – that the statements have damaged the Claimant’s reputation in such people’s eyes.

49. Two important matters arise here. The first is what is said about the backdrop of division, colouration by the background political dispute, and the camps into which the publishees might or might not fall. I return to these points below. The second is that not only do I have no evidence of actual adverse impact, there is no evidence before me from anyone who says they changed their mind or thought anything different about Dr Sivananthan because of reading the posts complained of. I have no direct evidence outside the posts themselves that anyone other than the parties read them at all. Dr

Sivananthan relies on a *wholly* inferential case. The components of that case are the gravity of the allegations, the identity of the members of the WhatsApp group, the importance of his reputation among those members, the probable extent of publication by percolation, and the impact in the community.

50. The evidence set out in the further particulars from which inferences of gravity, percolation and/or impact are invited is this:
- (a) A letter of complaint about Dr Sivananthan was sent on 18th October 2019 to CCHQ. Mr Vasikaran and two other WhatsApp group members were among the signatories. It enclosed an earlier letter of complaint from the previous August. The subject matter of the complaints was the allegation of unconstitutionality in Dr Sivananthan's chairmanship of the BTC, with particular reference to changing the constitution. These allegations also featured in the publications complained of. They were therefore serious enough to refer to CCHQ, and of an order capable of being damaging within the community in which they were published.
 - (b) BTF issued a press release on 29th November 2019 critical of Dr Sivananthan, containing allegations which he says repeated one of the defamatory statements 'or used words to similar effect'. This press release related to the matter of reports that the Conservative manifesto had said that a two-state solution for the Tamils was Party policy. It appears the BTC had misunderstood the position. The press release does not mention Dr Sivananthan but it opens by saying '*it has come to light that there have been some serious misrepresentations of the Conservative Party manifesto, hence we feel that we need to make a statement, so as to ensure that the Tamil Community is not misinformed by anyone*'. It also observed that '*Unfortunately, a Tamil organisation representing the Conservatives have put out on social and Tamil media that the Conservative Party supports a two-state solution for Sri Lanka. Whilst the political party must ensure that their policies are clear, it is extremely important that Tamils representing their parties take utmost care not to misinterpret words on the manifesto to mislead the community to gain votes.*'
 - (c) On 21st June 2021 an email, containing a letter dated 19th June signed by a number of individuals including Mr Vasikaran, making allegations the same as or similar to those made in the statements complained of, was sent to CCHQ's complaints and compliance department, copying in several MPs, Peers and the Party's co-chairman. Further such letters of complaint, co-signed by Mr Vasikaran and others, were sent to CCHQ in July, September and October 2021.
51. The further particulars say the fact that the same or similar allegations have surfaced elsewhere is evidence that false rumours of such nature had a currency in the community and were shared 'invisibly to Dr Sivananthan'. He says Mr Vasikaran's repetition of the allegations and encouraging others to repeat them, including to important and influential people in the Conservative Party whose opinion mattered to him, is an evidential basis supportive of an inferential case on serious harm.
52. In their written and oral evidence, Dr Sivananthan, Mr Rajasekaran and their further witness all testify to having been approached and asked about the same or similar allegations as those contained in the WhatsApp posts, by individuals in the Tamil community, by members of the APPGT and by others.

Consideration of the Claimant's case

(a) *General*

53. I start with some general observations about how Dr Sivananthan seeks to establish his case on serious harm. The first is that a *purely* inferential case, while in principle available, is not an *alternative* to an evidential process for establishing serious harm – it must *be* an evidential process for establishing serious harm. There is a difference between inference and speculation. The components of an inferential case must themselves be sufficiently evidenced and/or inherently probable to be capable of adding up to something which discharges a claimant's burden.
54. The second is that, given Dr Sivananthan accepts the class of direct publishees is a small one, the absence of evidence from any direct publishee is not inconsequential. The concern Dr Sivananthan expresses about inflaming an already partisan context by seeking evidence from direct publishees may or may not be understandable (it is asserted rather than demonstrated). But deciding not to do so places him at an evidential disadvantage. The authorities on establishing serious harm by inference alone tend to feature mass-circulation publications so that evidence of individual impact may be both genuinely unreachable and inherently probable at the same time. Publication to a closed and small WhatsApp group where there is little or no evidence of adverse impact in the chat itself or from any member or reader is a different matter. These facts alone do not easily facilitate an inference of serious harm.
55. The third is that where direct publication is to a limited class of publishees, the inferential case may have harder work to do in establishing wider publication by percolation. The percolation effect is a proposition about onward dissemination *by the original publishees* in a way which forges links in a causal chain between the publications and any harm they may do. It posits the original publishees spreading the allegations *because* they read about them in the original publication. The fewer the original publishees, the more intense the scrutiny needed of their probable potential or propensity for onward publication.
56. The fourth is a point which also arose on the facts in *Lee v Brown*. Where a libel claimant selects some publications as examples of a wider campaign of allegations by a defendant, that claimant may face a daunting problem of causation. If a defendant has undertaken a protracted course of conduct publicising allegations, a corresponding improbability arises that any member of that public later re-encountering them in published form will be impacted *as an effect of that specific publication*. The serious harm test is about the impact of an individual publication by a defendant on its readership. If the readership already knows everything about the defendant's view of the claimant contained in the publication from the defendant's own history and course of conduct, it is correspondingly unlikely that the publication will have material impact. There are other torts addressed to campaigns and courses of conduct (such as harassment), but libel is concerned with the effects of individual publications.
57. The fifth point is related, but distinct. If publication is not only in the context of a well-known dispute between the parties, but to an audience already *either* partisan *or* resolutely neutral as between them, then again a claimant may have to work harder to make their case on causation. In a polarised context, it may be less probable that

anyone's mind will have been changed either way by the publication. If no-one's mind is changed, then establishing the causation of reputational harm is a problem.

58. These are of course all generalisations about the establishment of serious harm by inference alone. Everything turns on the facts of individual cases. So I turn to the evidence and facts put forward by Dr Sivananthan in the present case.

(b) *The allegations*

59. The specific publications complained of include several different allegations. The immediate trigger for them all was the 'Back Boris' campaign letter's two 'provocations' (in conjunction with the event photo). I start with their tone. Mr Vasikaran's reaction was by way of political protest spilling over into personal blame. The posts are vehement, exasperated by events, and borderline facetious ('these two birds') - and directed at Dr Sivananthan and Mr Rajasekaran. Mr Vasikaran was letting off steam, and was called out as such by Ragu Anna.
60. The posts complained of stand out as points of rhetorical salience in an extended exposition of Mr Vasikaran's broader interpretation of events in their community context. Dr Sivananthan does not sue on the whole of Mr Vasikaran's publication; he has picked out the sharper and more personalised peaks of the argument. So they are very small extracts from the whole. It is inherently improbable any of them would have been read in isolation. They are punctuation points of 'righteous indignation', a mode of self-expression which does not engage, as perhaps the rest of his published argument seeks to do, at an intellectual level, on serious issues, with a politically sophisticated audience. In context, they perhaps say more about Mr Vasikaran's emotional register than about Dr Sivananthan himself. In terms simply of structure and tone, therefore, I consider them to have a lower, rather than a higher, inherent potential for adverse impact on Dr Sivananthan's reputation than the chat as a whole.
61. In terms of content and gravity, multiple allegations are involved. In the first place, there are what might be called the 'historical' allegations. Dr Sivananthan is in effect accused of acting unconstitutionally as BTC chair – by excluding people from office, by changing the constitution otherwise than in accordance with its own provisions on entrenchment, and, in particular, by doing so in order to provide himself and his colleague with extended terms of office. He is also accused around the matter of undermining the BTF in general, and seeking to replace it as the APPGT secretariat in particular, trying in the process to advance his own private interests. Not all of that, of course, appears in the publications complained of themselves; Mr Vasikaran conveys much else of potential impact in the rest of the chat.
62. The core facts on which these 'historical' allegations are built are not in real dispute. The changes to the BTC constitution and the history of the APPGT secretariat are a matter of record. It is what is implied about Dr Sivananthan's motivations that imports the defamatory sting – that he was putting his own personal and private interests unscrupulously above those of the community and the cause as a whole. It is the context of the Tamil cause that makes what would otherwise be allegations of petty, self-serving opportunism into something rather more. Dr Sivananthan said he was being called a traitor to a cause rooted in a deep sense of historical injustice and violation of national identity. The publications complained of do not say so in terms. But undermining others' costly and committed efforts to advance the cause, and doing so because you

prioritise your ego or your pocket over the cause, are, to a readership within the community, not small matters. I consider these historical allegations, in context, relatively grave. But they were not new. That affects their potential for impact.

63. Then there are the ‘new’ allegations – those arising from the ‘Back Boris’ letter and the conclusions Mr Vasikaran drew from it. Here, Dr Sivananthan is accused of appropriating credit due the BTF for the Geneva trips, and misleading Mr Johnson about the Tamils’ foreign policy aims. The former is of a piece with the ‘historical’ allegations of undermining the BTF. The latter is new and distinctive. I consider each in turn. But first, some general observations about the ‘Back Boris’ letter.
64. In so far as the publications complained of blame Dr Sivananthan for this letter, they proceed from a speculative exercise in joining the dots. The letter was circulated by Dr Sivananthan, without comment, as soon as it arrived, a little over a week after the campaign event itself. For those not lucky enough to have attended, that had been chiefly memorable for the image Dr Sivananthan posted of himself and Mr Johnson, and his caption about ‘raising Tamil issues today’. It seems Mr Vasikaran took that literally – as a claim Dr Sivananthan had made the most of the opportunity, however limited, of a conversation with the future Prime Minister to advance the Tamil cause.
65. Dr Sivananthan is clear no such opportunity arose, much less was taken advantage of. That was not surprising to hear. The occasion was a profile-raising campaign event where the presence of the candidate to a crowd of potential well-wishers and supporters was the point. The promise of meeting him was no doubt never meant to be taken as anything more than the briefest of ‘brush-by’ encounters, however memorable. An objective observer might have thought ‘raising Tamil issues today’ something of an improbable over-claim in the first place. But I accept Mr Vasikaran’s evidence that he took Dr Sivananthan at his word. For committed campaigners for the cause, being in the same room as a future Prime Minister may have seemed an obvious and golden opportunity which no activist worth their salt would have passed up.
66. So it was not an entirely unnatural reaction for Mr Vasikaran, and perhaps others, to assume *it was possible* that the follow-up letter reflected conversation between Dr Sivananthan and Mr Johnson. But I do agree with Dr Sivananthan that the blame attached in the publications complained of *obviously* adds two and two to make five.
67. As I said in my preliminary ruling, to a reasonable, informed but objective reader, it is clear what this letter was – a standardised piece of political campaign material with a personalised top and tail and a couple of tailored inflexions designed to please particular recipients. No doubt the well-intentioned political assistant who authored it for their principal’s signature was insufficiently immersed in the politics of the Tamil cause to be aware of the rivalries over the APPGT secretariat, and tensions between BTC and BTF, and how these might read across to turn a simple gesture of thanks for the UNHRC work into a perceived divisive slight. But deepening trade ties with Sri Lanka was a ‘complete howler’ – the very last thing any Tamil activist trying to get trade sanctions imposed wanted to see. Someone had made a mistake with the ‘insert name of country here’ slot in the template, forgetting this particular version of the letter was going not to a group trying to advance a country’s profile, but one trying to assert minority interests *against* a country.

68. Mr Vasikaran may have been personally predisposed, given the antecedents and his mindset at the time, to think Dr Sivananthan might well have taken the opportunity to advance BTC at the expense of BTF and take credit where it was not (wholly) due. To that extent, the new Geneva allegation partakes of the degree of gravity which attaches to the historical allegations; it belongs to the same narrative.
69. But the allegation of misleading Mr Johnson about the Tamils' aspirations for UK foreign policy towards Sri Lanka is different. As his interlocutor on the WhatsApp group asked: why would Dr Sivananthan do such a thing? There is no suggested context in the WhatsApp posts or elsewhere of any possible interest of his, private or otherwise, which could conceivably have been served by misleading Mr Johnson on this point. Mr Vasikaran himself, in his other chat entries, put things rhetorically to Dr Sivananthan and Mr Rajasekaran along the lines that since they are now inserting themselves into the APPGT secretariat they had clearly fallen down on their new job of explaining the Tamils' aims properly to Mr Johnson – at most a rather sarcastic allegation of incompetence. So the question in these circumstances is what inherent gravity, and potential for causing serious harm, this allegation may be inferred to have had.
70. On the evidence before me, the most likely account – both historically and by way of the inference that would be made by publishers – is that Mr Vasikaran in the summer of 2019 had a number of longstanding, but acute, disagreements with Dr Sivananthan on foot. He may have been irritated by the photo at the 'Back Boris' event and the somewhat grand claim that Dr Sivananthan had been 'raising Tamil issues' personally with such a senior politician. When the 'Back Boris' letter arrived, he first of all read into it yet another 'backstabbing' slight to BTF, and he was of course dismayed by the 'deepening ties' howler. The former was easy to fit with his angry narrative about the sort of man Dr Sivananthan was – putting self-interest above the grassroots efforts of ordinary Tamil activists – and so, as a rather florid flourish, he did not put it past Dr Sivananthan to be to blame somehow for the howler as well. It was hardly a sober piece of analysis, but the failure of Dr Sivananthan to respond and explain the obvious irritated him even further. The result was to ratchet up the rhetoric to a positive claim of misleading.
71. It was no part of Mr Vasikaran's case before me that Dr Sivananthan did indeed mislead Mr Johnson. It is obviously and deeply improbable. There is not a shred of evidence for it. I accept Dr Sivananthan's evidence that he did not. There is no evidence that anyone at any time (apart from Mr Vasikaran, perhaps, as he composed that long chat in July) seriously thought he did, or might have done. Dr Sivananthan himself described it as clearly and deliberately putting the worst imaginable spin on events. There is no evidence that anyone picked the idea up or repeated it (I deal with the BTF press release below). It was an impetuous squib and seems to have disappeared without visible trace in the real world – other than in the minds of the parties of course.
72. 'Deepening ties' was, as Dr Sivananthan said, *obviously* wrong, a plain mistake. As he also said, it had not occurred to anyone but Mr Vasikaran to blame him for it. His own evidence was that 'not necessarily everyone' in the WhatsApp group believed the allegation. I consider that an understatement. It is improbable that anyone seriously entertained the idea when Mr Vasikaran published it. So while, at its most literal, an allegation of misleading a future Prime Minister, on so fundamental a matter to Tamil activists as their desired UK foreign policy to Sri Lanka, does touch on grave subject matter, I am not persuaded that this particular allegation was *serious* in the sense of

raising any inference that it was likely to have been taken seriously or had a serious reputational impact on Dr Sivananthan. It was hot-headed, rhetorical and patently incredible.

(c) *The identity of the publishees*

73. The *immediate* publishee of the July posts was ‘Ragu Anna’. They were made during a long conversation with him. I have no evidence from or about Ragu Anna, who he was or what he thought about Dr Sivananthan as a result of what Mr Vasikaran said about him. But simply by reading the whole conversation, it is apparent that his own preoccupation was with the long-standing animosity between the parties in and of itself, and the desirability of putting an end to it, in the general community interest. His response was that of a peacemaker. I find no basis in this conversation for an inference that Ragu Anna thought worse of Dr Sivananthan as a result of Mr Vasikaran’s post nor that he was likely to give it any further currency. On the contrary, I find it more probable that he was trying to put the fire out rather than spread it.
74. The *direct* publishees were the 22 other members of the WhatsApp group. From what I can see, the traffic on the group chat was not particularly heavy. The posts complained of attracted little attention or response within the wider group. The group was closed not long after the October post. Seven of the phone numbers attached to the group have not been identified and I have been given little basis for inferring anything at all about them, other than that they were probably, but not certainly, BTC members. Apart from the parties themselves, that leaves 15 identified publishees. All but two were members of the BTC. Some of those were also BTF members.
75. The two identified non BTC members of the WhatsApp group were, respectively, the ‘Deputy Prime Minister of the Transnational Government of Tamil Eelam, the largest (if not one of) global Tamil diaspora organisations’ and a ‘leading member of the Tamil National Alliance in the UK, an alliance of Tamil political parties in Sri Lanka and its largest constituent’. I have no further evidence about these individuals or what they might or might not have thought about Dr Sivananthan as a result of reading Mr Vasikaran’s posts, if they did.
76. In relation to the BTC members, I have little evidence as to the likely state of mind with which they read the statements complained of (if they did). The background to the BTC constitutional issues between the parties was no secret (they had surfaced publicly over the years, including at AGM level), and the APPGT secretariat issue was also known of by then. There had been that attempted peacemaking meeting in the pub. Dr Sivananthan and his witnesses did not demur when it was put to them that there was a degree of general awareness of the parties’ ‘ongoing animosity’ and its causes. If they were interested at all, these publishees would have had plenty of time to make up their own minds about these matters, and indeed about their own Chair and Secretary, and Mr Vasikaran’s views of them.
77. I am told in general that the WhatsApp group publishees can be inferred to be people of importance and influence whose good opinion mattered a great deal to Dr Sivananthan. I can accept that. But then they are a group of individuals defined by their knowledge of and commitment to some very serious political issues. They belong in a world of activism and advocacy in the service of a cause that mattered deeply to them. That makes it more, rather than less, probable that they based their opinion of Dr

Sivananthan on their knowledge of him and of Mr Vasikaran, rather than on a brief and reactive WhatsApp exchange. It makes it more, rather than less, probable that if they had any concerns they would have made it their business to follow them up sensibly rather than swallow Mr Vasikaran's posts whole and uncritically. And it makes it more rather than less probable that the posts would have been quickly forgotten rather than passed to a wider audience. If these were serious people with serious preoccupations and both knowledge and critical faculties of their own, they were unlikely to be seriously influenced by the chats complained of.

78. In the absence of direct evidence from any of these publishees of the impact if any on them of reading Mr Vasikaran's posts, or evidence that they told anyone else about them, the identity of these known publishees provides little basis for the inference of serious harm. Some of them were perhaps already fully partisan in the parties' dispute, and those who were not may have been either so uninterested in it, or so resolutely neutral, that it is hard to see why the posts would catalyse any change of opinion among them. Dr Sivananthan himself draws attention to the 'backdrop of division' and the risk of colouration by the political dispute in the case of the direct publishees. That appears on the materials before me capable of applying at the time of publication and not just later in the history. The reasons Dr Sivananthan gives for not approaching the direct publishees for evidence *do* in my view limit the inferences which may be drawn in the absence of such evidence, on the facts of the case. I have little basis in all these circumstances for inferring that any direct publishee was likely to have thought any the worse of Dr Sivananthan as a result of Mr Vasikaran's posts if they read them at all, much less that they were likely to have been predisposed to give them any wider currency.

(d) *Extent of publication*

79. I have considered with care the evidential base put forward by Dr Sivananthan to support his contention that there was extensive onward dissemination of these allegations by the original publishees. I have set out above why I do not consider the potential for that to be obvious either from the nature of the allegations or from the identity of the original publishees. I acknowledge a baseline of inherent probability that social media, even a closed chat, can generate further gossip. But I do not consider Dr Sivananthan's positive case for percolation materially to advance his case on serious harm for the following reasons.
80. First, the fact that the same or similar allegations surfaced elsewhere after the posts is not, on the facts and evidence of this case, capable of materially supporting an inference of wide percolation. It is no mystery how and why the allegations came to feature in letters of complaint to CCHQ. It was not because the signatories had read or become aware of some WhatsApp posts. It was because Mr Vasikaran, and those who viewed the leadership of the BTC as he did, got together to do something about it. These letters – some written years after the posts – are largely preoccupied with the BTC constitutional issues. These were matters which long predated the posts and continued long after them. There is no evidence linking the content of the letters to the fact of readership of the posts, so as to support an inference of percolation. Had Mr Vasikaran never bothered posting to the WhatsApp group at all, there is every indication that these letters would have been written anyway.

81. It was the clear, consistent and striking evidence of Dr Sivananthan and all his witnesses that they felt Mr Vasikaran had been waging an intensive and long-standing ‘campaign’ against him. Dr Sivananthan described it as ‘relentless’; he said Mr Vasikaran had become obsessed with a personal ‘agenda’ of attacks on him, manifested by the constant repetition of his allegations and the divisive and unwarranted stirring up of feeling against him. Mr Rajasekaran spoke of a long-standing and ‘targeted’ campaign against Dr Sivananthan. Another witness described Mr Vasikaran telling him he ‘*would not rest until he brought Aru down*’.
82. But if Dr Sivananthan is right about this campaign, it presents a major problem for his case on serious harm. That is because the obvious explanation for the allegations surfacing outside the WhatsApp group is not the publications complained of, but that very campaign. The CCHQ letters have no visible *causal* connection to the WhatsApp posts, rather than to the apparent energy and ubiquity of Mr Vasikaran’s protest. Mr Vasikaran signed these letters. Perhaps he drafted them. In any event, Dr Sivananthan does not sue on those letters, and they do not rely on the fact and readership of the WhatsApp musings. They are the independent product of the efforts Mr Vasikaran himself evidently made, previously and subsequently, to rally others directly to his cause. If Mr Vasikaran was assiduously advancing his opinions of Dr Sivananthan in the Tamil community, then it is hard to see the WhatsApp posts as anything other than incidental campaign detail with no visible causative power of their own.
83. The BTF press release of 29th November is even harder to connect to the WhatsApp posts. It deals with the matter of the misunderstanding over the 2019 manifesto rather than any of the subject matter referred to in the posts. It does not name Dr Sivananthan or BTC. It does talk about ‘serious misrepresentations’, ‘misinformation’, ‘misinterpretation’, ‘misleading’ and ‘false representations’. All of this certainly has an edge to it, and some echo of the ‘Boris was misled’ idea. But the manifesto episode was dismaying in its own right – people had had their expectations raised that the Conservatives were pledged to make the Eelam dream come true, only to have them dashed again. It was all no doubt highly regrettable and the press release does not pull its punches. But again, Dr Sivananthan does not sue on this press release, and I see no basis for inferring it to be a product of anyone reading the comments Mr Vasikaran made about different events on WhatsApp weeks and months before.
84. Again, Dr Sivananthan and his witnesses being asked by others to explain and give their side of the allegations is not capable in all these circumstances of this case of amounting to an evidential base for inferring that the allegations had gained currency *because* they had been mentioned in the WhatsApp conversation. It is overwhelmingly more probable that they gained currency because Mr Vasikaran and his sympathisers made it their business to see that they did. The posting of the allegations, and others’ awareness of the allegations, may have had a common origin in Mr Vasikaran’s ‘campaign’, but I am unpersuaded to infer that the former caused the latter.
85. Being asked to explain the allegations is not, in itself, strong evidence of probable serious harm in any event. I have no basis for inferring that the interlocutors believed or even gave real weight to the allegations, were anything other than satisfied with the answers Dr Sivananthan and his colleagues provided, were unable or unwilling to make up their own minds independently about the rights and wrongs of the matter, or indeed were more concerned with forming adverse views about Dr Sivananthan than they were about the risks posed by the simple fact of dispute and division within the community.

Being put to the trouble of explaining things may be unwelcome and embarrassing but it does not of itself support an inference of serious reputational harm on the facts and evidence in this case.

(e) *Causation*

86. The problem for Dr Sivananthan's evidential case, as he puts it forward, is that it does not come close to discharging his burden of proving that the publications he complains of *caused or were likely to cause* serious harm. It is a problem of evidencing a probable causal chain linking the posts as such with any subsequent events, when (a) the posts themselves had limited inherent persuasive potential, being impetuous in tone and either rehearsing familiar grievances or making patently improbable claims; (b) their potential impact is hard to distinguish from that of the rest of the chat in any event, and no attempt was made to do so; (c) direct publishees were a limited class, none of whom has given any evidence of impact or indicated any propensity for crediting, or onward dissemination of, the publications; (c) the publications were made into an already polarised or partisan context, more likely to have already-formed positions reinforced by the posts than to be changed by them and (d) Mr Vasikaran's activism in advancing his own concerns and opinions provides the overwhelmingly more probable explanation of later events than does percolation of the original publications.
87. That is to say nothing of the fact that Dr Sivananthan's task is to establish the causation of serious reputational harm by *each* post complained of *individually*. The October posts are not in any event easy to understand on their own and independently of the July posts. I was given no evidence by which to understand the separate impacts, if any, of the different posts, and a cumulative case is not open to a claimant on the authorities.
88. In these circumstances, I am not persuaded that Dr Sivananthan has established sufficient grounds to fear for his reputation *as a result of* the posts complained of, so as to justify a finding that he has been libelled. I have been given no sufficient evidential basis for inferring serious harm of any sort to Dr Sivananthan's reputation as a result of these posts. Dr Sivananthan himself testifies to little more than his intolerance of Mr Vasikaran's 'campaign', his dislike of being asked to defend long-standing and persistent allegations, and the personal offence he took from the posts. These were all thoroughly unpleasant experiences no doubt. But libel law is concerned not with a claimant's own response to or feelings about publications (at any rate so far as liability rather than remedy is concerned) but with their real and actual impact on the minds and opinions of other people. Other people cannot be inferred to feel what a claimant feels on his own account; their reactions must be established as a matter of fact, whether on an inferential basis or otherwise.
89. I am not persuaded that Dr Sivananthan need have feared on this score to the degree with which libel law is exclusively concerned. I note in passing that he did not consider it worth engaging in the chat in the first place. His record in the community no doubt spoke, and continues to speak, for itself. I cannot find on the evidence he gave me that he was, or was likely to have been, seriously harmed in the eyes of others by the real, feared or imaginary impact of these posts. I saw very clearly the exception he takes to Mr Vasikaran, his world-view, his course of conduct, and the persistence of his challenge to his own leadership, methods, judgment and results. But libel is a narrow tort, further narrowed by statute. Its sole preoccupation is with the effects of *particular*

written publications – on an item by item basis – on the minds of people *other than* claimants. That is what reputational harm is, and it must be serious.

90. By enacting section 1, Parliament sent a clear message to claimants contemplating libel proceedings on the basis of their own, rather than other people's, reaction to publications, or by way of riposte to offence given and taken, or to rebuke their critics (fairly or unfairly) - without sufficient evidence of actual *reputational* impact. An inferential case is still a factual case about serious reputational harm in the minds of others. I am not persuaded of it in this case. That must reassure Dr Sivananthan, as a libel litigant concerned about serious reputational harm: I do not consider it probable on the case as he put it. But it is fatal to his defamation action.

Conclusions

91. For all these reasons, I conclude Dr Sivananthan has not discharged the statutory burden of establishing that the WhatsApp posts of which he complains have caused or were likely to cause serious harm to his reputation.
92. Section 1 of the Defamation Act 2013 provides that these statements are therefore 'not defamatory'. Parliament's indication in these circumstances is that considerations of freedom of expression require that a defendant is not to be put to and judged on the defence of his publications. The result is that I am not called on to analyse and reach a view on Mr Vasikaran's defences. I do not need to, to resolve this claim, and it would indeed not be right to.
93. In the result, this judgment has nothing else to say about the rights and wrongs of Mr Vasikaran's allegations. The truth or merits of the underlying differences between the parties must continue to be a matter for the political arena alone.

Decision

94. Judgment is given for the Defendant.