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Defendant's burden

First Condition: does the statement express an opinion? (s.3(2))

Second Condition (the Basis Condition): does the statement indicate, in general or specific terms, the basis of the opinion? (s.3(3))

Third Condition (the Objective Honesty Condition): could an honest person have held the opinion on the basis of any fact which existed at the time the statement was published? (s.3(4))

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Claimant's burden

“Malice”

If D has satisfied the three conditions, C can prove that the D did not hold the opinion in order to defeat the honest opinion defence. (s.3(5))

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Defendants, what have you got to lose?

- TPI: costs in the case
- Take a chance and plead opinion.
- Judicial assessments of what constitutes opinion somewhat erratic.
- Risk of Court of Appeal.
- Delay – the Defendant's friend

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Interim applications re the third condition

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Martin Whyte v BMA [2025] EWHC 1782 (KB)

Martin White: member of UK Junior Doctors Committee

The committee sent the email complained of to its 61,146 members:

" . . . We unfortunately have distressing information to share. Today we have discovered that a UK Junior Doctors Committee officer has [made deeply troubling comments online] that are anti-Semitic. . . ."

White sued BMA for defamation.

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Parties agreed (!) that the email was an expression of opinion (1st condition) and defamatory in the meanings that:

- (a) The Claimant had posted comments online that were deeply troubling and anti-semitic.
- (b) His comments were unacceptable, prejudicial, discriminatory, and incompatible with holding office for the BMA.

Parties also agreed that the basis (“troubling comments online”) were indicated in the email (2nd condition).

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Second tweet:

“Me: it’s important to represent Judaism and Jewish people fairly and respectfully in art.

Also me: Jew banker goblins.”

Third tweet:

“hahaha zeig heil hahaha gas the jews hahaha just kidding but have you seen these youtube videos about the holohoax they’re pretty convincing imo...”

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Summary Judgment in favour of BMA:

- It is the C's comments, not the C, that are said to be antisemitic.
- Honest person could conclude that to be the case just by looking at the tweets.
- And could further conclude that the tweets unacceptable etc.
- No need to consider D's 400 pages of evidence and 3 witness statements.
- (D could have probably succeed on a truth defence as well because court just had to evaluate the tweets, not the C's state of mind.)

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Andrew Bridgen v Matt Hancock [2025] EWHC 926 (KB)

Andrew Bridgen tweet in regard to an article re the link between vaccinations and serious adverse health effects:

“As one consultant cardiologist said to me this is the biggest crime against humanity since the Holocaust.”

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Matt Hancock commented on this in the HoC and tweeted a video of what he said with the comment:

“The disgusting and dangerous anti-semitic, anti-vax, anti-scientific conspiracy theories spouted by a sitting MP this morning are unacceptable and have absolutely no place in our society.”

This was agreed between the parties. (Query re whether the basis was sufficiently indicated.)

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Meaning:

“An unnamed MP has said something this morning related to vaccination which was baseless, unscientific, dangerous and offensive, including because its character was antisemitic.”

- **First Condition:** Fact underlined. Opinion not underlined.
- **Second Condition:** Basis agreed: “what has been said by a sitting MP this morning” (query re whether “sufficiently” indicated)
- **Fact re third condition:** Bridgen’s tweet.

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Remaining issues:

- Third condition: could an honest person hold the opinion based on the Bridgen tweet?
- Bridgen's case on s.3(5): Hancock did not hold the opinion.

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Bridgen's claim confined to the antisemitism sting.

Stage of litigation at time of summary judgment application by Hancock:

- TPI at which D satisfied first and second conditions.
- Reply pleaded

D applied for summary judgment on the third condition and s.3(5).
Failed.

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Collins Rice J re the 3rd condition:

“I am not persuaded to call his prospects of success unreal or to give Mr Hancock summary judgment on it without the sort of full exploration of where, in all the circumstances of this particular case, those limits properly lie. That requires investigating the precise mechanics of the defence, its application to the facts, and the range of evaluative options properly open to a court in the circumstances. That is only possible at trial. Simply setting out the nature of the disputed issue demonstrates its highly evaluative character, and already enters some way into palpably evaluative 'mini-trial' territory. It is not a matter to be foreclosed on an interlocutory basis.”

AND because . . .

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Collins Rice J re s.3(5): would not grant summary judgment to the D.

Because, in malice, the objective unreasonableness of the allegation and whether it was actuated by spite/ill-will may be relevant to proving bad faith (whether Hancock in fact genuinely held the opinion).

Therefore best to consider the 3rd condition and s.3(5) at the same time.

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Ultimately:

93. (Bridgen's case that antisemitic allegation not held by Hancock) was a gratuitous bid to silence rather than engage with his criticism, and to achieve his political destruction with language that was not politically survivable. It was not something Mr Hancock genuinely thought, simply something it suited his purposes to say. To that extent at any rate I consider it adequately pleaded and the inferential evidential base adequately set out, in accordance with the authorities cited above.

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94. I bear the following in mind. It would not be incoherent for a trial judge to find the honest opinion defence made out on its merits, including by reference to its factual basis, but also to find 'antisemitic in character' an exercise in vituperative rhetoric rather than genuine opinion.

i.e. Bridgen could lose on the third condition but prove his case re s.3(5).

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Dale Vince v Lord Bailey [2025] EWHC 287 (KB)

Relevant basis/fact was the agreed contents of an interview given by Dale Vince.

D's application for summary judgment (no realistic prospect of success) in regard to the third condition – failed.

D's application for the trial of the preliminary issue (balance of probabilities) on the third condition to take place granted.

D succeeded at the preliminary issue trial: the third condition was satisfied.

D's application for summary judgment in regard to s.3(5) – not successful. (PTA granted). Live issues of evidence.

Stage of litigation: PoC but no Defence.