Neutral Citation Number: [2025] EWHC 1170 (Admin)

Case No: AC-2024-LON-001310

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/05/2025

Before :

MR JUSTICE CHAMBERLAIN

- -

Between :

FARRUKH NAJEEB HUSAIN **Appellant**

- and -

SOLICITORS REGULATION AUTHORITY **Respondent**

- -

Franck Magennis (instructed by **Five Pillars Law Limited**) for the **Appellant**
Adam Solomon KC and Louise Culleton (instructed by **Capsticks LLP**) for the **Respondent**

Hearing date: 1 March 2025

- -

Approved Judgment

This judgment was handed down remotely at 10am on 14 May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Chamberlain:

Introduction

1. Farrukh Husain was admitted as a solicitor in 2014. He became active on the social media site then known as Twitter, using an account with a profile which identified him as a lawyer. In several tweets, he identified himself as an employment solicitor. In May 2021, the Solicitors' Regulatory Authority ("SRA") received a complaint and reviewed his Twitter feed. It started an investigation and later brought disciplinary proceedings in respect of tweets which it said were offensive and in some cases antisemitic, and about comments made in correspondence with the SRA, which it said were offensive.

2. The proceedings were heard by the Solicitors' Disciplinary Tribunal ("the Tribunal") over 12 days. Mr Husain accepted that he was the author of the tweets but said that he should not be disciplined for posting them in a personal capacity, denied that they were antisemitic and apologised if they had caused offence. In a comprehensive judgment handed down on 28 March 2024, the Tribunal found the allegations proven and ordered that Mr Husain be struck off the Roll of Solicitors.

3. Mr Husain now appeals to this court pursuant to s. 49 of the Solicitors Act 1974 ("the 1974 Act"). Initially, he represented himself and advanced 16 grounds of appeal, supported by a skeleton argument. He then filed a revised skeleton argument signed by counsel, Franck Magennis, which advanced four "consolidated" grounds of appeal:

   (a) There was medical evidence that Mr Husain suffered from a condition amounting to a disability, which caused the conduct complained of. The Tribunal wrongly regarded this evidence as irrelevant when considering liability and gave insufficient weight to it when considering sanction ("Ground 1").

   (b) The tweets were political speech which attracted the highest level of protection. The Tribunal failed to apply the correct legal test in this regard ("Ground 2").

   (c) The Tribunal erred in relying on the International Holocaust Remembrance Alliance working definition of antisemitism ("the IHRA working definition"), which was "flawed" and "partisan". It also relied heavily on expert evidence from a member of the Campaign Against Antisemitism, which is a "biased, widely discredited and openly Zionist organisation". To the extent that it relied on other definitions of antisemitism, the Tribunal's reasoning was inadequate and it consistently conflated anti-Zionism with antisemitism without any proper evidential basis ("Ground 3").

   (d) The sanction of striking off was manifestly excessive and disproportionate and departed from guidance and sanctions in other cases ("Ground 4").

4. The hearing before me took place on 11 March 2025. Mr Magennis appeared for Mr Husain. Adam Solomon KC appeared for the SRA. I permitted them to file notes after the hearing on specific points which had arisen at the hearing. Mr Magennis did so on 13 and 16 March 2025. Mr Solomon did so on 20 March 2025.

The parameters of the appeal

5. My task is not to try the allegations against Mr Husain, nor, to the extent that they are proven, to say what the sanction should be. Those tasks were for the Tribunal. Appeals under s. 49 of the 1974 Act are governed by CPR 52.21(3), which gives me the power to allow the appeal only if the decision of the Tribunal was "(a) wrong; or (b) unjust because of a serious procedural irregularity in the proceedings in the lower court".

6. The test to be applied was not contentious. It was helpfully set out by Morris J in *Ali v SRA* [2021] EWHC 2709 (Admin), at [93]-[94]. I can intervene only if the decision involves an error of law or fact or an error in the exercise of discretion. I must exercise caution and restraint before interfering with findings of fact or evaluative judgments of the Tribunal, which is a specialist tribunal, bearing in mind the advantage it had in hearing the witnesses. The question is not whether I would have reached a different conclusion, but whether the tribunal's decision involved a finding of fact with no basis in the evidence, a demonstrable misunderstanding of relevant evidence, a failure to take into account relevant evidence or a conclusion that cannot be reasonably explained or justified.

7. So far as sanction is concerned, in *Law Society v Salsbury* [2008] EWCA Civ 1285, [2009] 1 WLR 1286, Jackson LJ said this at [30]:

> "…the Solicitors Disciplinary Tribunal comprises an expert and informed tribunal, which is particularly well placed in any case to assess what measures are required to deal with defaulting solicitors and to protect the public interest. Absent any error of law, the High Court must pay considerable respect to the sentencing decisions of the tribunal. Nevertheless if the High Court, despite paying such respect, is satisfied that the sentencing decision was clearly inappropriate, then the court will interfere."

8. In *SRA v James* [2018] EWHC 3058 (Admin), [2018] 4 WLR 163, Flaux LJ (with whom Jeremy Baker J agreed) made clear at [53]-[55] that the court could interfere with a decision on sanction only if the tribunal committed an error of principle or its evaluation was wrong in the sense that it fell outside the bounds of what the Tribunal could properly and reasonably decide.

The conduct of the appeal

9. Mr Husain is an opponent of Zionism and a critic of Israel. A central issue in the proceedings before the Tribunal, and in the appeal before me, is whether he overstepped the boundaries of legitimate political speech and, in particular, whether when criticising Israel he used language that was antisemitic.

10. In his revised skeleton argument for the appeal, Mr Magennis for the appellant submitted that it was legitimate to assert that Israel is a fascist state, that Zionism is a fascist ideology and that Israeli fascism can be compared to other historical examples of fascism. Mr Magennis observed that Nazi Germany is the most well-known and studied example of fascism and that "[t]he ordinary reasonable observer would not view the comparison of Israel to Nazi Germany as inherently antisemitic".

11. Mr Solomon for the SRA, in his skeleton argument, noted that making comparisons between Israel and Nazi Germany is an example of antisemitism given by the IHRA, yet Mr Magennis's skeleton argument "seeks to defend this position". Mr Solomon continued: "The approach adopted by Mr Husain in the Revised Skeleton crosses the line from engaging with the legal question of the correct comparator, to making assertions which are simply antisemitic. This should not be tolerated by the Court."

12. Shortly before the hearing Mr Magennis filed a reply skeleton argument objecting to the allegation of antisemitism against him. This allegation, he said, "seems to be motivated by a desire to stifle, and in any event risks having the effect of stifling, the Appellant's freedom to fully advance his appeal". Mr Magennis invited Mr Solomon to withdraw the allegation that his revised skeleton argument "ma[de] assertions which are simply antisemitic".

13. Mr Solomon did not withdraw the allegation. The hearing proceeded and submissions were made in robust terms on both sides. At the conclusion of the hearing, I indicated that I would reserve judgment and would have to consider carefully whether I accepted or rejected Mr Magennis's submissions, but that I did not consider any of those submissions to have been professionally improper.

14. Given the nature of the allegations against Mr Husain, it was inevitable that both the Tribunal and (subject to what I have said about the parameters of the appeal) I would have to say something about the meaning of antisemitism and about the boundary between legitimate and illegitimate criticisms of Israel. These were controversial issues, even at the time when the tweets were posted. By the time the Tribunal gave its decision, they had become even more so, following Israel's military campaign in Gaza following the Hamas attacks on Israeli civilians on 7 October 2023.

15. In this case, some of Mr Husain's comments found by the Tribunal to be antisemitic were comments comparing Israel to Nazi Germany. His case before the Tribunal had been that these comments were not antisemitic. As a barrister representing Mr Husain in his appeal, Mr Magennis was obliged by the Code of Conduct (rC15.1) to "promote fearlessly and by all proper and lawful means [his] client's best interests". It was for him to judge what submissions to make, provided that those submissions were properly arguable.

16. Mr Solomon's complaint about Mr Magennis's submission was, I am sure, not motivated by any desire to stifle the appellant's freedom to advance his case. If I had accepted it, however, it would certainly have constrained that freedom. As a matter of principle, I consider that a court should be slow to shut out a submission by counsel on the ground that it is antisemitic where it is made in support of an argument about what constitutes antisemitism in a case where that is a central issue. The submission that it was not inherently antisemitic to compare Israel with Nazi Germany was properly arguable and, in my judgment, Mr Magennis did not act improperly by making it.

17. That said, Mr Magennis's oral submissions about Israel's conduct, though not professionally improper, at times went further than required to make his point. They included the submissions that Israel's establishment in 1948 was a "deliberate act of ethnic cleansing", that Israel is an "apartheid State" and a "colonial endeavour" and that Israel is now committing genocide in Gaza. Reference was made to recent judgments of

the International Court of Justice ("ICJ"). There are very few contexts in which it would be appropriate for a domestic court to opine on any of these matters. The present appeal is certainly not one. What matters here is whether the things Mr Husain said fell within the bounds of permissible political speech, not whether the criticisms levelled against Israel by Mr Magennis and Mr Husain are justified.

18. The issues involved in this case understandably evoke strong reactions on both sides. They are likely to arise in other cases. Where they do, legal representatives would be well-advised to focus rigorously on the issues the court has to determine, confine their submissions to those issues and aim to lower, rather than raise, the temperature of debate in written and oral arguments.

The SRA Principles and guidance

19. The SRA Principles require solicitors to act "in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons" (principle 2); with integrity (principle 5); and in a way that encourages equality, diversity and inclusion (principle 6).

20. In August 2017 the SRA produced a Warning Notice on Offensive Communications. This was updated in November 2019. It says:

> "We expect you to behave in a way that demonstrates integrity and maintains the trust the public places in you and in the provision of legal services.
>
> In the context of letters, emails, texts or social media, this means ensuring that the communications you send to others or post online do not contain statements which are derogatory, harassing, hurtful, puerile, plainly inappropriate or perceived to be threatening, causing the recipient alarm and distress."

21. The Warning Notice adds this:

> "The above Principles continue to apply to you (as the context admits) outside your practice, whether in some other business capacity or in your personal life. It is in this sphere – namely outside of work – that we are currently receiving the majority of complaints.
>
> The risk referred to above – namely that social media by its nature tends to encourage instant communication without the necessary forethought – tends to be greater when you are outside a work context. You must at all times be aware of the content you are posting and the need for professionalism.
>
> This is especially true if you are participating in online discussion (whether this be on Facebook, Twitter, other social media, forums, blogs, etc) and you have identified yourself as, or are known to be, a solicitor. You should bear in mind the possibility that users will re-share the content you have posted on their own social network, potentially leading to rapid sharing with a huge number of users. Similarly, you cannot rely on your own privacy settings to prevent the posting from being passed on by others.

> Even if you do not identify yourself as a solicitor, anonymity is not guaranteed; material which you post under a pseudonym may still be traced back to you or you may be identified as a solicitor if you include a photograph of yourself.
>
> You should also consider carefully before retweeting an offensive comment. Unless you refute the content, you will be at risk of being seen as implicitly endorsing it. If it comes to your attention that a third party has accessed your computer and posted an inappropriate comment in your name on a social media network, you should take immediate steps to go online to refute the comment. It is advisable in any event to regularly audit your online presence to remove any material which makes you uncomfortable."

22. In 2019, the SRA published a Topic Guide entitled *Use of social media and offensive communications,* which reminded solicitors that "we treat seriously communications that are offensive, derogatory or inappropriate whether in nature, tone or content" and that "regulatory action can be taken if the sender is identifiable as someone we regulate (even if acting in a personal capacity) and the communication would tend to damage public confidence".

The allegations against Mr Husain

23. There were three allegations against Mr Husain, which the Tribunal set out at the beginning of its judgment:

> "1.1: Between 27 September 2020 and 6 June 2021, he used his Twitter account to publicly post antisemitic and/or inappropriate and/or offensive comments and in doing so breached any or all of Principles 2, 5, and 6 of the SRA Principles 2019.
>
> 1.2: Between 27 September 2020 and 6 June 2021, he used his Twitter account to publicly post inappropriate and/or offensive comments and in doing so breached any or all of Principles 2, 5, and 6 of the SRA Principles 2019.
>
> 1.3: On 13 and 16 December 2022, he sent inappropriate and/or offensive emails to the SRA and in doing so breached any or all of Principles 2, 5, and 6 of the SRA Principles 2019."

24. The tweets relied upon were set out in the SRA's statement under rule 12(2) of the Solicitors (Disciplinary Proceedings) Rules 2019 ("the Rules"). It is not necessary to reproduce all of them, because the Tribunal set out those it regarded as individually antisemitic and I have recorded both the tweets and the Tribunal's conclusions about them later in the judgment. Many of the tweets complained of were posted in Twitter

conversations involving the barrister Simon Myerson QC (now KC) and the journalist Hugo Rifkind, both of whom are Jewish.

The hearing before the Tribunal

25. There was a case management hearing on 30 June 2023 at which directions were made. The parties were permitted to adduce expert reports on what might be considered antisemitic and as to the meaning of the appellant's words. The SRA served an expert report from Stephen Silverman. The appellant did not rely on expert evidence on this issue. There was a discussion about whether reasonable adjustments might be necessary at the substantive hearing. The appellant was permitted to file and serve medical evidence on that issue by 21 August 2023.

26. The substantive hearing began on 18 September 2023 and continued over 13 days (18-22 September 2023, 18-19 December 2023, 26 and 29 January 2023 and 6, 13, 20 and 23 February 2024). The appellant represented himself and was present throughout, except on the last day (before which he filed written submissions). The SRA was represented by counsel. The Tribunal heard evidence from Mr Myerson and expert evidence from Mr Silverman. The appellant provided a statement setting out an explanation for his tweets and a critique of the SRA's position.

27. Shortly before the hearing, the appellant provided medical records including a 2013 diagnosis of recurrent depression and a doctor's letter from 2022 stating that he had reported worsening depression and anxiety and that "due to his low mood and difficulties with anger management this had an impact on how he reacted to difficult situations".

28. The appellant made a number of applications, including an application for the expert's evidence to be struck out, and an application for the Chair to recuse himself. Both applications were refused.

29. On 16 December 2023 (nearly three months after the start of the hearing), Mr Husain applied to rely on a psychiatric report dated 12 December 2023. The report confirmed that the appellant had suffered from episodes of recurrent depression since 1998 with periods of input from his community mental health team, and was currently awaiting psychiatric review by that team. The psychiatrist's opinion was that: (i) the appellant had moderate to severe depression; (ii) he was currently suffering from the effects of the stress of ongoing tribunal proceedings which would limit his capacity at times to fulfil and appropriately communicate his thoughts and (iii) at the time of the tweets he had a relapse of depression "during which his symptoms and levels of agitation and irritability increased, making him more liable to escalations in confrontation with those around him. On balance the relapse of his depression is likely to have led to him acting without his normal due measure and control"; and (iv) reasonable adjustments should be made, holding hearing days a week apart, and with regular breaks.

30. The Tribunal admitted the psychiatric evidence for the purpose of informing the adjustments necessary to facilitate the appellant's participation and as relevant to

mitigation, but refused to admit it on the issue of liability, largely on the basis that it was served some four months late and to admit it for that purpose would be unfair to the SRA.

The Tribunal's judgment

31. At [19.21]-[19.27], the Tribunal set out (over 10 pages) the tweets complained of, the SRA's position on them and Mr Husain's responses. At [20]-[22] it summarised the evidence of Mr Myerson and Mr Silverman. At [23]-[25], it recorded a number of applications made by Mr Husain and its reasons for refusing them: (i) to strike out Mr Silverman's evidence; (ii) for the Chair to recuse himself; (iii) that permission should be given for certain individuals and organisations Mr Silverman had mentioned in evidence to reply to his comments; (iv) that the Tribunal and SRA should apologise to him for turning the hearing into a "charade"; (v) to recall Mr Silverman for further cross-examination; (vi) for leave to seek expert evidence and representation funded by the SRA. At [26], it set out (over some 32 pages): Mr Husain's case, both in general and in relation to the specific tweets relied on against him; some further points he had raised about the SRA's representative misleading the Tribunal and his asserted right to have the proceedings dismissed under the Equality Act 2010; and the Tribunal's decisions on these points (which was to reject them).

32. The Tribunal held that it was no part of its function to make any finding upon the rights and wrongs of the underlying conflict, nor to prevent or hinder an individual's right to act according to their conscience and deeply held views. Its function was limited to determining whether there had been any breach of the SRA Principles and Rules: see [27.1]-[27.5].

33. The Tribunal referred to Articles 6 and 8 ECHR and directed itself that the civil balance of proof applied: [27.6]-[27.7].

34. The Tribunal noted the terms of Article 10 ECHR and referred to the decision of the court of Appeal in *Adil v GMC* [2023] EWCA Civ 1261, [2024] ICR 445. At [27.11], the Tribunal held that its task was:

> "not to make any decision upon the Respondent's right to freedom of expression *per se* but to make findings of fact as to whether the Respondent's specific mode and manner of that expression had crossed from legitimate debate into antisemitism and/or the use of offensive, or inappropriate language, resulting in a breach of his professional duties and responsibilities, and if so found, whether the seriousness of such a breach required sanction".

In reaching that decision, the Tribunal said at [27.12] that it had borne in mind that:

> "Twitter is a dynamic, robust, and fast paced medium in which users may be more liberal and fractious with their language than in any face-to-face dialogue. However, the Tribunal noted that a member of a regulated profession, identifying themselves as such was in a qualitatively different position to an unregulated individual with no professional affiliations, duties, and obligations, particularly in circumstances where there is a risk that the exchanges may escalate and become vicious and offensive".

35. Although Article 8 protected an individual's private life, the Tribunal considered that *Beckwith v SRA* [2020] EWHC 3231 (Admin) showed that codes of professional practice may regulate what professionals do away from work if it realistically touched on the practice of their profession or upon the standing of the profession in the eyes of the public. *Diggins v BSB* [2020] EWHC 467 showed that there was no "bright line" between the professional and private realms. In this case, Mr Husain had volunteered that he was an employment solicitor. It was not unreasonable to assume that he had used his membership of the profession ("the solicitor brand") to add a level of legitimacy and gravitas to his public profile. It was therefore permissible to analyse his tweets to determine whether they were individually or collectively antisemitic and/or offensive or inappropriate and, if so, whether there had been a breach of the SRA Principles and professional conduct: [27.13]-[27.22].

36. There was, the Tribunal considered, no agreed legal definition of antisemitism. The IHRA definition had no legal status, but did have persuasive force. In a previous case *(SRA v Mahmood),* the Tribunal had used a synthesis of three definitions: the IHRA definition, the Oxford English dictionary definition and one offered by an expert who had given evidence in the *Mahmood* case, Prof. Gus John. The Tribunal took the same course, testing the evidence against all three definitions, whilst retaining the discretion, where appropriate and necessary, to develop its own definition. Essentially, "there was a necessity for the Tweets in question to demonstrate a hatred or prejudice to Jews as an over-riding requirement": [27.23]-[27.28].

37. In considering how it would apply the definition to the facts, the Tribunal applied the guidance which had been applied by the Tribunal in *PSA v GPhC & Ali* [2021] EWHC 1692 (Admin), as set out at [11]:

> "The test applied by the FPC was whether a reasonable person with all the relevant information would consider the words to be antisemitic: The 'reasonable person' in the Committee's mind therefore is someone who is in possession of all the facts and knows the context; someone with no particular characteristics... This reasonable person therefore would know what a Zionist is and how that is defined; would know the IHRA definition of anti- Semitism and its associated guidance; would know the dictionary definition of "antisemitism" etc. This reasonable person would have no strong views on the Israel/Palestinian question; would not otherwise be unduly sensitive; would be open-minded, balancing what they had heard and seen before reaching a conclusion..."

It followed that a finding of antisemitism required an objective assessment of the words in their context and that the respondent's good character was not relevant: see [27.29]-[27.30].

38. In assessing whether any of Mr Husain's statements were antisemitic and/or offensive and/or inappropriate, the Tribunal considered individual phrases both in isolation and also by taking account of their cumulative impact, bearing in mind the guidance given by the Supreme Court in *Stocker v Stocker* [2019] UKSC 17, [2020] AC 593, a defamation case. The core principle was that it was essential to consider context and to take into account the medium, style and environment in which the statements were made. In *Stocker*, the statement was made on a Facebook wall, where people would scroll through

quickly, gaining fleeting impressions of the posts made. The same was true here. Reference was also made to *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130. The approach would be: to consider each tweet individually and determine whether its meaning was inherently antisemitic, offensive or otherwise inappropriate; to stand back and look at the context of the Twitter conversation to determine whether this would undermine or support the initial conclusion; to view all the tweets on a macro/cumulative level to determine recurring and persistent patterns of expression and/or coded language; to avoid any over-elaborate analysis; and to resolve any doubt in favour of Mr Husain: [27.31]-[27.34].

39. The Tribunal found Mr Silverman to be, on the whole, a "satisfactory and dispassionate witness", but viewed his evidence as informative only and not determinative of the issues which fell to be considered. His evidence was helpful in providing wider context (e.g. noting the antisemitic trope that Jews in Israel originated from Eastern Europe), but beyond that, the Tribunal came to its own conclusions about whether the tweets were, objectively, antisemitic. The Tribunal added:

> "In a divergence from Mr Silverman's opinion the Tribunal concluded that expressing anti-Zionist views alone was not necessarily antisemitism without this also demonstrating a hatred or prejudice towards Jews, with this latter being engaged where, for example, the anti-Zionist views were couched in Nazi terminology or by reference to well-known Jewish slurs, stereotypes and tropes and/or called for the wholesale destruction/abolition of Israel as a country as opposed to engaging in a political debate regarding its borders and/or the actions of the Israeli government vis a vis Palestinians and/or Hamas."

See [27.35].

40. The Tribunal considered Mr Myerson to be credible: see [27.36].

41. The Tribunal found Mr Husain to be "ardent and passionate in his beliefs" and knowledgeable about the history of the region. He had a hitherto unblemished record. However, as in *Zaman Ali*, the critical issue was the meaning of the words, not the subjective intention with which they were used. The Tribunal set out some examples of tweets by Mr Husain where he had expressed his view "bluntly and robustly yet without recourse to offensive language". However, there were also examples where he had crossed the line from blunt commentary to "[t]weets which could be viewed as objectively antisemitic, albeit in some cases written in a way to obscure the true meaning which lay beneath, and others where offensive language was used, some with crude sexual references". The Tribunal placed no weight on the contention Mr Husain's mental health played a part in his tweets. There was no evidence on which it could do so as the report of Dr Zaman had been admitted for the sole purpose of deciding upon reasonable adjustments and mitigation: [27.37].

42. The Tribunal then set out its own analysis of Mr Husain's tweets, explaining which it had found individually to be antisemitic and why, by reference to the various definitions it had cited:

(a) On 2 October 2020, Mr Husain tweeted: "How terrible 1300 Zionist criminals coming to steal the land of Palestine and turn the Palestinians into refugees by those East Europeans who kicked the Palestinians out of their homes and took up residence in them. PALESTINES, ETHNIC CLEANSING, that continues to this day. SHAME". The Tribunal considered that this was an example of: "Denying the Jewish people their right to self-determination (e.g. by claiming that the existence of a State of Israel is a racist endeavour) AND Drawing comparisons of contemporary Israeli policy to that of the Nazis."

(b) On 3 May 2021, Mr Husain tweeted: "No Muslim should buy The Times, it is a bigoted pager with numerous Zionists working for it like David Aaronovich, Daniel Finkelstein etc. Earlier Cage was awarded damages against this Zionist mouthpiece". The Tribunal saw this an example of: "Making mendacious, dehumanising, demonising, or stereotypical allegations about Jews as such or the power of Jews as a collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions. Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations."

(c) On 10 May 2021, Mr Husain tweeted: "1. A problem created by Britain - u don't want Eastern Europeans here but exported a murderous bunch of Eastern European Zionists to Palestine and armed them. Yes u don't want peace & not in ur blood Nick and Dominic. That is why u been arming Israel since 1968 2. Most Jews did not leave Palestine, they remained in Roman times & are there today Palestinians who converted to Islam. The Europeans have always believed in a mono- culture that is why E.Europeans Zionist believe in ethnic cleansing Palestinians and stealing their lands and homes". The Tribunal saw this as an example of "A trope that Jews do not originate from Israel but instead from Eastern Europe. Reference to Ashkenazi Jews from central and Eastern Europe is also an attempt to delegitimise the existence of the state of Israel by asserting that Jews originate from Europe rather than the Middle East. Also using Zionist as a place holder word for Jew."

(d) On 12 May 2021, Mr Husain tweeted: "1. The people of Israel - a bunch of Eastern European thugs who ethnically cleansed Palestine 2. When will the East European Terror groups leave Palestine? Palestine is occupied and you should leave and go back to Poland/Hungary whence you came". The Tribunal saw this as an example of: "Holding Jews collectively responsible for actions of the state of Israel. A trope that Jews do not originate from Israel. Also using Zionist as a place holder word Jew."

(e) On 13 May 2021, Mr Husain tweeted: "100 percent of your ancestor Zionist ass are from Eastern Europe." The Tribunal saw this as an example of "A trope that Jews do not originate from Israel. Also using Zionist as a place holder word Jew."

(f) On 15 May 2021, Mr Husain tweeted: "1. You deny that you are a fascist who believes in the right of the "promised" people to Palestine? You deny the Nakba and the reality of Apartheid Israel? Live your illusion in your own little foolish world 2. Only a Zionist idiot would call a hotel a war zone but then again for

Zionists Al Jazeera offices are fair game so are UN schools which you hit with white phosphorous. Zionism is fascism and has no moral qualms What's happening about war crimes/genocide of Palestinians". The Tribunal saw this as an example of: "Denying the Jewish people their right to self-determination (e.g. by claiming that the existence of a State of Israel is a racist endeavour. Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour."

(g) On 16 May 2021, Mr Husain tweeted: "1. If you want to know the reality of what you are it is a Zionist PIG who spreads hate and believes in massacring Palestinian kids 2. This is port and parcel of being brought up as a racist Zionist in apartheid othering and killing Palestinians is what they've been doing since Palestinian, before 19:48 when Brits encouraged Jewish migration in line with Balfour declaration. 3. It has not been quiet since Brits started arming Zionists who stole Palestinian land and built settlements on it. Not quiet even after suppression of 1937 first Intifada and British disarming of Palestinians. 4. Zionist squatters should leave Palestine and head back to E.Europe, there is no place for them in Palestine. Why do Israeli threaten world with annihilation if Palestinian's take back their land? Why Palestinian can't return 2 Palestine but Jew welcome to return". The Tribunal said: "These Tweets used the trope that Jews do not originate from Israel. Also using Zionist as a place holder word Jew and referring to 'pig' which is an known offensive Jewish trope. Denying the Jewish people their right to self-determination (e.g. by claiming that the existence of a State of Israel is a racist endeavour."

(h) On 19 May 2021, Mr Husain tweeted: "1. Oh yes Israel can kill every day of the week and ethnically cleanse Palestinians to make way for the master race, the promised people Palestinians have right to life and defence as Zionist are Aggressors. 2. Israel also bombed another Gaza journalist yesterday killing him so there is a policy to kill journalists, medical staff and destroy infrastructure to create hopelessness in the Gara concentration camp." The Tribunal saw this as an example of "Drawing comparisons of contemporary Israeli policy to that of the Nazis. As above".

(i) On 20 May 2021, Mr Husain tweeted: "1. Gosh even u r apparently a lawyer, but ur understanding of morality and law seems to part way may when it comes to the apartheid state which treats Palestinians like UNTERMENSCHEN and their land like Lebensraum. 2. Implicit in what you are challenging me over is that you are a ZIONIST (RACIST) ISRAEL supporter. You therefore choose to attack me on my German usage since you can't attack me for criticising FASCISM/ZIONISM ISRAELI SOCIETY. 3. We also need to spend time with Palestinians and understand Al Nakbe which is on going it is not acceptable so peddle racism in the form of Zionism a cruel and fascist ideology. Look how Israeli schools promote killing and enslaving Arabs". The Tribunal saw this as an example of: "Drawing comparisons of contemporary Israeli policy to that of the Nazis. Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour."

(j) On 22 May 2021, Mr Husain tweeted: "Israel wants to sing at Eurovision so they should relocate to Eastern Europe where Netanyahu and his vile kind along with

Turds like Yitzhak Shamir emerged from." The Tribunal saw this as an example of: "The trope that Jews do not originate from Israel."

(k) On 23 May 2021, Mr Husain tweeted: "1. The Times now reduced to being the back orifice of Zionism has this idiot [Hugo Rifkind] writing for it. A once quality paper has become cancerous with Zionist writers like Daniel Finkelstein/Frankenstein and David Aahronovich [sic]. 2. That land belonged to Palestinians from time immemorial not to Eastern European's. It is Israel that has destroyed Palestine and obliterated Gaza driving The Majority of Palestinians into exile in 1948." The Tribunal saw this as an example of "Making mendacious, dehumanising, demonising, or stereotypical allegations about Jews as such or the power of Jews as a collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government, or other societal institutions."

(l) On 26 May 2025, Mr Husain tweeted: "Israelis do not live by Talmud they are murderers and thieves." The Tribunal saw this as an example of: "Holding Jews collectively responsible for actions of the state of Israel."

(m) On 2 June 2021, Mr Husain tweeted: "1. Yeah the land of Poland by Jews and Palestine with Palestinians. 2. Let ur people return to East Europe and Palestinian refugees return their lands." The Tribunal saw this as an example of: "Trope that Jews do not originate from Israel."

(n) On 4 June 2021, Mr Husain tweeted: "Typical Zionist always have damn walls and want to take ur money". The Tribunal said: "References to walls could be a reference to the Western/Wailing Wall and references to money is the connotation or trope of greed and avarice."

(o) On 5 June 2021, Mr Husain tweeted: "Maybe because the only Eastern part of ur people is Eastern Europeans Your geography is skewed go back to Poland cos Palestine is Islamic land." The Tribunal saw this as an example of: "Trope that Jews do not originate from Israel."

(p) On 6 June 2021, Mr Husain tweeted: "1. U r the one who started ur sort like to start and cry wolf typical Zionist shite. 2. And Rifkind is a Zionist pig supporting theft of Palestine for his Eastern European kin. 3. You Zionists invent ownership papers. If we are silly enough to believe u never ethnically cleansed Palestine. 4. Why don't you Eastern Europeans go home to Poland since Palestine is for Palestinians. Why don't you pay rent for squatting in Palestine? 5. Why can't you end the occupation- it is Palestinian land, it is their home they are not illegal Ashkenazi Immigrants. The Tribunal said: "Zionist used as a place holder for Jew and the trope that Jews did not originate in Israel."

See [27.38.1]-[27.28.7].

43. Looking at the tweets as a whole, the Tribunal's conclusions were as follows:

> "27.38.8 The Tribunal found the accretion of the Respondent's Tweets over a spread of months; their frequency, sustained intensity, and the cumulative

impact of the language used by the Respondent made it more likely than not that when viewed collectively the Tweets were founded on hatred or hostility towards Jews.

27.38.9 As an observation, it was notable that no one who engaged with the Respondent in the Tweets used racist or bigoted language against him and this tended to negate the Respondent's submission that the Tweets had been part of fast moving and robust dialogue in which insults were traded.

27.38.10 Contrary to his assertions, it was clear to the Tribunal that in a number of his Tweets he had not acted rashly whilst in the heat of argument, but he had instead picked his words very carefully to deliver a particular message to Mr Myerson and Mr Rifkind whilst simultaneously attempting to occlude his true, underlying, meaning from the casual reader. Whilst the Respondent's subjective intent was not relevant to the actual meaning of the words it was more likely than not that he had wished to obtain some plausible deniability if he was to be later picked up on the Tweets in the way which latter happened.

27.38.11 In some of the Tweets however, the Tribunal found that there was no nuance or subtlety and no attempt to obscure their meaning with such Tweets being plainly and deliberately crude and offensive.

27.38.12 Findings of antisemitism made the Tweets inherently offensive and/or inappropriate."

44. The Tribunal went on to conclude, with respect to allegation 1.2, that some tweets directed at Mr Myerson and Mr Rifkind, which may have included an element of antisemitism, were also "starkly offensive, absent any taint of antisemitism" and that there were also other tweets of a more general nature which would have been offensive to people of other ethnicities and sexualities. These included:

(a) On 4 January 2021: "Who let the mentally challenged out of the hospital."

(b) On 15 April 2021: "What do you expect from a Zionist retard."

(c) On 8 May 2021: "That is why some Pakistani have slave mentality. They like the one who raped their great great great grandmothers."

(d) On 18 May 2021, "But my TALIB blow up doll with additional strap on manhood is a best seller and Brigitte said she'd be ordering a replacement because her current one has holes in all the wrong places."

(e) On 21 May 2021: "if u were anti-racist Myerson u would not be Zionist which is racism. You reek of white privilege that's why you cry about Reading lists circulated by Barristers whose principles decry fascism. What's wrong Myerson – still treating junior Barristers like Palestinians through bully boy tactics? Another Zionist Oik obviously shines Myerson's shoes with his tongue. Myerson is waiting for you to pick the dandruff off his wig and clean his shoes."

(f) On 30 May 2021 "To hell with your Yuan and to hell with your Chinese empire. U will be remembered as the new Mongols and cursed for ur stupidity. You implemented gender imbalance in ur own country via aborting females and stole Uighar women for rape to breed ur race. Brother don't you have any self respect? This Chinese was raping Muslim women and had enslaved one million Muslims in the concentration camp. Whoever supports China is a traitor and a person with weak faith."

(g) On 30 September 2021: "You dirty Gujar, who r u to speak for Pashtun. You are the biggest bacha BAZ. If there are so many disappeared, how come the Army has not taken your butt and shoved some bottles up it and filled your mother's hole with some baby juice?"

(h) On 3 June 2021: "Was he black aboriginal or one of those European white guys who get jobs in the legal profession with their broad white European 'Aussie' smile."

(i) On 6 June 2021: "Matthew Standon was on the ground crying like a baby because he pissed his pants with no nappy on. The Israeli terror forces got upset cos they'd have to clean Standon with a Greek shower and baton clean Standon's Rear. Next time keep ur dummy in mouth and stand down Standon."

See [27.38.14].

45. The Tribunal's general conclusion (at [27.38.15]) was that:

> "Whether the Respondent was attempting satire, irreverence and/or humour, the Tweets had been nonetheless puerile, hurtful, and gratuitously offensive."

46. The Tribunal then went on to find, in relation to allegations 1.1 and 1.2, that there had been a breach of principle 5 (integrity) (see [27.38.17]-[27.38.19]), principle 2 (public trust) (see [27.38.20]-[27.38.20]) and principle 6 (encouraging equality, diversity and inclusion) (see [27.38.22]-[27.38.25]).

47. Allegation 1.3 was different, because that involved communications to the SRA's investigating officer ("IO"). Examples included: "You are a Zionist apologist and fascist like ur organisation- look forward to the McCarthyite show trial", "You and your silly little fascist organisation do not have my consent to contact my GP. You and your Zionist racist pals can go and play with Mr Myerson" and "Given the lack of engagement with the points I have raised above, I can only consider that IO who is a Sikh Punjabi is angry about comments made on Twitter by me about the Sikh national hero Ranjit Singh as a rapist of Muslim women. IO should have been excused from considering my case since she considers I am offensive to Indians and IO is very obviously an Indian." See [27.39.2].

48. The Tribunal noted that "[i]n correspondence between a solicitor and his regulator the observance of the formalities of business-like communication was required" and that the messages were "intrinsically and overtly offensive". This was in breach of principles 5, 2 and 6: see [27.39].

49. The Tribunal then turned to sanction. On the day of the hearing when this had been considered (23 February 2024), Mr Husain had sent in a note from his GP which included this: "Mr Husain feels unable to attend this hearing due to a decline in his mental health and I am concerned that attending this hearing could cause further deterioration. I would be grateful for your support in this matter". He also filed written submissions to the effect that the Tribunal had been wrong to admit Dr Zaman's report only as to reasonable adjustments and mitigation. He cited *BSB v Howd* [2017] EWHC 210 (Admin). The Tribunal noted that Mr Husain had made no application to adjourn the hearing and decided that it was appropriate to proceed in his absence. His position was not analogous to that of the barrister in *Howd*: see [27.40].

50. As to sanction, the Tribunal noted that, as regards allegations 1.1 and 1.2, "the Respondent's motivation appeared to shift from one of making potentially valid political points to being purely offensive and stooping to use racist and antisemitic language to underline his points of argument": [49].

51. As regards allegation 1.3, "his motivation appeared to be one of anger and outrage at being called to account by his regulator": [50].

52. Under each allegation, the misconduct arose from a conscious decision. There may have been "an element of spontaneity", but "this conduct persisted over a number of months and the Respondent had had time to reflect and moderate his mode of expression": [51]. While he may have been suffering from depression, this did not excuse his behaviour and there was no medical evidence that his condition was of such a nature or degree that he did not know what he was doing or had no control over his use of Twitter. There was no medical evidence to explain why his depression would have caused him to be antisemitic and use racist and inappropriate sexualised language: [52]-[53].

53. The harm to those affected and to the reputation of the profession was high, and foreseeably so: [55]-[58]. The misconduct was deliberate and calculated and repeated, continuing over a period of 9 months: [59]. The misconduct was motivated by and/or demonstrated hostility, based on protected or personal characteristics of a person, namely race and religion. There was clearly a bullying element and puerile and crude sexual references: [60]. Other than a hitherto unblemished record, there was no mitigation. Mr Husain had shown "no insight whatsoever": [62]. His apology to Mr Myerson was not genuine and he had shown "no contrition": [63]. He had been unduly combative during the proceedings: [64]. He had transitioned from portraying himself as a "stout defender of freedom of speech" to being someone who was "angry and depressed and not able to control his impulses": [65].

54. In the circumstances, the Tribunal considered that the only sanction to protect the public and public confidence in the profession for this "ingrained behaviour" was an order that he be removed from the Roll: [66]-[70].

55. The Tribunal considered Mr Husain's means and made no order as to costs: [73]-[94].

Ground 1

Submissions for Mr Husain

56. Mr Magennis for the appellant submitted that the Tribunal irrationally concluded that the appellant was not disabled within the meaning of the Equality Act 2010 ("the 2010 Act"), wrongly excluded the psychiatric report and GP's letter from its consideration of liability, contrary to the guidance in *Bar Standards Board v Howd* [2017] EWHC 210 (Admin), failed to make reasonable adjustments in breach of s. 20 of the 2010 Act (in that it refused to have the hearing on non-consecutive days) and failed to make findings in relation to breach of s. 15 of the 2010 Act.

Submissions for the SRA

57. Mr Solomon for the SRA submitted that the Tribunal was correct to say that there was no evidence that Mr Husain was disabled. The psychiatric report of Dr Zaman was admitted only for the purpose of determining reasonable adjustments and mitigation. The decision not to admit it as relevant to the substance of the complaints was taken at a case management hearing separate from the final hearing and cannot be challenged on appeal. *Howd* turns on its facts and is not analogous to the present case. Section 15 of the 2010 Act is a definition section and is in any event not relevant.

Discussion

58. In *Howd*, the Disciplinary Tribunal of the Council of the Inns of Court found six charges proven against a barrister. These related to his sexually inappropriate conduct on one evening at a party held by his former chambers. Lang J found at [21] that the medical evidence established on the balance of probabilities that "his inappropriate, and at times offensive, behaviour was a consequence of his medical condition". At [48], she said: "if the public was aware that his behaviour was a consequence of a medical condition, and so lacked any reprehensible or morally culpable quality, it would be unlikely to diminish their trust and confidence in the profession or in Mr Howd as a barrister, provided he was fit to practise". At [55], she said that, in the light of the medical evidence, his behaviour "plainly was not reprehensible, morally culpable or disgraceful, as it was caused by factors beyond his control" and so did not amount to serious professional misconduct.

59. In my judgment, this part of the judgment establishes very little by way of authority. On the facts, the misconduct alleged took place on one evening. The judge considered that the medical evidence showed that the barrister's disinhibition was caused by factors beyond his control and lacked any reprehensible or morally culpable quality. The nature of the medical evidence, and the judge's reasons for concluding that it negated his culpability, are set out in a confidential annex to the judgment, so it is not possible to say anything about these. The only proposition of law that can safely be drawn from *Howd* is that, in principle, medical evidence *might* be such as to negate culpability.

60. In the present case, the conduct in issue took place over nine months. Dr Zaman said only that Mr Husain's depression made him "more liable to escalations in confrontation with those around him" and that "[o]n balance the relapse of his depression is likely to have led to him acting without his normal due measure and control". He did not say that the

depression impaired his ability to understand the nature of what he was tweeting, or to take a rational decision about whether to tweet or not. Nor did Dr Zaman say that Mr Husain's depression caused or even contributed to his tweeting content which was antisemitic, racist and grossly offensive over a period of nine months. As the Tribunal correctly held, there was no evidence of any link between Mr Husain's medical condition and these critical, objectionable features of his conduct.

61. It follows that, even if Dr Zaman's report had been admitted as relevant to liability, it would not have been relevant to the Tribunal's determination whether Mr Husain had breached the SRA Principles, because, taken at its highest, it would not have explained his conduct. In fact, however, the reason why the Tribunal declined to admit Dr Zaman's report on the issue of liability was that it was four months late. If it had been served on time, the SRA might well have obtained its own evidence in response. This was a proper case management reason for excluding it.

62. The Tribunal did, however, take Dr Zaman's report into account when deciding what adjustments should be made to ensure that the hearing was fair (as well as in relation to sanction). A review of the transcript of proceedings (which covers some but not all of the hearing) shows that the Tribunal in fact made considerable efforts to assist the appellant. By way of example, the Tribunal provided training on how to navigate the digital system being used, sent Mr Husain guidance notes in advance on issues such as adjournments, assisted him in finding documents and permitted requests for unscheduled breaks (including when Mr Husain said that he needed time to think).

63. The hearing lasted 13 days, spread over 5 months. Mr Husain attended hearings on 18-22 September 2023, 18-19 December 2023, 26 and 29 January 2024 and 6, 13 and 20 February 2024. On the final day (23 February 2024) he did not attend but filed written submissions in advance. The Tribunal was well placed to assess for itself whether any further adjustment was required. The transcript and judgment show that Mr Husain advanced his case robustly and fully. There is no proper basis for the suggestion that the Tribunal should have made greater allowances for his medical condition.

64. Given that there was no evidence that Mr Husain's medical condition negated his culpability, and that the Tribunal properly considered what adjustments should be made and made those adjustments, there was no need to consider the question whether Mr Husain was disabled for the purposes of the 2010 Act. There is no rule which prevents a court or tribunal from conducting a hearing at which one of the parties has an impairment satisfying the definition of "disability" in s. 6 of the 2010 Act. Conversely, the duty of a court or tribunal under Article 6 ECHR to ensure that the hearing is fair applies even if the impairment in question does not satisfy that definition. In any event, the duties owed by public authorities under s. 29 of the 2010 Act do not apply to those exercising judicial functions, as the Tribunal was: see para. 3 of Sch. 3 to the 2010 Act.

65. These conclusions mean that it is not necessary to consider whether, as a matter of jurisdiction, it is open to Mr Husain to appeal against the Tribunal's interlocutory decision not to admit Dr Zaman's report on the issue of liability. On that issue, Mr Solomon for the SRA relied on the decision of the Court of Appeal in *Re a Solicitor*, The Times, 4 May 1994, for the proposition that appeals under s. 49 of the 1974 Act lie only against final decisions. It may have to be determined in another case whether that decision precludes an appeal in a case such as this, where the Tribunal has made a final (and

therefore appealable) decision and it is said that, as a result of the prior interlocutory decision, the final decision is "unjust because of a serious procedural irregularity" within CPR 52.21(3)(b).

Ground 2

Submissions for Mr Husain

66. Mr Magennis for Mr Husain submits that the tweets were clearly political speech which should have attracted the highest level of protection under Articles 9 and 10 ECHR. The Tribunal should therefore have asked itself whether the tweets were "seriously offensive" rather than simply "offensive" or "inappropriate": see the decision of the Bar Tribunal and Adjudication Service in *Holbrook v BSB*. Yet in the parts of its decision concerning liability, the Tribunal in fact applied the lower test (see [27.11], [27.22], [27.31], [27.34], [27.36.1], [27.37.7], [27.38.2], [27.38.11], [27.38.12], [27.38.13], [27.38.20], [27.38.23] and [27.39.9]). It referred to the correct test ("seriously offensive and seriously discreditable") for the first time when dealing with sanction (see [47]), but with no explanation or justification for the shift.

67. In his post-hearing note, Mr Magennis referred to the decision of the Court of Appeal in *Adil v GMC* [2023] EWCA Civ 1261, [2024] ICR 445, as setting out the correct approach to Article 10 in regulatory cases.

Submissions for the SRA

68. Mr Solomon KC for the SRA notes that, in *Ali v SRA,* Morris J said at [94] that:

> "decisions of specialist tribunals are not expected to be the product of elaborate legal drafting. Their judgments should be read as a whole; and in assessing the reasons given, unless there is a compelling reason to the contrary, it is appropriate to take it that the Tribunal has fully taken into account all the evidence and submissions".

69. The Tribunal here applied precisely the test contended for by Mr Husain (see at [68]-[69]). The *Holbrook* case was very different. There, the barrister concerned accepted that "the right to political speech is not entirely unfettered" and that speech would lose its protected status if it included "derogatory, racist… language" (see [42]). In this case, there was such language. That being so, the interference with Mr Husain's Article 9 and 10 rights was proportionate and justified.

70. In his post-hearing note, Mr Solomon submitted that the Court of Appeal in *Adil* had recognised the legitimacy of proportionate regulation of speech in the regulatory context.

Discussion

The law

71. Article 9(1) guarantees "the right to freedom of thought, conscience and religion", which includes the freedom to manifest one's religion or belief in "worship, teaching, practice and observance". Article 10(1) guarantees "the right to freedom of expression", which

includes the right to "impart information and ideas without interference by public authority".

72. Articles 9(2) and 10(2) provide that the freedoms may be subject to "such limitations" (in the case of Article 9(2)) and to "such formalities, conditions, restrictions or penalties" as are "prescribed by law and are necessary in a democratic society" in the interests of "public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others" (in the case of Article 9(2) and "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" (in the case of Article 10(2)).

73. Although Mr Magennis's skeleton argument made reference to a "protected belief" engaging the provisions of Article 9, his submissions focussed on Article 10. In my judgment, it is under that provision that the case falls to be analysed.

74. Many of the tweets in this case were on a subject of political importance: the Israel-Palestine conflict. For a recent restatement of the heightened protection accorded to "political speech" under Article 10, see e.g. *Higgs v Farmor's School* [2025] EWCA Civ 109, [63] (Underhill LJ).

75. Speech does not lose its protection merely because it is abrasive in tone or liable to offend some of those who hear it. As Sedley J said in *DPP v Redmond-Bate* (12999) 163 JP 789, [2000] HRLR 249, at [20]:

> "Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having".

76. In similar vein, the European Court of Human Rights has emphasised that the right to freedom of expression is applicable "not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb": see e.g. *Nilsen v Norway* (2000) 30 EHRR 878 [GC], [43], using a formulation which first appeared in *Handyside v UK* (1979-80) 1 EHRR 737, [49].

77. However, as the Court of Appeal recently recognised in *Adil*, at [68], there are decided cases which recognise the lawful interference with Article 10 rights in the interests of the proper regulation of the professions. One of these was *Diggins*.

78. In that case, Warby J heard an appeal from a decision of the of the Disciplinary Tribunal of the Council of the Inns of Court which had imposed a reprimand and a fine for sending a single tweet using crude racist and sexist language, directed at a young, black student. At [82] of his judgment, he dismissed an argument based on Lord Kerr's judgment in *Stocker*, that a person should not be criticised for tweeting causally, without thought or inhibition. He said:

> "As everybody knows, some of the most damaging and hurtful statements are those made casually, without proper forethought or self-restraint."

At [83], he added:

> "It is a notorious fact that many on Twitter use rude and offensive language, indeed that some engage in harassment of others, or wounding 'pile-ons'. But I have no evidence, nor is it a matter of common knowledge, that everybody on Twitter behaves in these ways. Even if that was so, a descriptive norm of that kind could not confer a right on any individual user to post rude or offensive messages."

At [96], he found that the panel was right to strike the balance between the appellant's free speech and privacy rights, and the rights of others, in the way they did.

79. In *Holbrook v BSB* (Case 2021/4441, 25 March 2022), a panel of the Bar Tribunal and Adjudication Service allowed an appeal against the decision of an Independent Decision-making Panel to impose an administrative sanction on a barrister in respect of a single tweet, responding to a tweet calling for the French satirical magazine Chalie Hebdo to be shut down. The barrister had tweeted: "Free speech is dying & Islamists and other Muslims are playing a central role. Who will lead the struggle to reinstate free speech as the foundation of all other freedoms?"

80. The panel (chaired by Lyndsey de Mestre QC) recorded at [42] the barrister's acceptance that:

> "the right to political speech is not entirely unfettered and would lose its highly protected status where the manner of expression of the political view involves gratuitous personal abuse, derogatory racist or sexist language, such as was found in the tweets examined in *Diggins v BSB*, or 'grossly offensive and disparaging': Facebook posts which were 'targeted and misogynistic' such as was found in a 2018 Tribunal decision."

At [44], the panel said:

> "…given the importance ascribed to freedom of expression in the authorities referred to above (and many of the others to which we were referred at the hearing), it follows that, for the expression of a political belief to be such that it diminishes the trust of the public in the particular barrister or in the profession as a whole will require something more than the mere causing of offence. At the very least, the relevant speech would have to be 'seriously offensive' or 'seriously discreditable' as suggested in the Handbook Guidance. Even in such cases there would have to be a close consideration of the facts to establish that the speech had gone beyond the wide latitude allowed for the expression of a political belief, particularly where the speech was delivered without any derogatory or abusive language and the objection was taken to the political belief or message being espoused, rather than the manner in which that belief or message was being delivered."

At [45]-[46] the panel said that any guidance given by the by the regulator had to be read "bearing in mind the hierarchy of free speech values". At [47], it said that the case law on free speech dictated that "the baseline for a breach of CD5 should be set higher than merely that a comment would simply offend". The IDP's finding that the tweet would cause offence therefore fell short of establishing the type of conduct that was necessary for a breach of the relevant professional duty.

81. Although the reasoning of the panel does not appear to have been referred to in any reported decision, both parties accepted that the approach set out by the panel was correct. I would respectfully endorse the parts of the panel's reasoning I have set out above as a correct statement of principle, applicable to any case where a regulator takes disciplinary action against a professional on the basis of public speech on a political issue on the ground that it is offensive.

Did the Tribunal err?

82. The Tribunal's judgment was detailed and comprehensive. At [26.16.5], it accurately recorded Mr Husain's submission that, even if it were to conclude that any of the tweets were offensive/antisemitic, it would still have to consider whether this amounted to professional misconduct; and that this required consideration of Mr Husain's Article 10 rights (as explained in *Adil*) and "the high level at which the bar must be set before a regulator can properly seek to interfere with a professional's Article 10 rights" (as set out in *Holbrook*). At [26.16.19], it also recorded Mr Husain's reliance on the passage from Sedley J's judgment in *Redmond-Bate* which I have set out above.

83. At [27.11], the Tribunal said that its task was "to make findings of fact as to whether the Respondent's specific mode and manner of that expression had crossed from legitimate debate into antisemitism and/or the use of offensive, or inappropriate language, *resulting in a breach of his professional duties and responsibilities*" (emphasis added). At [27.22], the Tribunal said that it was permissible to analyse the tweets "to determine whether they were, individually and/or collectively antisemitic and/or offensive or inappropriate, as set out in Allegations 1 and 2, *and if it decided they were, then whether there had been breaches of the SRA Principles and professional conduct*".

84. These passages make clear that the Tribunal understood there to be two relevant questions in its analysis. The first was whether the tweets antisemitic and/or offensive or inappropriate. The second, which arose only if the answer at the first stage was "Yes", was whether that amounted to a breach of the SRA principles and professional conduct.

85. The passages criticised by Mr Magennis at [27.31] and [27.34], [27.36.1], [27.37.7], [27.38.2], [27.38.11], [27.38.12] and [27.38.13] were all part of the first stage of the analysis. In these passages, the Tribunal used the terms "offensive or inappropriate" without using the qualifier "seriously". However, it would be wrong to say that the Tribunal failed generally to consider *how* offensive the tweets were. At [27.38.11], it found that, in some of the tweets, "there was no nuance or subtlety and no attempt to obscure their meaning with such Tweets being *plainly and deliberately crude and offensive*". At [27.38.12], it said that findings of antisemitism made the tweets "*inherently* offensive and/or inappropriate", at [27.38.13] that some tweets directed at Mr Rifkind were "*starkly* offensive, absent any taint of antisemitism" and at [28.38.15] that the tweets set out in the table above had been "puerile, hurtful and *gratuitously* offensive"

(emphases added). In my judgment, there is very little material difference between the language used here and an express finding that some of the tweets were "seriously offensive". To all intents and purposes, it amounts to the same thing.

86. The findings at [27.38.17] and [27.38.25] in relation to breach of principles 5, 2 and 6 under allegations 1.1 and 1.2 (the second stage of the analysis) was therefore premised on findings which amount, in substance, to a conclusion that some of the tweets were seriously (rather than just barely) offensive.

87. The findings at [27.39.3] and [27.39.4] in relation to allegation 1.3 were that the tweets had "racist/discriminatory content" and were "*intrinsically and overtly* offensive". Later, at [57], the Tribunal explained that the "distressing language regarding her ethnicity" used in communications to the SRA's investigating officer amounted to "bullying and offensive abuse". This too was, in substance, a finding that the communications in question were "seriously offensive".

88. If there were any doubt about this, however, the Tribunal resolved it at [68]-[69], by saying in terms that Mr Husain's conduct had been "both seriously offensive and seriously discreditable" in that there had been "many examples of antisemitic rhetoric, vulgar and offensive language, and racism".

89. In my judgment, these passages show that the Tribunal did not misdirect itself as to the high bar required before concluding that Mr Husain had breached principles 2, 5 and 6 of the SRA Principles. Whether it gave proper effect in its decision to the principles underlying Article 10 is better considered under ground 3, to which I now turn.

Ground 3

Submissions for Mr Husain

90. Mr Magennis for Mr Husain submitted that the Tribunal was wrong to rely on the IHRA working definition of antisemitism, which has been widely criticised. In particular, the Tribunal used that definition as the basis for stating, in relation to certain tweets, that it is inherently antisemitic to refer to Israel as a fascist state or to compare it with historical examples of fascist states, including Nazi Germany. The Tribunal, however, applied this approach inconsistently, at one point accepting that a tweet which made the comparison was acceptable. The Tribunal reached irrational conclusions in relation to individual tweets. Given the Tribunal's approach (to look at individual tweets and then reach an overall conclusion as to the cumulative position), errors in individual cases undermine its overall conclusion.

91. In addition, the Tribunal erred in admitting Mr Silverman's evidence. There was no need for expert evidence on the issue of what constitutes antisemitism. Mr Silverman was not a true expert. He had a close connection to one of the parties, having provided training to the SRA (see by analogy *EXP v Barker* [2017] EWCA Civ 63, [2017] Med LR 121). He used the IHRA working definition without explaining how controversial it is, made baseless criticisms of third parties and had a previous link to SRA, to whom he had provided training. The Tribunal in any event attached too much weight to his evidence.

Submissions for the SRA

92. Mr Solomon for the SRA submitted that there was no error of law in relying on the IHRA working definition. It is widely adopted, including by the UK Government and European Parliament. It has been widely used in the regulatory sphere, including by the Solicitors Disciplinary Tribunal, by the General Pharmaceutical Council (as shown by my decision in *Professional Standards Authority for Health and Social Care v General Pharmaceutical Council, Ali (Interested Party)* [2024] EWHC 577 (Admin), [2024] IRLR 504). In any event, the Tribunal did not rely exclusively on the IHRA working definition. It considered several and ultimately formed its own conclusions. The Tribunal's conclusions on particular tweets were not plainly wrong or irrational. Again, specific submissions are made about particular tweets.

93. The Tribunal properly admitted and weighed the expert's evidence. He did in fact explain the controversy around the IHRA guidance, but in any event his evidence was for the Tribunal to assess. The connection between the expert and instructing party was known to the Tribunal, which referred to it. Overall, there was no error of law or approach.

Discussion

The IHRA working definition and examples

94. The IHRA is an inter-governmental organisation founded in 1998 by former Swedish Prime Minister Göran Persson to address issues related to the Holocaust and genocide of the Roma. It has 35 member countries (including the UK, the USA, Israel and most European Union Member States) and 8 observer countries. In 2016, it decided to adopt a "non-legally binding working definition of antisemitism":

> "Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities."

95. On its website, after setting out the definition, the IHRA says this:

> "To guide IHRA in its work, the following examples may serve as illustrations:
>
> Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that levelled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for 'why things go wrong.' It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.
>
> Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.

- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.

- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.

- Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).

- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.

- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.

- Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.

- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.

- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.

- Drawing comparisons of contemporary Israeli policy to that of the Nazis.

- Holding Jews collectively responsible for actions of the state of Israel."

96. As the Tribunal said at [19.24.6], the IHRA working definition was formally adopted by the UK Government in a written ministerial statement by the Rt Hon. Sajid Javid MP, then Secretary of State for Communities and Local Government, on 12 December 2016 (HCWS345). Mr Javid said that the IHRA working definition, "although legally non-binding, is an important tool for criminal justice agencies, and other public bodies to understand how anti-Semitism manifests itself in the 21st century, as it gives examples of the kind of behaviours which depending on the circumstances could constitute anti-Semitism".

97. As the Tribunal also noted at [19.24.8], the working definition and examples have since been accepted by the European Parliament and many other countries and employed by a range of governmental and political institutions. They have also, however, been criticised. The Tribunal recorded at [26.16.29] comments made in 2021 by the British-Israeli academic Avi Shlaim, a former Professor of International Relations at the University of Oxford:

> "Scholars and legal experts have convincingly argued that IHRA's definition is incoherent, vague, vulnerable to political abuse, and not fit for purpose. It fails even to meet the most elementary requirement of a definition, which is to define. The decisive role of pro-Israel advocacy groups in drafting and promoting the definition has also been established…"
>
> "The examples [referred to in the IHRA definition], falsely represented as part of the IHRA definition, have been used to delegitimise and censor legitimate criticism of Israel and, more broadly, to curtail free speech on Israel. This shields Israel from accountability for its serious human rights abuses, which consequently continue unchecked."

PSA v GPhC, Ali

98. In *Ali*, the Professional Standards Authority for Health and Social Care appealed against a decision of the General Pharmaceutical Council's Fitness to Practise Committee imposing a warning on a registrant who had made two antisemitic comments at a rally. In my judgment I made these general observations about antisemitism and anti-Zionism, drawing on aspects of the IHRA working definition and examples:

> "57. Antisemitism is hatred or hostility towards Jews as a racial and/or religious group. That hatred or hostility can be manifested in different ways. As the IHRA working definition points out, contemporary examples include "mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective – such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions". There are many conspiracy theories circulating, based on these kinds of stereotypical allegations. These conspiracy theories are expressions and instruments of racism, not just crackpot musings. It is important to recognise them as such.
>
> 58. Zionism is a label given to a group of political beliefs about the legitimacy of the foundation and subsequent policy and conduct of the state of Israel. Since its foundation in 1948 as the only Jewish nation state, Israel has been consistently criticised. Some of that criticism has focussed on the fact that its foundation involved the displacement of peoples of mainly Arab ethnic origin (although large numbers of Jews were also displaced from majority Arab countries at about the same time). Other criticism

> focuses on the subsequent conduct of Israel, particularly towards the Palestinian inhabitants of the West Bank and Gaza Strip. It has included the claims that Israel's policy and conduct is contrary to international law (including international humanitarian law and international human rights law), motivated by racism, or otherwise morally objectionable. These claims have come from various sources (including Jews and indeed Israelis) and are vigorously disputed.
>
> 59. The line between antisemitism and legitimate opposition to political Zionism can in some cases be difficult to draw with confidence and accuracy.
>
> 60. In the first place, the word 'Zionist' (or in some contemporary discourse the contraction 'Zio') is sometimes used by people who regard themselves as progressive, and would be ashamed to use the word 'Jew', to mean exactly that. Deciding whether language is being used in this way requires a careful and contextual analysis of what is being said. Sometimes it will be obvious that a statement using the word 'Zionist' conveys an objectively racist meaning, sometimes less so.
>
> 61. Second, even when 'Zionist' is not used euphemistically as a synonym for 'Jew', some criticisms advanced against Zionists as supporters of the state of Israel may reflect underlying antisemitic attitudes. The IHRA's non-exhaustive list of examples of antisemitism includes '[a]pplying double standards by requiring of [Israel] a behaviour not expected or demanded of any other democratic nation'. Whether a particular criticism of Israel or its supporters involves this kind of double standard, and if so whether it reflects underlying antisemitism, may be highly controversial.
>
> 62. Third, accusations of antisemitism can be used to malign and discredit those engaging in legitimate criticism of the policy and conduct of the state of Israel and thereby to suppress such criticism. Foreign policy decisions by the United Kingdom and other governments may affect that policy. In a liberal democracy such as ours, there is a strong public interest in allowing such decisions to be informed by criticisms of Israel and the responses to those criticisms. To that end, legal frameworks, whether in the criminal or in the regulatory sphere, must be interpreted and applied so as to avoid the 'chilling' of legitimate political speech, which attracts the highest level of protection under Article 10 ECHR, as given effect in this jurisdiction by the [Human Rights Act 1998]..."

99. Mr Magennis relied on this last paragraph. Mr Solomon relied on the fact that I referred to some of the examples given by the IHRA with apparent approval.

Applying the IHRA working definition and examples consistently with Article 10 ECHR

100. The IHRA working definition (set out in full in para. 95 above) defines antisemitism as "a certain perception of Jews, which may be expressed as hatred toward Jews". There is no difficulty with this. As the Tribunal noted at [19.24.3], it is very similar to those found in the major dictionaries: "hostility to or prejudice against Jews" (Oxford English Dictionary); "hatred of and hostility toward the Jews" (Oxford Dictionary of English); "hostility to and prejudice against Jewish people" (Collins Dictionary). It is consistent with the formulation I used in the first sentence of [57] of my judgment in *Ali:* "hatred or hostility towards Jews as a racial and/or religious group".

101. The IHRA itself was, however, careful to distinguish the "working definition" from the "contemporary examples". The latter "*could, taking into account the overall context include*" the matters in the bullet points that follow. Mr Javid was equally careful, when announcing the UK Government's adoption of the IHRA working definition, to describe the bullet points as "examples of the kind of behaviours which *depending on the circumstances could* constitute anti-Semitism" (emphases added). Neither the IHRA itself, nor the UK Government, has ever suggested that, if the description in any of the bullet points applies to it, speech or conduct is ipso facto to be regarded as antisemitic.

102. If properly understood—i.e. as examples of speech which *could*, depending on the context, be antisemitic—most of the IHRA's examples are, in my view, both unobjectionable and useful. They serve to illustrate some of the ways in which hatred or hostility towards Jews has historically been expressed. However, particular care is required in the application of the seventh and eighth examples because they relate to speech which is critical of the historic or contemporary conduct of the State of Israel; and, as I said in *Ali*, such speech in principle attracts the highest level of protection under Article 10 ECHR.

103. At [61] in *Ali*, I noted that it may be highly controversial whether a particular criticism involves "[a]pplying double standards by requiring of [Israel] a behaviour not expected or demanded of any other democratic nation". Answering that question is likely to involve making judgments on contested factual and normative matters. In general, Article 10 accords broad protection to such judgments. Courts and tribunals should be wary of entering this difficult terrain, save where they are applying a legal framework that makes it impossible to avoid doing so. In consequence, they should in my view be cautious in accepting that a statement is antisemitic on the basis that it employs an alleged double standard of this kind.

104. For similar reasons, caution is also required when considering speech that is said to "[deny] the Jewish people their right to self-determination". One way of reading these words is that—while criticism of this or that contemporary Israeli policy is legitimate—criticism of the founding circumstances or principles of the State of Israel is not. If that were so, it would presumably follow that advocating the abolition of the State of Israel and its replacement with a unitary state comprising both Jewish and Palestinian citizens (the so-called "one-state solution", which has historically had some support among Israelis as well as Palestinians) would necessarily be antisemitic. In oral argument, Mr Solomon for the SRA defended this position. I do not accept it. Whatever might be said about the desirability of a "one-state solution" or its feasibility in current circumstances,

there is no good reason to regard its proponents as automatically or even presumptively antisemitic.

105. Nor, in my judgment, can it be regarded as axiomatically antisemitic to claim that "the existence of a State of Israel is a racist endeavour". Criticisms of this sort have been levelled against Israel since the events leading to its establishment in 1948. There is no doubt that those events included the displacement of Palestinians from their homes and land in what is now Israel (referred to by Palestinians as *Al-Nakba* or "the catastrophe"). The view that this was a form of ethnic cleansing or a species of colonialism is vigorously disputed, not only because many Jews regard Israel as their ancestral homeland, but also because of the displacement of Jews from their homes and land in majority Arab countries at about the same time. But this does not render such a view off-limits in a democratic society which values the right to freedom of expression.

106. The claim that Israel is an "apartheid State", though one which is liable to offend many Jews, also lies in principle within the area protected by Article 10. At the time when the Tribunal was making its decision in the present case, such claims had been made in express terms in proceedings before the ICJ. That court has now given its Advisory Opinion in *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinians Territories, including East Jerusalem* (19 July 2024, General List No. 186), finding that those policies and practices gave rise to a breach of Articles 2 and 3 of the Convention on the Elimination of All Forms of Racial Discrimination. (Article 3 condemns "racial segregation and apartheid" and requires contracting states to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.) Israel contested the ICJ's jurisdiction and criticised the decision. What can—and what cannot—be drawn from it is beyond the scope of this judgment. But the fact of these proceedings and their outcome does seem to me to illustrate the difficulty of an approach which places outside the bounds of legitimate political debate claims that the policies and practices of the State of Israel are systemically discriminatory or amount to apartheid.

107. It must also be borne in mind that the IHRA's examples were billed as "contemporary examples" in 2016. They were not intended to set the parameters of legitimate political debate for all time. Whether a particular criticism of Israel's conduct falls within the bounds of legitimate political debate depends on the facts—and the facts change. A court or tribunal using the IHRA working definition and examples must be alert to this and must avoid using them in a way which forecloses political debate on new events as they unfold.

108. For all these reasons, where speech is said to fall within the seventh and eighth of the IHRA's examples, it is unlikely that the substantive content of the message alone will justify the label "antisemitic". However, depending on the language used, and in context, the speech may be antisemitic. The focus of the court or tribunal should therefore be on the language and context.

109. The tenth of the IHRA's examples was "[d]rawing comparisons of contemporary Israeli policy to that of the Nazis". Mr Magennis may be right to say that it is not possible to stigmatise *every* such comparison as necessarily antisemitic. Reasoned comparisons between particular policies of the Israeli government and particular policies pursued by Nazi Germany are occasionally made by historians and journalists in the mainstream media in the UK, the US and Israel. However, to the extent that it was formulated as a

criticism of the IHRA's example, Mr Magennis's submission was directed at a straw man. The IHRA does not claim that *every* comparison between Israel and Nazi Germany is ipso facto antisemitic. Its claim is the more modest one that such comparisons *could, depending on the context,* be antisemitic.

110. Comparisons between the policy of Nazi Germany and that of any other government are apt to be incendiary. Making such a comparison with Israel is likely to be especially hurtful. That is not enough on its own to take speech outside the protection of Article 10. However, the language or imagery of Nazism is often used as a taunt, which deliberately references and weaponises the most painful events in Jewish history, to which some Jews alive today are witnesses and which continue profoundly to affect many others. Depending on the context, a criticism of Israel which pointedly uses Nazi language and imagery as a racialised taunt of this kind could reasonably be regarded as antisemitic.

Mr Silverman's expert report and evidence

111. In considering the proper approach to the meaning of the tweets, the Tribunal referred to the decision of the Supreme Court in *Stocker v Stocker*. Although that was a defamation claim, the approach of Lord Kerr (with whom the other members of the Court agreed) is instructive. At [43]-[45], he said that it was "unwise to parse a Facebook posting for its theoretically or logically deducible meaning". Rather, a court should "ascertain how a typical (i.e. an ordinary reasonable) reader would interpret the message", bearing in mind that their reaction is likely to be "impressionistic and fleeting". He endorsed the reaction of Nicklin J in another case to complex arguments about meaning: "these points only emerge as a result of close analysis, or someone pointing them out. An ordinary reasonable reader will not have someone by his/her side making points like this." It follows from this approach that it would be wrong to admit evidence of any kind (whether factual or expert) on the meaning of a social media post: see (again in the defamation context) *Koutsogiannis v Random House Group Ltd* [2019] EWHC 48 (QB), [2020] 4 WLR 25, [12(x)].

112. In *Diggins,* Warby J applied the approach in *Stocker* to the meaning of the tweet in issue there. However, at [82], he emphasised that "*Stocker* has nothing to say about whether a social media post can or cannot be treated as having a seriously defamatory, or seriously offensive, tendency". This is because the ordinary and natural meaning of a tweet is distinct from the question whether, in that meaning, the tweet satisfies a given legal standard (seriously defamatory in the context of a claim for libel, antisemitic in the present context). There is no reason why a court or tribunal should apply the same approach to both questions.

113. There is a particular danger in applying a pure "ordinary reasonable reader" approach to the question whether a statement is antisemitic, especially if one applies the further gloss that the judgment should be impressionistic and should eschew close analysis. Some instances of antisemitism use coded language or images, which make conscious or unconscious reference to tropes, false allegations or conspiracy theories about Jews. Some, such as those portraying Jews as sinister controllers of global finance and media, date back to the late nineteenth and early twentieth centuries. Some, such as the blood libel that Jews make matzos from the blood of Christian children, go back much further. The important point, however, is that knowledge about antisemitism as a historical and cultural phenomenon is not universal. An "ordinary reasonable reader" might not have it

and so might not appreciate the cultural significance of (say) a cartoon containing a hook-nosed caricature of a banker, an octopus, a vampire or a puppet-master. Once the historical significance of these things is understood, however, the image can be identified as antisemitic—and unequivocally so.

114. The most natural way of addressing this is to ask whether the statement or conduct in question would be regarded as antisemitic to an observer with a reasonable understanding of the main historical and cultural manifestations of antisemitism. In this respect, reference to the IHRA's working definition and examples may help, subject to the caveats set out earlier in this judgment. Reference to case law interpreting the IHRA working definition or commenting on the examples may also assist. In most instances, this is likely to be sufficient for a court or tribunal to decide whether a particular meaning (identified using the approach in *Stocker*) is antisemitic.

115. In this case, however, the panel had just one previous decision (of the Tribunal in *Mahmood*) to assist it on the proper way to approach the question whether a statement is antisemitic. It had before it a respondent who was contesting both the allegation that what he had said was antisemitic and also the appropriateness of the IHRA definition. The Tribunal understandably considered that it needed to inform itself about antisemitism as a historical and cultural phenomenon. It therefore decided that expert evidence was "necessary for the proper consideration of an issue or issues in the case" within rule 30(3) of the Rules. I do not consider that it was wrong in principle or outside the limits of its discretion for it to reach that view.

116. I turn now to the criticisms directed at Mr Silverman himself. I reject the submission that he was disqualified from acting as an expert by the lack of any relevant academic qualifications. Such qualifications are not a condition for the admissibility of expert evidence. Nor did the fact that Mr Silverman had previously provided training to the SRA make it inappropriate in principle for him to give expert evidence. That connection was known to the tribunal (though initially the SRA said, mistakenly, that the training had taken place only after Mr Silverman had submitted his expert report in this case to the SRA). But it did not logically supply any reason why he would be incentivised to reach any particular view on the issues he had been asked to consider. Unlike in *EXP v Barker*, he was not being asked to provide evidence in support of an already crystallised dispute between two parties. His function had been to say whether the tweets were antisemitic so as to inform the SRA's charging decision. The latter decision was avowedly based on his report.

117. As I have noted, the Tribunal did not accept Mr Silverman's evidence in its entirety. Nonetheless, in my judgment, it should have approached his evidence with greater circumspection than it did. He was, at the time of the hearing, Director of Investigations and Enforcement at the Campaign for Antisemitism. Some examples of the CAA's recent public comments were recorded at [26.16.17] and [26.16.27]. The section of Mr Silverman's report entitled "Problematic organisations and individuals" should also have flagged to the Tribunal that the expert before them was an active participant in, rather than just a commentator on, a highly polarised political debate. In my view, these matters were relevant to the extent to which his evidence could be regarded as "objective unbiased opinion on matters within his expertise": see *The Ikarian Reefer* [1993] FSR 563, 565.

Were the Tribunal's conclusions open to it?

118. So far, I have confined myself to general comments on the IHRA working definition and examples and on Mr Silverman's report and evidence. I now turn to examine the way in which, in the light of these, the Tribunal dealt with the allegations against Mr Husain, bearing clearly in mind the limits of the appellate function.

119. As to allegation 1.1, the Tribunal's general conclusion at [17.38.2] that a number of tweets individually and collectively demonstrated a hatred or prejudice towards Jews was not only open to it but also, in my judgment, clearly correct.

120. When on 3 May 2021 Mr Husain tweeted that "No Muslim should buy The Times, it is a bigoted pager with numerous Zionists working for it like David Aaronovich, Daniel Finkelstein etc.", he singled out two prominent Jewish journalists. There was no reason to mention these individuals other than they are well known to have Jewish ancestry. There were many other journalists writing for The Times who had also expressed views which could be described as "Zionist" using Mr Husain's very broad understanding of that word as encompassing anyone who supported the existence of the State of Israel. They were not singled out. On 23 May 2021, Mr Husain referred to the same two individuals and added a third "Zionist… idiot": Hugo Rifkind, another prominent and well-known Jewish journalist. In context, the word "Zionist" being used as a code word or "placeholder" for "Jew". The Tribunal was also entitled to see in these posts a reflection of the antisemitic conspiracy theory that the media is controlled by Jews and the antisemitic trope that Jewish citizens are more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of the countries of which they are citizens. The Tribunal was entitled, and in my view clearly correct, to regard these posts as instances of antisemitism.

121. On 10 and 12 May 2021, the core message Mr Husain was delivering was that the establishment of the State of Israel involved the displacement of the Palestinian people by Jews who in the immediate past originated from outside the land that is currently Israel. That message fell in principle within the bounds of legitimate political debate, but Mr Husain chose to deliver it in racially charged terms by referring to "a murderous bunch of Eastern European Zionists" and "a bunch of Eastern European thugs" and chose to call on Israelis to "leave and go back to Poland/Hungary whence you came". Mr Husain returned to this theme on 13 May 2021 when he tweeted: "100 percent of your ancestor Zionist ass are from Eastern Europe" and on 2, 5 and 6 June 2021, when he referred again in abusive terms to people from Poland and Eastern Europe and to "Ashkenazi immigrants". The Tribunal was entitled to see these references as attempts to racialise the point he was making by singling out one of the places (Eastern Europe) from which Jews currently living in Israel and their recent ancestors came (when many came from the Middle East, North Africa and other places). This was, in my judgment, a sufficient basis for the Tribunal to categorise these comments as antisemitic. I doubt whether it was necessary to refer in addition to the "trope that Jews do not originate from Israel".

122. On 16 May 2021, the use of the language "Zionist PIG" and reference to his interlocutor having been "brought up as a racist Zionist in apartheid othering and killing Palestinians" was a clear example of racialised abuse. There was another such example on 6 June 2021, when Mr Husain tweeted about "typical Zionist shite" and said that Hugo Rifkind was

"a Zionist pig supporting theft of Palestine for his Eastern European kin". These comments were examples of antisemitic racism. As the Tribunal noted, the term "pig" is especially offensive to many Jews and has historically been used to dehumanise them. The Tribunal could properly infer that the word was selected with that in mind. The Tribunal was right to say that the term "Zionist" was here being used again as a code word or "placeholder" for "Jew". That was how Mr Rifkind interpreted it—and any reasonable reader with a reasonable understanding of the main historical and cultural manifestations of antisemitism would agree.

123. The language used on 20 May 2021 to draw comparisons between Nazi Germany and contemporary Israeli policy (in particular the use of the terms "UNTERMENSCHEN" and "Lebensraum") were examples of the kind of racialised taunt I have described in [110] above. This tweet was not part of a reasoned comparative historical analysis. It had to be read in the context of those which preceded and followed it. In that context, the Tribunal was entitled to regard it as antisemitic.

124. On 22 May 2021, Mr Husain tweeted: "Israel wants to sing at Eurovision so they should relocate to Eastern Europe where Netanyahu and his vile kind along with Turds like Yitzhak Shamir emerged from." If a statement of this kind had been made about black politicians whose ancestors had come from Africa, there would be no doubt about how to categorise it. There should be no doubt about this post either. It is an example of unvarnished antisemitic racism. Again, I doubt that it was necessary to categorise it also as an instance of the "trope that Jews do not originate from Israel".

125. There was a significant debate in the hearing about the about the tweet on 4 June 2021 in response to someone who had tweeted a link behind a paywall: "Typical Zionist always have damn walls and want to take ur money". The Tribunal thought "walls" could be a reference to the Western or Wailing Wall and therefore a thinly veiled reference to Judaism. Mr Magennis for Mr Husain submitted that it was obviously a reference to the wall which separates the Occupied Palestinian Territories from Israel (the legal consequences of which were examined by the ICJ in 2004) and therefore a proper subject for political comment. I do not think that it matters much what exactly was meant by the reference to "walls" because the Tribunal was on any view entitled to regard the words "want to take ur money", in context, as a reference to the antisemitic trope that Jews are greedy or obsessed by money. (This trope is likely to have emerged when access to professions other than banking was restricted for Jews in many parts of Europe, but remains a mainstay of antisemitic discourse.)

126. There are parts of the Tribunal's judgments which could be seen as reflecting a view that speech which denies the Jewish people their right to self-determination and/or claims that the existence of a State of Israel is a racist endeavour is ipso facto antisemitic. If and to the extent that the Tribunal took that view, they were in my view wrong to do so for the reasons I have given. But any such error was not material, because the many examples I have given above amply justify the Tribunal's ultimate conclusion at [28.39.8] that: "the accretion of the Respondent's Tweets over a spread of months; their frequency, sustained intensity, and the cumulative impact of the language used by the Respondent made it more likely than not that when viewed collectively the Tweets were founded on hatred or hostility towards Jews". Indeed, the Tribunal could not rationally have reached any other conclusion than that Mr Husain had, over a long period, repeatedly tweeted in terms that were both grossly offensive and antisemitic.

127. The Tribunal made clear that it did not accept all of Mr Silverman's evidence. One part which it found helpful was his explanation of "an antisemitic trope which asserted that Jews in Israel originated from Eastern Europe": see [27.35.4]. As I have sought to show, many of the tweets which referred to Eastern Europe and Poland can be seen on their face to be racist and antisemitic even without the assistance of Mr Silverman's evidence on this point.

128. Parts of the table at [28.39.7] indicate that separate reliance was placed on the idea that references to Eastern Europe are used to delegitimise the State of Israel by saying that Jews do not originate from there. As I have said, however, in many of the cases where the Tribunal referred to this "trope", the tweet contained obviously racial language and this provided a distinct reason why the tweet in question was antisemitic. Overall, the Tribunal's very detailed judgment shows that its reliance on Mr Silverman's evidence was relatively modest. Its conclusion that many of the tweets were antisemitic could in any event be seen to be correct, and indeed indisputable, for other reasons.

129. As to allegation 1.2, there can be no real doubt that the tweets were not just offensive but seriously so. The Tribunal was fully entitled to find them "puerile, hurtful, and gratuitously offensive": see at [27.38.15]. If and to the extent that Mr Husain had legitimate political points to make, he had no need to couch them in crude, derogatory, often sexualised language. Quite apart from any antisemitic content, some of the tweets were also overtly racist in other ways.

130. The Tribunal's conclusion in relation to allegation 1.3 was also both properly open to it and clearly correct. The investigation of complaints against regulated professionals is an important public function. Staff working for regulators are entitled to work without being subjected to gratuitous abuse by those whom they are investigating. The comments made by Mr Husain to the investigating officer in this case were not only seriously offensive, but also made gratuitous reference to the officer's race. There was no excuse for those comments.

131. The Tribunal's conclusion, in relation to allegations 1.1, 1.2 and 1.3, that there had been a breach of principle (integrity), principle 2 (public trust) and principle 6 (encouraging equality, diversity and inclusion) was plainly open to it and, in my view, correct.

Ground 4

Submissions for Mr Husain

132. Mr Magennis for Mr Husain cited the Tribunal's Guidance Note on Sanctions, which provides at [48] that striking off will be appropriate only where the Tribunal has determined that "the seriousness of the misconduct is at the highest level, such that a lesser sanction is inappropriate" and "the protection of the public and/or the protection of the reputation of the profession requires it". He described the tweets "in some instances offensive and foolish" but submitted that they evidenced a "relatively low" level of misconduct, which (i) involved no allegation of dishonesty, (ii) caused no loss or damage to anyone, (iii) involved no criminality and (iv) resulted in just two complaints to the SRA. Even if the SRA did not regard Dr Zaman's report as reducing Mr Husain's

culpability to nil, it did reduce his culpability to a level below that required for striking off. The judgement does not explain why a lesser sanction would not suffice.

133. Mr Magennis relied on other disciplinary cases against solicitors, barristers and in one case a part-time judge, where lesser sanctions had been imposed for what he submitted was similar behaviour.

Submissions for the SRA

134. Mr Solomon for the SRA submitted that this ground of appeal proceeds on a misconception as to the correct test on appeal. The correct test is as set out in *Salsbury* and *James*. Here, the findings in the Tribunal's judgment on sanction were damning. Mr Husain repeatedly used racist and antisemitic language. His rudeness to his regulator was motivated by anger and outrage at being called to account. The distress he caused to people was entirely foreseeable and the level of harm was very high. His misconduct was deliberate and calculated and repeated, continuing as it did over a period of at least 9 months. It was motivated by the race and religion of the people about whom he was tweeting. There was an element of bullying. It was at times also puerile and crude. He had shown no insight and no contrition and the SDT was concerned he would behave in a similar vein again.

Discussion

135. Given the limits of the appellate role in relation to sanction, when considering this ground of challenge, I have focussed on the Tribunal's findings and reasoning on sanction, before considering whether these involved any error of principle or approach and then, if not, whether the ultimate decision was "wrong" in the sense that it was "clearly inappropriate" (*Salsbury*, [30]) or "falling outside the bounds of what the Tribunal could properly and reasonably decide" (*James*, [54], citing *Bawa-Garba v General Medical Council* [2018] EWCA Civ 1879, [2018] Med LR 561, [76]).

136. In my view, there was no error of law or principle or approach in the Tribunal's consideration of sanction. Having heard from Mr Husain directly and at length, it was well-placed to judge the motivation behind the conduct complained of. As to allegations 1.1 and 1.2, it was entitled to conclude that this had shifted "from making potentially valid political points to being purely offensive and stooping to use racist and antisemitic language to underline his points of argument": [49]. As to allegation 1.3, it was entitled to conclude that "his motivation appeared to be one of anger and outrage at being called to account by his regulator": [50].

137. The findings that Mr Husain's behaviour resulted from a conscious decision and persisted over many months were open to the Tribunal and factually correct. The Tribunal clearly considered the medical evidence carefully but was entitled to conclude that there was nothing to explain why his depression would have caused him to be antisemitic and use racist and inappropriate, sexualised language: see [51]-[53].

138. The Tribunal found that the harm to those who received Mr Husain's tweets, and to the reputation of the profession, were both foreseeably high: [55]-[58]. These findings were open to the Tribunal. So were the findings that the misconduct was motivated by and/or demonstrated hostility, based on protected or personal characteristics of a person, namely

race and religion and that there was clearly a bullying element and puerile and crude sexual references: [60].

139. The Tribunal was also well-placed to judge Mr Husain's attitude to his misconduct, some years after the tweets complained of. Its finding that he had shown "no insight whatsoever" was open to it, as were its findings that his apology to Mr Myerson was not genuine, that he had shown "no contrition" and that he had been unduly combative during the proceedings: [62]-[64].

140. In the light of these findings, the Tribunal was entitled to be "concerned that the Respondent would behave in similar vein with clients and members of the public who did not share his views or who he perceived were challenging him": [66]. This was a finding of particular importance when considering sanction.

141. In my judgment, the Tribunal explained adequately why it had concluded that no lesser sanction than striking off would suffice. In essence, it was because, having considered all the evidence and formed clear impressions about Mr Husain's motivations at the time of the misconduct and his attitude at the time of the hearing, it was not satisfied that a lesser sanction would protect the public from a repetition of his behaviour. I cannot say that this conclusion was wrong in the sense of being "clearly inappropriate" or "outside the bounds of what the Tribunal could properly and reasonably decide".

142. It will rarely be persuasive in an appeal of this kind to set out a list of sanctions imposed in other cases. Such cases turn on their own facts and have their own contexts. Insofar as reliance was placed on decisions of the High Court, it may be noted that in *Ali* (where a warning was upheld as a proper sanction) the misconduct involved antisemitic comments made on one occasion, there was a full and sincere apology and there had been no repetition in the seven years between the date when the comments were made and the date of the appeal in the High Court. In *Diggins*, the penalty related to a single tweet and the only question for Warby J was whether a fine was manifestly excessive (he held not). In *Lambert-Simpson v Health Care Professions Council* [2023] EWHC 481 (Admin), there were three tweets and the only issue before the judge was whether a four-month suspension was too harsh (Fordham J held not).

Conclusion

143. For these reasons, Mr Husain's appeal is dismissed.