Neutral Citation Number: [2024] EWHC 2706 (KB)

Case No: KB-2023-002975

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/10/2024

Before :

DEPUTY HIGH COURT JUDGE AIDAN EARDLEY KC

- -

Between :

KEN BATES	**Claimant**
- and -	
(1) TOM RUBYTHON	**Defendants**
(2) BUSINESSF1 MAGAZINE LIMITED	

- -
- -

William McCormick (instructed by **Carter-Ruck**) for the **Claimant**
The First Defendant appeared in person and for the Second Defendant

Hearing dates: 7-10 October 2024

- -

Approved Judgment

This judgment was handed down remotely at 12pm on 25 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

DHCJ Aidan Eardley KC

Aidan Eardley KC :

1. The Claimant brings libel proceedings in respect of an article published in the May 2023 edition of BusinessF1 Magazine and online. It is titled *"The biggest 'wrong-un' in sport"* (**the Article**). The claim is limited to publication in England and Wales. This is my judgment following a contested trial. I have structured it as follows:

A. The parties (paras 2-5)
B. Issues for determination at trial (paras 6-8)
C. Pre-trial applications (paras 9-35)
D. The Trial (paras 36-40)
E. Principal Findings of Fact (paras 41-60)
F. Meaning (paras 61-77)
G. Serious harm (paras 78-94)
H. Remedies (paras 95-116)
I. Conclusion (para 117)

A. The Parties

2. The Claimant is a retired businessman. He is a British citizen but lives in Monaco. He is 92 years old. He was represented at trial by specialist media law solicitors (Carter-Ruck) and leading counsel, William McCormick KC.

3. The First Defendant is a journalist and the sole director and majority shareholder of the Second Defendant. The Second Defendant publishes BusinessF1 Magazine (**the Magazine**). The First Defendant is the editor of the Magazine and wrote the Article. He is 69.

4. The First Defendant acts in person and, in his capacity as a director, represents the Second Defendant. He suffered a medical emergency in May 2024 which led to the original trial date in June 2024 being vacated. His conduct of the litigation may also have been affected while he recuperated, although such medical evidence as there is does not shed much light on this. On 30 August 2024 his secretary wrote to the Claimant's solicitors stating that he *"is back at work on Monday* [2 September 2024] *after his medical leave, fully recovered"*.

5. I was keenly aware of the inequality of arms between the parties, the difficulties faced by a litigant in person in libel litigation, and the possibility that those difficulties may have been exacerbated in this case by the First Defendant's period of ill-health. I did what I could to ameliorate the position. I permitted the First Defendant to conduct the trial from his office in Northampton in light of his telling me that it would be tiring and stressful to attend in person. Before he cross-examined the Claimant I explained the limited scope for legitimate questioning (given the very narrow scope of the defence itself) and pointed him to areas where cross-examination might be legitimate and fruitful. The First Defendant nevertheless found it difficult to formulate appropriate questions. I granted him a lengthy adjournment, from about 2.30pm on the first day of the trial (day 2 of the hearing) until the next morning, to give him a chance to refine his questions further.

B. Issues for determination at trial

6. The Re-Amended Particulars of Claim (**RAPC**) set out a claim for libel in conventional form. The pleaded case on serious harm (see Defamation Act 2013, s.1(1)) is entirely inferential. No reliance is placed on any specific adverse events that are said to be attributable to readers having read the Article and thinking less of the Claimant as a result. The Claimant seeks damages (including aggravated damages), an injunction, and an order under Defamation Act 2013, s.12 requiring the Defendants to publish a summary of my judgment.

7. The Defendants admit publishing the Article and it is not disputed that the Article is defamatory at common law. The Amended Defence does not advance any defence of truth or other substantive defence. The Defendants' principal contention is that the Claimant already had such a bad reputation that it was incapable of sustaining any serious harm as a result of publication of the Article. If that case fails, the Defendants invite me to find in any event that the Claimant's inferential case is insufficient to discharge the burden he bears of proving serious harm to his reputation.

8. The principal issues for me to determine therefore are (1) meaning; (2) serious harm – including whether the Claimant had a pre-existing reputation so bad that it was incapable of sustaining any further serious harm; and (3) if the Claimant succeeds on serious harm, remedies.

C. Pre-trial applications

9. On the first day of trial and before the trial commenced I dealt with two outstanding applications by the Claimant. One sought an order striking out most of paragraph 4 of the Amended Defence. The other sought an order striking out almost all of the First Defendant's Witness Statement dated 16 March 2024 which stands as his witness statement for trial. I acceded to the first application in part and the second application in its entirety. I said I would give my detailed reasons in this judgment. Before I come to those, I need to address some matters of law.

Evidence of bad reputation or prior misconduct in mitigation of damages

10. The law presumes that an individual has a reputation that is capable of being damaged: *Jameel v Wall Street Journal Europe Sprl* [2006] UKHL 44, [2007] 1 AC 359 at [93] (Lord Hope); repeated in the post-2013 Act case of *Wright v McCormack* [2023] EWCA Civ 892, [2024] KB 495 at [51] (Warby LJ). Claimants therefore do not need to adduce evidence of their own good reputation, though they sometimes do. A defendant may seek to rebut the presumption, in other words prove that the claimant in fact has a bad reputation, in order to reduce the level of damages. When doing so, a number of rules of evidence must be observed. For present purposes I can summarise them as follows:

(1) A defendant may adduce evidence that the claimant has a general bad reputation in the sector of his life to which the statement complained of relates: *Scott v Sampson* (1887) 8 QBD 491 at 503 (Cave J) and Gatley on Libel and Slander 13th edn (2022), 34-081 to 34-083. Such evidence about the claimant should come from "those who know him and have had dealings with him" *Plato Films Ltd v Speidel* [1961] AC 1090 at 1139 (Lord Denning), repeated in *Associated Newspapers Ltd v Dingle* [1964] AC 371 at 412;

(2) Evidence that there are rumours circulating to the same effect as the libel is inadmissible: *Scott v Sampson* at 503-504;

(3) Evidence of other publications making the same allegation as the statement complained of is inadmissible as proof of a pre-existing bad reputation: *Associated Newspapers Ltd*

v Dingle (and see the useful discussion of the rule in *Dingle* by Warby J in *Lachaux v Independent Print Ltd* [2015] EWHC 2242 (QB), [2016] QB 402 at [69]-[87]);

(4) A defendant may not adduce evidence of particular acts of misconduct by the claimant as tending to show his character and disposition; neither may they be put to him in cross-examination for that purpose: *Scott v Sampson* at 5-4505; Gatley 34-087 & 34-089;

(5) A defendant may rely upon the claimant's criminal convictions as evidence that he has a bad reputation but only if they are convictions in the relevant sector of the claimant's life and have taken place within a relevant period such as to affect the claimant's current reputation: *Goody v Odhams Press Ltd* [1967] 1 QB 333 at 340 (Lord Denning). So too, it seems, equivalent "judicial strictures" in civil litigation: *Turner v News Group Newspapers Ltd* [2006] 1 WLR 3469 at [48]. "Such authoritative public denunciations are deemed to result in reputational harm": *Wright v McCormack* (CA) at [51] (Warby LJ) (Mr McCormick disputes the admissibility of "judicial strictures" but I consider this to be part of the ratio of Warby LJ's decision: see [67]).

11. Principle 4 (prohibition on evidence of specific acts of misconduct to show character/disposition) does not preclude a defendant from adducing evidence, in mitigation of damages, of particular facts directly relevant to the context in which a defamatory publication came to be made: *Burstein v Times Newspapers Ltd* [2001] 1 WLR 479. The decision can be seen as an attempt to reconcile two objectives which are in tension: on the one hand, ensuring that damages are not calculated "in blinkers", i.e. without regard to matters which may have a bearing on the sum needed to compensate and vindicate the claimant; on the other hand, the need to avoid satellite issues dominating a trial and unfairly exposing a libel claimant to a roving inquiry into the entirety of his character and conduct: see [40]-[41] (May LJ). The control mechanism used to keep these two objectives in balance is the requirement that any facts to be adduced must fall within the "directly relevant background context" to the publication complained of.

12. The Court of Appeal has not been prescriptive about the nature of the facts that may fall within the zone of directly relevant background context (see e.g. *Turner v News Group Newspapers Ltd* [2006] EWCA Civ 540, [2006] 1 WLR 3469 at [53]-[55], Keene LJ). An examination of the proposed material must be undertaken in each case: *Warren v The*

Random House Group Ltd [2008] EWCA Civ 834, [2009] QB 600 at [79] (Sir Anthony Clarke MR). Nevertheless, the principle should be applied with caution. The evidence must be "so clearly relevant to the subject matter of the libel or to the claimant's reputation or sensitivity in that part of his life that there would be a real risk of the jury assessing damages on a false basis if they were kept in ignorance of the facts to which the evidence relates": *Turner* at [56].

13. In *Warren* the judge, Gray J, had rejected parts of a *Burstein* plea because "investigation of the issues raised by the particulars, highly contentious but ultimately peripheral, would enlarge the inquiry into compensation in a way which was disproportionate to their significance". The Court of Appeal endorsed this aspect of his reasoning: see [84]-[85].

14. Unless admissible under the rule in *Burstein*, a defendant who does not advance a defence of truth may not give evidence of facts tending to prove the truth of the libel. "Nor may he achieve that purpose by cross-examination as to such facts, even if he expressly disavows a plea of truth and states that he tenders the evidence merely in mitigation of damages": Gatley 34-033.

Evidence of bad reputation or prior misconduct on the issue of serious harm

15. I explain more about the serious harm requirement below. For present purposes, the important point is that it requires proof, as a matter of fact, that the publication had a seriously negative impact on the claimant's reputation or is likely to do so. The state of a claimant's pre-existing reputation among publishees is therefore a relevant matter: see *Lachaux v Independent Print Ltd* [2019] UKSC 27, [2020] AC 612 at [16] (Lord Sumption) and *George v Cannell* [2021] EWHC 2988 (QB) at [119]-[125] (Saini J). A defendant is entitled to argue that a claimant's reputation was already so bad that it was incapable of suffering any further serious harm. The argument may be a difficult one to succeed on - "A person can have a low opinion of another, and yet the other's reputation can be harmed by a fresh defamatory allegation": *Monroe v Hopkins* [2017] EWHC 433 (QB), [2017] 4 WLR 68 at [71](8), (Warby J). Nevertheless, it is certainly open to a defendant to plead and prove such a case.

16. One of the rules of evidence that applies to proof of bad reputation in mitigation of damages has already been held to apply equally to proof of bad reputation in rebuttal of a case on

serious harm. That is the rule in *Dingle* (Principle 3 above): see Lord Sumption in *Lachaux* at [21] (*"*It would be irrational to apply the *Dingle* rule in one context but not the other*"*). The editors of Gatley suggest at 4-017, fn. 101, that the same should be true of all the common law rules concerning proof of bad reputation and, more widely, evidence in mitigation of damages. Mr McCormick does not go that far and I do not need to reach a conclusion on that suggestion in order to dispose of this case. However, I need to say three things to explain the approach I have taken.

17. First, Mr McCormick invites me to assume in the Defendants' favour that Principle 4 above (the prohibition on reliance on particular acts of misconduct) does <u>not</u> read across to the serious harm issue. I do so without further comment because Mr McCormick's next point is obviously right: if proof of misconduct is to be admitted on this basis, it could only be in combination with evidence - or a proper evidential basis for inferring – that the publishees were aware of it. Otherwise, proof of the misconduct itself says nothing about what the publishees actually thought of the claimant at the material time. Moreover the prior misconduct would need to be sufficiently present in their minds and sufficiently relevant to the contents of the statement complained of as to raise doubts that the claimant could have suffered any (further) serious harm to his reputation as a result of their reading the statement. Evidence that does not pass that threshold will be irrelevant to the issue of serious harm and inadmissible.

18. Second, a claimant's previous convictions have been relied upon to reject his case on serious harm - *Ahmed v Express Newspapers Ltd* [2017] EWHC 1845 (QB) (Tugendhat J) – and judicial findings about a claimant made in other litigation were taken into account in *Umeyor v Ibe* [2016] EWHC 862 (QB) (Warby J): see [81]-[82]. These cases appear to show Principle 5 being applied in the context of serious harm. However, both judgments stressed the likelihood of the convictions/findings actually having come to the attention of the publishees: in *Ahmed*, the convictions were just two years old and were "heavily reported": see [1], [27], [31]. In *Umeyor*, the "gist and key features of the judgment will have become known to the vast majority". I leave open the question of whether the extent to which convictions/strictures have been publicised may require more rigorous investigation when they are relied upon in the context of serious harm than when they are raised in mitigation of damages.

19. Third, *Burstein* evidence (see [11]-[13] above) may have some relevance on serious harm (see *Umeyor v Ibe* at [79]), though I would suggest only where the relevant facts were known to publishees and so contributed to the reputation a claimant actually had among readers prior to publication. Such evidence would still have to fall within the zone of "directly relevant background context". That concept would surely have to be interpreted in the same cautious way as it is when the court is assessing damages, and not more widely.

Reliance on other publications without infringing the rule in Dingle

20. This is not an issue that arises in relation to the Claimant's strike out applications but it does arise in respect of some documents the Defendants asked me to look at and it is convenient to deal with it here. The authorities seem to recognise that there is scope for a defendant to rely on other publications to similar effect as the publication complained of in a way that does not infringe the rule in *Dingle*, i.e. not for the impermissible purpose of showing that the claimant had a bad reputation at the relevant time, but rather for the purpose of "isolating" the harm caused by the publication complained of. "Isolating" the harm means properly identifying the harm caused by the specific publication complained of, in contradistinction to harm caused by other means: see e.g. *Dingle* itself at 410 (Lord Denning) and the discussion in *Wright v McCormack* [2021] EWHC 2671 (QB), [2022] EMLR 10 at [149]-[167] (Julian Knowles J). As Collins Rice J said in *Miller v Turner* [2023] EWHC 2799 (KB) at [74], in applying s.1(1) "it is necessary not to lose sight of the basic tort rules of causation. Evidence *contrary* to the imputation of causal responsibility is no less potentially important than evidence tending to favour it".

21. Where an inquiry into other publications is appropriate on this basis, it will only assist the defendant if there is evidence – or a proper evidential basis for inferring – that the other articles (etc) came to the attention of readers of the article complained of and, by reason of their timing and contents, are such as to call into question the claimant's contention that the publication of the statement complained of caused serious harm to the claimant's reputation.

Application to strike out parts of the Amended Defence

22. The Claimant's application does not attack the headline proposition in the Amended Defence that the Claimant has "no reputation to damage" but it attacks what is pleaded in

support of that case, as well as the pleaded proposition that the Claimant must, but cannot, satisfy Defamation Act 2013 s.1(2) (serious financial loss).

23. I was initially unattracted by this application given that I was hearing it on the first day of trial and that the real question for me was whether the Defendants were in a position to adduce any evidence that was admissible on the issue of the Claimant's reputation. Nevertheless, I was persuaded that there was some utility in requiring the Amended Defence to be further amended in a way that properly reflected the matters on which evidence might be adduced and the limits on potential cross-examination.

24. Parts of the Amended Defence put forward specific alleged acts of misconduct of the Claimant without any accompanying averment that they were known to readers of the Article. For the reasons I have given above, that is not a case that I could take into account on either serious harm or damages and I decided that I should strike out those paragraphs.

25. Parts of the Amended Defence referred to an "interim" survey that the Defendants had conducted on the state of the Claimant's reputation and an intention to commission a further, more extensive survey. Mr McCormick made some good technical points about the pleading but his main submissions were that the survey already conducted was evidentially hopeless and that the intended wider survey had never been carried out. I did not think it was right to strike out the references to surveys in the Amended Defence. I would not want to be taken as ruling that survey evidence is never admissible on the issue of serious harm or damages. I considered that it was better to assess whatever survey evidence was put before me on its merits.

26. The Defendants withdrew their reliance on s.1(2), so I struck out this averment. I made clear to the Defendants that they were still entitled, in support of their case on serious harm, to make points about the apparent lack of any financial consequences for the Claimant flowing from publication.

Application to strike out parts of the First Defendant's Witness Statement

27. Striking out parts of a witness statement is an exercise of the power under CPR 32.1 to control the evidence. It must be exercised in accordance with the overriding objective. Where the evidence contained in the witness statement is not probative of any issue in

dispute, it will fall to be struck out because it is inadmissible. Even if admissible, the evidence may be struck out if there are good grounds for doing so, having regard to such matters as whether admitting the evidence would distort the trial and distract the court with collateral issues; whether the probative value of the evidence outweighs any unfair prejudice; and the burden that admitting the evidence may impose on the other party: see *Rahman v Rahman* [2020] EWHC 2392 (Ch) at [50]-[51] and the cases cited there. CPR PD 32 para 25.1 states that where a witness statement does not comply with Part 32 or the PD, the court may refuse to admit it. Again though, that is a power that must be exercised in accordance with the overriding objective.

28. Paragraph 1 of the First Defendant's Witness Statement states that it is made in support of the Defendants' case "that the Claimant has no reputation". The following 59 paragraphs (the passages to which the Claimant objected) set out a sort of potted biography of the Claimant, in highly tendentious terms, tracing the history of his personal life and business career.

29. The Witness Statement is written in the third person. It is obviously not based on any personal dealings between the First Defendant and the Claimant, nor on first-hand knowledge of any of the events in question, yet, in breach of CPR PD 32 para 18.2, it fails to indicate sufficiently the source of the First Defendant's information and belief. Very occasionally the Witness Statement identifies an individual from whom the First Defendant has obtained information. Then, in a statement of truth at the end (which, incidentally, does not adopt the mandatory wording set out in CPR PD 22, para 2.1), the First Defendant says that "much of the detailed information" was obtained from two named individuals (now deceased) and that "the information about Chelsea Football Club" was obtained from discussions with two other named individuals (one of whom is said to be deceased). A named "journalist who has written extensively about the business career of Mr Bates" is identified as a source of further unspecified information.

30. The purpose of the requirement in PD 32 is to put the other party in a position where they can consider the reliability of the reported information and the credibility of its source. If necessary, they can then apply to cross-examine the source and/or lead evidence attacking their credibility: see CPR 33.4 & 33.5. Such information as the First Defendant has given in the Witness Statement is insufficient for this purpose.

31. Returning to the content of the Witness Statement, it includes some general assertions about the Claimant's character which seem to be simply an expression of the First Defendant's own (highly negative) opinion. It does not purport to give evidence of how the Claimant was perceived by third parties (still less, by readers of the Magazine) prior to publication. Instead, the First Defendant recounts how the Claimant has allegedly behaved on particular occasions in his personal and business life. The Witness Statement makes allegations about some of the same matters that are dealt with in the Article, though usually in a watered-down way.

32. I had no hesitation in finding that the Witness Statement is inadmissible as evidence of bad reputation in support of a case in mitigation of damages. It does not contain any admissible evidence of the Claimant's general reputation. It consists principally of evidence of particular acts of misconduct by the Claimant, in plain breach of the principles laid down in *Scott v Sampson* and *Plato Films Ltd v Speidel*.

33. I was also satisfied that the Witness Statement contains no evidence relevant to the issue of serious harm. There is no averment that any of the facts mentioned were known to readers of the Magazine. Neither is there any evidential basis for inferring that readers knew these facts or that, by 2023, the facts would have left such a negative impression in readers' minds that the Article would have been incapable of having any further serious effect on their estimation of the Claimant. Most of the alleged conduct occurred between the early 1960s and 1996. The Witness Statement does not address how any of these alleged facts were publicised, either at the time or since (other than a vague reference to some articles that the First Defendant himself wrote in *Business Age* in the 1990s). For the most part, the allegations made in the Witness Statement are significantly less serious than those in the Article. For those reasons, this evidence could not conceivably assist the Defendants on the issue of serious harm, even assuming, as I am invited to, that there is greater latitude for admitting evidence of previous misconduct for the purpose of assessing serious harm than there is for assessing damages.

34. What gave me greater pause for thought is whether anything in the Statement should be admitted under the rule in *Burstein*. The Defendants have never advanced a *Burstein* case and, had they been represented, that would have been the end of it. However, in fairness to

the Defendants, I considered that I should canvass the possibility with the parties. Having done so, I reached the view that the Statement should not be admitted as *Burstein* evidence either. That is for the following reasons:

(1) There is no pleaded and particularised *Burstein* case in the Amended Defence, as there should be. That is not necessarily fatal – I could allow a late amendment – but it would only be right to do so if the contents of the Witness Statement could support a properly particularised case that had a realistic prospect of success.

(2) Nothing concerning the Claimant's personal life could be admissible under *Burstein*. The Article concerns his business career, not his personal life.

(3) Some parts of the Witness Statement traverse the same ground as the Article (the Claimant's time in the BVI and Ireland for example) but in a lengthy and unfocussed way. It is unclear what specific *Burstein* particulars could be derived from these parts.

(4) In some places the Witness Statement does make a specific allegation that might be said to relate to the contents of the Article, but the allegation is so minor in comparison to what is alleged in the Article that (to quote Gray J in *Warren*) investigation of the issues raised would enlarge the inquiry in a way which was disproportionate to their significance. An example concerns the Claimant's involvement in the concrete business. The Article alleges that he almost certainly had his business rivals killed. The Witness Statement alleges that he engaged in various "rough tactics" that are said to have been commonplace at the time such as disrupting his rivals' deliveries. The events are alleged to have occurred in the early 1960s and the First Defendant's evidence is hearsay (and probably multiple hearsay) derived from two people who are now deceased. It is not appropriate to require the Claimant to have to deal with such evidence when its likely effect overall will be minimal.

(5) In some places the Witness Statement makes essentially the same allegation as the Article (e.g. fraud at Chelsea FC, and an allegation that there are grounds to suspect that the Claimant arranged the murder of Matthew Harding in a helicopter crash). That is not "directly relevant background context" to an imputation in the Article, it *is* the

imputation. If the Defendants wished to prove its truth, they would have needed to advance a truth defence.

(6) Lastly, there is the obvious unfairness of requiring the Claimant to answer such a case at trial when no formal notice has been given of it and, in breach of PD 32, the Claimant has failed properly to identify the sources of the hearsay in the Witness Statement, thus depriving the Claimant of his ability to investigate their credibility and reliability.

35. For all these reasons, I struck out paragraphs 2-60 of the Witness Statement.

D. The trial

36. The Claimant had come to London in June 2024 with the intention of giving evidence in person. After the original trial date was vacated, he applied to give evidence remotely from Monaco. At a hearing in July 2024 I granted that application (which was ultimately not opposed) and gave brief written reasons, along with directions for the appropriate conduct of the remote hearing.

37. So it was that the Claimant gave evidence from his lawyer's office in Monaco, in accordance with my directions. He adopted his trial witness statement. In that statement he gives brief details of his career and the degree of contact he retains with people in England. Mostly though, his witness statement is focussed on explaining the impact that the publication of the Article, and the Defendants' pre- and post-publication conduct have had upon him.

38. The Claimant was cross-examined at length but to no great effect, largely because the First Defendant (despite my rulings and guidance) persisted in asking questions which were not relevant to any matter in dispute and could only have been relevant to a defence of truth. I did not require the Claimant to answer these questions but he sometimes did, also at considerable length. He became somewhat intemperate with the First Defendant, under immense provocation.

39. The First Defendant adopted what was left of his Witness Statement and was cross-examined by Mr McCormick. I refer to some of his answers below.

40. The other evidence was documentary. The Claimant's representatives had included, in file 3 of the trial bundle, the entirety of the Defendants' disclosure. I asked the First Defendant to identify which documents the Defendants relied upon and I have taken those into account.

E. Principal findings of fact

41. The principal facts that are material to my decision are as follows. Most of them were not disputed. Where there was a dispute, I have given reasons for my findings.

42. The Claimant was born in England and has spent much of his life here, with some periods living abroad. He has lived in Monaco for the past 20 years. He has been involved in various business ventures during his life but a dominant feature of his career has been his involvement in top flight football in England. Between 1982 and 2004 he was the owner and chairman of the companies that operated Chelsea FC. Between 2005 and 2012 he was owner and chairman of the company that operated Leeds Utd FC. He also had some involvement in the design and construction of the new Wembley stadium. He retired 10 years ago. Since then he has been coming to England once or twice a year. He has many friends and family here. He usually hosts an annual Christmas event in London for friends and family, including former employees from Chelsea, business associates and colleagues. Between them, the Claimant and his wife have a large family comprising 6 children, 15 grandchildren, 15 great grandchildren and more great grandchildren on the way.

43. The Magazine is a well-established monthly publication. An average of 8,000 copies are printed each month and it has an audited circulation figure of 7,061 copies per edition. An individual copy will be read by multiple readers so that typically an issue will reach some 40,000 readers. Most readers report that they spend more than an hour reading each issue. The Magazine describes its circulation as a mixture of *"prime subscribers, bulk subscribers and geographically circulated copies by way of the hospitality and aviation sectors*". Some copies are distributed to exhibitions, conferences and the paddocks of international race meetings. The readership comprises members of the motorsport community and people who work across the sports industry, with that readership divided equally between motorsports and general sports. 24% of the readers are in the UK. Subscribers can also access a digital version of each edition on the Second Defendant's website. All this information is drawn from that website. It is not challenged by the Defendants.

44. Also on the website is a statement of the Magazine's "philosophy":

> *"Facts and attention to details remain the overriding editorial philosophy of BusinessF1. It is reporting without a preconceived agenda of the highest standard, hence the quality of the storytelling is consistently high. This is because BusinessF1 writers seek to tell the story behind the story. If it's good, the good is reported but if it is bad, then we don't shy away from reporting the bad. There is simply no other magazine like it for providing up-to-date honest analysis. People may not always like elements of it but they always respect it because it is truly independent, with no ties to any organisations working within motor sport. The Editor has total authority and autonomy and only answers to his work colleagues."*

45. Overall, around 85% of the readers trust the Magazine as a source of accurate and impartial information on which they can rely. This was the First Defendant's own estimate in his oral evidence.

46. In March 2023 the Mail On Sunday printed a lengthy interview with the Claimant in which he recounted his business career and expressed his views on the current state of football. The piece is not uncritical but overall paints a fairly positive picture. The Mail on Sunday article enraged the First Defendant, who thought it was misleading. He decided to write an article which would, as he saw it, set the record straight. He knew his article would contain serious allegations but he did not approach the Claimant for comment while he was preparing it.

47. The Article appeared in the May 2023 edition of the Magazine. I describe it in more detail below. That edition had 100 pages. The Article appeared on pages 78-81. It was listed on the contents page with the same prominence as the other feature articles in the edition.

48. I find that the Article was probably read by around 9,000 people in England and Wales. That is a more conservative estimate than was proposed on the Claimant's behalf. I arrive at it by taking 24% of the typical readership of 40,000 and then discounting further to reflect the fact that some of those readers may live in Scotland or Northern Ireland rather than England and Wales, and to reflect the fact that not all readers will have read the whole edition. As is usual in these cases, it is not possible to be more precise.

49. I reject the Defendants' submission that the Article will have been read by only a handful of people. They argued that it was placed towards the back of the Magazine and was of no real interest to readers since it was not about motorsport. This flies in the face of the facts about the Magazine's readership which I have summarised at [43] above. Those readers come from across the sports industry and spend a considerable amount of time reading each edition. The Article was drawn to their attention on the contents page in the same way as the other feature articles. I also doubt that readers' interests are so neatly compartmentalised between motorsport and other sports as the Defendants suggest. It is not credible that an experienced editor such as the First Defendant would devote 4 pages of the Magazine to an article that readers would not want to read.

50. Mr McCormick did not really press his case about online publication. On the very sparse information with which I was provided, I am not able to say that the Article was read to any significant extent on the Second Defendant's website.

51. Carter-Ruck sent the Defendants a letter of claim on 12 June 2023. The Defendants did not respond in accordance with the Pre-Action Protocol. Instead they printed an edited version of the letter of claim on the letters page of the July 2023 edition of the Magazine. I reject as inherently implausible the Defendants' suggestion that the Claimant and Carter-Ruck intended that this should occur. The editing was misleading. It preserved (and therefore repeated to readers) the summary of the serious allegations in the Article, but it excluded most of the detailed explanation in the letter as to why the allegations were false. For example, in respect of the allegation that the Claimant had rivals in the concrete business murdered, the letter was edited so as to suggest that the Claimant was only denying having done so in West London. The words "*For the avoidance of doubt our client was not involved in the 'disposal' of any 'competitors' anywhere*" were omitted.

52. Beneath the edited letter of claim, the First Defendant published a response:

> *"**The editor replies:** I am pleased to confirm, that apart from the above, Ken Bates is an upright citizen of the United Kingdom and regarded as such by most people, aside from the 28,000 people who hold season tickets for Chelsea Football Club who detest the man – as I do. Ken Bates makes Philip Green appear almost a candidate for sainthood. As Amber says the article does, indeed, "go to the core of our client's character"."*

53. The Defendants published a further edited letter from Carter-Ruck in the September 2023 edition of the Magazine. Again, the First Defendant published a personal response beneath it which began, "*The real acid test of any lawyer's letter (and I should know) is the addressee's reaction when he/she opens the envelope. If it is a frown know you are in trouble, if it is uncontrolled laughter you know you are ultimately going to win out. No prizes for guessing the reaction to Ms Courtier's letter of 12th of June"*. The reply then descends into gratuitous abuse of the Claimant's current solicitors which I do not need to reproduce, but it contains the line *"When their clients tell them they are innocent, they actually believe them. Peter* [Carter-Ruck] *was never under any such illusions"*. Notably, by this time proceedings had been issued and the Defendants had put in their Defence. They neglected to tell their readers that they were not, in fact, defending any of the allegations as true. The opposite impression is given.

54. Carter-Ruck asked the Defendants to disclose the list of the Magazine's subscribers in England and Wales and, when this was not forthcoming, issued an application in May 2024 seeking the list. At a hearing before Collins Rice J on 17 June 2024, despite expressing misgivings, the First Defendant told the Court that he would provide the list and this was then embodied in a consent order dated 2 July 2024 requiring disclosure by 12 July 2024.

55. The Defendants never complied with that order to provide the list of subscribers. I find that this amounted to deliberate disobedience and not, as the First Defendant argued, the result of matters beyond his control or because of an innocent misunderstanding. I make that finding on the balance of probabilities (I was not asked to consider contempt of court). I can explain it as follows.

56. On 9 July 2024 a member of the Second Defendant's staff emailed the Court stating, *"A problem has arisen with the Judge's order of the 2nd July, 3(2). The Subscriptions Team has pointed out that the Data Protection Act forbids the release of this information. Mr Rubython has asked if the Judge can provide an indemnity enabling us to release this information."*. Then, on 12 July 2024, the First Defendant wrote to the Claimant repeating that the information could not be released without an "indemnity" from the Court, citing s.170(1) of the Data Protection Act 2018. Carter-Ruck wrote again on 2 September 2024. The order for disclosure is reproduced on the first page of their letter and then dealt with on the second page where the request for disclosure is repeated and it is explained to the

Defendants that DPA 2018 s.170(1) is irrelevant but that, in any event, s.170(2)(b) includes a defence for the disclosure of data that is ordered by a court. The First Defendant replied the same day, dealing with other matters in the letter and also saying, *"Secondly, I am not prepared to break the law to satisfy you. If you can get me and my staff an indemnity from the Judge, or the Data Protection Office, you can have the personal information you require."*. The Defendants never reverted to the Court to seek their "indemnity" or to have the order varied.

57. In oral evidence, the First Defendant said that the person who had told him that he could not lawfully provide the data was Ania Grzesik, a "feisty" longstanding employee of the Second Defendant who he felt unable to order around. She is not a lawyer but "knows her way around" data protection law. He said that she refused point blank to hand him the data because of the legal risk of disclosing it and that he did not know how to access it himself. I do not accept that he was powerless to obtain the data from Ms Grzesik. He is the sole director of the Second Defendant which employs her. He was in a position to discipline or dismiss her if she was really standing in the way of the Defendants complying with a court order.

58. As to Carter-Ruck's letter of 2 September 2024, the First Defendant said that this was his first day back at work after his convalescence and that he did not read the second page of it. I think that is unlikely. There would have been no reason for him to address the issue of the subscriber list in his reply the same day (which he did) unless he had read on to the second page and seen that Carter-Ruck were still pursuing it. He will have seen there the clear explanation as to why data protection law provided no obstacle to compliance with the order.

59. The more likely explanation then is this: however the issue of data protection first came up, the First Defendant was happy to latch on to it as an excuse for not complying with the order and then clung on to it even after its validity as an excuse had been exploded, wilfully turning a blind eye to Carter-Ruck's explanation.

60. I have laboured this point because the Claimant invites me to draw an adverse inference from the Defendants' breach of the order. I return to this below. I turn now to the issues that I must determine in this trial.

F. Meaning

Meaning – legal principles

61. I am required to identify the single, natural and ordinary meaning of the Article, applying the well-established principles re-stated by Nicklin J in *Koutsogiannis v Random House Group Ltd* [2019] EWHC 48 (QB) at [12] (approved by the Court of Appeal in *Millet v Corbyn* [2021] EWCA Civ 567*,* [2021] EMLR 19):

(i) The governing principle is reasonableness.

(ii) The intention of the publisher is irrelevant.

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

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

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

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

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

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

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

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

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

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

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

(xiv) The ordinary reasonable reader is assumed to have read or watched the statement complained of once.

62. It is conventional to place a meaning within one of the "Chase" levels (after *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1772, [2003] EMLR 11) of "guilt", "reasonable grounds to suspect", or "grounds to investigate", but these are simply a helpful shorthand, not a straitjacket that prevents the court reflecting the particular nuances of an article: *Brown v Bower* [2017] EWHC 1388 (QB), [2017] 4 WLR 197 at [17] (Nicklin J).

First impressions

63. In accordance with accepted practice, I read the Article through once and noted the impressions it made on me before considering the parties' cases and submissions on meaning.

64. The Article is termed a "profile". Just above the main headline ("**The biggest 'wrong-un' in sport**" – bold in the original) there are the words, *"Ken Bates is still alive and attempting to rewrite history from his lair in Monte Carlo"*. My impression from this introduction was that the Article was going to be a comprehensive character assassination of the Claimant,

which is indeed what it turns out to be. It is framed as a riposte to the Mail on Sunday article, which the writer regards as a piece written by a carefully vetted journalist and which gave an unduly positive account of the Claimant's business career. This is presented as just the latest example of the Claimant's long history of trying to control publicity about himself including through frequent unjustified use of English libel law but also, on one occasion (mentioned later in the article) by paying "thugs" to remove magazines from the shelves of London shops. The reader is told that, as a resident of Monaco, the Claimant could not sue for libel now (not least because returning to England would result in him being "detained" by HMRC) with the implication that only now can the whole truth about the Claimant be told after he has suppressed it for so long.

65. Having set the scene in this way, the Article recounts what is presented as the true history of the Claimant's business career, in contradistinction to the anodyne account given in the Mail on Sunday. It starts with his first successful business, dealing in ready-mixed concrete, in respect of which the Article states: *"In those days it was necessary to have your business rivals killed and literally buried in the product to get on. Almost certainly Bates has had his business rivals disposed of in the past and once refused to answer a direct question on the subject from a journalist"*. Then it moves to the British Virgin Islands, where the reader is told *"he got involved in a land fraud …and conned some British investors. The land was never developed or even purchased and Bates spun a yarn to fend off writs…"*. Next the scene moves to Ireland where the reader is told that the Claimant set up a bank, and that, *"After accepting millions in deposits, he lent the deposits to unnamed foreign entities, who stripped the money out, sent the bank bust and Bates left the country. The Irish Government had to compensate the customers who had lost out. Bates blustered his way out of trouble although he had transferred the untraceable funds to associates in Hong Kong"*.

66. After this somewhat breathless canter through his early years, the Article slows down when it moves on to the Claimant's career in football and descends into much more detail. It explains that, in 1982, he acquired the company behind Chelsea FC, which was in financial difficulties at the time, from Brian Mears by promising him *"a loan in return for selling him the club for £1($2). Mears believed every promise that Bates made him – none of which he kept. In fact, Bates reneged on virtually everything he had promised Mears in return for surrendering ownership"*. It accuses the Claimant of stripping the assets of the company (*"Bates effectively turned Chelsea into a property development company and skimmed all*

the money off the top for himself and his cronies") and then placing it into liquidation and reneging on all its debts while he *"gradually and illegally transferred all its assets"* to a new company, disguising this manoeuvre from the newly formed Premier League. *"It was plain and simple fraud"*, the Article states.

67. Then the Article turns to the Claimant's relationship with Matthew Harding (*"an honest man – the exact opposite of Bates"*) who invested in Chelsea in a deal that would eventually see the ownership of the club pass to him. As to this, the Article says that *"Bates also knew that if Harding got access to the club's books, he would likely have succeeded in exposing Bates as a crook. However before any of that could come to pass, Matthew Harding was killed in a mysterious, but very convenient (for Bates) helicopter crash"*. In one of the most striking parts of the Article (illustrated by a photo of the helicopter), the First Defendant writes:

> *"The reason for the crash that killed Harding was never explained. His helicopter simply nosedived from the sky and plunged into the ground, bursting into flames… The weather on the night of the crash was crystal-clear but soon after take-off the pilot asked air traffic control if he could abort the flight and turn back to Manchester airport. What caused the pilot to do that was never discovered. But there must have been an incident.*
>
> *There was no viable reason for the accident which killed Harding and three of his friends plus the pilot, the cause was never established.*
>
> *After the accident, Bates spread rumours that Harding and his friends had been drinking heavily and their drunken antics distracted the pilot…but blood tests afterwards proved the men were far from drunk.*
>
> *There were much stronger rumours that Bates had hired saboteurs to 'fix' the helicopter during the match when it was left unguarded in a nearby field. But no evidence of sabotage could be found. At an inquest held afterwards the local Coroner said he had no choice but to declare the death of Matthew Harding "accidental"*
>
> *But it seemed certain it was sabotage and far from accidental […]*
>
> *Did Ken Bates order Harding's death? – That remains an open question that needs to be answered in a British courtroom…"*

68. The narrative returns to financial dealings with Chelsea, stating that the Claimant *"eventually stripped every cent Harding had invested in the club and transferred it to bank accounts in Dubai and Hong Kong"* before selling it to Roman Abramovich because credit had become tight ("*The banks, realising Bates was a crook, wanted their money back"*).

Lastly the Article deals with the Claimant's acquisition of Leeds United (*"He felt he had one last 'con' left in him*) which we are told he put into receivership, reneging on its debts, but then performed *"an old style phoenix operation"* whereby he was able to sell the club for a profit of £50m.

69. The article ends by describing the Claimant's retirement "*in his Monaco penthouse bought for tens of millions with his ill-gotten gains"*. The final line – mirroring the headline - calls him, *"the most crooked man ever to own sports properties"* and beneath it there is a photo of him with a caption including the words *"Bates is worth an estimated $200 million, most of it gained dishonestly"*.

70. There is a sub-theme about the non-payment of tax, picking up on the opening reference to the Claimant being at risk of detention were he to return to the UK.

The parties submissions on meaning

71. The Claimant's pleaded meanings are as follows:

(1) The Claimant had directed the murder of business rivals, in order to further his business interests;

(2) The Claimant had murdered Matthew Harding and 4 others by means of sabotage of the helicopter in which they were travelling when the helicopter crashed causing their death and had done so to prevent Matthew Harding exposing him as a crook;

(3) The Claimant had evaded paying UK taxes and was living in exile, because he feared that if he returned to the UK he would likely be arrested for tax evasion;

(4) The Claimant had operated a fraud in which he deceived persons into investing in land in the British Virgin Islands, which land was never bought with the money invested being lost;

(5) The Claimant had brought about the collapse of the Irish Trust Bank by lending the money deposited with it to associates of his in Hong Kong;

(6) The Claimant bought Chelsea Athletic and Football Club Limited having made promises to the seller which he had no intention of keeping, and which he did not keep;

(7) The Claimant had illegally and fraudulently asset stripped Chelsea Athletic and Football Club Limited by both diverting its cash to his offshore accounts and to associates of his and by transferring its remaining assets (some of which he dishonestly pretended were liabilities) to Chelsea Village Limited;

(8) The Claimant had prevented the public reporting of his crimes by issuing libel proceedings which he knew to be unfounded and by paying people to use violence or the threat of violence to remove magazines that contained such reports from shop shelves;

(9) The Claimant had purchased a 50% interest in Leeds United Football Club with the proceeds of crime and for the purposes of a fraud whereby he planned to (and did in fact) engineer the transfer at an undervalue of the entire interest in Leeds United Football Club to offshore trusts which he controlled which he would then (and did in fact) sell at a massive profit;

(10) The Claimant is a murderer, a con-man, a crook and a fraudster most of whose wealth has been dishonestly acquired.

72. Mr McCormick's case was that these meaning are plain and obvious, requiring little by way of argument to support them.

73. Although the Defendants had never advanced any rival meanings, I gave them the opportunity to do so and the First Defendant made the following submissions in response to the Claimant's case. He said that the Claimant's meaning (1) was too high and that all that was suggested was that there were grounds to suspect that the Claimant had murdered his business rivals. In respect of the Claimant's meaning (2) he said that the article meant that the helicopter had been sabotaged but only that there were grounds to suspect that the Claimant was responsible for that. In respect of the Claimant's meaning (3) he said that the article meant that the Claimant was living abroad and not paying UK taxes but denied that this was an allegation of criminal tax evasion. In respect of the Claimant's meanings (7)

and (9) he claimed that the Article only alleged the use of a "Phoenix" operation which was not necessarily illegal or dishonest, albeit that, in respect of Chelsea, the Article alleged a breach of FA and/or Premier League rules. In respect of the Claimant's meaning (8), he disputed that there was an implication that the "thugs" the Claimant employed to remove magazines from shops either used or threatened violence. In respect of the Claimant's meaning (10) the Defendant repeated that any allegations of murder in the Article are made at the level of strong suspicion and not guilt. He also said that the Article does not state that the Claimant is a crook. Apart from these points, I did not understand the Defendants to be disputing the Claimant's pleaded meanings although, ultimately, it is a matter for me.

Meaning – discussion and conclusions

74. Determining the meanings in this case is not particularly difficult and I can keep my reasons short. That is because, unlike the situation in many cases, there are very few qualifications or nuances in the Article and no reflection whatsoever of the Claimant's position on the events in question. It is all bane and no antidote.

75. In certain respects the Claimant's meanings are overstated. There is a small degree of doubt injected into the allegation of murder concerning rivals in the concrete business. In respect of the helicopter crash, the Article is unequivocal in its assertion that this was sabotage, but it leaves room for doubt as to whether it was the Claimant who directed the sabotage. A motive for doing so is ascribed to him, but the Article expressly says that certainty cannot be achieved unless he is put on trial. The Article certainly alleges that the Claimant used "thugs" to remove magazines from shops and that term itself implies people with a propensity towards violence but it does not go so far as to imply that they explicitly threatened or used violence.

76. However, I reject some of the Defendants' points. Some of the references to non-payment of tax, read in isolation, are neutral as between clever but legal tax avoidance and illegal tax evasion but the reasonable reader's assessment of these passages will have been heavily influenced by the striking opening paragraph stating that the Claimant would likely be "detained" over tax matters if he ever returned to the UK. The allegation is therefore one of illegal tax evasion not lawful tax avoidance. In relation to Chelsea, the Article does not merely allege, as the Defendants assert, some legal but morally questionable "Phoenix operation", nor merely some sort of conduct that was legal but in breach of prevailing

FA/Premier League rules. It says in terms that it was "plain and simple fraud". As for Leeds, the allegation of dishonesty is less explicit but, by the time the reasonable reader has reached this part of the Article, they are likely to regard it as more of the same.

77. I also think that, in order to capture the true sting of the Article and to avoid repetition, the meanings need to be restructured somewhat. The meanings that I find the Article to bear are as follows:

(1) The Claimant has amassed his great wealth through a career built on dishonesty, including:

(a) operating a fraud in the BVI in which he deceived British investors into investing in land that was never bought or developed;

(b) acquiring the company behind Chelsea FC for a nominal sum by making promises to the owner that he had no intention of keeping (and did not keep);

(c) stripping the company's assets for his own benefit and then putting it into liquidation to clear its debts and illegally and fraudulently transferring its remaining assets to a new company he had set up;

(d) using the proceeds of his fraud at Chelsea to acquire an interest in the company behind Leeds Utd and then putting that club into receivership to clear its debts while transferring ownership of the club to entities which he covertly controlled so as to be able to sell the club for a massive profit (which he did);

(e) evading paying UK taxes such that he would be at risk of arrest were he to return to the UK;

(2) The Claimant almost certainly had business rivals murdered when he was running a concrete business;

(3) There are very strong grounds to suspect that the Claimant murdered Matthew Harding and 4 others by arranging for their helicopter to be sabotaged so that it crashed, and that he did so to prevent Mr Harding exposing him as a crook;

(4) The Claimant brought about the collapse of the Irish Trust Bank by lending its deposits to his associates in Hong Kong, leaving the Irish government to compensate the customers;

(5) The Claimant has prevented the public reporting of his crimes and misdeeds by issuing libel proceedings that he knew to be unfounded and sending thugs to remove from London shops copies of a magazine that had tried to expose him.

G. Serious harm

Serious harm – legal principles

78. Section 1(1) of the Defamation Act 2013 provides that "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant". It is therefore no longer sufficient to show that the statement has a tendency to have a substantial negative effect on the claimant's reputation in the eyes of right thinking people. That common law test has been modified in two important ways. First, a claimant must prove as a matter of fact that the publication of the statement has resulted in reputational harm. "This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had": *Lachaux* at [14] (Lord Sumption). Proof that publication is "likely to cause serious harm" likewise requires establishing as a matter of fact "probable future harm" (*ibid*). Second, the degree of harm required has been raised from "substantial" to "serious" (an ordinary English word requiring no further gloss: see e.g. *Lachaux* in the Court of Appeal [2017] EWCA Civ 1334, [2018] QB 594 at [44]).

79. Where, as here, the statement complained of conveys a number of distinct imputations, it is necessary for the claimant to satisfy the threshold test in respect of each imputation: *Sube v News Group Newspapers Ltd* [2018] EWHC 1961 (QB) at [34] (Warby J).

80. A person's reputation consists in the esteem in which they are held by others. It inheres in, and is distributed across, the minds of those who know of the claimant (including those

who come to know of the claimant by reading the statement itself: see *Lachaux* at [25]). There is no readily available means of establishing the state of a person's reputation at a particular time so, although a claimant must now prove that the defendant's publication has caused (or is likely to cause) damage to their reputation as a matter of fact, the law does not impose unattainable standards. It is accepted that it is often unrealistic to expect a claimant to call as a witness someone who has read the statement complained of and formed an adverse view of them (see e.g. *Wright v McCormack* at [52], Warby LJ). Sometimes harm to reputation results in observable consequences: the claimant may be shunned socially, vilified on social media, miss out on a promotion, or lose custom from their business. Where such events occur, a claimant may rely upon them, but the absence of such evidence will not necessarily mean that the claim fails.

81. Often, the best a claimant can do is to invite the court to infer that serious reputational harm has been caused by reference to "the meaning of the words, the situation of [the claimant], the circumstances of publication and the inherent probabilities": *Lachaux* at [21] (Lord Sumption). This is acceptable, but the exercise is one of inference not speculation: the claimant must establish by evidence facts which cumulatively support the inference that, on the balance of probabilities, serious harm has in fact been caused: see e.g. the comments of Collins Rice J in *Sivananthan v Vasikaran* [2023] EMLR 7 at [53] and *Miller v Turner* [2023] EWHC 2799 (KB) at [45].

Serious harm – the parties' submissions

82. The Claimant did not adduce evidence to show that he had a particularly good reputation. He relies on the presumption that he had a reputation capable of being damaged. He points to the gravity of the allegations in the Article, the extent of publication, the likelihood of repetition by some readers, the identity of the publishees ("almost all part of the sports industry"), and the Magazine's claims to be a source of authoritative factual information and trusted as such by its readers. The Claimant invites me to draw an adverse inference from the fact that the Defendants have not called any of the Magazine's subscribers as witnesses and that, in deliberate breach of the order of Collins Rice J, they have failed to disclose the list of subscribers. The Claimant says that I can infer from these things that the Defendants believe that the identity of the subscribers, and the evidence that they would give at trial, would undermine their case rather than support it.

83. The Defendants' principal case is that the Claimant had a general bad reputation prior to publication, such that it cannot have suffered serious harm. If that case fails, the Defendants resist the Claimant's inferential case. They say that, as a nonagenarian retiree living in Monaco, the Claimant is unlikely to be remembered among the Magazine's readers in England and Wales or of any interest to them, and unlikely ever to meet any of them. They point to the lack of any mentions of the Article in the mainstream media, on the internet or social media, the lack of evidence of adverse consequences (social, financial or otherwise) and the lack of any witnesses who read the Article and thought less of the Claimant. In the First Defendant's memorable words, "the only damage to the Claimant has been to his own vanity".

Pre-existing bad reputation

84. The Defendants had little admissible evidence to support their case on bad reputation. It really boils down to three things.

85. First, I was shown a document setting out a number of questions and responses. No evidence was called to explain what this was but I was told that it was the result of the "interim" survey referred to in the Amended Defence. I did not understand Mr McCormick to object to my taking account of what is pleaded about it there, namely that Ms Grzesik spoke to 20 people aged between 50 and 70 at the Chelsea FC ground in August 2023 and asked them 7 questions. The questions included, *"Do you know who Ken Bates is?"* (the 3 people who said no to this were not asked any further questions), *"Have you read a recent profile in BusinessF1 magazine of Ken Bates?"* (everyone said no), *"is it your opinion that Ken Bates is an honest man* (1 answered yes, 13 answered no), and *"what is your view of Ken Bates's reputation generally?* (1 said good, 5 said bad, 6 said very bad).

86. As I have said, I would not necessarily rule out reliance on survey evidence as a matter of principle. However, I cannot place any real weight on this particular survey. What matters is how readers of the Magazine regarded the Claimant before publication. There is no evidence, or proper basis for inferring, that the individuals who responded were either readers of the Magazine or likely to share the same knowledge and beliefs as readers of the Magazine.

87. Second, I have considered two reported civil cases in which the Claimant was the losing party. That is on the basis that these involve "judicial strictures" in previous civil litigation which may be admissible on serious harm: see [18] above. These cases came into the proceedings obliquely. The first was mentioned in an article that the First Defendant showed me and the judgment had been included in the authorities bundle. The second was a related case of which I was aware and I therefore considered it appropriate to invite the parties' submissions on it.

88. In *Levi v Bates* [2009] EWHC 1495 (QB) Mr Bates was found to have libelled Melvyn Levi, a businessman who was a member of the consortium which owned Leeds FC and sold it to the Claimant's entities. Mr Bates did this in 3 Leeds Utd match programmes and a letter to club members. The publications included allegations that (in summary) Mr Levi had sought to blackmail the new owners of the club by blocking the effective transfer of control unless he was paid money to which he was not entitled, thereby stopping the new owners from raising much needed new investment. Gray J dismissed the defence of truth and awarded damages of £50,000. He criticised Mr Bates for having made improper use of a privileged legal opinion to make his attacks on Mr Levi (see [116]). He said that blaming Mr Levi for blocking the transfer was a "convenient strategy" for explaining why Mr Bates and his associates had gone about gaining full control of the club in another, less costly way (see [151]-[154]). He stopped short of calling Mr Bates dishonest or malicious. I was shown a contemporaneous report of the case from the Guardian but the Defendant accepted that few readers of the Magazine were likely to have seen it.

89. *Levi v Bates* [2015] EWCA Civ 206, [2016] QB 91 was a claim for harassment by Mr Levi and his wife, first determined in Mr Levi's favour by the Leeds County Court and then subject to an appeal where Mr Bates was also found liable to Mr Levi's wife. The harassing conduct consisted in attacks on Mr Levi published by Mr Bates in match programmes and again criticising him for his conduct in the dispute about ownership of Leeds United. This included publishing the Levis' home address and telephone number and implicitly encouraging fans to contact Mr Levi directly. Mr Bates had been ordered to pay £10,000 damages to Mr Levi (reduced from what would otherwise have been due to reflect the overlap with Mr Levi's earlier libel action) and the Court of Appeal ordered him to pay an additional £6,000 for his harassment of Mrs Levy. There was no evidence about the extent of any publicity that this case may have attracted.

90. These decisions make findings about the Claimant's conduct in a sector of his life that is addressed in the Article (his ownership and control of football clubs). They indicate that he is someone who has been prepared to libel and harass an opponent in order to advance his business interests in football, and to make improper use of privileged material in order to do so. However, the libel judgment was some 14 years old by the time the Article was published and the Court of Appeal decision in the harassment claim was some 8 years old. Neither of them involved "judicial strictures" that came close to the serious allegations of dishonesty and criminality made in the Article. They do not establish that, at the time the Article was published, the Claimant had a reputation so bad that it was incapable of being damaged by the sort of allegations the Defendants chose to make in the Article. At best, these earlier decisions may have some mitigating effect on damages if that stage is reached.

91. Third, the Defendants say I should draw an adverse inference from the fact that the Claimant chose not to rely on evidence from his wife as he had originally intended. They say I should infer that, had she given evidence, she would have been forced to admit that the Claimant had no reputation capable of being harmed. I decline to draw that inference. A solicitor's witness statement filed in July 2024 stated that Mrs Bates was no longer fit enough to give evidence and this was re-iterated by the Claimant in his oral evidence. When opening his case, Mr McCormick indicated that he intended to put in her witness statement as hearsay. He did not do so in the end but that is because I myself raised some concerns about whether the Defendants had been given sufficient and timely notice of this proposed course. It was reasonable for the Claimant not to call his wife.

92. The Defendants' case on pre-existing bad reputation therefore fails and I approach the issue of serious harm applying the presumption that the Claimant had a reputation capable of being damaged.

Serious harm – conclusion and reasons

93. I am satisfied on the balance of probabilities that the publication of the Article has caused serious harm to the Claimant's reputation. I say that for the following reasons.

(1) the allegations are very serious: murder, suspected murder, serial dishonesty and the use of heavy-handed tactics to cover this all up. The Claimant's pleaded meaning about the

Irish bank does not include an allegation of dishonesty or criminality and (mindful of the proviso to *Koutsogiannis* principle xiii) I have not included these elements either. Nevertheless, an allegation that someone has caused a bank to collapse, forcing a government to step in to compensate the customers, is a serious one.

(2) Readers of the Article are likely to have known of the Claimant and take an interest in him. They are from the sports business sector and he played a prominent role in English football for 30 years. His profile in England will have declined since his retirement but many readers will have recalled him. It is notable that the Mail on Sunday evidently considered him to be a person of sufficient interest to justify publishing a lengthy interview with him in March 2023. Allegations are more likely to stick in the minds of readers if they know the claimant personally or feel they know him because of his public profile: see *Dhir v Saddler* [2017] EWHC 3155 (QB), [2018] 4 WLR 1 at [55] (Nicklin J). The fact that readers of the Article may not have met the Claimant in person (and may never do so) does not assist the Defendants. Harm to reputation occurs at the time an article is read: *Lachaux* at [25].

(3) The Defendants' decision to refer to the Article and repeat some of its allegations on the letters page in July and September 2023 will have reinforced it in the minds of readers, increasing the sticking power of the allegations: see [51]-[53] above.

(4) The Article was read by a substantial number of people in England and Wales, probably around 9,000: see [48] above. There was no evidence of onward publication but I consider that there will have been a degree of percolation. The Article is sensationalist, it is about a person who was familiar to readers, and one of its main features - the death of Matthew Harding in a helicopter crash – was itself a memorable event. The combination of these factors means that it is likely the Article will have been discussed (and its contents repeated) in sports business circles.

(5) I have considered whether the relentless hostility of the Article will have caused readers to treat it with scepticism. I think that some will have done. The Article has none of the balance that is generally found in modern serious journalism. There is a strong whiff of revenge (although the reader is never told why the writer might bear a grudge) and the assertion (mistaken of course) that the Claimant could not sue for libel may have led

some readers to wonder whether the writer had felt free to throw as much mud as he could find, with or without a proper factual basis. The allegation of murdering rivals in the concrete business appears to be based on little more than the assertion that this is what everyone did at the time, which would strike some readers as an extraordinarily flimsy basis for such a serious allegation. Nevertheless, I remind myself of the evidence that the Magazine holds itself out as an authoritative source of carefully researched information and is trusted as such by most of its readers: see [44]-[45] above. Many readers, I find, will have taken the Article at face value as a well-informed, in-depth exposé of the Claimant's true history, published to debunk the sanitised account given in the Mail on Sunday. Those readers are likely to have taken the allegations seriously.

(6) I draw an adverse inference from the Defendants' refusal to disclose the list of subscribers in breach of the order of Collins Rice J: see [54]-[60] above. I find they did this because they believed it was likely that the subscribers would turn out to be people who knew of and took an interest in the Claimant and not people who already regarded him as a man of bad reputation. The Claimant has already established a prima facie case to that effect and so I am entitled to take the Defendants' culpable failure to provide the list into account in the Claimant's favour: see, generally, on adverse inferences, *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 at 337-340 (Brooke LJ). (I do not draw an adverse inference from the fact that the Defendants did not call subscribers themselves. That would have been an unusual thing to do in a case concerning large-scale publication).

(7) Further, the fact that the Claimant did not call any readers as witnesses is hardly surprising in the circumstances given that the Defendants deprived him of the means of identifying them. It does not undermine his case.

(8) The lack of any observable consequences for the Claimant flowing from the publication is noteworthy but does not prevent me drawing an inference of serious harm given the strength of the other factors I have mentioned. The Defendants' point about this might have been stronger if the Claimant were still living in England and active in business. Then, one might have expected to see him being snubbed socially or experiencing business difficulties if the Article had been read and believed. But since he is retired and lives abroad there are fewer opportunities for the change in perception of him in the

minds of readers in England and Wales to manifest itself in observable behaviour. It is that change in perception that counts as reputational harm and, so long as I am satisfied that it happened and was serious (which I am) it does not matter that it was not accompanied by other negative consequences.

(9) This is not a case where there is any real need to "isolate" the harm done by the Article from that which may have been done by other harmful material: see [20]-[21] above. The First Defendant showed me a number of articles, book extracts and podcasts concerning the Claimant but mostly accepted that this material was unlikely to have come to the attention of the Magazine's readers. The exception was a chapter from a book by Tom Bower about the history of Chelsea FC (*"Broken Dreams"*). The First Defendant said that there would be an overlap in readership there because he and Mr Bower are similar writers with a similar following. But the book was published in 2003 and, although it covers some of the same ground as the Article and is not flattering to the Claimant, it is much milder and omits the most serious allegations altogether. The First Defendant himself said that the point of the Article was to bring new information to readers' attention. The publication of the Tom Bower book 20 years previously does not call into question, in my mind, the proposition that the Article caused serious reputational harm.

94. I find that the serious harm test is met in respect of each of the imputations I have found the Article to bear (including, if necessary, each of the sub-imputations under the "dishonesty" imputation).

H. Remedies

Damages – legal principles

95. The principles governing the award of damages for defamation were comprehensively set out by Warby J in *Barron v Vines* [2016] EWHC 1226 (QB) at [20]-[21]. I direct myself by reference to that summary but do not need to set it out. Essentially, I must arrive at a sum which adequately compensates the Claimant for the harm to his reputation, serves as vindication, and compensates him for the injury to his feelings. Aggravated damages may be awarded to compensate for any additional injury to feelings caused by the way in which the Defendants have conducted themselves. The sum I award must be no more than is

necessary to serve those ends. Anything more would be a disproportionate interference with the Defendants' rights under ECHR Article 10.

Damages – the parties' submissions

96. Mr McCormick repeats the points he made on the issue of serious harm; he relies on the Claimant's written and oral evidence as to the injury to his feelings; and he identifies various matters in aggravation of damages. He does not ask me to identify a separate award of aggravated damages: he says I should make a compendious award taking all matters into account. He invites me to consider four previous cases as relevant comparators and he has updated the awards in those cases to account for inflation and the decision in *Simmons v Castle* (No.2) [2012] EWCA Civ 1288, [2013] 1 WLR 1239. He refers me to *Berezovsky v Terluk* [2011] EWCA 1534 (£150,000, now c. £285,000), *Al-Amoudi v Kifle* [2011] EWHC 2037 (QB) (£175,000, now c. £320,000), *Bento v CC Bedfordshire* [2012] EWHC 1525 (QB) (£125,000, now c. £220,000), and *Sloutsker v Romanova* [2015] EWHC 2053 (QB) (£110,000, now c. £165,000). He says the minimum I should award in this case is £275,000.

97. The Defendants also repeat the points they made on serious harm. They say that anything more than a nominal award would send the message that rich people can succeed in libel claims regardless of their character or reputation. They say that they have not used the trial as a platform to make further attacks on the Claimant, but only to articulate their legitimate case. They suggest that, if the Claimant is entitled to substantial damages, at all, they should be reduced by reference to the time he has left to live, since the law only protects the reputation of the living.

Damages – discussion and conclusions

98. I have already made findings about the harm caused to the Claimant's reputation at [93] above. When considering what is necessary to compensate for that harm and serve as vindication, the following factors argue for a higher award: (1) the gravity of the allegations; (2) the substantial (but not enormous) number of publishees; (3) the likelihood of the allegations "sticking" given that readers will have been aware of the Claimant already and will then have been reminded of the allegations by what appeared on the letters page in July and September 2023; (4) many readers are likely to have taken the allegations seriously; (5) the likelihood that there has been some (modest) percolation. I would add that there is a continuing (if modest) risk of further percolation, for the same reasons.

99. The following factors argue for a lower award for the purpose of compensating for reputational harm and vindication: (1) some readers will have treated the Article with scepticism, particularly the aspects for which little evidence was offered (e.g. murder in the concrete business); (2) there has been no republication online or in other news media; (3) it appears that the allegations have not reached (or have not been believed by) the limited number of people in the jurisdiction with whom the Claimant still has close personal interactions. The serious harm that has been caused to his reputation has occurred principally in the minds of readers who knew of him but did not know him personally. It has not had, and may never have, practical repercussions for him; (4) the public criticisms made of the Claimant in the two *Levi* judgments mean that the Claimant did not have – or at least does not deserve – an entirely unblemished reputation in respect of his conduct in the football business; (5) my reasoned judgment will go some way to providing vindication though I have not, of course, examined and made findings about the merits of the allegations; (6) so too will the s.12 Order I am going to make (see [114] below): readers will be informed directly that the Defendants have been found to have libelled the Claimant.

100. Turning to the injury to the Claimant's feelings, my impression, both from reading the Claimant's witness statement and from observing his oral evidence, is that his predominant emotions are anger and irritation at the Article. Those are matters that require compensation but they are less serious than the deep distress and trauma that some libel claimants report.

101. In two respects, I find, the Claimant's reactions went beyond anger. First, I accept that the publication of the Article has caused him genuine concern about how he will be regarded after his death. He is of advanced years and, to put it bluntly, he has limited opportunities now to take actions that will restore his damaged reputation. He was genuinely worried that the Article would be the last word on his life and that he would be remembered forever as a murderer and a fraudster.

102. Second, I accept that the Claimant was genuinely concerned by the impact the Article had on his wife. I need to be careful here because Mrs Bates is not a claimant and I am not giving compensation for what the Article says about her or the impact it had on her feelings. Nevertheless, it was natural that the Claimant would show her the Article and she was deeply upset upon seeing what it said about him. The Claimant had to witness that and deal

with it as part and parcel of dealing with the aftermath of publication. This caused him real upset. His evidence on this point was heartfelt and sincere. It has some relevance.

103. Turning to aggravated damages, the RAPC plead a long list of conduct by the Defendants that is open to criticism but I remind myself that I am concerned with compensation, not punishment. I have only taken the Defendants' conduct into account where there is clear and compelling evidence that it had a real effect on the Claimant's feelings.

104. I have not increased the award by reference to the particular features of the Article that the Claimant says he found annoying, such as certain basic factual inaccuracies. That seems a somewhat artificial exercise where the headline allegations of the Article are so obviously serious and offensive.

105. The fact that the Defendants did not contact the Claimant prior to publication is a relevant aggravating factor. The First Defendant accepted that he should have done this and the result of his not doing so was that the Claimant was confronted with these serious allegations out of the blue, without the opportunity to put his side of the story or to take steps to prevent publication. That, I accept, added to his sense of shock and outrage.

106. The Defendants' post-publication conduct has also seriously exacerbated the impact on the Claimant's feelings of anger and irritation. In his witness statement the Claimant singles out the references to his complaint made on the letters pages of the Magazine in the July 2023 and September 2023 editions – both the decision to publish a misleadingly edited version of his letter of claim and the mocking responses of the First Defendant. He also refers to allegations made in various court documents which repeated the imputations in the Article (despite there being no defence of truth) and accused him of perjury. Lastly the Claimant relies upon the Defendants' conduct of the case at trial. As I have mentioned, in his lengthy cross-examination, the First Defendant put questions to the Claimant that could only have been relevant to a defence of truth. He went further and questioned the Claimant about wholly new allegations that did not feature in the Article at all. In re-examination, Mr McCormick asked the Claimant how this had made him feel. The Claimant's answer was that it had made him feel contempt for the First Defendant so, again (and fortuitously for the Defendants) the emotional impact, while real, was less than it might have been on many libel claimants subjected to a similar interrogation.

107. I reject as illogical the Defendants' submission that damages must somehow be reduced in proportion to the time the Claimant has left to live. An award of damages provides compensation for damage to reputation that has already occurred, serves to demonstrate the baselessness of the allegations, and compensates for the emotional harm already sustained. There is no reason why an older person should require any smaller sum than a younger person.

108. This was a serious libel. In the minds of many readers, it will have left the Claimant's reputation in tatters. The factors I have mentioned at [99], along with the relatively limited emotional impact on the Claimant, serve to reduce the necessary award but the sum will nevertheless have to be a very substantial one. In all the circumstances, the sum that is necessary to compensate for the damage to the Claimant's reputation, to provide vindication, and to reflect the injury to his feelings is £150,000. That includes an element to reflect the effect on the Claimant of the Defendants' aggravating conduct before and after publication.

109. My award is substantially less than the sum Mr McCormick asked for. It is also substantially less than the sums awarded in the four cases he cited, once those awards are updated by applying his formula. Close factual comparison is invidious when each libel is unique but suffice it to say that, in my judgement, each of the four cases cited had aspects that made them more serious than the present case in terms of reputational harm and/or emotional impact. Further, although I am grateful to Mr McCormick for his updating calculations, the Court should not be beguiled by mathematical formulae. There have been some very serious libel claims in recent years yet the awards have not kept pace with the trajectory that Mr McCormick's calculations appear to predict. See e.g. *Aaronson v Stones* [2023] EWHC 2399 (KB) where Julian Knowles J awarded £110,000 for allegations of rape published very widely online. The ultimate question is what sum is necessary, in contemporary society, to serve the purposes of compensation and vindication without disproportionately interfering with a defendant's ECHR Article 10 rights.

Injunction

110. I should only exercise my discretion to grant an injunction if there is a real risk that the Defendants will repeat their allegations and if an injunction would amount to a legitimate and proportionate interference with the Defendants' ECHR Article 10 rights.

111. The First Defendant told me several times during the trial that he is "done" with the Claimant and has no intention of writing another word about him. I accept that he meant what he said at the time. The trouble is, I do not believe that he will be able to stick to his good intentions. Such is his hatred of the Claimant, there is a real risk that he will launch into print again to attack him, particularly if the Claimant receives further positive or neutral publicity along the lines of the Mail on Sunday article.

112. To explain this risk, I need look no further than the First Defendant's closing speech. I had told him repeatedly during the trial what the legitimate areas of evidence and argument were. Despite this, he chose to use (or rather abuse) his closing speech to make yet another wholesale attack on the character and conduct of the Claimant. He repeated allegations from the Article and his struck-out Witness Statement. He claimed he was entitled to do this because certain questions that Mr McCormick asked him in cross-examination had somehow opened the door. He was wrong about that. If he genuinely believed it, it only goes to show how all rational thought processes abandon him once the subject of the Claimant comes up.

113. I shall therefore grant an injunction.

Order under Defamation Act 2013, s.12

114. Defamation Act 2013, s.12(1) gives me a discretion to order the Defendants to publish a summary of my judgment. The purpose of such an order is to assist the Claimant to repair damage to his reputation and obtain vindication. A mandatory order to publish something is a significant interference with a defendant's ECHR Article 10 rights and I should therefore only make an order if it could realistically achieve the objectives I have mentioned and would be, in the circumstances, a proportionate interference with the Defendants' Article 10 rights. I am not presently concerned with what the statement should say or how and when it should be published. Those are matters that the court can rule on in due course if the parties cannot agree. Nevertheless, I need to take a view as to what such an order

might realistically achieve for the Claimant, and at what cost (in Article 10 terms) to the Defendants. See generally, *Monir v Wood* [2018] EWHC 3525 (QB) at [239]-[240] (Nicklin J).

115. In the course of argument, I raised concerns with Mr McCormick about the proportionality of such an order in this case, given that the Magazine is distributed internationally whereas this case has concerned only publication in England and Wales. He made certain practical suggestions in response (e.g. the use of an insert in copies of the Magazine that are distributed here, or direct communication with the named subscribers on the Defendants' list who live here). In fact, I need not have been so concerned because, when it came to the First Defendant's submissions, he explained that he was relaxed about including a short s.12 statement in the Magazine.

116. In my judgement, a s.12 statement in this case can be published in a way that directly reaches most of the original publishees of the Article and it will add real value in terms of vindicating the Claimant and restoring his reputation in their eyes. There are ways in which this can be done without disproportionately interfering with the Defendants' Article 10 rights. Accordingly, I shall make the order and will rule in due course, if necessary, on any disputes about the wording of the statement and the time, manner form and place of publication. The statement need only be a few sentences long, setting out what the case was about, my decision on liability, and the remedies I have awarded.

I. Conclusion

117. The Claimant has proved his case. I award him £150,000 in damages including aggravated damages. I grant an injunction restraining the Defendants from publishing the same or similar allegations and I make an order under s.12 of the 2013 Act. I shall ask the parties to agree a draft order, to include provisions about costs.