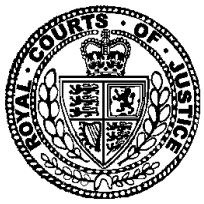

Neutral Citation Number: [2022] EWHC 2572 (KB)

Case No: QB-2020-005420

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/10/2022

Before :

THE HONOURABLE MRS JUSTICE TIPPLES DBE

- -

Between :

(1) Direct Accident Management Limited
(2) Bond Turner Limited **Claimants**

- and -

Newsquest Specialist Media Limited **Defendant**

- -
- -

Richard Munden (instructed by **Bond Turner**) for the **Claimants**
Gervase de Wilde (instructed by **Wiggin LLP**) for the **Defendant**

Hearing dates: 9th & 10th May 2022

- -

Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email, release to the National Archives and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 17 October 2022 at 10 am.

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The Honourable Mrs Justice Tipples DBE:

INTRODUCTION

1. This is a libel action which arises out of the publication of two articles on the website of the 'Insurance Times'. The first article was published on 20 December 2019 and has the title 'Credit hire sharks circle as market reacts to excessive costs' ("**the first article**"). The second article was published on 2 January 2020 and has the title 'Rogue agent aggravates industry with trumped-up credit hire costs' ("**the second article**").

2. The defendant is the publisher and operator of the 'Insurance Times' magazine, e-newsletter and website at http://www.insurancetimes.co.uk/ which is promoted as the "leading information, analysis and insight brand in UK General insurance". The author of both articles is Katie Scott. The articles are set out in the Annex to this judgment, with paragraph numbers added in square brackets.

3. On 17 December 2020 the claim form was issued seeking damages, an injunction and related relief in defamation. The claim form and particulars of claim were served on 15 April 2021.

4. The first claimant, Direct Accident Management Limited ("**DAM**"), describes itself as specialising "in all aspects of vehicle accidents, post-accident assistance and vehicle hire". It says that it trades as 'DAMS', employs over 150 individuals, and is authorised and regulated by the Financial Conduct Authority (FRN 836071): see paragraph 1 of the particulars of claim.

5. The second claimant, Bond Turner Limited ("**Bond Turner**"), describes itself as "a multi-disciplinary law firm specialising in personal injury, professional and clinical negligence, defamation and privacy, historic abuse, will and estate disputes, credit hire, road traffic accidents, and data protection breaches". It says that it employs 33 Grade A solicitors and over 100 others as solicitors, barristers, legal executives and litigators, interpreters and accountants. It also says that it is authorised and regulated by the Solicitors Regulatory Authority and, like DAM, is part of the Anexo Group and owned by Anexo Group Plc: see paragraph 2 of the particulars of claim.

6. There is no dispute between the parties that the 'Insurance Times' is a publication that is widely read in the insurance sector or industry.

7. DAM's case is that all the words in the first article, in their natural and ordinary meaning, meant and were understood to mean that DAM:

   (1) is an outlier and the anomalous epitome of poor practice within the wholly unregulated credit hire sector in which it operates; and

   (2) that such poor practices, in which the DAM routinely engages and for which it is the worst offender, include:

      a. charging, and then arranging for the claiming in road traffic accident claims, of credit hire costs which are well in excess of normal market rates, without justification;

b. exploiting loopholes to maximise credit hire costs;

c. dishonestly, and by using deliberately underhand methods, elongating repair periods to increase credit hire costs; and

d. dishonestly or unreasonably layering in terms of credit repair, credit hire, personal injury and rehabilitation.

8. DAM's case is that the words complained of that make up the second article, in their natural and ordinary meaning, meant and were understood to mean that DAM:

(1) is guilty of widespread fraud, in particular of the fraudulent concoction and exaggeration of excessive and extortionate credit hire costs, which it then fraudulently seeks payment for through the courts via claimants bringing road traffic accident claims;

(2) is guilty of generally dishonest and underhand practices, going back many years;

(3) operates in a manner that is unusually dishonest and wrongful, even within the unregulated and generally unethical credit hire sector; and

(4) does not act honestly, fairly and professionally in their customers' best interests, directly contrary to FCA principles for businesses;

(5) in breach of its own FCA obligations to act honestly and with integrity, knowingly participated in activities that constituted a breach of the Solicitors Regulation Authority ("SRA") Principles and GDPR namely improperly acting in respect of introducing and referring clients to other members of the Anexo Group of companies; making impermissible direct referrals; referring customers to other Anexo Group companies without consent; and generally acting towards its own customers in a deliberately non-transparent, dishonest and underhand manner;

9. Bond Turner's case is that the words complained of that make up the second article, in their natural and ordinary meaning, meant and were understood to mean that Bond Turner:

(1) does not act honestly, fairly and professionally in their customers' best interests, directly contrary to FCA principles for businesses; is guilty of acting in a deliberately non-transparent, dishonest and underhand manner towards its clients in respect of introductions and referrals, and in particular:

(2) acting improperly despite having a conflict of interests in respect of client introductions;

(3) failing to disclose referrals from firms in the same group to consumers;

(4) engaging in unlawful direct referrals of consumers;

(5) referring custom directly, without client consent, to other Anexo Group companies for group-wide financial gain, in breach of SRA regulations and GDPR;

(6) allowing a credit hire company which it knows or ought to know is rogue and fraudulent to benefit from its SRA authority, in breach of SRA regulations; and

(7) failing to be transparent in its contracts and fee disclosures in respect of their work with the obviously rogue and fraudulent company, in breach of SRA regulations and the GDPR.

10. On 15 July 2021 Master McCloud made an order by consent for the trial of the following preliminary issues, namely:

> "(i) the natural and ordinary meaning of the statements complained of;
>
> (ii) whether the statements complained of, in any meaning found, are defamatory of the claimants at common law; and
>
> (iii) whether the statements complained of were (or included) a statement of fact or opinion."

11. On 28 February 2021 the defendant served notice of its case on meaning. It takes issue with DAM and Bond Turner's meanings and maintains that in its natural and ordinary meaning the first article meant and was understood to mean that DAM:

(1) allowed a grossly excessive and unreasonable sum many times the value of the relevant vehicle of £400,000 in credit hire fees to accrue to its client, a driver to whom it had provided a replacement vehicle, in a claim in which the driver was ultimately held to be at fault,

(2) conduct which sought to take advantage of the lack of regulation in the credit hire sector in a manner which is unethical and places it outside the norm of practice within the sector in which it operates.

12. The defendant maintains that in its natural and ordinary meaning the second article meant and was understood to mean that:

(1) DAM and Bond Turner are part of a group through which DAM provides credit hire services and Bond Turner provides legal services within the same Road Traffic Accident marketplace.

(2) DAM allowed a grossly excessive and unreasonable sum many times the value of the relevant vehicle of £400,000 in credit hire fees to accrue to its client, a driver to whom it had provided a replacement vehicle. DAM did so notwithstanding that the driver was involved in a claim in which the defendant insurer's liability was being disputed and in which there were strong grounds to suspect fraudulent and underhand behaviour in relation to the accident, in which the driver had driven her car into a stationary, parked vehicle. The litigation was conducted on the driver's behalf by Bond Turner. This gives rise to:

(A) reasonable grounds to suspect that DAM:

(a) failed to investigate whether its own client was at fault for her accident;

(b) failed to mitigate its client's liabilities in an attempt to pressure the settlement of her claim;

(c) in doing so contravened the requirement to act honestly, fairly, and professionally in their customers' best interest;

(d) does not act honestly and transparently towards its clients in respect of client introductions and referrals to Bond Turner; and

(B) reasonable grounds to investigate whether Bond Turner:

(a) fails to act honestly and transparently towards its clients in respect of client introductions and referrals from DAM, and in respect of extending its SRA authority to a credit hire company such as DAM.

13. It is the defendant's case that the underlining indicates where the meanings comprise expressions of opinion (otherwise the meanings comprise statements of fact).

14. The defendant admits that its meanings are defamatory at common law of DAM in respect of the first article, and of DAM and Bond Turner respectively in respect of the second article.

15. The trial of the preliminary issues took place on the afternoon of 9 May 2022 and morning of 10 May 2022.

16. This judgment concerns that trial and only relates to the meaning of the two articles. The defendant has not yet been required to file a defence and so no substantive defences have been raised. The court is not, at this stage, adjudicating on any issue concerning the two articles other than meaning. Specifically, the court is not determining whether allegations made in the articles about the claimants (or anyone else) are true.

17. I read the two articles in advance of the hearing. I did so knowing the identity of the parties to the claim, but I did not know anything else about the claim. I therefore knew the claimants were complaining, but I did not know what they were complaining about. Further, I read the articles without any reference to the parties' rival contentions or submissions on meaning. That was to capture my initial reaction as a reader and which is, of course, the accepted general practice in a trial of this nature.

RELEVANT LEGAL PRINCIPLES

18. The relevant legal principles were not in dispute between the parties.

19. The court's task is to determine the single natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable reader would understand the words to bear.

20. The law to be applied by the Court when determining the single meaning of a publication complained of is now "conveniently distilled" in *Koutsogiannis v The Random House Group Ltd* [2020] 4 WLR 25, Nicklin J ("***Koutsogiannis***") at [11]-[12]: see *Corbyn v Millett* [2021] EMLR 19, CA ("***Corbyn***") at [8]. The law is settled and very well known, and does not need to be repeated. The context of the words and the medium of the publication is all important when assessing meaning: *Stocker v Stocker* [2020] AC 593, SC at [40]. 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): *Koutsogiannis* at [12(iii)].

21. The other principles relevant to the issues in this case are *Chase* levels of meaning and the "repetition rule". Both parties directed my attention to *Brown v Bower* [2017] 4 WLR 197 ("***Brown***") at [17], where Nicklin J summarised the origin and function of *Chase* levels of meaning. Likewise, the repetition rule was explained by Nicklin J in *Brown* at [28] to [32] (and also in *Hewson v Times Newspapers Limited* [2019] EWHC 650 (QB) ("***Hewson***") at [35]-[36]). Those passages are again well known, and do not need to be repeated here. The inter-relationship between *Chase* levels of meaning and the repetition rule was explained by Nicklin J in *Poroshenko v BBC* [2019] EWHC 213 (QB) at [26] and, in particular, he said this:

> "Publications that result in a meaning at *Chase* level 2 or 3, tend to flag clearly to viewers/readers that there are reasons why they should be cautious before accepting allegations made by others, perhaps for motives of their own, for example".

22. Mr de Wilde, for the defendant, also directed my attention to *Hewson* at [42] in relation to mitigation in this particular context. In *Hewson* Nicklin J explained:

> "The classic example of such mitigation is an article that contains two sides of a dispute. A direct application of the repetition rule to part of an article that reported the allegations defamatory of the claimant would produce a level 1 meaning. But that would be to ignore the context and the fact that the Claimant's rebuttal of the charge has also been included. How far that goes to reduce (or even extinguish) the meaning that application of the repetition rule would otherwise produce depends upon the context of the publication as a whole. If an article reports that Y has said that X had stolen money from him/her, but goes on to state that Y has previously made the same allegation which was shown to be false; that Y has a personal grudge against X; and Y has told Z that he has made up allegations against X to get back at him for some earlier dispute, the result will almost certainly be that the article bears no defamatory meaning of X. If anything, the article is more likely to defame Y. Examples like that are rare, but they do exist. A more common example is where an article presents both sides in a way that the reader will see as roughly even-handed; or certainly not containing any steer as to which side should be believed. At that point, the ordinary reasonable reader can only suspend judgment on whether the claimant is guilty. Instead, and depending on context, s/he may well alight on either a *Chase* level 2 or 3 meaning. I am deliberately using straightforward examples and a level of generality to demonstrate the point, but it cannot be repeated too often: context is everything."

23. It was common ground that the common law principles to be applied to determine whether a statement complained of contains allegations of fact or opinion were summarised by Nicklin J in *Koutsogiannis* at [16] (recently referred to by the Court of

Appeal in *Corbyn* at [12]). These principles are well known and, for completeness, I set them out here:

> "… when determining whether the words complained of contain allegations of fact or opinion, the court will be guided by the following points:
>
> (i) The statement must be recognisable as comment, as distinct from imputation of fact.
>
> (ii) Opinion is something which is or can be reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation etc.
>
> (iii) The ultimate question is how the words would strike the ordinary reasonable reader. The subject matter and context of the words may be an important indicator of whether they are fact or opinion.
>
> (iv) Some statements which are, by their nature and appearance opinion, are nevertheless treated as statements of fact where, for instance, the opinion implies that a claimant has done something but does not indicate what that something is, ie the statement is a bare comment.
>
> (v) Whether an allegation that someone has acted "dishonestly" or "criminally" is an allegation of fact or expression of opinion will very much depend on context. There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact."

24. As to (iv) and "bare comment" in *Corbyn* Warby LJ explained at [24] that:

> "… The authorities show that "bare comment" is a pointer, or guideline, or rule of thumb that reflects the key principle. The question is, would the words used strike the ordinary viewer as a statement of fact or opinion? The answer does not turn on whether any given word is an adjective, noun, or verb, or some other part of speech. This is a matter of substance, not a formal, analytical matter of grammar or linguistics. In practice, when someone uses a descriptive word without giving any detail of what he is describing, that will tend to come across as an allegation of fact. That is what the cases on "bare comment" say. That is how the notion of "bare comment" was treated by Lord Nicholls in *Cheng*, and by Nicklin J in *Koutsogiannis*; and that, in my judgment, is how it was approached by Saini J in this case …".

25. As identified above there is no dispute that the first article is defamatory of DAM at common law, and the second article is defamatory of DAM and Bond Turner.

26. Having set out those principles, I now turn to the first article.

THE FIRST ARTICLE

Impression

27. The impression I noted down of the article when I first read it was as follows. There has been a recent legal case in Nottingham in which the insurer, Aviva, successfully defended

a claim where a credit hire organisation (CHO) sought to charge £400,000 in credit hire costs. These costs were for the use of a replacement vehicle, over a period of more than two years, when liability was in dispute. This was an extraordinary and vast sum and Aviva's solicitors say that they have a number of other claims for credit hire costs which are also excessive.

28. The article asks whether excessive credit hire costs are really a problem in the insurance industry. The reader is informed that CHOs are unregulated, which provides opportunities for CHOs to make money and build costs. Examples are provided of this, such as elongating repair periods. However, there is self-regulation which many CHOs voluntarily adhere to which limits charges. The article identifies ways that insurers can mitigate their exposure to such charges.

29. The article then considers how it was that such extraordinary charges arose in the Nottingham case. The reader is told that DAM, the first claimant, was the CHO involved in the Nottingham case and responsible for the vastly excessive costs. The reader is told that those within the industry are quick to label DAM as an outlier and anomaly of poor practice, in a sector which largely self-regulates. That poor practice is because DAM, unlike many CHOs, does not adhere to the standards of self-regulation within the sector and takes advantage of the opportunities to make money in an unregulated sector or drives up costs by underhand tactics.

30. I did not form the impression on reading the article when I first read it that DAM had done anything which was dishonest.

The parties' submissions: context

31. The parties provided the court with detailed skeleton arguments and at the hearing Mr Munden, for the claimants, and Mr de Wilde, for the defendant, made brief oral submissions. Counsel were, of course, mindful of the trap of over-elaborate analysis.

32. The 'Insurance Times' is a business publication for the insurance sector or industry. However, the parties did not agree as to who is taken to be representative of those who would read this publication. Mr Munden submitted that the hypothetical reader will have knowledge of the insurance industry and will, for example, know that the acronym 'ABI' refers to the Association of British Insurers. I mention this because 'ABI' is referred to in the articles, but is not defined.

33. Mr de Wilde went further and submitted that the representative reader of the 'Insurance Times' is: (i) a professional or specialist with a particular focus on or interest in the insurance sector in their working life; and (ii) likely to be familiar with the law and the claims industry relating to the insurance sector. He maintains that the court should take judicial notice of these characteristics on the basis of the "highly specialised nature of the publication, which is on its face not aimed at the general reader": see *Koutsogiannis* at [12(ix)].

34. The first and second articles published by the 'Insurance Times' are not law or case reports. I do not consider that they are "highly specialised" publications as submitted by Mr de Wilde. Rather, they are general insurance industry publications in relation to the

consequences of a legal case. In these circumstances, I agree with Mr Munden. The hypothetical reader will have knowledge of and an interest in the insurance industry, which includes the claims industry. However, the hypothetical reader will not be a lawyer or indeed a "professional or specialist" with any particular expertise or knowledge of the claims industry relating to the insurance sector.

Meaning

DAM's submissions

35. Mr Munden submitted that the first thing that the reader sees at the top of the article is a large picture of sharks swimming in murky waters, which immediately creates an air of menace, and of unscrupulous predatory behaviour. Mr Munden pointed to the headline 'Credit hire sharks circle as market reacts to excessive costs' which informs the reader that the 'sharks' are credit hire organisations or CHOs, such as DAM (being the only CHO named in the article), and it is the CHOs who are acting in an unscrupulous predatory manner with a degree of dishonesty. He then pointed to the sub-heading which asks 'Are CHOs being vilified or are there reasons to doubt sector standards as credit hire costs escalate?'. This, he said, suggests to the reader both (i) that credit hire organisations are being vilified, and (ii) that there are reasons to doubt standards in the credit hire sector. He submits that the thrust of the remainder of the article is that the sector is unregulated such that standards are extremely low, and that therefore any vilification of CHOs is justified.

36. Mr Munden then referred to the different parts of the article, starting with the Aviva case in paragraphs 1 and 2, the reference to an "emerging trend" of excessive costs, and that there is a general issue in the insurance industry about excessive charges, a point repeated throughout the article. The widespread nature of the problem is set out in paragraphs 3 to 7, under the heading 'Industry-wide' which, when taken together, suggest dishonesty on the part of the CHOs. This is because it is suggested to the reader that the CHOs are intentionally, unnecessarily and unreasonably elongating repair periods and layering in terms of credit repair, credit hire, personal injury, rehabilitation, in order to increase costs. The next heading is 'A self-regulated industry' in which at paragraphs 8 to 13, readers are being told that the lack of regulation is problematic, has led to a lowering of standards and that CHOs need regulation. Under the heading 'Whiplash reform revenue' readers are informed in paragraph 16 that industry experts predict an escalation in credit hire costs when these reforms are implemented, as the CHOs will lose revenue. Mr Munden submitted that unscrupulous conduct and dishonesty is suggested on the part of CHOs, on the basis that they will be increasing credit hire costs not for any legitimate purpose, but to make up for the shortfall elsewhere in their business model. Likewise, dishonest conduct by CHOs is also referred in paragraph 19 when it is said they use "underhand behavioural tactics" which can elongate repair periods in order to drive up costs. Mr Munden submitted that the next section entitled 'Industry response' does not contain any denial of the various criticisms of CHOs made in the article. There is no antidote provided at all.

37. The final section of the article is entitled 'PASS NOTES' and refers to the decision of Nottingham Crown Court (sic) in which Aviva was successful in respect of liability, and it was that case which drew attention to credit hire costs because of the vast sums

involved. The reaction of the industry is then set out in paragraphs 25 to 28. Finally, Mr Munden submitted that paragraph 29 of the article identifies the culprit as DAM, and he also made the point that that is the first and only time that DAM is identified in the whole article. The reader is then told that, even by the standards of the CHO sector, DAM is unusually awful. Further, the article has told the reader what the poor practices referred to are. They are exploiting loopholes; using underhand methods to elongate repair periods; layering credit hire; sending notification documents to the wrong addresses; and charging excessive costs. The reader is told that CHOs are responsible for poor practices; but if any CHOs are undertaking poor practices DAM is one of them, and DAM is a particularly bad example of poor practice. Further, Mr Munden submits these are all statements of fact about DAM.

Defendant's submissions

38. The first submission made by Mr de Wilde, for the defendant, is that DAM's meaning makes no reference to the litigation involving Aviva or the £400,000 charge which Aviva did not have to pay. The claimant has, however, pleaded the whole article, and not picked out any particular passages for complaint. Put shortly, Mr de Wilde submitted that in the first article the claimant is only referred to in the context of the Aviva case, and that article (and indeed the second article) must mean something about the Aviva case. This is because the article is introduced by reference to the litigation and the £400,000 charge, and it is apparent from the face of the article that it was DAM who had charged £400,000 in credit hire fees for a replacement car. The publication must, of course, be read as a whole (see *Koutsogiannis* at [12(viii)]) and in that context Mr de Wilde submitted there is no reasonably available defamatory sting which does not include reference to the proceedings and the £400,000 charge.

39. Mr de Wilde then submitted that is there is very limited reference to DAM in the article, and there is no suggestion of any dishonesty on the part of CHOs. He pointed to the first paragraph of the article which explains that "excessive costs pertaining to credit hire fell under the full glare of the insurance sector's spotlight" as a result of Aviva's successful defence of a legal action to recover a charge of £400,000 for a replacement vehicle. He said that the article then shifts to "industry wide" issues, and there is no mention of DAM until the 'PASS NOTES' section at the end of the article. He submits that the author, and those who have contributed, are careful to avoid any direct reference to DAM in analysing industry phenomena such as cost-building, high credit hire costs, or the lack of FCA regulation. The broader insurance industry and credit hire issues are not said to be anything to do with DAM.

40. Mr de Wilde submitted that the 'PASS NOTES' section is a discrete and self-contained part of the article, and DAM cannot "yoke" earlier parts of the article to what is said here. In the final paragraph of the article DAM is identified as "an outlier and anomaly of poor practice" which is a tautologous phrase characterising DAM's hire fees as an exceptional case which exists outside the more generalised industry activities identified earlier in the article, and this description of DAM is an evaluation of the £400,000 charges. Mr de Wilde submitted that DAM's meaning is illogical as it cannot be an outlier and anomaly, whilst at the same time epitomising poor practice in the industry. Rather, there is a comparison between DAM and the rest of the industry and the more general focus on the industry does not refer to DAM. This means that the central defamatory imputation

concerns the key feature of the Aviva case, namely the £400,000 hire fees, and the expressions of opinion about that sum.

41. The defendant does not dispute that the allegation against DAM of allowing the sum of £400,000 to accrue to its own client is at *Chase* Level 1. This is because the first article says that "a credit hire organisation (CHO) sought to charge a driver £400,000 for a replacement vehicle".

Conclusion: the first article

42. The parties, of course, agree that the article must be read as a whole taking into account the context in which it appeared. I agree with Mr de Wilde that the meaning of the words in the first article cannot be divorced from the context which is that DAM is responsible for the credit hire charges of £400,000 which Aviva was successful in defending. Those charges are described as excessive and vast, and the article identifies the different ways in which credit hire organisations are able to make money in what is an unregulated sector. Those ways, such as exploiting loopholes or elongating repair periods, are regarded by some in the industry as poor practice by CHOs. Repair periods can also be elongated by underhand tactics used by CHOs.

43. However, I do not agree with Mr de Wilde that the final section of the article entitled 'PASS NOTES' is a discrete and self-contained part of the article such that any of the money making opportunities or underhand tactics referred to in the earlier parts of the article cannot be attributed to DAM. I also do not accept his submission that the description of DAM is limited to an evaluation of the £400,000 charges.

44. This is because the article arises out of a recent legal action in which there had been excessive credit hire charges of £400,000 for which DAM, a credit hire organisation (CHO), was responsible. The article then uses that as a platform to consider, with reference to quotes provided from those within the industry, whether such excessive charges are a problem for the credit hire industry. The credit hire sector is unregulated, and the article identifies various ways in which CHOs can increase costs including the use of underhand tactics. There is self-regulation, which many CHOs adopt and that limits costs.

45. The article then returns to the legal action. The precise reasons for the credit hire charge of £400,000 are not identified, but some speculation is provided from industry figures as to how it may have happened. The hypothetical reasonable reader will inevitably wonder how it was that such a large credit hire charge came about. The reader is then told that DAM was responsible for these charges, and that the industry are "quick to label DAM as an outlier and anomaly of poor practice within a sector that, on the whole, successfully self-regulates". The reader will understand from this that DAM is an outlier as it does not participate in self-regulation adopted by many in the credit hire sector. Further, the reader will understand, that DAM applies poor practice. This is an anomaly because the sector, on the whole successfully self-regulates. The poor practice is plainly a reference to the earlier parts of the article, which sets out the ways in which unregulated CHOs build costs or use underhand tactics to drive up costs. The article does not specify which of these poor practices were the particular reason for the £400,000 charge, so the hypothetical reader understands it could have been any of them.

46. Further, given the reader is told by Glen Eastwood, managing director at MSL, an industry company, that "the case is extraordinary; I've never seen anything like it. It's the biggest one I've heard of", that signals to the reader that, in an unregulated sector, DAM is an example of a CHO which is particularly bad when it comes to charging excessive credit hire costs.

Decision

47. I identified my initial view of the words complained of and have received oral and brief written submissions from the parties. The court has to be careful not be too analytical in its approach. I have to determine the impression that would have been conveyed to the hypothetical reasonable reader reading the first article once.

48. Applying the principles I have identified, my conclusions are that the natural and ordinary meaning of the words complained of, read in their proper context as they affect DAM is:

    (1) In a recent legal action relating to liability for a road traffic accident DAM, a credit hire organisation, had sought to charge a driver the excessive sum of £400,000 for a replacement vehicle, used for two years and nine months while liability was disputed.

    (2) DAM does not participate in the self-regulation by the credit hire sector to limit credit hire charges. DAM has taken advantage of the lack of regulation in the credit hire sector to seek to charge excessive costs, and in doing so has applied poor practices such as exploiting loopholes or elongating repair periods.

    (3) DAM is an example of a credit hire organisation which is particularly bad when it comes to charging excessive credit hire costs.

49. This meaning is defamatory of DAM at common law.

50. This meaning is a statement of fact. I do not agree with Mr de Wilde that the use of the word "excessive" at paragraphs (1), (2) and (3) above is an expression of opinion. He submitted that any observation on the scale of the charge can only be evaluative of the fact of the charges. The reader understands that the excessive charges are the result of poor practices by DAM, but how the charge accrued in the legal action concerning Aviva is not explained. No further detail is provided. In these circumstances, the description of the charges or costs as excessive is, in my view, a statement of fact.

THE SECOND ARTICLE

Impression

51. The clear overall impression I noted down when I first read this article was that DAM is responsible for fraud in the unregulated credit hire sector and Bond Turner, as solicitors acting in this sector, may not act honestly or fairly or professionally.

52. The article explains the story that lies behind the year's notorious legal case concerning credit hire charges. That case arose out of Aviva's successful defence of liability in a

road traffic accident. DAM provided the claimant driver with a replacement vehicle, and charged vast credit hire charges of £400,000 over a period of more than 2 years. These are the "trumped-up credit hire costs" and DAM is the "rogue agent" referred to in the headline. The article considers whether unethical conduct by credit hire operators is on the rise. The reader is told that DAM does not adhere to the voluntary standards in the unregulated credit hire sector. DAM is a rogue operator. On top of that, DAM is part of the Anexo Group, which includes Bond Turner, a legal firm who recover hire charges, which gives rise to the potential for a conflict of interest as DAM and Bond Turner operate in the same market place.

53. The reason there has been a lot publicity about the case is because Aviva were trying to combat fraud. However, this type of behaviour by rogue operators has been going on for a long time. DAM is well known for it and has been giving the credit hire industry a bad name. The judge's decision in the Aviva case was not to do with the amount of the credit hire charges, and the article asks whether DAM or Bond Turner are to blame. It is said that they may have breached principles of honesty and fairness, but they have not done anything wrong. The article concludes by considering the lasting impacts of the case. Credit hire is identified as the prime culprit for industry fraud, for which DAM is responsible. This will have reputational damage for the whole sector, even if DAM is an outlier compared to other credit hire operators.

Meaning

DAM and Bond Turner's submissions

54. Mr Munden for the claimants submitted:

a. Overall, the reader is provided with very clear allegations of fraud against both DAM and Bond Turner, which is a closely affiliated organisation. Further, the allegations against Bond Turner are more serious in the context of this article, than if they had been published in isolation without any mention of DAM.

b. The article's striking heading, and opening paragraphs, make it clear that DAM is the rogue agent responsible for the fraudulent concoction of credit hire charges in the legal action described in the article. DAM is the only rogue operator identified in the article and there are repeated references to DAM being rogue, dishonest and fraudulent (see, for example, heading & paragraphs 15, 27, 28, 35, 51, 52, 53), which is longstanding conduct going back to 2013 (paragraph 30), that has "tarnished" credit hire companies as a whole (paragraph 32).

c. The first reference, albeit implicitly, to Bond Turner is in paragraph 3 of the article. They are the legal professionals acting on behalf of the claimant who, in relation to "unethical credit hire", "should never have pushed it as far as they did".

d. The relationship between DAM and Bond Turner is considered in the section of the article entitled "conflict of interest" (paragraphs 17 to 26). This relationship is not one that is immediately obvious, but is "revealed" by "digging deeper" and, on doing so, there is a potential conflict of interest "simmering below the surface". DAM and Bond Turner are part of the Anexo Group and they operate in the same

market place. DAM charges credit hire fees to a customer, and Bond Turner are solicitors who recover credit hire fees. In the context where DAM is a rogue operator, the reader will understand that DAM is directly referring customers to Bond Turner for "group-wide financial gain", in breach of the Solicitors Regulatory Authority (SRA) regulations (paragraph 21). Likewise, the reader will also understand that Bond Turner are possibly breaching of the SRA regulations by allowing the "rogue" DAM to "shelter under their authority" (paragraph 23). Further, the underhand behaviour within the credit hire sector referred to in paragraph 27 is an allegation of underhand behaviour against both DAM and Bond Turner, ie dishonesty, and that they are guilty of lack of transparency and breaches of the SRA regulations.

e. The section entitled "Regulatory loophole" does not provide sufficient antidote given the terms of the serious allegations made against DAM and Bond Turner. The reader is told that the judge in the Aviva case has not ruled on the credibility or reasonableness of the credit hire aspects. However, on a plain reading of paragraph 35 the reader is told, in answer to whether the finger can "really be pointed at DAM or Bond Turner here", that DAM and Bond Turner's actions may have breached the FCA's principles for businesses, in respect of acting honestly, fairly and professionally in their customer's best interests. The statement that "the businesses have not broken any laws" is inadequate to remove the sting of "underhand" behaviour and "fraud" being conducted over many years.

f. The article makes it clear that DAM is an outlier and acts in an unusually dishonest manner, even in this unregulated sector (paragraph 49) and the article concludes with two clear allegations of fraud against DAM (paragraphs 51 to 53).

Defendant's submissions

55. Mr de Wilde for the defendant submitted:

a. DAM has adopted an unrealistic approach to meaning. This is because, and as with the first article, DAM's meaning makes no reference to the litigation involving Aviva or the £400,000 charge which Aviva did not have to pay. The second article must mean something about the Aviva case, which is central to the second article, and the astonishing sum of £400,000 charged for the hire of a vehicle by DAM (see paragraph 38 above). Further, the second article refers to DAM right the way through, but does so "through the lens of the Aviva case", a "focus" which is established from the start of the article.

b. The article does not allege fraud against DAM and Bond Turner. The second article provides a clear account of the parties to the legal action which Aviva successfully defended, together what was decided in the case (see, for example, paragraphs 1, 2, 4 and 34). The hypothetical reasonable reader (who the defendant contended is the more specialist reader) would understand that there are grounds to suspect misconduct on the part of the claimant driver, as she was found liable. This is the fraud that Aviva were trying to combat. The road traffic accident was the fault of the claimant driver, who caused the accident by driving into a stationary parked vehicle. This is suspicious conduct by the claimant

driver, which took place *before* DAM hired the driver a vehicle, or Bond Turner acted for the driver in the legal action. Such an imputation cannot therefore be defamatory of either DAM or Bond Turner as their role in the Aviva case post-dated the accident for which the claimant driver was found liable. Further, the hypothetical reasonable reader would understand the reference to "industry fraud" and "fraudulent practices" at the conclusion of the article to refer to the claimant driver's conduct, rather than DAM or Bond Turner.

c. There is no dispute that the allegation against DAM of allowing the sum of £400,000 to accrue to its own client is at *Chase* Level 1. This is because the second article says that the claimant driver "had amassed £400,000 worth of credit hire charges". However, where the article explores the issues which are "the backstory to this year's most notorious credit hire case" (which Mr de Wilde identified as DAM's failure to mitigate and a potential "contradiction" by DAM and Bond Turner of the FCA's principles of business) in a manner which is defamatory of both DAM and Bond Turner, it does not do so in terms of guilt. The conduct of each claimant is described in cautious terms such that the allegations against DAM are in terms of "reasonable grounds to suspect", whereas those against Bond Turner of "reasonable grounds to investigate". This distinction reflects DAM's central role in allowing the £400,000 charge to be incurred in the Aviva case, whereas Bond Turner's role is more peripheral, the conflict of interest between DAM and Bond Turner is described as "potential" and any breach of SRA regulations is expressed in conditional and general terms.

d. The section of the article entitled "Regulatory loophole" explains that the Aviva case was only about liability for the accident and not about the credibility and reasonableness of the credit hire charges (paragraph 34), a distinction which is critical. The article then provides mitigating material as it says that DAM and Bond Turner may have contradicted the FCA's principles for businesses, namely a requirement that regulated firms act honestly, fairly and professionally in their customers' best interests, but they are absolved of breaking any laws as the reader is told that "the businesses have not broken any laws, especially as credit hire is not an FCA-regulated claims management activity" (paragraph 35) and Christopher Dibb, an associate at Plexus Law, said "I don't think anybody is suggesting that the credit hire company had done anything wrong, against the rules in this case …" (paragraph 36). When this mitigating material is weighed in the balance, the ordinary reasonable reader will conclude not that DAM is guilty of not acting honestly, fairly and professionally in their customers' best interest, but that there are reasonable grounds to suspect such conduct (see *Brown* at [17]; *Hewson* at [42]).

e. The evaluations of the scale of the £400,000 charge contained in the second article, such as "colossal, eye-watering", "extortionate", "high" would all strike the reader as opinion.

Conclusion: the second article

56. There is no dispute that I must assess the meaning of the second article separately.

57. The ordinary reasonable reader will have read the article once and will not subject it to any form of textual analysis. The reader does not have anyone sitting beside them pointing out what they should make of the article, or drawing attention to any particular parts of it. Proper regard to the overall context and presentation of the words complained of is probably the most important principle to be applied in the assessment of meaning: see *Porshenko* at [20](iv).

58. The conclusion I have reached is that the second article alleges that DAM is guilty of fraud in relation to the credit hire costs it charges. That was my initial impression when I first read the article and that impression has not been shifted by Mr de Wilde's submissions for the defendant.

59. I agree with Mr de Wilde that the second article must mean something about the Aviva case. It is the extortionate credit hire costs charged by DAM in the Aviva case which give rise to the story. However, the second article is not a case or law report about the Aviva case. Rather, it provides the platform from which the article considers the various industry issues the vast credit hire costs in the Aviva case give rise to.

60. Mr de Wilde accepts that the second article contains allegations of fraud, but says these are directed at the claimant driver in the Aviva case. I do not agree. As I have explained above, the hypothetical reader will have knowledge of and an interest in the insurance industry, which includes the claims industry. He is not a lawyer or indeed a "professional or specialist" with any particular expertise or knowledge of the claims industry relating to the insurance sector. It is plain on reading the second article that the ordinary reasonable reader would understand that the allegations of fraud are squarely directed at DAM. The rogue operator is DAM and it is DAM who charged the "trumped-up" credit hire costs, a description which suggests the costs were invented or grossly exaggerated. The reader is told that the case was in the "public arena because Aviva were trying to show their skills at combatting fraud" (paragraph 28) and that "October's legal case has once again placed credit hire as a prime culprit in terms of industry fraud, and even though DAM is the firm involved …" (paragraph 51). I do not see that there is any basis on which the reasonable reader could understand, on reading the second article as a whole and in context, that the allegations of fraud are directed against the claimant driver, and not against DAM.

61. Further, I have reached the view that the allegations of fraud against DAM in relation to the credit hire costs are *Chase* Level 1. The issue here is whether the information provided in the section entitled "Regulatory loophole" reduces the defamatory impact of the allegations made against DAM. In my view it does not. The danger here is not to fall into the trap of over analysis. I agree that the article explains that in the Aviva case the judge did not rule on the credibility or reasonableness of "the credit hire aspects". The reader is then told that DAM and Bond Turner's actions may "contradict the FCA's principles for businesses, which requires regulated firms to act honestly, fairly and professionally in their customers' best interests, the businesses have not broken any laws, especially as credit hire is not an FCA-regulated claims management activity" and "I don't think anybody is suggesting that the credit hire company had done anything wrong, anything against the rules in this case…". However, immediately after that the reader is then informed that DAM "simply left their client in a credit hire vehicle for an extortionate amount of time" (paragraph 36). The reader is not provided with any other information as how the credit hire charges were incurred or any information which could signal that the amount charged by DAM was justified.

62. This is significant because the article is an investigation into the "backstory to this year's most notorious credit hire case". The reader has already been told that:

    a. DAM is a rogue operator;

    b. the "trumped-up" costs of £400,000 DAM charged were "unethical credit hire" (paragraph 3) and it was a "ransom-type case";

    c. "underhand behaviour in the credit hire sector is not new" and it came into the public arena because "Aviva were trying to show their skills at combatting fraud";

    d. DAM has received "scathing reviews" going back to at least 2013; and

    e. DAM has been called "a real bunch of cowboys".

63. Then, three sections later, in the final part of the article entitled "Lasting impacts", the reader is told in no uncertain terms that credit hire is the prime culprit for industry fraud, and DAM is the firm involved. That information provided to the reader is then reinforced by the quotes from Kirsty McKno, chair of the trade association the Credit Hire Association, in the final two paragraphs of the article in which she says that "there are rogue credit hire companies involved in fraudulent practices" and "it's insurers and credit hire companies against fraud" (paragraphs 52 and 53). The overall effect of the second article is that DAM is presented as being responsible for fraud in relation to credit hire costs. This is a clear message of guilt. Further, as DAM "may be labelled as an industry outlier" the reasonable reader will understand that DAM's conduct in relation to credit hire costs is particularly bad in the unregulated credit hire sector.

64. I turn now to the relationship between DAM and Bond Turner. The reader is told that they are part of the same group, with different functions but operating in the same market place. The reasonable reader will understand that there is a potential conflict of interest, and the potential issues which could lead to possible breaches of the Solicitors Regulation Authority's regulations in relation to direct referrals or introductions of customers by DAM to Bond Turner. Further, the reasonable reader will understand DAM is a rogue operator that incurs credit hire costs fraudulently, and that Bond Turner acted for the unsuccessful claimant driver in the Aviva case. Bond Turner are the legal professionals who Tim Kelly said "should never have pushed it as far as they did" (paragraph 3) and that they "may have contradict[ed] the FCA's principles for businesses, which requires regulated firms to act honestly, fairly and professionally in their customers' best interests" (paragraph 35). I agree with Mr de Wilde that, in relation to the conduct between DAM and Bond Turner, their respective conduct is described in cautious terms that result in a *Chase* Level 2 meaning for DAM. However, given the very serious allegations of fraud against DAM, that DAM and Bond Turner are part of the same group, Bond Turner acted for the claimant in the Aviva case, and "it may not have acted honestly, fairly and professionally in their customers' best interests" the ordinary reasonable reader will not characterise Bond Turner's role as being peripheral. Rather the ordinary reasonable reader will understand that its conduct in this regard is on a par with DAM, and that there are reasonable grounds to suspect that Bond Turner fails to act honestly and transparently towards its clients in respect of introductions and referrals from DAM. Beyond that, I do not think that the niceties of the other possible breaches of the Solicitors Regulatory

Authority's regulations will register with the ordinary reasonable reader on one reading of the article.

Decision

65. As with the first article, I took care to identify my initial view of the words complained of. I have to determine the impression that would have been conveyed to the hypothetical reasonable reader reading the second article once. Applying the principles I have identified, my conclusions are that the natural and ordinary meaning of the words complained of, read in their proper context is:

    (1) DAM, a credit hire firm, is guilty of fraud in relation to charging exaggerated and grossly excessive credit hire costs to its customers. Such fraudulent conduct by DAM goes back to 2013 and it is particularly bad conduct by a credit hire firm in the unregulated credit hire sector.

    (2) DAM provided a replacement vehicle to a driver in a road traffic accident and, over a period of almost three years, charged its customer the exaggerated and grossly excessive sum of £400,000 in credit hire costs whilst her car was being repaired and liability was being disputed.

    (3) There are reasonable grounds to suspect that there is a conflict of interest between DAM and Bond Turner, a legal firm, in relation to the provision of credit hire services and claims to recover the cost of such services.

    (4) There are reasonable grounds to suspect that DAM does not act honestly and transparently towards its customers in respect of client introductions and referrals to Bond Turner.

    (5) There are reasonable grounds to suspect that Bond Turner fails to act honestly and transparently towards its clients in respect of introductions and referrals from DAM.

66. This meaning is defamatory of DAM and Bond Turner at common law.

67. This meaning is a statement of fact. I do not agree with Mr de Wilde that the use of the words "exaggerated and grossly excessive" at paragraphs (1) and (2) above is an expression of opinion. As with the first article, he submitted that any observation on the scale of the charge can only be evaluative of the fact of the charges. The reader understands that the extortionate charges are the result of fraud by DAM. The reader is told by Christopher Dibb at Plexus Law that in the Aviva case DAM "simply left their client in a credit hire vehicle for an extortionate amount of time" (paragraph 36). How that happened is not explained. Likewise, the reader is not provided with any information to explain how extortionate charges were incurred by DAM in relation to other customers (paragraphs 30 and 31). In these circumstances, the description of the charges or costs as being exaggerated and grossly excessive is, in my view, a statement of fact.

ANNEX

The first article

On 20th December 2019 the Defendant published the first article containing the following words (save for the italicised words which are descriptive, and the paragraph numbers which have been inserted).

"Credit hire sharks circle as market reacts to excessive costs

[Above the headline was a photograph of sharks underwater]

By Katie Scott 20 December 2019

Are CHOs being vilified or are there reasons to doubt sector standards as credit hire costs escalate?

[1] Unexpected and excessive costs pertaining to credit hire fell under the full glare of the insurance sector's spotlight in October, as insurer Aviva, represented by law firm Keoghs, successfully defended legal action where a credit hire organisation (CHO) sought to charge a driver £400,000 for a replacement vehicle, used for two years and nine months while liability was disputed.

[2] The vast sum of credit hire in this case placed an uncomfortable focus on CHOs – Keoghs revealed that it now has between 25 and 30 cases on its books involving credit hire costs of more than £100,000.

John Gibson, partner and motor services director at Keoghs, said: "We are seeing a greater propensity for smaller firms that sit outside of the [General Terms of Agreement] racking up excessive charges, so claims over £10,000, £20,000. But we're definitely seeing it as an emerging trend".

Industry-wide

[3] But, how much of an issue is excessive credit hire costs and has it really infiltrated the industry?

[4] Laurenz Gerger, general insurance policy advisor at the ABI, noted: "It's a market where you have organisations operating at margins and they want to maximise those margins. So long as there's potential for money to be made, you'll always see an influx of certain players who are willing to push limits.

[5] "There'll always be firms [that] seek to exploit loopholes in existing processes."

[6] Caroline Johnson, director of third-party technical claims at LV=GI agreed: "We do see a continued increase in the volume of credit hire cases and also the periods that are being claimed for credit hire.

[7] "There is, unfortunately, a lot in the industry around opportunities to elongate repair periods; layering in terms of credit repair; credit hire, personal injury,

rehabilitation. [It] is a really good opportunity for [accident management companies] and other industries to get a hold of these claims and really cost bill on them."

A self-regulated industry

[Next to this heading was a photograph of a pile of coins and some coins in the air, captioned "Industry needs to work to eradicate credit hire hikes"*]*

[8] A key issue in this debate is that credit hire is not subject to mandatory regulations; although insurers and claims management companies (CMCs) fall under the watchful eye of the FCA, credit hire is not counted as a regulated claims management activity, despite typically being offered as a part of this service.

[9] Many CHOs, however, voluntarily sign up to the General Terms of Agreement ("GTA"); this provides agreed service standards and charges across all signatories. CHOs that commit to the GTA have to undergo a background check too, added Gerger.

[10] Equally, Glen Eastwood, managing director at MSL, explained that many insurers and CHOs agree their own protocols around rates, how claims are monitored and how insurers will be notified about losses.

[11] Despite this self-regulatory model, the ABI continues to push for CHOs to be subject to the same regulatory standards as other organisations involved in the claims process.

[12] Gerger explained: "We were disappointed that the remit of this FCA regulation was not extended to CHOs; they're nothing other than an unfortunate omission on the part of the government when the Finance Guide and Claims Act came into force last year."

[13] Johnson agreed: "I absolutely think the FCA should be regulating the credit hire organisations."

Mitigating credit hire costs

[14] So, what can insurers do to avoid credit hire costs getting out of hand? Eastwood said: "Intervention is the single biggest thing [insurers] can do to reduce their exposure to credit hire costs." This would involve promptly accepting liability, if your insured is at fault, and offering assistance to the non-fault third-party before CHOS. Insurers could also issue a letter to the third party, outlining their hire rates. Then, insurers must monitor the claim thoroughly, Eastwood added.

[15] Gerger, on the other hand, said: "Insurers [can] make a general without prejudice interim payment for the equal damage where there are ongoing Losses, to help mitigate any claims costs there."

Whiplash reform revenue

[16] Industry experts predict an escalation in potential credit hire cost issues once the Civil Liability Act, also know as the whiplash reforms, are implemented. Eastwood

said that the changes to personal injury claims could lead to "a lot of people saying 'we've lost that revenue, how do we make additional revenue?' We might see claims management companies ramping up their efforts to increase credit hire costs."

[17] Part two of the whiplash reforms, which centre around credit hire, are also still up in the air as the industry awaits the Ministry of Justice's (MoJ) consultation response.

[Adjacent to this paragraph was a photograph of a gavel, captioned "Ruling to put the brakes on runaway credit hire charges"*]*

Driving up costs

[18] However, factors outside CHOs could also influence costs. For example, uncertainty around importation to the UK after Brexit could affect spare parts provision and related costs, while more sophisticated vehicle technology in newer cars means that not only are parts harder to find, but that the repairs themselves take longer too.

[19] Johnson additionally noted that underhand behavioural tactics can elongate repair periods. This could include notification documents being sent to the wrong office, making it harder for insurers to intervene earlier.

Industry response

[20] Trade body the Credit Hire Organisation (CHO), which has 55 members operating within the credit hire sector, maintains that sky-high invoices are not the end goal for these organisations.

[21] Kirsty McKno, chair of the CHO, explained: "We are working to ensure that our members do not issue high value invoices. it is against our members' interest to do so. It will likely lead to a refusal to pay from the insurer and end up in litigation, which can result in cashflow issues for credit hire Firms."

[22] McKno further confirmed the importance of collaboration between insurers and CHOs. "The aim is to work together to reduce friction in the process for the benefits of the clients," she said. "The credit hire companies have matured considerably in recent years and that process will continue."

[23] Eastwood agreed: "It's much better to work with insurers than it is to fight against them. Years ago, [credit hire] was a real battleground, but it's reduced. There's been a lot of case law, which has really made the situation clear."

PASS NOTES

[Below this heading was a photograph of a car accident]

Why have credit hire costs come to the industry's attention now?

[24] In October this year, Nottingham Crown Court ruled in favour of insurer Aviva and law firm Keoghs in legal action discussing liability for a road traffic accident (RTA). However, this case caught the eye of the insurance sector not because of the liability dispute per se, but because of the credit hire costs involved – the claimant in

question had racked up more than £400,000 in credit hire charges over a period of two years and nine months. So far, so unusual.

How has the industry reacted to this case?

[25] In the main, industry figures have been baffled as to why the credit hire in this case was allowed to continue for such an extended length of time, especially without apparent communication to the claimant that she may be liable to foot the bill.

[26] Glen Eastwood, managing director at MSL, believed this was a one-of-a-kind case. He said: "The case is extraordinary; I've never seen anything like it. It's the biggest one I've heard of.

[27] "You can get significant bills where there's a prestige vehicle involved, so when you're looking at really high-end vehicles, they are expensive to buy, they are expensive to hire-out, but I've never seen anything like that.

[28] "You should be advising that client as you go along of their own responsibilities and duties and I'm not sure if you're getting to a point where you've got a £400,000 hire bill that's being done."

Is the industry playing the blame game?

[29] The credit hire firm involved in the aforementioned legal case is Direct Accident Management (DAM), part of the Anexo Group. Those within the industry are quick to label DAM as an outlier and anomaly of poor practice within a sector that, on the whole, successfully self-regulates. Whether this behaviour will escalate across the sector post whiplash reform is still up for debate, however, as credit hire firms look to recoup personal injury claim profits."

The second article

On 2nd January 2020 the Defendant published the second article containing the following words (save for the italicised words in square brackets which are descriptive, and the paragraph numbers which have been inserted):

"**Rogue agent aggravates industry with trumped-up credit hire costs**

By Katie Scott 2 January 2020

Insurance Times **investigates the backstory to this year's most notorious credit hire case**

[1] In October 2019, law firm Keoghs an insurer Aviva successfully defended legal action that disputed liability in a road traffic accident. The claimant, who was found liable of driving her Audi into a stationary, parked vehicle, had amassed £400,000 worth of credit hire charges while her car was being repaired; a hire period of two years and nine months.

[2] The claimant's car was recovered by a garage in Lichfield, which recommended a credit hire firm called Direct Accident Management (DAM) to source a replacement hire vehicle. It is this organisation that is being deemed responsible for racking up those colossal, eye-watering, and some would say unnecessary, charges.

[3] But, how common is this phenomenon and is unethical credit hire on the rise? Tim Kelly, managing director and owner at consumer website MotorClaimsGuru, said the legal professionals acting on behalf of the claimant "should never have pushed it as far as they did".

Laurenz Gerger, general insurance policy advisor at the ABI, added: "It's an extreme example of a firm that's willing to push boundaries to maximise its profits, and that's clearly worrying for the insurance industry as a whole."

Company close up

[4] DAM provides services to non-fault victims of road traffic accidents, its major source of income is derived from the hire of replacement motor vehicles and motor cycles on a credit basis to non-fault drivers while their own car is off the road being repaired or until the at fault drivers insurance company makes payment to the client for the pre-accident value of their vehicle (if it's a write-off). In order to recover costs, DAM has to satisfy itself that its client was not at fault for the accident.

[5] As at the year ending 31 December 2018, the organisation's operating profit stood at £11.6m, a 47% increase from £7.9m in 2017.

[6] Kirsty McKno, chair of trade association the Credit Hire Organisation (CHO), acknowledged that DAM is not a CHO member firm and that "they don't operate in a way that we would expect a member of the CHO to act".

[7] An example of this would be around the mitigation principles outlined in the General Terms of Agreement (GTA), a voluntary commitment that sets standards for the credit hire industry.

[Adjacent to this paragraph was an image of a damaged car, captioned "Industry needs to work to eradicate credit hire hikes"*]*

[8] Although DAM is not a signatory of the GTA, many non-member credit hire firms still adhere to its practices.

[9] According to McKno,"mitigation is a duty that a customer who we've provided a car for has to ensure that hire doesn't go on for too long.

[10]If a temporary repair could be under taker and you can afford to pay for that temporary repair, then you should do that."

[11]This raises the question of whether DAM applied this thinking in the recent Aviva case and whether it considered nearly three years as "too long" or not when it came to the credit hire period.

Held to ransom

[12]Christopher Dibb, associate at Plexus Law, compared the case's scenario to a ransom, especially when targeting impecunious claimants.

[13]He said: "More and more, we are seeing these ransom-type cases, where the value of the vehicle can actually be quite low and claimants will sit in hire, even in cases where liability is disputed, until that [pre-accident value] is paid.

[14]"Now, as in this case, if a defendant insurer wants to dispute liability all the way to trial, it can become very expensive, even when the value of the vehicle is low, and ransom cases I think are becoming more and more prevalent and that's one of the main issues for the industry at the moment."

[15]Kelly agreed: "You've got rogue operators that basically are operating completely outside of the scope of the [regulatory] side of it and without authority, but nothing's being done to control them in any way."

[16]Even McKno, an advocate of credit hire and the service it provides, said that the Aviva case "shook us slightly but didn't surprise us".

Conflict of interest

[17]Digging deeper into DAM, however, revealed a potential conflict of interest simmering below the surface in relation to introducing, **define.**

[18]DAM is owned by Anexo Group, which owns four business units under two reporting divisions – credit hire and legal services. DAM is one of these business units.

[19]The others are Bond Turner, formerly Armstrong Solicitors, a legal firm that recovers hire and repair charges; Professional and Legal Services, a medical legal

agency which arranges third-party reports to support customers' claims from either a credit hire or personal injury perspective; and IGCA 2013, which administers after-the-event insurance for independent third-party insurers.

[20] The group's 2019 quarter three results showed an operating profit of just over £4m.

[21] Kelly identified failing to disclose referrals between firms to consumers as a potential issue here; although direct referrals were allowed in the past, they are no longer permissible.

[22] Anexo Group's businesses all operate in the same marketplace, albeit providing different functions, so referring custom directly, without client consent, for group-wide financial gain is not outside the scope of profit-making imagination. If this occurred, it would fall foul of the Solicitors Regulation Authority (SRA) regulations.

[23] "Any type of introductory side of it is done through the SRA and what you've got is a lot of these companies that are acting as rogue companies, as credit hire providers, some of them are then acting as introducers through subsidies to pick up on the [personal injury] side of it," he explained.

[24] "There are possible breaches of the SRA [Solicitors Regulation Authority] regulations [when] companies that are legal companies are extending their authorities that they have been given through the SRA for these alternative companies that are providing credit hire and they're allowing these companies to shelter under their authority.

[25] "It should be transparent, it should be in the terms and conditions of the contract, it should be within their fee disclosures. There would certainly need to be provisions within [the] contract where a consumer consents to then being passed across through [General Data Protection Regulation]."

[26] Instead of issuing customer details directly to a recommended firm, Kelly said that organisations have to tell consumers which business they recommend and let individuals get in touch themselves.

Why the attention now?

[27] Despite the recent media attention, Kelly added that underhand behaviour without the credit hire sector is not new.

[28] "It's not something that isn't abnormal within the industry," he said. "It's something that comes into the public arena because Aviva were trying to show their skills at combatting fraud.

[29] "It's not something that suddenly popped up – it's something that's been going on for absolutely years. It's just unfortunate that there are some rogue companies that can publicise this kind of image on the industry."

[30] Customer reviews posted on *insurancecompanyreview.co.uk* appear to reinforce Kelly's timeline, with scathing reviews for DAM going back to at least 2013.

[31] The most recent feedback, posted in May 2018, saw the customer left with a £20,000 bill – they called the firm a "real bunch of cowboys".

[32] For McKno, however, media reports are part of the publicity problem for the credit hire sector, tarnishing those that are performing to expected standards. She said: "It [is] very difficult when, as an industry, we see a case like this going through the press that then taints us.

[33] "Joe Public out there and the insurers will then have the view that all credit hire acts in the way that all the companies outside of the GTA and the CHO act, and that's not the case at all."

Regulatory loophole

[34] Although the legal action involving Aviva reached viral status because of the extortionate credit hire costs, the case was centred around deciding liability – the presiding judge did not rule on the credibility or reasonableness of the credit hire aspects, noted Dibb.

[35] Therefore, can the finger really be pointed at DAM or Bond Turner here? Although the organisations' actions may contradict the FCA's principles for businesses, which requires regulated firms to act honestly, fairly and professionally in their customers' best interest, the businesses have not broken any laws, especially as credit hire is not an FCA-regulated claims management activity. Only personal injury activities come under this regulatory remit.

[36] Dibb said: "I don't think anybody is suggesting that the credit hire company had done anything wrong, anything against the rules in this case; they've simply left their client in a credit hire vehicle for an extortionate amount of time.

[37] "Bond Turner are perhaps one of the most prolific firms that we come across, but that's nothing to say that they are doing anything wrong or anything against the rules."

Reform influences

[38] A further area of concern when it comes to credit hire relates to the upcoming whiplash reforms, due to come into effect from April 2020. Part one of the Civil Liability Act deals with personal injury and the small claims limit, part two, which considers credit hire, has yet to make an appearance.

[39] "Credit hire is going to become an ever more increasingly important battleground between defendant insurers and claimant companies because it will be seen as a way that claimant firms can [ride] up costs by bringing a credit hire claim," Dibb said.

[40] "The costs of the low value personal injury market is going to fall away somewhat and if that's the case, then certain personal injury solicitors may move away from that market as well. I think there's a danger that accident management companies and credit hire companies are going to spill into that void and all that space, which may see credit hire claims becoming ever more prevalent."

[41] McKno also considers the post-reform climate a worry for the sector. She added: "The worry is that post reform, you might have more [rogue] companies pop up because they'll see provision of a vehicle and running an injury claim as being easy money and I know there's been some concerns about that happening in the future."

Monitoring

[42] Industry voices agree that the credit hire sector needs a firmer hand; although historically monitored using a self-regulation system, some believe this is no longer fit for purpose.

[Adjacent to this paragraph was an image of an office with an 'UBER' sign captioned "How Uber crackdown could impact the insurance industry"*]*

[43] Dibb, for example, said: "We certainly have to be better and [have] tighter regulation of the credit hire market." Kelly agreed: "This whole aspect of the industry is an absolute mess and it's certainly something that needs more regulatory control around it."

[44] In terms of the CHO, McKno confirmed that the trade association has no regulatory powers beyond its mandated membership - even then its most severe reprimand would be electing a firm from the membership.

[45] "If we found that a company had misbehaved, we have a structure that would allow US to convene [a governance] committee and have a conversation with that credit hire company around whether or not it was suitable for them to remain a member," she explained.

[46] Despite this regulatory limbo, McKno added that the credit hire sector is primarily ruled by case law. She said: "We don't have laws that govern us as such, it's more about the cases that have happened in the courts [that set a] precedent.

[47] "There's a lot of case law that says it's really important for someone who's had an accident, anything incurring a cost, to make sure that they take steps, if liability isn't resolved, to bring that hire to an end as soon as possible."

[48] But, can regulation be installed in the sector? Kelly explained that the only way to achieve this would be through Parliament. "The way you could have any regulatory authority over it was if there were statute applied through Parliament to impose a regulatory body over it to regulate it. That's the only way," he said.

Lasting impacts

[49] DAM may be labelled as an industry outlier, but will this legal case with Aviva have any lasting impacts on credit hire or insurance? Kelly said it will have no affect whatsoever on the industry, however he does think it could change consumer behaviour.

[50] On the one hand, this could be negative as genuine claimants are put off from making legitimate claims in fear of being landed with an excessive bill at the end.

However, "from an insurance side of it, it's completely positive because all it does is put off consumers from making illegitimate claims, which is wrong," Kelly added.

[51] High credit hire costs are typically only associated with prestige vehicles, yet October's legal case has once again placed credit hire as a prime culprit in terms of industry fraud, and even though DAM is the firm involved, reputational damage for the sector will be tough to repair.

[52] McKno said: "There are rogue credit hire companies that are involved in fraudulent practices and that is very definitely one that we would want to see stamped out and working with the [Insurance Fraud Bureau], working with the [Insurance Fraud Enforcement Department], working with insurers, is something we are trying to achieve.

[53] "That is why I'm very much getting across the message that it's not insurers against credit hire, it's insurers and credit hire companies against fraud."
