



Neutral Citation Number: [2021] EWHC 2082 (QB)

Case No: QB-2021-000317

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/07/2021

Before :

THE HONOURABLE MR JUSTICE SAINI

Between :

MICHAEL JAMES WALLACE ASHLEY

Claimant

- and -

TIMES NEWSPAPERS LIMITED

Defendant

Adam Speker QC and Victoria Jolliffe (instructed by **Carter-Ruck**) for the **Claimant**
Anthony Hudson QC and Aidan Wills (instructed by **Wiggin LLP**) for the **Defendant**

Hearing dates: 19 July 2021

Approved Judgment

.....

THE HONOURABLE MR JUSTICE SAINI

MR JUSTICE SAINI :

This judgment is in 7 parts as follows:

- | | | |
|------|---------------------------|----------------|
| I. | Overview: | paras. [1-13] |
| II. | The Articles: | paras. [14-21] |
| III. | The Rival Meanings: | paras. [22-29] |
| IV. | The “repetition rule”: | paras. [30-50] |
| V. | Conclusion on Meaning: | paras. [51-80] |
| VI. | Defamation at common law: | para. [81] |
| VII. | Fact/Opinion: | para. [82] |

Annexe: The Articles: the words complained of.

I. Overview

1. This is a trial of a number of preliminary issues, including the issue of meaning, in a defamation claim issued on 28 January 2021 by Michael Ashley (“the Claimant”), against Times Newspapers Limited (“TNL”), the Defendant. The Claimant is the Chief Executive Officer and majority shareholder of Frasers Group plc, formerly Sports Direct International plc. He is also the ultimate owner of Newcastle United Football Club.
2. The claim arises out of a series of seven related articles (“the Articles”) published by TNL (in print and online formats) between 16 July 2020 and 18 July 2020. I have set out the words in the Articles complained of by the Claimant in an Annexe to this judgment. In argument before me, the parties used the defined terms identified in the Annexe (when making reference to specific articles), and I will adopt these definitions below.
3. I read the Articles and formed my own provisional views in relation to the meaning of the statements complained of before considering the pleadings and detailed written submissions of the parties. Those submissions were in due course supplemented orally by Leading Counsel for the Claimant and Leading Counsel for the Defendant at trial. The submissions as to the law were of real assistance to me. However, the parties also devoted substantial efforts to making arguments about the meaning of Articles. These are simple Articles which would probably take a very slow and careful reader no longer than about 20-30 minutes in total to read once.
4. As has now become normal in adversarial hearings of the present type, the Claimant argues that he has been accused of the most serious criminal wrongdoing (*Chase Level 1*) while TNL says, at the other extreme, that the statements complained of are not even defamatory of the Claimant. The nature of the process encourages the adoption of unrealistic stances even if the costs of the process are capped, as they were in this case

at £25,000.00 (excluding VAT) per party, pursuant to an earlier Order of the Court. I am confident both parties have in fact exceeded the cap in terms of costs expended.

5. As regards the print editions, the statements complained of are contained in 3 articles published in *The Times* on Friday 17 July 2020 and Saturday 18 July 2020, as follows:
 - i) “*Stars’ phone records ‘fixed’*”: *The Times*, 17 July 2020 (“the First Hardcopy Article”);
 - ii) “*How co-owner tries to mine Ashley court case*”: *The Times*, 17 July 2020 (“the Second Hardcopy Article”); and
 - iii) “*Two arrested in ‘phone fixing’ case*”: *The Times*, 18 July 2020 (“the Third Hardcopy Article”).
6. The First Hardcopy Article was published at the top of the front page of *The Times* and continued on page 5, columns 3-5. The Second Hardcopy Article appeared at the bottom of pages 4-5 of the same edition of *The Times*. Pages 4-5 were a double page spread, headed: “*News Times investigation*”. Those pages contained the main article reporting on the investigation which *The Times’* journalist Matt Lawton had carried out. The headline of that article was: “*Ferdinand, the doping case and boss who shoots from lip*” (“the Ferdinand Article”).
7. As to online publication, the statements complained of are contained in 4 articles published in the online edition (that is, on the *Times* Website and on the App) on 16, 17 and 18 July 2020. As would be expected, the content of these publications, available only to subscribers, is very similar to the print editions. The articles were as follows:
 - a) “*Sport Mobile: Firm ‘changes phone records’ for sports stars*”, first published at 21:09 on 16 July 2020 (“the 1st Online Article”);
 - b) “*Sport Mobile: Two arrested over ‘fixing’ of sports stars’ phone records*”, first published at 12:00 on 17 July 2020 (“the Revised 1st Online Article”);
 - c) “*Co-owner tried to mine Mike Ashley court request*”, first published on the Website and on the App at 12:01 on 17 July 2020 (“the 2nd Online Article”); and
 - d) “*Sport Mobile: Two arrested in ‘phone fixing’ case*”, first published at 00:11 on 18 July 2020 (“the 3rd Online Article”).
8. The uncontroversial background facts which are at the heart of the present claim concern litigation in 2017, where the Claimant was in a dispute with a Mr Jeffrey Blue (“Mr Blue”). The trial of that claim, in which Mr Blue sued the Claimant as defendant, attracted substantial media attention, mainly by reason of the Claimant’s involvement, the colourful facts and an alleged oral contract being made at the Horse & Groom pub on Great Portland Street W1 during a heavy drinking session. At the conclusion of a trial in July 2017, Leggatt J dismissed Mr Blue’s claims and found for the Claimant: [2017] EWHC 1928 (Comm). I will call this “the 2017 Action” below.

9. For present purposes, I can take Leggatt J’s conclusion at [142] as a neat summary of what the 2017 Action was about and its outcome:

“In the course of a jocular conversation with three investment bankers in a pub on the evening of 24 January 2013, Mr Ashley said that he would pay Mr Blue £15 million if Mr Blue could get the price of Sports Direct shares (then trading at around £4 per share) to £8. Mr Blue expressed his agreement to that proposal and everyone laughed. Thirteen months later the Sports Direct share price did reach £8. But no reasonable person present in the Horse & Groom on 24 January 2013 would have thought that the offer to pay Mr Blue £15 million was serious and was intended to create a contract, and no one who was actually present in the Horse & Groom that evening – including Mr Blue – did in fact think so at the time. They all thought it was a joke. The fact that Mr Blue has since convinced himself that the offer was a serious one, and that a legally binding agreement was made, shows only that the human capacity for wishful thinking knows few bounds”.

10. The Articles were published some 3 years after 2017 Action concluded and concern covertly recorded statements made by a person called John Shepherd (“Mr Shepherd”), who runs a mobile phone service company, Sport Mobile. That company is said to have had clients in the sporting and business arenas including the Claimant, the professional footballer Rio Ferdinand, and an unnamed Premier League manager. The Articles refer to private statements made by Mr Shepherd in these recordings (either to TNL’s journalists or to an unidentified person) and provided to TNL’s journalists. Mr Shepherd denies making these statements.
11. In broad terms, it was said that Mr Shepherd claimed to have “fixed” the mobile phone records of his clients. This was said to include texts which Mr Shepherd said he “protected” from disclosure in the 2017 Action. The recordings suggest a sales pitch by Mr Shepherd as to the improper “special services” (my term) he could offer to clients based on what he claims he had done for clients in the past, including the Claimant and Mr Ferdinand.
12. The Claimant says that he has been directly accused of highly improper and criminal misconduct including perverting the course of justice in the 2017 Action. TNL submits that the reasonable reader of *The Times* would understand that the entire focus of the Articles was a public interest investigation into Mr Shepherd and his company.
13. I have to determine three preliminary issues in this trial:
- i) the natural and ordinary meaning of the statements complained of;
 - ii) whether the statements complained of are defamatory of the Claimant at common law; and
 - iii) whether the statements complained of were (or included) a statement of opinion or an allegation of fact.

II. The Articles

14. Over a series of days, *The Times*, in what it billed as a ‘*Times investigation*’ by its ‘*chief sports correspondent*’, brought to public attention statements made privately by Mr Shepherd. Although the Articles vary in emphasis, the broad theme is the same. The focus is an investigation into Mr Shepherd and his company, Sport Mobile, and the claims (or marketing boasts) he had made in covert recordings in what seems to be an attempt to promote his business. The Articles read as a serious piece of investigative journalism into potential wrongdoing by Mr Shepherd and his company.
15. Although one must consider each of the Articles, the broad flavour is provided by the terms of the First Hardcopy Article:



(Given the number of other Articles in issue and in order to keep this Judgment within a reasonable length, I have not reproduced verbatim the entire text of all the Articles, large parts of which are not the subject of complaint).

16. At a high level, to a reasonable reader, there are two main aspects which stand out as a matter of impression from all the Articles. First, the fact that Mr Shepherd's client base includes well-known personalities including those in the world of sport (such as Rio Ferdinand and an unnamed Premier League manager) and business overlapping with sport (such as the Claimant). Second, the improper (and potentially criminal) nature of the services that Mr Shepherd claims to be able to provide to his company's clients. Specifically, the fact that his company can (and has, in the past) in effect manipulated phone records, or prevented proper disclosure of them, when the company's clients have been in situations where regulators or court processes require disclosure.
17. The Articles would not be of any real interest to a reader without these twin aspects: that is, the nature of the clients and the improper nature of the services which Mr Shepherd's company can provide. These are the features which make it a serious piece of investigative journalism and a front page story which is continued over some days. The fact that the names of well-known personalities including Rio Ferdinand and the

Claimant are “dropped into” (in the words of the Claimant’s Leading Counsel) allegations of serious wrongdoing by Mr Shepherd is significant to the impression a reasonable reader takes away from the Articles.

18. It is right to observe, as submitted by Leading Counsel for TNL, that the prominence given to the Claimant is less than that given to Rio Ferdinand and the missed drugs test and resulting disciplinary proceedings against him in 2003. There is a prominent separate article, the Ferdinand Article, with the headline “*Ferdinand, the doping case and boss who shoots from lip*”. I accept that readers of the First and Second Hardcopy Articles would have read the Ferdinand Article on pages 4-5 and looked at the images on those pages. Accordingly, I have had regard to the content of that article. I note that the Ferdinand Article was illustrated by pictures of: (a) Rio Ferdinand playing football; (b) Rio Ferdinand and John Shepherd standing together; (c) Mr Shepherd playing golf with Joe Root (the England cricket captain); (d) Mr Shepherd with Gareth Southgate (the England football manager and former England footballer); and (e) a photograph of Mr Shepherd in sports kit.
19. That said, the Claimant is one of the few named clients (with photographs) and, as appears in the text cited in the Annexe, an important part of certain of the Articles is the connection between the claimed improper services his company can provide and the 2017 Action. I do not consider the Ferdinand Article reduces the importance of what is said about the Claimant.
20. The Annexe contains the detail of what was said by Mr Shepherd in such recordings in relation to the Claimant but, in very broad terms, the substance is that Mr Shepherd claimed he was able to arrange for the mobile phone records of his clients to be “fixed”. That plainly means, in context, that he changed or otherwise manipulated such records. The claims are that he was able to provide this service at times when clients may have had to produce records for legal or regulatory reasons.
21. The way in which Mr Shepherd’s claims are presented would leave the reader with the impression that the improper acts were directed by his clients (as opposed to acts of Mr Shepherd acting without instruction) and were part of the unique service which his company could offer. The authors of the Articles do at points express real scepticism in relation to the boasts of Mr Shepherd. TNL is also right to observe that Mr Shepherd is essentially making a marketing pitch in these covert recordings. It is fair to observe that statements attributed to Mr Shepherd are essentially in the form of marketing ploys, exaggerations or boasts (“bravado”) of what Mr Shepherd said he could do for clients. That said, there would have been little of interest in this story as a piece of investigative journalism without the detail of who the clients were and what he claims to have done for them.

III. The Rival Meanings

22. The Claimant pleads that the First Hardcopy Article, the First Online Article, the Second Hardcopy Article, and the Second Online Article bore the following natural and ordinary meaning:

“the Claimant, alternatively there are reasonable grounds to suspect that the Claimant, engaged John Shepherd and Sport Mobile to hide damning evidence of text messages and phone calls which should have been provided to Jeffrey Blue in High Court proceedings.”

23. The Claimant pleads that the Second Hardcopy Article and Second Online Article bore the following additional meaning:

“the Claimant, alternatively there are reasonable grounds to suspect that the Claimant, deliberately misled the High Court and Mr Blue when he told the Court that Sport Mobile did not have records of his text messages, knowing that Sport Mobile did have or could get that information.”

24. The Claimant pleads that the Third Hardcopy Article and the Third Online Article bore the following meaning:

“The Claimant, alternatively there are reasonable grounds to suspect that the Claimant, engaged John Shepherd and Sport Mobile to hide evidence of phone records which should have been provided in High Court proceedings.”

25. The Claimant pleads that the Revised First Online Article bore the following meaning:

“The Claimant, alternatively there are reasonable grounds to suspect that the Claimant, perverted the course of justice by engaging John Shepherd and Sport Mobile to hide damning evidence of text messages and phone calls which should have been provided to Jeffrey Blue in High Court proceedings”

26. The Claimant pleads that the Third Online Article bore the following meaning:

“The Claimant, alternatively there are reasonable grounds to suspect the Claimant, engaged John Shepherd and Sport Mobile to hide evidence of phone records which should have been provided in High Court proceedings”.

27. TNL denies that those articles bore such meanings. It says the Articles would be understood by the ordinary, reasonable reader of *The Times* as being about Mr Shepherd making extraordinary boasts in an attempt to mine, exploit and profit from his relationship with Mr Ashley and the 2017 Action in an effort to attract business. TNL says that the ordinary, reasonable reader of *The Times* would not have understood (or understand) the Articles to allege that Mr Ashley was involved in any wrongdoing.

28. TNL argues that the First Hardcopy Article, the Second Hardcopy Article and the Revised First Online Article and the Second Online Article all bear the following meanings:

“(i) John Shepherd boasted that in 2017 he / Sport Mobile had “protected” Mr Ashley’s text messages and mobile phone

records from scrutiny in a High Court claim between Jeffrey Blue and Mr Ashley by failing to provide Mr Ashley's phone records when they could, in fact, have done so, despite being asked by Mr Ashley to provide them;

(ii) These were extraordinary boasts that Mr Shepherd seemed to make to attract business and in an attempt to exploit his relationship with Mr Ashley and the 2017 High Court claim; and

(iii) These extraordinary boasts were undermined by the facts of the case and appeared to be an embellishment of the established events”

29. TNL argues that the Third Hardcopy Article and Third Online Article bear the following meaning:

“although Mr Shepherd had claimed that he “protected” phone records that Mr Ashley was asked to provide in a High Court case in 2017, Mr Ashley had denied any involvement in the events that Mr Shepherd had suggested took place”.

IV. The “repetition rule”

30. The Claimant argues that TNL's case on determination of meaning has a basic defect. It was submitted that TNL's case ignores the “repetition rule”, simply summarising what is said in the articles (*John Shepherd boasted*). It was said that this is impermissible under the so-called “repetition rule”.
31. There is in my judgment substance to the Claimant's submissions under this head but in some respects they go too far using the rule to drive a *Chase* Level 1 accusation of guilt under his primary case. The rule cannot be applied mechanistically in determining meaning. I will return to this point when I state my conclusions on the meaning issue below. I also agree with the Claimant's other complaint that TNL's pleaded meanings fail to engage with the sting in relation to the Claimant and read more like a precis of the Articles with a focus on Mr Shepherd.
32. The “repetition rule” is a principle “deeply embedded” in the law of defamation (Shah v Standard Chartered Bank [1999] QB 241, 261G). It has two distinct applications. First, it is a rule relevant to the determination of the single meaning that a statement bears. Second, it serves to limit the evidence that is admissible to prove the truth of a defamatory imputation.
33. As explained in Hewson v Times Newspapers Limited [2019] EWHC 650 (QB) at [41]:
- “The effect of the repetition rule is that the use of verbs like “alleged” or “claimed” (however often they are repeated in a publication) is unlikely, in itself, to insulate a publisher from the effect of the rule. If the impact of the repetition rule on the meaning of reports of allegations made by others is to be

mitigated or avoided, the material that has that effect must be found elsewhere in the publication.”

34. In my judgment, the repetition rule is clearly engaged in this case. The Articles consist, for the most part, of reports of allegations made by Mr Shepherd. The parts complained of are, in form, hearsay: ‘John Shepherd also claimed’ (First Hardcopy Article [3], [3/7]), ‘the boasts ...’ ([4], *ibid*), ‘The extraordinary boasts of potentially criminal activity ...’ ([9], *ibid*), ‘Mr Shepherd also claimed in a conversation...’ ([11], *ibid*), ‘Mr Shepherd claimed Sport Mobile “kept it quiet”...’ ([12], *ibid*), ‘His claims...’ ([14], *ibid*), ‘However, in sales patter to clients, the co-owner of the company has claimed he failed to produce...’ (Second Hardcopy Article [10], [4/9]), ‘It is a claim...’ ([10], *ibid*), ‘Shepherd claimed in one conversation that he “kept it quiet”...’ ([12], *ibid*), ‘Yesterday The Times reported that John Shepherd, who runs Sport Mobile, ... claimed he “protected” phone records that Mike Ashley... was asked to provide.’
35. Nicklin J in Brown v Bower [2017] EWHC 2637 (QB); [2017] 4 WLR 197 at [19]-[27] undertook a comprehensive review of the authorities and it was common ground before me that his conclusions as to the application and scope of the rule were correct as a matter of law. I will not undertake the same exercise by going through each of the substantial number of cases cited to me.
36. I will need to consider some of those case but, for present purposes, I will apply Nicklin J’s summary of the principles and the well-known observations in Lewis v Daily Telegraph Ltd [1964] AC 234 which assist in understanding the rationale for the rule and its limits.
37. In Lewis, Lord Hodson observed, at para 275:

“If one repeats a rumour one adds one’s own authority to it and implies that it is well founded, that is to say, that it is true. It is otherwise when one says or implies that a person is under suspicion of guilt. This does not imply that he is in fact guilty but only that there are reasonable grounds for suspicion, which is a different matter.”

Similarly, Lord Devlin explained, at pp 283–284:

“...you cannot escape liability for defamation by putting the libel behind a prefix such as ‘I have been told that ...’ or ‘It is rumoured that ...’ and then asserting that it was true that you had been told or that it was in fact being rumoured. You have ... to prove that the subject-matter of the rumour was true ... A rumour that a man is suspected of fraud is different from one that he is guilty of it. For the purpose of the law of libel a hearsay statement is the same as a direct statement, and that is all there is to it.”

Later, at p 285, Lord Devlin added:

“It is not therefore, correct to say as a matter of law that a statement of suspicion imputes guilt. It can be said as a matter of

practice that it very often does so, because although suspicion of guilt is something different from proof of guilt, it is the broad impression conveyed by the libel that has to be considered and not the meaning of each word under analysis. A man who wants to talk at large about smoke may have to pick his words very carefully if he wants to exclude the suggestion that there is also a fire; but it can be done. One always gets back to the fundamental question: what is the meaning that the words convey to the ordinary man: you cannot make a rule about that.”

The underlined emphasis is mine. This sentence encapsulates the nature of the ultimate task of the Court.

38. By reporting a defamatory statement, the newspaper gives a far wider currency to it, which may otherwise have been left in obscurity. That would certainly have been the case here with Mr Shepherd’s claims. As I said in argument, it is really doubtful whether anyone would care about these allegations made by Mr Shepherd, or indeed whether they would have been published absent some “celebrity” connection.
39. In addition, a newspaper lends greater authority to the statement than it would have in the mouth of its originator. This is the basis for the repetition rule. In Truth (NZ) Ltd v Holloway [1960] 1 WLR 997 (PC) at p.1003, Lord Denning explained:
- “This case is a good instance of the justice of this rule. If Judd [the originator of the statement] did use the words attributed to him, it might be a slander by Judd of Mr Holloway [the claimant] in the way of his office as a Minister of the Crown. But if the words had not been repeated by the newspaper, the damage done by Judd would be as nothing compared to the damage done by this newspaper when it repeated it. It broadcast the statement to the people at large ...”
40. In Stern v Piper [1997] QB 123 at p.136 D, Simon Brown LJ said:
- “The policy underlying and justifying the rule is that stated by Lord Reid in Lewis v Daily Telegraph Ltd ... ‘I can well understand that if you say there is a rumour that X is guilty, you can only justify it by proving that he is guilty, because repeating someone else’s libellous statement is just as bad as making the statement directly.’”
41. In Mark v Associated Newspapers Ltd [2002] EWCA Civ 1634; [2002] EMLR 38, Simon Brown LJ said at [29], having observed that the repetition rule dictates the meaning to be given to the words used:

“...that is by no means to say that the meaning dictated is an artificial one. Rather the rule accords with reality. If A says to B that C says that D is a scoundrel, B will think just as ill of D as if he had heard the statement directly from C. If, moreover, A is a respectable newspaper, D’s position will be worse than if B had merely heard the statement directly from C. It will be

worse in part because there will be many more Bs, and in part because responsible newspapers do not generally repeat serious allegations unless they think there is something in them so that the very fact of publication carries a certain weight.”

42. The Claimant is right to submit that if the credibility of the originator of the statement is to be allowed to shape the meaning of a report of it - as TNL appears to contend for here - evidence would have to be heard, in the case of a dispute, as to the credibility or reliability of the originator. But that would run up against the rule that no evidence is admissible on the issue of the natural and ordinary meaning of the words. As Hirst LJ explained in Shah v Standard Chartered Bank [1999] QB 241 at p.263 G:

“One most salutary advantage of holding fast to the repetition rule is that it avoids lengthy investigation of the reliability of the makers of hearsay statements which might otherwise be admissible.”

43. The Defamation Act 2013 has had no impact upon the rule. See Lachaux v Independent Print Limited [2019] UKSC 27; [2020] AC 612 at [23].

Limits of the “repetition rule”

44. Leading Counsel for TNL was right to emphasise that even if the repetition rule applies in this case when I am considering the meaning of words, it takes its place alongside all the other matters to which the court must have regard when determining meaning. My task is to determine what the ordinary reasonable reader would understand the words to mean.
45. The repetition rule cannot be applied mechanistically to the determination of meaning. See Brown v Bower at [29]-[32]. Specifically, it does not in and of itself turn a report of another’s accusation into an accusation by the publisher of guilt on *Chase* level 1.

Single publication?

46. The parties are agreed that the ordinary, reasonable reader of the hard copy edition of *The Times* for 17 July 2020 would have read both the First and Second Hardcopy Articles together, as well as the main spread and the article on the unnamed Premier League manager. I also understood that they agreed that each of the Online Articles after the first should be read together (based on the hyperlinks to earlier articles). They do not however agree on whether the Third Hardcopy Article should be read together with the First and Second Hardcopy Articles.
47. Turning to the applicable principles, the meaning of a statement complained of is determined by reference to the publication as a whole. In this context, two or more articles may be held to form part of a single publication. The test is whether “the various items under consideration were sufficiently closely connected as to be regarded as a single publication”: Dee v Daily Telegraph [2010] EWHC 924 (QB); [2010] EMLR 20 at [29]. That applies regardless of whether the articles in question are “continuation articles” on different pages of the print edition of a newspaper or “different items of published material relating to the same subject matter” (ibid, at [29]).

48. The principle in Dee applies equally to online publications. The recent Scottish case of Wildcat Haven Enterprises CIC v Wightman [2020] SLT 473, correctly captures the test. Lord Clark stated that where several publications/articles are relied on the test is whether:

“having regard to all of the circumstances, it is to be inferred that hypothetical ordinary reasonable reader of the material complained of will also have read, or have in mind, the other material which is relied upon as context. For that to be possible, there must be a sufficient nexus, connection or association between the publications, which could include a reference or hyperlink or the publications being part of for example ... a series or sequence of material” (at [26]).

49. The Third Hardcopy Article was published in a different edition of the newspaper on a different day to the First and Second Hardcopy Articles. I accept the Claimant’s submission that its natural and ordinary meaning can be found only by looking at what was published in it.
50. I consider that there was a sufficient nexus, connection or association between the Online Articles (after the first) that they either are or should be regarded as a single publication (as agreed at the hearing by the parties). The Website and the App are subscription only services, and it may reasonably be inferred that a significant number of readers of the 18 July 2020 digital edition will also have read the 17 July 2020 digital edition.

V. Conclusion on Meaning

51. Both parties analysed the text of each of the Articles in some detail in writing and orally, as I have indicated. I have considered these submissions as a cross-check against my own provisional view. I have sought to avoid falling into the trap of treating the Articles as legal documents. There is a real risk of this when counsel spend pages of skeleton arguments arguing about the meaning of words which are quite straightforward. Certain of the arguments effectively invited me to fix on specific words which were said to be “the key bit”. That risks diverting one from the task at hand.
52. I will not set out the detail of the arguments made to me, given the nature of the exercise which I have to perform. My reasons will however indicate which points I found persuasive. Both parties were to some extent guilty of focusing on certain words and ignoring others. That is how they arrive at polar opposites on the issue of meaning.
53. Counsel for TNL submitted in writing that the hypothetical reasonable reader is taken to be one who is representative of those who read the publication in which the statement complained of was published i.e., *The Times*. Reliance was placed on case law where it was said that in respect of *The Times*, this hypothetical person is “amongst the more highly educated and better informed members of the public”: John v Times Newspapers Limited [2012] EWHC 2751 (QB) at [19]. It was argued that the “ordinary reader of

the print and digital versions of *The Times* can be taken to be educated, informed and discerning, and, as such, able to follow articles on complex topics, such the articles giving rise to this claim”.

54. This approach was not pursued orally when I raised this matter with Leading Counsel for TNL. I confess that I would not have found this a straightforward approach to apply. I do not consider that the words would mean one thing to the claimed “educated, informed and discerning” reader (whatever that means) and something else to those claimed to be less educated. The hypothetical reasonable reader is not someone who is to be identified according to letters after their name. I proceed on the basis that such a person is simply someone who understands the English language (and who is not unduly suspicious and avid for scandal). I do not consider these Articles would mean something different if they were being read by readers of *The Sun* as opposed to *The Times*.
55. I will identify my decision on meaning below followed by brief reasons explaining why I have come to those conclusions. References in square brackets are to paragraph numbers in the Annexe. I have considered the Articles as a whole and also considered the substantial reliance placed by Leading Counsel for TNL on the Ferdinand Article and his emphasis on the scepticism of the journalist when considering Mr Shepherd’s claims. I have reached my conclusions applying the repetition rule and the established principles to be applied determining meaning as summarised in Koutsogiannis v Random House Group Ltd [2019] EWHC 48 (QB); [2020] 4 WLR 25. I also found assistance in the caselaw to which I was helpfully referred by Leading Counsel for the Claimant concerning “bane and antidote”, including Mark v Associated Newspapers Ltd.

The First Hardcopy Article: Stars’ Phone Records ‘Fixed’

The Second Hardcopy Article: How Co-Owner tries to Mine Ashley Court Case

56. The Claimant does not dispute that the ordinary, reasonable reader of the hard copy edition of *The Times* for 17 July 2020 would have read both the First and Second Hardcopy Articles together, as well as the main spread and the article on the unnamed Premier League manager.
57. In my judgment, the meaning of these Articles is that **there are grounds to suspect that John Shepherd and his company Sport Mobile helped the Claimant in avoiding disclosure of potentially relevant text messages and phone records in the 2017 High Court proceedings brought by Mr Blue.**
58. In addition, the meaning of the Second Article is that **there are grounds to suspect that the Claimant knew that Sport Mobile could have obtained his text message records while telling the court he could not get those messages.**
59. I have no hesitation in rejecting the Claimant’s primary meaning case – that is, a direct accusation of guilt of wrongdoing. This is not case where in context the effect of any of the Articles is to adopt or to endorse Mr Shephard’s claims. The context and language point away from *Chase* Level 1.
60. That said, the First Hardcopy Article purports to be and would be understood to be a piece of serious public interest journalism and investigative reporting. The strapline

states that: ‘*Mike Ashley’s texts ‘protected’ from scrutiny by High Court.*’ The Claimant appears very early in the first column at [3] and then in the fourth and fifth columns: [11]-[13]. He is also pictured on the front page holding a mobile telephone, a photograph deliberately chosen to indicate his likely involvement.

61. The reason for the Claimant’s inclusion is the statements made by Mr John Shepherd that he “protected” phone records that the Claimant was asked to provide in a High Court case in 2017: [3] and [12]. Later on the front page, it is explained that Mr Shepherd has stated that, in 2017, Sport Mobile protected records of text messages requested in a £15million High Court case between Mr Ashley and a former business executive Jeffrey Blue which Mr Ashley won: [11]-[12]. The article continues on page 5 of the paper. What Mr Shepherd says is that his company ‘*kept it quiet*’ and protected texting and phone records [12]. He explained why his company did so: because ‘*[w]e’ve got some pretty wicked stuff.*’: [12]. In other words, ‘*stuff*’ that Mr Ashley was asked to, but did not want to, provide to his opponent in litigation.
62. I have not ignored the point stressed by TNL that what Mr Shepherd is saying is described in places as “boasts”. However, the ordinary, reasonable reader would understand that *The Times* would not simply have published “boasts” if there was no foundation at all for what was eventually published. The fact that Mr Shepherd may boast does not in and of itself mean he is not telling the truth. Being indiscreet or “shooting from the lip”, as it is put, also does not mean that what he says is obviously false.
63. Nor do the denials attributed to Mr Shepherd assist. It is said that Mr Shepherd himself denies making the allegations ([4]) but *The Times* goes on to explain that it has the recordings and is publishing extracts from them, so his denials amount to nothing. In my judgment, he would be understood to be denying things now because he had been caught behaving improperly, not because what he said was obviously untrue at a time when he did not realise he was being recorded. His purported explanation – that he was just getting in business – would be understood to be somewhat odd. The reader would understand that he obtained business from those in the sporting world *because* he could deliver what he offered, not because he could not do so. Indeed, he is presented (in the text and in photographs) as a well-connected man who had a background at Vodafone. Mr Ferdinand and the Claimant would be expected to deny what is said. Denials from them are bare and in my judgment (see [4] and [25]) carry no or little weight in the context of the article as a whole.
64. Even where *The Times* sought to suggest it is casting doubt on what Mr Shepherd says about the Claimant, in the first article, it is somewhat lukewarm: ‘*the facts of the case undermine the version of the story Mr Shepherd seems to use to attract business.*’ [13]. In other words, there is some foundation for a story involving the Claimant.
65. I also note that there is some detail in the Articles which can be regarded as supporting Mr Shepherd’s claims. *The Times* reports that its investigation relates to more than simply statements made by Mr Shepherd. Mr Lawton tells readers that former staff – who should know – claim that the company can obtain phone records and change them: [6]. The coverage goes on to say that ‘*Customers and four members of staff have told The Times that Sport Mobile has offered to change records when its clients are being investigated by the authorities, and the company claims to have carried out this service on numerous occasions.*’: [8].

66. That is, a number of sources apparently confirming to *The Times* that the company can do what Mr Shepherd claims was done at the time. This add to the flavour that there is some basis for the claims he makes.
67. As to the Second Hardcopy Article, on the inside pages, *The Times* confirms that there was a relationship between the Claimant and Sport Mobile at the time of the 2017 Action and explains that Sport Mobile was responsible for holding and providing copies of the Claimant's phone records: [8]-[11]. The newspaper reports that during the 2017 Action, the Claimant asked Sport Mobile for text messages and, at that time, the court was told that Sport Mobile did not have the information.
68. In my judgment, the reader would appreciate that Mr Shepherd's claims of a relationship with the Claimant were not wholly without foundation and that the documents were not provided: [8]. The reader would understand that the Claimant was wrong to tell the High Court that Sport Mobile did not have the records. The reader is also told that the Claimant has an unusual or unorthodox approach to business: [1]. He is therefore suggested to be the type of man who might behave in this way with Mr Shepherd. These points all give the impression that there is a basis for the allegations but not that they are endorsed as being true. The denial at the end of the second article does not improve the position.
69. Given the focus given to particular parts of the Second Hardcopy Article in TNL's oral submissions, I should say that what is recorded at [8] of this article (about the Claimant having requested Sport Mobile to provide text message in the 2017 Action) when read together with the following paragraphs beginning with the "however" in [10] gives a reader the impression that there was a difference between what happened in 2017 (request and inability to provide texts) and what could in fact have been provided. Mr Shepherd says at [12] that these texts were "protected" and the inference a reasonable reader would draw would be that such protection was at the instance of the client, the Claimant. It is simply unrealistic to suggest, as appeared in TNL's written case, that there is no implication of suggested involvement of the Claimant.
70. The alternative submission for TNL at the trial was that if I rejected their primary case the meanings were at most *Chase* Level 3. I reject that submission. It is unrealistic. The language, nature and form of the Articles are such that meanings are a form of *Chase* Level 2. This was presented as a serious investigation by a senior journalist.
71. There was debate before me as to whether, in determining meaning in this case, I should add the qualification "reasonable" to the "grounds to suspect". The Claimant's secondary case as to meaning adds this qualification. As I said in argument, I do not consider that this form of qualifier is helpful. It merely serves to add a further layer of complication for future dispute. "Grounds" to my mind are facts and matters which would give a rational person a logical basis to draw a conclusion. If they are not "reasonable" no such conclusion can be drawn, and they are not properly called "grounds".

The Third Hardcopy Article: *Two Arrested in 'Phone-Fixing' Case*

72. As I have already said, I agree with the Claimant that the meaning of the Third Hardcopy Article (which was published in a different edition of the newspaper on a

different day to the First and Second Hardcopy Articles), it to be found by looking at what was published in it.

73. In my judgment, the meaning of this Article is the same as the First Hardcopy Article. I note that the article is much shorter and begins with its story about “bitch phones” (before going on to the general issue of phone record manipulation). But it also then goes on to refer to Mr Shepherd having claimed he “protected” the Claimant’s phone records in the context of the 2017 Action. The connection which a reader would make between that allegation and improper manipulation of records is obvious. I will also not repeat what I have said above about the impression the term “protected” would give a reader concerning the Claimant’s conduct.
74. I add that I have not accepted aspects of the Claimant’s pleaded case in relation to this article. I have taken into account that the article says that individuals at Sport Mobile have been arrested in the context of an investigation into ‘*corruption in sport*’ [5] and on ‘*suspicion of fraud*’ [12]. I do not consider in context this really changes the overall impression (insofar as concerns the Claimant) that one would have obtained absent these additions.

The First Online Article and Revised First Online Article: *Firm ‘Changes records’ for Sports stars*

75. The First Online Article largely mirrors the First Hardcopy Article and I consider it has the same meaning. However, it was revised on 17 July 2020 to include a new headline and four new introductory paragraphs. I note that this takes in part of what is written in the Third Hardcopy Article.
76. The Claimant argues that publishing the First Online Article with additional detail that two individuals have been arrested and a statement from the North West Regional Organised Crime Unit referring to an investigation into ‘*corruption, which involves perverting the course of justice and conspiracy and false accounting*’ [1b] makes the meaning more serious. I note an express reference is made in the additional text to the “High Court” proceedings. I also note that there the addition of wording at [4] that ‘*there is no suggestion that Mr Ferdinand and Mr Ashley are involved in the police investigation*’.
77. In my judgment, considering this revised article as whole, a reasonable reader would not go so far as the Claimant submits and connect him to criminal wrongdoing (including perversion of the course of justice) concerning “corruption in sport”, which is the subject of the police investigation.
78. Accordingly, I find the meaning of the Revised First Online Article as the same as the First Online Article (and the First Hardcopy Article).

The Second Online Article: *Co-Owner tried to mine Mike Ashley Court request*

79. This is identical to the Second Hard Copy Article and has the same meaning as that article.

The Third Online Article: *Sport Mobile: Two Arrested in ‘Phone Fixing’ case*

80. This is identical to the Third Hard Copy Article (save for one sentence) and has the same meaning at that article.

VI. Whether the statements are defamatory of the Claimant at common law

81. The meanings I have found are defamatory imputations at common law. The accusations in the Articles relate to the Claimant's conduct in High Court litigation, specifically withholding or hiding or protecting information that he should have provided to the other side. That is clearly improper conduct applying the shared values of our society. The *Chase* Level 2 meanings I suggested in argument (to some extent mirroring my eventual conclusions) were accepted by Leading Counsel for TNL to carry defamatory imputations.

VII. Fact or Opinion?

82. The defamatory imputations complained of derive from Mr Shepherd but are about the Claimant's conduct. They are not opinions. Those defamatory imputations, about what the Claimant did, are plainly factual. Again, this was not in dispute.

Ashley v Times Newspapers Limited

ANNEXE: THE WORDS COMPLAINED OF

The First Hardcopy Article (17 July 2020)

The Claimant complains about the following words in the First Hardcopy Article together with the publication of the photograph of him:

“Stars’ phone records ‘fixed’

•‘Evidence paid for’ in Ferdinand drug case, company boss says • Mike Ashley’s texts ‘protected’ from scrutiny by High Court

TIMES INVESTIGATION

Matt Lawton

Chief Sports Correspondent

...

[2]... In an undercover recording obtained by *The Times*, John Shepherd, who runs the exclusive mobile phone service Sport Mobile, ...

[3] ...also claimed he “protected” phone records that Mike Ashley, the billionaire owner of Sports Direct and Newcastle United, was asked to provide in a High Court case in 2017.

[4] The boasts, which are understood to be categorically denied by the footballer and Mr Ashley, have been described by Mr Ferdinand’s agent as “bravado”. It is understood Mr Shepherd denies making the allegations.

[5] Sports Mobile has a client list containing some of the biggest names in British sport. It claims to provide “secure mobile billing” as part of a bespoke telephone service for players and managers at 16 Premier League clubs, as well as senior members of the England cricket team and stars from horse-racing and other sports.

[6] Former staff also claim it can obtain phone records and change them to the advantage of customers.

[7] Although not a phone service provider, Sport Mobile orders SIM cards in bulk from companies like Vodafone and O2 and then privately distributes them to clients. Once a card is activated, the firm is provided with a number it gives to the client. It then generates secure bills from data given to it by the phone service providers, which it passes on to its celebrity customers.

[8] Customers and four former staff members have told *The Times* that Sport Mobile has offered to change records when its clients are being investigated by the authorities, and the company claims to have carried out this service on numerous occasions.

[9] The extraordinary boasts of potentially criminal activity are contained in covert recordings of Mr Shepherd...

[11]... Mr Shepherd has also claimed in a conversation that was recorded for the purpose of this investigation, that in 2017 Sport Mobile “protected” records of text messages requested in a £15 million High Court case between Mr Ashley and a former business associate, Jeffrey Blue. Mr Blue, a former banker, was unsuccessful in suing Mr Ashley after accusing him of reneging on a business agreement.

[12] When discussing Mr Ashley’s case and the request in the High Court for his text messages, Mr Shepherd claimed Sport Mobile “kept it quiet” and “protected all the texting and the phone records, some calls on that...it wasn’t a criminal case or anything like that. We’ve got some pretty wicked stuff. It’s got to go to a pretty high level, a criminal case or whatever, for me to produce that.”

[13] The facts of the case undermine the version of the story Mr Shepherd seems to use to attract business.

[14] His claims in relation to the two high-profile cases appear to be an

Continued on page 5, col 3
Sports stars’ mobile records ‘fixed’

embellishment of the established events. However, former employees and clients have said they believe Sport Mobile’s systems could be used to change billing data for other clients.

[15] According to four former members of staff, Sport Mobile operates a billing system that enables it to erase or change phone numbers on bills they provide to customers. The former staff claim it is part of an exclusive service that has been offered to some clients.

[16] Industry experts who run similar mobile phone companies for high net worth clients say it is easy to change a customer’s records if requested. ...

[25] ...While it is understood Mr Shepherd denies both any wrongdoing and making the claims, and Mr Ashley and Mr Ferdinand dismiss those claims, all three have declined to comment.”

The Second Hardcopy Article (17 July 2020)

The Claimant complains about the following words in the Second Hardcopy Article together with the publication of the photograph of him:

“How co-owner tries to mine Ashley court case”
Matt Lawton

[1] It was a legal battle that exposed Mike Ashley’s rather unorthodox approach to business.

[2] In July 2017 the High Court heard how the billionaire Sports Direct boss, and owner of Newcastle United, liked to conduct meetings in the pub while consuming lots of alcohol.

[3] An investment banker and former business associate claimed that in January 2013, during a “night of heavy drinking” at the Horse & Groom pub in Great Portland Street, London, Mr Ashley had agreed to pay him £15 million if the company’s shares doubled to £8. Jeffrey Blue recalled how his wife texted him after the shares did reach £8 on February 25, 2014: “It’s hit 8!!!!”

[4] Mr Blue accused Mr Ashley of reneging on the deal, and more than three years later they ended up in court. Mr Ashley said that he had no recollection of making the offer but that it was “obviously just banter”. Mr Justice Leggatt ruled that no one would have considered Ashley’s offer to be “serious”.

[5] “The Sports Direct senior management meetings certainly show that Mr Ashley is happy to combine discussion of business matters with alcohol,” the judge said in his ruling. “There

is no evidence to suggest that Mr Ashley has ever negotiated or concluded a contract at one of these meetings.

[6] “The evening at the Horse & Groom was a considerably less formal occasion than management meetings. There was no agenda or structure for the occasion and the conversation was social or general chat, rather than being specifically directed to any business subject.”

[7] Mr Ashley won his case. Lawyers said that his legal bills were £1.5 million, with Mr Blue’s about £1 million. The judge ordered Mr Blue to pay Mr Ashley’s costs.

[8] During the lawsuit a request was made for Mr Ashley’s text messages and it is understood that Mr Ashley asked Sport Mobile to provide copies. In court, it was suggested that Sport Mobile was “unable to provide them because they didn’t have the information”. The *Financial Times* dedicated an article to the company operating in the wealthy world of elite British sport.

[9] An industry expert has told *The Times* that although Sport Mobile would not hold copies of the text messages, they could have requested copies from Vodafone, who would have held encrypted copies. It is understood that no formal request was ever made to Vodafone in the proceedings and, accordingly, John Shepherd’s claims of keeping records “quiet” lack substance.

[photo caption] Court case exposed Mike Ashley’s unusual approach to business.

[10] However, in sales patter to clients, the co-owner of the company has claimed he failed to produce Mr Ashley’s phone records when he could, in fact, have done so. It is a claim that Mr Shepherd has made to clients and repeated in a conversation covertly recorded for *The Times*.

[11] While Mr Shepherd says he has an agreement in place with Mr Ashley that means he does not send him his bills, he says he could have provided records of his texts and calls because his company receives the raw data from the provider.

[12] Shepherd claimed in one conversation that he “kept it quiet”. “We protected all the texting and the phone records, some calls on that...it wasn’t a criminal case or anything like that. We’ve got some pretty wicked stuff.”

[13] Mr Shepherd seeks to exploit the court case when talking to clients: “If, for example, I had an email from you saying John I don’t want you to keep any phone records of mine...we don’t produce the bill. If it’s a criminal case, if the police are involved, they can override me, HMRC still have to come and ask me for the information. But a lot of other cases, divorce cases...then we can stretch things out and give them time to speak to their lawyers.

[14] “So, from that point of view, if we do need to produce records for you at any point in time, I can still go back to the raw data and we can still do that and get them back. It’s got to go to a pretty high level, a criminal case or whatever, for me to produce that.”

[15] Mr Ashley declined to comment. However it is thought that he denies there was any improper interference.

The Third Hardcopy Article (18 July 2020)

As the lead story on page 5 of the edition of *The Times* dated 18 July 2020 the Defendant published an article under the headline “*Two arrested in ‘phone fixing’ case*”. This was reproduced on the version of the newspaper on the Defendant’s app. The Third Hardcopy Article included a photograph of the front page of the previous day’s edition with the words “Stars’ phone records ‘fixed’” and a photograph of the Claimant. The Claimant complains about the following words:

“Two arrested in ‘phone fixing’ case
Matt Lawton

[1] An exclusive mobile phone company whose clients include some of the biggest names in sport has supplied “bitch phones” for customers wishing to keep secret their extramarital affairs, former staff have claimed.

[2] Sport Mobile claims to have clients at 16 Premier League clubs as well as members of the England cricket team, other sports stars and athlete representatives. The company is a corporate partner of the League Managers Association.

[3] The former staff members have told *The Times* that some customers require extra phones with a request for no bills to be supplied. They say the phone were often paid for with cash, with Sport Mobile staff sent to collect the money from the clients, on some occasions at football training grounds. ...

[5] ... Police arrested two men and executed a warrant at a premises in Shropshire yesterday as part of an investigation into corruption in sport.

[6] Although not a phone service provider, Sport Mobile distributes sim cards ordered from companies such as Vodafone and O2 to its clients. Once a card is activated, it provides the customer with a number and generates secure bills from its own platform using data received from the service providers.

[7] According to four former members of staff, Sport Mobile operates a billing system that enables it to erase or change telephone numbers on the bills they provide to their customers. The former staff claim it is part of an exclusive service that has been offered to some clients. It is understood the company disputes this and says that only monetary values can be changed.
...

[10]... Yesterday *The Times* reported that John Shepherd, who runs Sport Mobile, ... claimed he “protected” phone records that Mike Ashley, the billionaire owner of Sports Direct and Newcastle United, was asked to provide in a High Court case in 2017.

[11] It is understood Mr Ferdinand and Mr Ashley deny any involvement in the events Mr Shepherd has suggested took place.

[12] A statement issued on behalf of the North West Regional Organised Crime Unit said: “Detectives from the [unit] and the National Crime Agency are carrying out an investigation into corruption ... As a result ... two men aged 62 years and 37 years both from the Telford area have been arrested on suspicion of fraud.”

[13] Sport Mobile were approached for comment. It is understood Mr Shepherd denies that such activity has taken place at his company.”

The First Online Article and Revised First Online Article (16 July-17 July 2020)

In addition to publication in the hard copy and on its App in the same form, as set out above, the Defendant published online on its website two versions of an article originally published under the headline “*Sport Mobile: Firm ‘changes records’ for sports stars*”. The Claimant complains about both versions:

- 1.1. First: from around 9.00pm on 16 July 2020 to around 12.00pm on 17 July 2020, the Defendant published online on its website an article together with a photograph of the Claimant holding a mobile telephone under the headline “*Sport Mobile: Firm ‘changes phone records’ for sports stars*” with the strapline, ‘Times Investigation’ (“the First Online Article”).
- 1.2. Secondly: from around 12.00pm on 17 July 2020, the First Online Article was revised to include a revised headline and additional wording (similar to the wording of the Third Hardcopy Article) as set out below (“the Revised First Online Article”).
- 1.3. A link to the Second Online Article was included at the foot of the First Online Article and the Revised First Online Article under the heading “Related Articles”.

The First Online Article

The Claimant complains about the following words in the First Online Article together with the publication of the photograph of him.

“TIMES INVESTIGATION

Sport Mobile: Firm ‘changes phone records’ for sports stars

• ‘Evidence paid for’ in Ferdinand drug case, company boss says • Mike Ashley’s texts ‘protected’ from scrutiny by High Court
Matt Lawton, Chief Sports Correspondent

...

[2]... In an undercover recording obtained by *The Times*, John Shepherd, who runs the exclusive mobile phone service Sport Mobile, ...

[3] ... also claimed that he “protected” phone records that Mike Ashley, the billionaire owner of Sports Direct and Newcastle United, was asked to provide in a High Court case in 2017.

[4] The boasts, which are understood to be categorically denied by the footballer and Mr Ashley, have been described by Mr Ferdinand’s agent as “bravado”. It is understood Mr Shepherd denies making the allegations.

[5] Sports Mobile has a client list containing some of the biggest names in British sport. It claims to provide “secure mobile billing” as part of a bespoke telephone service for players and managers at 16 Premier League clubs, as well as senior members of the England cricket team and stars from horse-racing and other sports.

[6] Former staff also claim that the company can obtain phone records and change them to the advantage of its customers.

[7] Although not a phone service provider, Sport Mobile orders Sim cards in bulk from companies such as Vodafone and O2 and then privately distributes them to clients. Once a card is activated, the firm is provided with a number it gives to the client. It then generates secure bills from data given to it by the phone service providers, which it passes on to its celebrity customers.

[8] Customers and four former staff members have told *The Times* that Sport Mobile has offered to change records when its clients are being investigated by the authorities, and the company claims to have carried out this service on numerous occasions.

[9] The extraordinary boasts of potentially criminal activity are contained in covert recordings of Mr Shepherd. ...

[13]... Mr Shepherd has also claimed in a conversation that was recorded for the purpose of this investigation, that in 2017 Sport Mobile “protected” records of text messages requested in a £15 million High Court case between Mr Ashley and a former business associate, Jeffrey Blue.

[14] Mr Blue, a former banker, was unsuccessful in suing Mr Ashley after accusing him of renegeing on a business agreement.

[15] When discussing Mr Ashley’s case and the request in the High Court for his text messages, Mr Shepherd claimed Sport Mobile “kept it quiet” and “protected all the texting and the phone records, some calls on that... it wasn’t a criminal case or anything like that. We’ve got some pretty wicked stuff.

[16] It’s got to go to a pretty high level, a criminal case or whatever, for me to produce that.”

[17] The facts of the case undermine the version of the story Mr Shepherd seems to use to attract business.

[18] His claims in relation to the two high-profile cases appear to be an embellishment of the established events. However, former employees and clients have said they believe Sport Mobile’s systems could be used to change billing data for other clients.

[19] According to four former members of staff, Sport Mobile operates a billing system that enables it to either erase or change phone numbers on the bills they provide to customers. The former staff claim it is part of an exclusive service that has been offered to some clients.

[20] Industry experts who run similar mobile phone companies for high net worth clients say it is extremely easy to change a customer’s records if requested. ...

[31] ... While it is understood Mr Shepherd denies both any wrongdoing and making the claims, and Mr Ashley and Mr Ferdinand dismiss those claims, all three have declined to comment.”

The Revised First Online Article

As referred to above, the Revised First Online Article contained a revised headline:

“Sport Mobile: Two arrested over ‘fixing’ of sports stars’ phone records

National Crime Agency starts investigation into corruption after Times report”

The Revised First Online Article contained the words complained of above, save that paragraph 4 of that version was revised to include the following words as shown in italics: “It is understood Mr Shepherd, who is in his 50s, denies making the allegations. There is no suggestion that Mr Ferdinand or Mr Ashley are involved in the police investigation.” A photograph of the Claimant, along with the following additional words complained of as introductory paragraphs appeared:

“[1a] Police have arrested two men and executed a warrant at a premises in Shropshire as part of an investigation into alleged corruption in sport.

[1b] A statement issued this morning on behalf of the North West Regional Organised Crime Unit said: “Detectives from the [unit] and the National Crime Agency are carrying out an investigation into corruption, which involves perverting the course of justice and conspiracy and false accounting.

[1c] “The investigation commenced after allegations were raised of perverting the course of justice in football arbitration proceedings, and in the High Court, and sport integrity testing (both historic and current).

[1d] “As a result a warrant has been executed at a premises in Shropshire today (Friday 17th July) and two men aged 62 years, and 37 years both from the Telford area have been arrested on suspicion of fraud.

[1e] “Investigators are following a number of positive lines of inquiry and the two men arrested today have been taken to police stations where they will be interviewed by detectives.”

The Revised Online Article also included the additional text: [11] It is understood that Mr Ferdinand and Mr Ashley deny any involvement in the events Mr Shepherd suggested took place. There is no suggestion that they are involved in the police investigation”.

The Second Online Article

In addition to publication in the hard copy, from around 12.01am on 17 July 2020 under the headline “Co-owner tried to mine Mike Ashley court request”:

- 1.4. the Defendant published the Second Hardcopy Article as set out at paragraph 2 above together with a photograph of the Claimant, by making it available on its website.
- 1.5. A link to the First Online Article (and Revised First Online Article) was included at the foot of the Second Online Article under the heading “Related Articles”.

The Third Online Article (18 July 2020)

In addition to publication in the hard copy, from around 12.01am on 18 July 2020 under the headline “*Sport Mobile: Two arrested in ‘phone fixing’ case*”:

- 1.6. the Defendant published the words in the Third Hardcopy Article as set above with one additional sentence at the end of paragraph [11] of that article: “*There is no suggestion that they are involved in the police investigation*” defamatory of the Claimant, by making it available on its website.
- 1.7. A link to the Second Online Article was included at the foot of the Third Online Article under the heading “Related Articles”.