Neutral Citation Number: [2024] EWHC 389 (KB)

Case No: QB-2022-001596

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 February 2024

Before :

MASTER DAGNALL

- -

Between :

Dr ASHTI HAWRAMI	**Claimant**
- and -	
(1) JOURNALISM DEVELOPMENT NETWORK INC.	**Defendants**
(2) DANIEL BALINT-KURTI	
(3) WILLIAM JORDAN	

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Tom Blackburn (instructed by **Carter-Ruck**) for the **Claimant**
Jonathan Price and Claire Overman (instructed by **Weil, Gotshal & Manges (London) LLP**) for the **Defendants**

Hearing dates: and 2 June and 11 December 2023

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Approved Judgment

This judgment was handed down remotely at 10.00am on 22 February 2024 at a non-attendance hearing, and then by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MASTER DAGNALL

MASTER DAGNALL:

Introduction

1. This is my judgment in relation to an application by the claimant made by Application Notice dated 13 February 2023 in this defamation claim. The Claimant seeks summary judgment under Civil Procedure Rule 24.3 against the defence advanced by the defendants of qualified privilege, so as to remove it from further consideration in these proceedings.

2. The matter arises from an article ("the Article") written by the second and third defendants and published by the first defendant entitled "The Rise and Fall of a US Oil Man in Iraq". It was published first on the first defendant's website on and from the 22nd of May 2021 ("the Original Version"). It was amended and further published on and from the 30th of August 2022 ("the First Amended Version") and then further amended and further published on and from the 12th of September 2022 ("the Second Amended Version"). The claimant alleges that it contains defamatory meanings and libels him, and claims damages and an injunction to prevent further publication. The claimant issued the claim form on 19 May 2022 and the defence was served on 5 December 2022 and an amended defence was served on 18 April 2023.

3. The defendants have raised various defences (see below) one of which is that the Article is a fair and accurate report of certain legal proceedings (known as "the Excalibur Litigation") so as to attract qualified privilege under section 15 of and schedule 1 to the Defamation Act 1996 ("the 1996 Act"). The claimant says that the defendants have no realistic prospects of establishing that as being the case and that there is no compelling reason for there to be a trial of that defence, and therefore he seeks summary judgment against that single defence.

4. The matter came before me first on the 2nd of June 2023 ("the June Hearing") when I heard argument. However, the time allocated was insufficient, and I was unclear as to how each side put their case in circumstances where the interaction of questions of how the defence of qualified privilege operates in this area with questions as to what are the correct meanings to be given of a publication and how those meanings are to be determined at seemed somewhat complex. I therefore adjourned the matter together with directions designed to enable the parties to clarify their cases and with which they complied. I then heard further submissions on 11 December 2023.

5. I have taken into account all the evidence before me and submissions from the parties even where I do not specifically mention elements of them in this judgment.

The Claimant

6. The claimant is a British citizen who has been resident in the UK for many years. He has also had various roles in the Kurdistan Regional Government ("KRG") of Iraq. From May 2006 until July 2019, he served as Minister of Natural Resources and from July 2019 to early 2022 as Assistant Prime Minister for Energy Affairs.

The Excalibur Litigation and History

7. The Excalibur Litigation concerned claims brought by an entity, Excalibur Ventures LLC ("Excalibur") controlled by two brothers, Messrs Wempen, which asserted that it had been wrongfully excluded by two other entities, Texas Keystone Inc. ("Texas") and Gulf Keystone Petroleum Limited ("GKP", an entity which owned a subsidiary Gulf Keystone Petroleum International Limited ("GKI") which was also, as was another Gulf company, a defendant to the Excalibur Litigation), from interests and profits in relation to oil exploration in Iraq, and, in particular, a Production Sharing Contract(s) between GKI and the KRG relating to four blocks (being areas in which oil exploration was to take place) one of which (where oil was to be discovered) being known as Shaikan (the relevant contract being "the Shaikan PSC").

8. The Excalibur Litigation resulted in a very lengthy trial ("the Excalibur Trial") in late 2012 and early 2013, and then in a written judgment ("the Excalibur Judgment") delivered by Christopher Clarke LJ (as he was then) dated 13 December 2013 and with Neutral Citation Number [2013] EWHC 2767. It is 1476 paragraphs and 322 pages long.

9. The Excalibur Judgment describes the following history which is relevant to the application before me.

10. At the relevant times the Kurdistan Democratic Party ("KDP") was the effective ruling party of the KRG which governed the Kurdish controlled areas of Iraq.

11. In November 2007 the KRG entered into the Shaikan PSC with GKI and which granted oil concessions including of the Shaikan block. GKI was a subsidiary of GKP which was controlled by one Todd Kozel ("Kozel") and who is "the US Oil Man" referred to in the title of the Article.

12. In or very shortly after November 2007 GKP entered into a contract called the Representation Agreement ("RA") with an entity called the Dabin Group ("Dabin") whereby Dabin, in return for what were said to be future consultancy services, would be paid 10% of the net revenues to be derived under the Shaikan PSC (being effectively 17% of the turnover to be derived under the Shaikan PSC). Dabin was associated with a KDP official, one Izzedin Berwari ("Berwari").

13. In 2010 questions arose as to whether the RA was legal under the law of the KRG due to the involvement of Berwari in Dabin. The upshot was that the RA was informally treated as void and what would have been Dabin's interest in the Shaikan PSC was acquired or forfeited to the KRG.

14. Also in 2010 some other oil concessions became available to be allocated by the KRG. An entity "ETAMIC", which was owned or backed by certain unidentified Middle Eastern investors, was to be allocated interests in some blocks ("the Other Blocks", in one of which oil was eventually to be discovered). GKP asked the claimant whether other blocks were available and the claimant introduced GKP to ETAMIC. ETAMIC then entered into some form of swap arrangement whereby ETAMIC would procure that the PSCs to be granted for the Other Blocks would be granted to GKP (rather than to ETAMIC) in return for ETAMIC becoming a 50% shareholder in GKP.

15. However, ETAMIC and GKP eventually parted company, due to ETAMIC being unable to fulfil various financing commitments, on the basis that ETAMIC gave up its 50% shareholding in GKP and received in return $12 million and also with the result that ETAMIC did not discharge, and GKP was left with, $40 million of financing costs which might otherwise have been the responsibility of ETAMIC.

16. Excalibur brought its claim asserting that it had relevant rights in the blocks and/or in GKP's eventual turnover or profits. However, the claim was dismissed for reasons which do not concern me on this application. The claimant was not a party to the Excalibur proceedings.

The Article and the Meanings and Defences advanced

17. The Article itself is lengthy and is, at least notionally, about Kozel and GKP, and not about the claimant although he is mentioned in it on various occasions (and with a picture of him appearing within it). I am appending an Annex 1 of the text of the Original Article (with paragraph numbers, which do not exist in the published versions, inserted by the parties before me) and Annexes 2 and 3 with the words added in the First Amended Version and the Second Amended Version.

18. The claimant asserts that the natural and ordinary meaning of the Article includes the following meanings ("the Claimant's Meanings") which are said to be defamatory of the claimant:

> "Dr Hawrami, whilst serving as Minister of Natural Resources in the government of the KRG of the autonomous region of Iraqi Kurdistan, had:
>
> a) in November 2007, granted a highly lucrative contract to Gulf Keystone Petroleum ("GKP") because of and/or knowing of a secret, corrupt and illegal agreement entered into between Todd Kozel ("Kozel") of GKP and the company of Izzeddin Berwari ("Berwari"), a member of the governing Kurdistan Democratic Party ("KDP") politburo and a high level and senior public official with connections to the Prime Minister of the KRG ("the kickback agreement"), whereby potentially huge revenues from the oil concession would be paid by GKP in kickbacks to Berwari's company for securing the Shaikan Production Sharing Contract ("PSC") for GKP;
>
> b) in 2010, been privy to a private agreement between GKP and the KRG to treat as void for illegality the kickback agreement just weeks before the UK Bribery Act was passed in April 2010, but, corruptly and in violation of a Kurdish oil law, that which Dr Hawrami had pushed through the Iraqi Kurdistan Parliament, allowed GKP to retain the contract, instead of cancelling the contract by reason of GKP's corruption, as the oil law required him to do; and
>
> c) shortly thereafter, facilitated the secret funnelling of US$12m from GKP, a public company quoted on the London Stock Exchange, to an offshore company secretly connected to Kozel and the KRG, by introducing Kozel to a group of investors operating under the name of Etamic and to the idea of the transaction."

19. In paragraph 10 of the Amended Defence, those meanings are denied. It is further stated that the Article contains no meaning defamatory of the claimant at common-law. Alternatively it is contended that the only relevant meaning is one that "there were

grounds to investigate whether the Claimant, through his office, had come to know about but failed to properly investigate and act upon an illegal agreement which benefited a high-ranking member of Iraqi Kurdistan's ruling party." ("the Defendants' Alternative Meaning").

20. In paragraph 32 of the Amended Defence it is asserted that the defendants will rely upon defences of Qualified Privilege under section 15 of and paragraphs 2 and 5 of Schedule 1 to the 1996 Act, and also upon the defence of publication in the Public Interest under section 4 of the Defamation Act 2013 ("the 2013 Act"). Paragraphs 18 onwards of the Amended Defence dispute that the claimant has suffered serious harm by reason of the publication, and raise various specific matters regarding the damage which the claimant asserts that he has suffered and will suffer by reason of the publication of the Article.

21. I note that the defendants are not advancing any case that either or any of the Claimants' Asserted Meanings or the Defendants' Alternative Meaning are true (so as to amount to a defence under section 2 of the 2013 Act) or are statements of honest opinion on their part (so as to amount to a defence under section 3 of the 2013 Act).

<u>The Qualified Privilege Defence advanced</u>

22. The Qualified Privilege defence is under the 1996 Act, relevant elements of which read as follows:

Section 15
"15. Reports, &c. protected by qualified privilege.
(1) The publication of any report or other statement mentioned in Schedule 1 to this Act is privileged unless the publication is shown to be made with malice, subject as follows.
(2) In defamation proceedings in respect of the publication of a report or other statement mentioned in Part II of that Schedule, there is no defence under this section if the plaintiff shows that the defendant—
(a) was requested by him to publish in a suitable manner a reasonable letter or statement by way of explanation or contradiction, and
(b) refused or neglected to do so.
For this purpose "in a suitable manner" means in the same manner as the publication complained of or in a manner that is adequate and reasonable in the circumstances.
(3) This section does not apply to the publication to the public, or a section of the public, of matter which is not of public interest and the publication of which is not for the public benefit.
(4) Nothing in this section shall be construed—
(a) as protecting the publication of matter the publication of which is prohibited by law, or
(b)as limiting or abridging any privilege subsisting apart from this section."

Schedule 1
"Qualified Privilege
Part I
Statements having qualified privilege without explanation or contradiction

> 2. A fair and accurate report of proceedings in public before a court anywhere in the world.
> 5. A fair and accurate copy of or extract from any register or other document required by law to be open to public inspection."

23. The Amended Defence pleads that the Article contained a "fair and accurate report" of elements of the Excalibur Trial and of the Excalibur Judgment. The Amended Defence cites a number of particular paragraphs and words from a transcript of evidence ("the Excalibur Transcript") given at the Excalibur Trial and of the Excalibur Judgment. The defendants' position, through counsel Mr Price and Ms Overman, was that they did not accept that the Excalibur Judgment and the Excalibur Transcript were incapable of being defamatory of the claimant, but they also stated (according to my note of Mr Price's submissions) that they did not accept that they were so defamatory. That position is a somewhat curious one, and I am not sure that it would be sustainable in law, but, in the light of my judgment, and for reasons given, below, I do not need to reach any final view as to that.

24. The parties' respective contentions as to what are relevant elements of the Excalibur Transcript and of the Excalibur Judgment (which I call together "the Excalibur Material") were refined in a document which I required them to produce in which the defendants set out what they asserted were matters of fair and accurate report in the Article by reference to elements of the Excalibur Transcript and of the Excalibur Judgment, and the claimant asserted what were said to amount to distortions and omissions so that the Article was not such a fair and accurate report.

25. The main passages (although I have taken account of all elements) of the Excalibur Judgment relied upon by the defendants were as follows:

> "4. In the event, Excalibur accepted not being a party to any PSC to be entered into as a result of a successful bid. On 6 November 2007, after a series of proposals (as opposed to a formal bid), a PSC was entered into between the KRG on the one hand and (i) Gulf Keystone International Ltd ("Gulf International"), the third defendant, a Gulf subsidiary; (ii) Texas; and (iii) Kalegran Ltd ("Kalegran") on the other in respect of the Shaikan block. Kalegran is a Cypriot company wholly owned by MOL Hungarian Oil & Gas Public Company Ltd ("MOL"), a public oil and gas company listed on the Budapest Stock Exchange, whose largest shareholder is the Hungarian State.
>
> 24. For the purpose of the IPO Gulf had to produce a "Competent Persons Report", describing and assessing the company's assets. The Competent Persons Report was carried out by a subsidiary of Exploration Consultants Limited ("ECL"), a company based in Henley-on-Thames, providing consultancy and operations services (seismic and well site geology) to exploration and production ("E& P") companies. ECL's Chairman was Dr Ashti Hawrami ("Dr Hawrami"), an Iraqi Kurd, who was in May 2006 to become the Minister of Natural Resources in the KRG. Gulf continued to use ECL's services after the listing. Mr Kozel first met Dr Hawrami in 2002 or 2003.
>
> 116. Towards the end of 2004 Mr Wempen began to focus on Kurdistan and realized that it was necessary to have a local partner with strong local ties. On 16 December 2004 Excalibur entered into a Memorandum of Understanding ("MOU") with the Dabin Group ("Dabin"). Dabin was a Kurdish investment development

company based in Erbil focused on working with foreign enterprises to develop investment projects in Kurdistan. Khaled (Azzat) Othman (Spindari) (hereafter "Azzat") was its VP for business development. Izeddin Berwari was its President. He was a retired member of the KRG and a continuing senior member of the KDP. At the time Dabin's focus was on construction and real estate development but it was interested in expanding into infrastructure and petroleum projects. Dabin viewed the IRF as something that would enable them to achieve this and Mr Wempen viewed Dabin as a partner who would negotiate approval of the IRF's projects.

119. On 13 March 2005 Mr Wempen received a letter from Nichervan Barzani, the Prime Minister of the KDP-controlled region of Kurdistan (and in 2006 of the unified KRG), with whom Dabin appear to have had connections, inviting him (on behalf of Excalibur) to Erbil to discuss investment opportunities. The KRG was interested in attracting foreign, particularly American, capital.

360. By April 2006 the prospect of any award of any Concession was on hold pending the formation of a new government. Mr Wempen was concerned that if there was a change in government and Dr Hawrami of the PUK (whom he had not met) took control of oil matters Excalibur might be out of any deal (see his email to Azzat of 26 April). In the event, in May 2006 Dr Hawrami became Minister for National Resources, one of the most important portfolios in the KRG. He knew Mr Clark, Mr Samarrai and Mr Kozel. Dr Hawrami is a qualified oil engineer with a PhD in oil reserve engineering. He had significant international upstream experience having worked in the oil industry in the UK since 1975. He is agreed, on all sides, to have detailed technical knowledge, to be a man of integrity and someone who would appreciate what was in the best interests of the KRG in considering bids and awarding contracts. In practice it would be he who would decide who would get the award of any contract.

619. On 6 August 2007 the Kurdistan Regional Oil and Gas Law ("KROGL") was passed by the Kurdistan National Assembly. This was a culmination of Dr Hawrami's efforts to make the bidding process transparent and compliant with international norms. KROGL set out the framework by which petroleum operations would be regulated in the KRG and paved the way for the grant of PSCs. Article 24 laid down the criteria that had to be satisfied by anyone who wanted to participate in a PSC. It entitled the Minister to conclude a Petroleum Contract for exploration and development in respect of a specified area with "a Person – (defined as "a natural person, or other legal entity") – or a group of Persons".

739. Mr Kozel travelled to Erbil with MOL representatives. At a barbecue at Mr Berwari's house on 5 November 2007 Dr Hawrami suggested that as an alternative to payment to it of the signature bonuses in cash the KRG could subscribe for shares in Gulf. Mr Patrick produced a draft share subscription agreement, but, although there were some further discussions in late November and early December between Dr Hawrami and Mr Kozel, this idea went no further. Gulf paid the bonuses in cash.

740. The official signing ceremony for the Shaikan and Akri-Bijeel PSCs took place on 6 November 2007 in Erbil. The Shaikan PSC was executed by Texas, Gulf International, Kalegran Limited and the KRG. Gulf was named as the Operator. Excalibur was not named as a party, and, although Mr Wempen had wanted to attend, he had no invitation to do so. (Nor, although expecting to go, had he been invited to Budapest). Mr Kozel could not influence whether Mr Wempen was invited to Erbil and

was indifferent to whether or not he came. The signing "ceremony" took place in the Prime Minister's office in a large compound with no spectators or press. The Prime Minister signed the PSC.

741. Immediately after Mr Kozel had attended the signing he went to see Dabin and signed the agreement for Dabin to be Gulf's representative in Kurdistan. Dabin was to provide "consulting and government relations services", advice as to political developments, arranging meetings and introductions to political and financial organisations and individuals in Kurdistan and Iraq and consulting service for transportation, accommodation and security. The agreement granted Dabin a 10% share in Gulf International's net profits from the Shaikan PSC on account of the services which Dabin was to provide in relation to it – a potentially valuable (if distant) benefit. Since it involved Gulf in carrying the expenditure it amounted to something like a 17% equity interest. Gulf obviously thought Dabin would be valuable to it in providing political and strategic information, including introducing Gulf to local leaders. Dabin also had a construction company which could build drilling locations and a security company.

1285. On 28 April 2009, Gulf announced the spudding (i.e. commencement of drilling) of the first Shaikan exploration oil well. After extensive drilling and exploratory works, oil was discovered at Shaikan on 3 August 2009 and was announced to the market on 6 August 2009.

1296. In Spring 2009, Mr Kozel asked Dr Hawrami if he had any interesting available blocks. Dr Hawrami brought the Sheikh Adi and Ber Bahr blocks to Gulf's attention. These had been relinquished by DNO. Dr Hawrami introduced Gulf to ETAMIC, a company that had been formed by a group of Middle Eastern investors, who were contemplating a water plant project in Dohuk in Kurdistan and who wanted to obtain an interest in an oil and gas licence. Dr Hawrami said that they had no oil and gas experience. He introduced them on the basis that he would not approve ETAMIC going on the PSC, but, if a structure was worked out to involve them, Gulf International would be entitled to obtain an interest in these two blocks. Mr Kozel went to Mr Marcus Hugelshofer, who (a) had a shareholding in the Near East Commercial Bank ("NECB") to which Dr Hawrami had referred ETAMIC; and (b) was Mr Kozel and Gulf's lawyer, to put together such a structure.

1297. Gulf agreed to enter into an arrangement with ETAMIC in which ETAMIC was to become a 50% shareholder in Gulf International in return for the latter acquiring interests in the Sheikh Adi and Ber Bahr Blocks, which had been earmarked for ETAMIC. On 16 June 2009 the Gulf Board discussed and approved the transaction. One benefit of the deal was that it reduced the risk in Kurdistan. If Shaikan dried up, the other two blocks, which were two and a half times the size of the two existing blocks might be more productive (in the event oil was discovered in Sheikh Adi).

1298. The agreement, which was never recorded in writing, was that, in consideration of ETAMIC becoming a 50% shareholder in Gulf International and paying 50% of all costs payable by Gulf International, it would procure the award of two new PSCs in the Sheikh Adi and Ber Bahr blocks in which Gulf International would hold interests of 80% and 40% respectively. In effect it was a swap in which Gulf International received an interest in two blocks in return for a 50% interest in itself and, therefore, indirectly

Shaikan. Mr Gerstenlauer reviewed the transaction for the acceptability of the assets that Gulf was receiving.

1300. In the event ETAMIC was unable to pay its cash calls for expenses in relation to these Blocks. On 20 January 2010, Gulf wrote to ETAMIC holding it in default of its obligations. Gulf then entered into discussions with the KRG in order to reorganise its holdings in the PSCs. As set out in its press release dated 10 March 2010, as part of this reorganisation, the 50% shareholding in Gulf International held by ETAMIC reverted to Gulf. Gulf International paid to the KRG the sums owed by ETAMIC, and the KRG become entitled to Additional Infrastructure Support Payments, amounting to 40% of Gulf's entitlement to Profit Petroleum in respect of all four PSCs. This was a very substantial reduction in Gulf's entitlement reducing its share in any Shaikan field profits to between 9% and 18% – and an illustration of the risk involved in this field. Gulf also made a $ 12 million termination payment to ETAMIC in full and final settlement of any claims, a reasonable price for the certainty of unencumbered rights to the two new blocks.

1312. When the Shaikan PSC was signed, Dr Hawrami was not aware that Gulf was about to enter into its agreement with Dabin. Shortly afterwards Dr Hawrami indicated to Mr Kozel that Dabin could not participate in a PSC because locals and local companies should not benefit from a PSC. On 29 January 2010 Gulf asked the KRG whether the profit-sharing agreement with Dabin was legally valid in the light of KROGL. Their letter indicated that they had concluded that it was not. On 27 February 2010 the KRG replied that it was not its policy that a PSC contractor should involve any local service provider or individual with a direct or indirect interest in the PSC. In addition it said that KROGL prohibited participation of any individual or organisation linked to government officials, political parties or influential individuals. That applied to Dabin in the light of Mr Berwari's links to the KDP.

1313. On 2 March 2010 Gulf informed Dabin that, following a review of the agreement, it was not in compliance with KROGL and that Gulf International was therefore obliged to serve a notice of termination. Dabin indicated that it would respond, but did not do so. The agreement has for practical purposes been treated as void, and Dabin has not challenged that. Dr Hawrami took the view that the 10% net profit interest payable to Dabin should be paid to the KRG and that is what Gulf ended up having to do.

1339. I accept the authenticity of these two emails; and am satisfied that the first (i) was not solicited by Mr Kozel; (ii) set out the message which Dr Hawrami wished to convey to the Foreign Ministry; and (iii) reflected his true attitude both in 2012 and 2006-7. Mr Wempen, and many others, have the highest regard for Dr Hawrami and he is accepted, on all sides, to be a man of integrity. It is highly unlikely that he (or Mr Howard) would be parties to some underhand Kozel stratagem[106]. It is apparent from what he wrote that in 2006 and 2007 he regarded Excalibur as lacking the requisite technical and financial qualities to participate in the PSC – a matter to which he would naturally have addressed his mind at the time, having regard to his obligations as Oil Minister and the qualification provisions of KROGL.

1476. Accordingly I shall give judgment for the defendants."

26. The defendants further rely upon witness evidence contained in the Excalibur Transcript with regard to the claimant having introduced ETAMIC and GKP to each other; something which the claimant disputes (and see paragraph 80 of the Article where the claimant's lawyers' denial is set out). However, I do also note that paragraph 1296 of the Excalibur Judgment itself states (whether rightly or wrongly) "… Dr Hawrami introduced Gulf to ETAMIC…" They further rely upon a number of passages in the Excalibur Transcript which are quoted from directly in the Article.

Approach to Summary Judgment

27. The claimant seeks summary judgment under Civil Procedure Rule ("CPR") 24.3:

> "**24.3** The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—
> (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

28. Both sides took me to the general approach to summary judgment applications, and in particular the first condition (although the second condition of "there is no other compelling reason why the… issue should be disposed of at a trial" also has to be satisfied) regarding "no real prospect" in section 24.3.2 of the White Book:

> "The following principles applicable to applications for summary judgment were formulated by Lewison J in Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch) at [15] and approved by the Court of Appeal in AC Ward & Sons Ltd v Catlin (Five) Ltd [2009] EWCA Civ 1098; [2010] Lloyd's Rep. I.R. 301 at [24]:
> i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: Swain v Hillman [2001] 1 All E.R. 91;
> ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: ED & F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8];
> iii) In reaching its conclusion the court must not conduct a "mini-trial": Swain v Hillman;
> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED & F Man Liquid Products v Patel at [10];
> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No.5) [2001] EWCA Civ 550;
> vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] F.S.R. 3;

vii) On the other hand it is not uncommon for an application under Pt 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which
would have a bearing on the question of construction: ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725.
In respect of points of law and of construction the notion of "shortness" does not appear to relate to the length of the document to be construed or the length of the material passage in that document but may relate to the length of the hearing that will be required and the complexity of the matrix of fact the court will have to consider: see the comments of Chief Master Marsh in Commerz Real Investmentgesellschaft MBH v TFS Stores Ltd [2021] EWHC 863 (Ch). He further commented that there was an overlap between the idea of a point of construction not being "short" and the second limb of CPR r.24.2: there may be some points that the court is capable of grappling with that, nevertheless, due to the context in which they arise or other factors, are best left to be dealt with at a trial."

29. Mr Blackburn, counsel for the claimant, submitted that I had all the material which would be in front of a trial judge before me, being essentially the Article (and its amended forms), the Excalibur Judgment and any elements of the Excalibur Transcript sought to be relied upon, and he submitted that I was to carry out an evaluative exercise (below) which only had one possible answer. This was not a case where there could be additional evidence put before the court and therefore I could (and should) determine that the "no real prospect" condition was satisfied and proceed to grant summary judgment.

30. Mr Price leading Ms Overman, counsel for the defendants, did not seem particularly to dissent from the proposition that I had all the material which a trial judge would (or could) have to decide, essentially, whether the statutory test was (or could be) satisfied. He did emphasise, though, the importance in defamation cases of principles of freedom of speech (embodied in Article 10 of the European Convention on Human Rights ("Article 10")) both generally and specifically in relation to the reporting and public dissemination of what occurs within the courts.

<u>Determination of Issues of Meaning and interaction with Qualified Privilege and Mr Blackburn's Asserted Principle</u>

31. There is a particular complexity in this case that the parties are in dispute as to the alleged defamatory meanings, the claimant asserting the Claimant's Asserted Meanings and the defendants both disputing them generally, and adding that if there was ever any

defamatory meaning (their primary case being that there is and was none and not even the following) then it was only the Defendants' Alternative Meaning.

32. No-one has sought to ask me to determine the issues of meaning.

33. In fact paragraph 6 of CPR Practice Direction 53B provides:

> "**Determination of meaning**
> **6.1** At any time in a defamation claim the court may determine—
> (1) the meaning of the statement complained of;
> (2) whether the statement is defamatory of the claimant at common law;
> (3) whether the statement is a statement of fact or opinion.
> **6.2** An application for a determination of meaning may be made at any time after the service of particulars of claim. Such an application should be made promptly.
> **6.3** Where an application is made for a determination of meaning, the application notice must state that it is an application for a determination of meaning made in accordance with this practice direction.
> **6.4** An application made under this paragraph must be made to a Judge."

34. This provision does not prevent a KBD Master deciding an issue of meaning on a summary judgment basis (as opposed to on the usual basis of a full trial of the question of meaning either as a preliminary issue (as often occurs) or a part of a full trial). However, it is a significant disincentive to my being prepared to do so albeit in some cases that route may be appropriate.

35. However, there is a general difficulty known as the "Curistan" problem in determining questions of meaning in circumstances where a defence of Qualified Privilege is advanced which arises from the case law, and where the general law is to the effect that the position as to qualified privilege should be determined first and only then the position as to what are the correct meaning(s).

36. This is particularly relevant to a point of principle ("Mr Blackburn's Asserted Principle") raised by Mr Blackburn as to the ability (or, he would say, absence of ability) of a defendant to raise a qualified privilege defence of "fair and accurate reporting" of a subject-matter which is itself not defamatory of the claimant (and Mr Price does not say that the Excalibur Judgment and the Excalibur Transcript are defamatory, but simply that the defendants are not accepting that they are incapable of being so). Mr Blackburn submits that it is not possible to have a "fair and accurate" report which report is itself defamatory when the subject-matter of the report is not defamatory. He submits that for that situation to occur must involve a reporting which is not "fair and accurate"; or otherwise the report would not include defamatory material. He submits that in those circumstances the qualified privilege argument can never succeed as a defence because either there is no claim (because there is no defamatory meaning in the Article) or no defence (as if there is a defamatory meaning in the Article the reporting cannot be "fair and accurate"); and therefore the qualified privilege defence has "no real prospect of success" and summary judgment should be granted against it.

37. It is most convenient to consider the case-law in relation to both this aspect and fair and accurate reporting qualified privilege together and which I now do.

Case Law in relation to fair and accurate reporting Qualified Privilege

38. Both sides took me to the decision in Curistan v Times Newspapers [2009] QB 231. This decision concerned the reporting of proceedings in Parliament and whether they were fair and accurate where the newspaper had added in further material to the report.

39. Arden LJ held that if there had been excessive intermingling of extraneous material with what was the subject-matter of the report then "fairness and accuracy" and thus Qualified Privilege might be lost, see paragraphs 26-38:

> "Proposition (ii): One of the requirements of a fair and accurate report is that the quality of fairness must not be lost by intermingling extraneous material with the material for which privilege is claimed
>
> 26. There are a number of authorities on what constitutes a fair and accurate report. It need not be a verbatim report. It can be selective and concentrate on one particular aspect as long as it reports fairly and accurately the impression that the reporter would have received as a reasonable spectator in the proceedings: see generally *Cook v Alexander* [1974] QB 279, and *Tsikata v Newspaper Publishing Ltd* [1997] 1 All ER 655.
>
> 27. However, these appeals are principally concerned with the quality of fairness. Fairness in section 15 has been held to mean fairness in terms of presentation rather than fairness between the speaker and the subject of the statement (see per Lord Denning MR in *Cook v Alexander* at 289). A report does not cease to be fair because there are some slight inaccuracies or omissions (*Andrews v Chapman* (1853) 3 C & K 286 at 290). It follows that if there is a substantial or material misstatement of fact that is prejudicial to the claimant's reputation, the report will not be privileged. If the report refers to an accusation made on a privileged occasion which is in fact untrue, the defence of fair comment may be available if it is in terms which would be fair if the accusation were well-founded and provided that the comment is made in good faith and without malice (*Mangena v Wright* [1909] 2 KB 958, 977).
>
> 28. Fairness can also be lost by the presence of extraneous material. This proposition is supported by a memorable passage in the speech of Lord Denning in *Dingle* (see [33] below). In that case, the plaintiff complained of an article written in the Daily Mail which included the reporting of a report of a Parliamentary select committee. The reporting of the select committee's report was privileged under the Parliamentary Papers Act 1840. At trial the judge held that the part of the article which reported on the proceedings in Parliament was privileged. The remainder of the article was found to be defamatory and the judge then set about fixing the damages for the libel. The case then went to this court and to the House of Lords (Lord Radcliffe, Lord Morton of Henryton, Lord Cohen, Lord Denning and Lord Morris of Borth-y-Guest). The issues before the House related to the assessment of damages. The House, dismissing an appeal from this court, held that the judge had wrongly taken into account evidence that the plaintiff's reputation had already been damaged by what had been said in Parliament or by what had been said on other occasions, and that the Daily Mail had subsequently published an article which vindicated the plaintiff's reputation.

29. Only Lord Radcliffe, Lord Denning and Lord Morris focussed on the issues arising from the inclusion within a single article of privileged and non-privileged material. Lord Radcliffe clearly considered that the privilege attaching to the reporting of a select committee report was not lost simply because the article included other matters. He held at page 389: "We have to start our consideration of this case therefore by recognising that so far as the Daily Mail or any other newspaper confined itself to reproducing extracts from the report and acted in good faith and without malice the respondent would have no cause of action in defamation against it." Then again at page 392 he importantly held that the meaning of the article was to be found by disregarding the privileged part of the article:

"If one reads the article through without including the extract from the select committee report, which is protected, the effect of what is imputed to the respondent does not seem to amount to such deliberate misstatements or deliberate concealments as constitute an offence under section 12 of the Prevention of Frauds Act."

30. Lord Radcliffe therefore approached the judge's assessment of damages on the basis that the judge has assessed them for a libel imputing sharp practice but not a criminal offence.

31. Significantly, when Lord Radcliffe dealt with the matters which the judge had to leave out of account in assessing damages, he held at page 394:

"… and the judge had to eliminate that part of the article that consisted of extracts from the select committee's report, since under the Act of 1840 such extracts could not in law be treated as a libel."

32. Similarly, at page 414, Lord Morris accepted that the judge had to leave the privileged parts of the article out of account when he was fixing damages:

"The judge had approached the case with two broad questions in mind which he framed as follows: (1) To what extent was the plaintiff wrongfully defamed by the defendants? And (2) How much damage to his reputation was caused by this?

In regard to the first of these questions I think that the approach of the judge was entirely correct: he excluded from consideration those parts of the article which were privileged and he excluded those parts which were true. He held that the extracts contained in the article which came from the select committee's report were published without malice. He held that some parts of the article though only of slight materiality were true. He proceeded therefore to isolate those matters from the "indefensible part of the libel" and then posed the second question in the words: "How much damage is attributable to so much of the libel as is neither privileged under the Act nor true?"

33. Lord Denning, however, went further and considered the extent of the privilege provided by the 1840 Act. At page 411, he held:

"But here comes the question: Suppose that the reports in other newspapers were privileged, as they were in this case, cannot they be referred to in order to mitigate damage? I think the answer must be "No." If a newspaper seeks to rely on the privilege attaching to a parliamentary paper, it can print an extract from the parliamentary paper and can make any fair comment on it. And it can reasonably expect other newspapers

to do the same. But if it adds its own spice and prints a story to the same effect as the parliamentary paper, and garnishes and embellishes it with circumstantial detail, it goes beyond the privilege and becomes subject to the general law. None of its story on that occasion is privileged. It has "put the meat on "the bones" and must answer for the whole joint. If it cannot justify it, it must pay damages: and it cannot diminish these by reference to the privileged reports which it and others may have given previously. It is rather like the position of a Member of Parliament. Within the House he may make all sorts of defamatory statements under the cloak of parliamentary privilege. If he steps outside and, throwing off his cloak, repeats them at large, he exposes himself to attack. If he fails to justify his words, he must pay damages. He is not allowed to say in mitigation that he had already done the plaintiffs a lot of harm by what he had already said in the House, or even that other members in the House had also done the plaintiffs harm by what they had said there".

34. The judge considered these passages and concluded at [21] of his judgment that he could not accept that the passage which I have quoted from the speech of Lord Denning was to be interpreted as meaning that the privileged passages in a hybrid article were relevant only as context. However, Lord Denning clearly thought that in the absence of over-embellishment the passages which merely contained a fair and accurate report would be privileged and outside the scope of liability for defamation. Lord Radcliffe treated the privileged passages as not constituting a libel at all. Lord Morris only dealt with the issue in the context of damages but he put the privileged passages on a par with passages which could be justified. It can be argued that these passages are concerned only with damages. However, I read the passages as going further than this. Even if I am wrong on that point, I cannot see that the law can consistently provide that the same matter should be relevant in establishing liability for defamation yet be irrelevant when it comes to the assessment of damages. I will come back to this point below.

35. The position, therefore, is, as Kirby J observed the High Court of Australia in *Chakravarti v Advertiser Newspapers* (1998) 193 CLR 519 at para. 153 that:

"Excessive commentary or misleading headlines which amount to commentary run the risk of depriving the text of the quality of fairness essential to attract the privilege"

36. Thus, I conclude that reporting privilege will be lost if the quality of fairness required for reporting privilege is lost by intermingling extraneous material with the material for which privilege is claimed."

40. Arden LJ went on to consider that the publisher could also lose Qualified Privilege by adopting the subject-matter of the report as their own statements rather than simply treating them as reported matters. However, that aspect does not arise here as (1) it is not part of the claimant's case and (2) it is common ground that the subject-matter of the report (i.e. the Excalibur Judgment and the Excalibur Transcript) are not defamatory (and so that it does not matter whether or not they have been adopted or simply reported).

41. Arden LJ then went on to consider what is the position as to how issues of meaning should be approached where there has not been such an "intermingling" as to lose Qualified Privilege:

"*Proposition (v): In the case of an article consisting in part only of passages entitled to reporting privilege, the meaning of the non-privileged passages is to be ascertained on the basis that (1) the privileged passages merely provide the context in which the statements in the non-privileged passages were made, and (2) the repetition rule has no application to the privileged passages*

52. What the judge did, having rejected the submissions made on the "pre-preliminary" issues, was to consider the meaning of the non-privileged passages on the basis of the whole of the article and he did this through a combination of the single meaning rule and the repetition rule. The real complaint is about the repetition rule. If that is not applicable to the privileged words, those words can only be relevant as context.

53. As Mr Parkes submits in his skeleton argument, the repetition rule is a very well established common law principle in England and Wales, and profoundly affects the meaning to be put on words and the way in which words can be justified. It "reflects a fundamental canon of legal policy in the law of defamation, dating back nearly 170 years, that words must be interpreted, and the implications they contain justified, by reference to the underlying allegations of fact and not merely by reliance upon some second-hand report or assertion of them." (*Shah v Standard Chartered Bank* [1999] QB 241 at 263)…"

42. However, Arden LJ rejected the contention that the repetition rule applied and affirmed her Proposition (v), in particular at paragraphs 59-60:

"59. To apply the repetition rule would also in my judgment be inconsistent with section 15 of the DA 1996. As I have already noted, Simon Brown LJ observed in *Stern v Piper* at page 137 (and again in *Al-Fagih* at [35]) that the law of statutory privilege presupposes the existence of the repetition rule. Put another way, the clear intention of section 15 is at minimum to disapply the repetition rule as it would otherwise apply to the fair and accurate report. What Mr Curistan contends is that the single meaning rule applies to the article as a whole, and that the meaning of the non-privileged words is to be found by taking the cumulative effect of the privileged words and the non-privileged words together and applying the repetition rule. There is no "antidote" in the article to the bane of Mr Robinson's allegations. The existence of a defence of privilege would be relevant only to the assessment of damages and not meaning. As I see it, this is merely an indirect way of applying the repetition rule to the privileged words. The non-privileged words have on this analysis to be interpreted (from the standpoint of the hypothetical reasonable reader) on the footing that the defendant is himself making the allegations which in the report are attributed to someone else. In my judgment, this infringes the privilege given to the fair and accurate report since it imposes a sanction on its author for what is said in that report. Moreover, it is bound to have a chilling effect on the addition of factual material to a report, as is commonly expected from the responsible press today, and may have the same effect on the addition of comment, even though the defence of fair comment is not affected.

60. Moreover, if the repetition rule were to apply to the ascertainment of meaning of the non-privileged statements appearing in the same article so as to impose a higher hurdle for the maker of those statements to have to overcome if he wishes to justify the truth of those statements, the value of the privilege would be undermined and indeed

would be revealed as incomplete. That would in my judgment be contrary to the purpose of section 15. In all the circumstances, I conclude that the submission that the repetition rule should apply to the accusations made in the report is contrary to section 15. It is therefore no answer that the defendant may be able to rely on some other defence, such as *Reynolds* privilege. My conclusion on this point is also an answer to the submission of Mr Parkes that to disapply the repetition rule would elevate political speech into a special category by requiring an adjustment of the rules of meaning when applied to a report of a statement in Parliament when this would be contrary to *Reynolds.* As I see it, the disapplication is a consequence of the statutory protection given to reporting privilege."

43. This led Arden LJ to conclusions as to what was the appropriate analysis process in paragraphs 69-70:

"69. Once the repetition rule is disapplied, there is no reason why a fair and accurate report entitled to qualified privilege under section 15 should be read as anything more than a statement that the allegations mentioned in the report were made. The report would not of course be entitled to qualified privilege if the writer had adopted the allegations made in the privileged passages or so intermingled them with extraneous material that the privilege was lost.
70. If qualified privilege applies, the only remaining question is the meaning of the non-privileged passages in the context of the accompanying report. To some extent I have already dealt with this above."

44. Laws LJ (agreeing with Arden LJ as did the Lord Chief Justice with both of them) after emphasising the importance of the doctrine of Qualified Privilege in this context, said:

"87. Finally I add these short comments about embellishment and adoption. It is plain that there will be no qualified privilege in an account of Parliamentary speech if the publisher has so embellished the material that it cannot be said to be a fair and accurate report. So much, I think, is shown by this passage from Lord Denning's speech in *Dingle* at 411:

"But if it [sc. the publisher] adds its own spice and prints a story to the same effect as the parliamentary paper, and garnishes and embellishes it with circumstantial detail, it goes beyond the privilege and becomes subject to the general law. None of its story on that occasion is privileged. It has 'put the meat on the bones' and must answer for the whole joint."

88. Some care is I think needed in considering the concept of adoption, discussed by Arden LJ at paragraphs 37 – 40. In a sense the publisher who embellishes Parliamentary speech may be said to have adopted it: by "putting the meat on the bones" he has made the allegation his own. But I think it is misleading to characterise such a case as one of *adoption.* Rather than adopting what was said, the publisher has produced a critically different text. Since what he has produced cannot be said to be a fair and accurate report of Parliamentary speech, the law gives him no shield of

qualified privilege. That is the whole analysis of the case; no recourse to any such idea as adoption is required.

89. In *Buchanan* [2005] 1 AC 115 a Member of Parliament effectively re-stated outside Parliament what he had earlier stated inside it. The first statement was absolutely privileged. It could not sensibly be suggested (and was not) that the later utterance was somehow a fair and accurate report of the earlier. Thus the species of qualified privilege which arises in this case did not arise there. Again, no recourse to adoption is needed for the case's analysis.

90. In a hybrid case such as this, where there is, first, a fair and accurate report of Parliamentary speech and, secondly, further distinct material, the law is clear: other things being equal the first is subject to qualified privilege and the second is not.

91. In all these circumstances I entertain some doubt as to whether adoption is a useful conceptual tool in this area of the law."

45. I was next taken to Qadir v Associated Newspapers Ltd [2012] EWHC 2606 which related to what was contended to be fair and accurate of documents kept on a public court register as part of legal proceedings, but which had been combined with a journalistic investigation. At paragraphs 65-76 it was held:

"65. Mr Warby submits that in the 1996 Act Parliament specified categories of information (in addition to those previously specified in the 1952 Act) which it was in the public interest that the public should be told about. Parliament introduced new categories of statutory qualified privilege, but these were to be available in "certain closely defined circumstances", as explained by Lord Bingham in *McCartan Turkington Breen v Times Newspapers Ltd* [2001] 2 AC 277 (where the references are to the Northern Ireland statute) as follows at p290:

"1. In a modern, developed society it is only a small minority of citizens who can participate directly in the discussions and decisions which shape the public life of that society. The majority can participate only indirectly, by exercising their rights as citizens to vote, express their opinions, make representations to the authorities, form pressure groups and so on. But the majority cannot participate in the public life of their society in these ways if they are not alerted to and informed about matters which call or may call for consideration and action. It is very largely through the media, including of course the press, that they will be so alerted and informed. The proper functioning of a modern participatory democracy requires that the media be free, active, professional and enquiring. For this reason the courts, here and elsewhere, have recognised the cardinal importance of press freedom and the need for any restriction on that freedom to be proportionate and no more than is necessary to promote the legitimate object of the restriction.

2. Sometimes the press takes the initiative in exploring factual situations and reporting the outcome of such investigations. In doing so it may, if certain conditions are met, enjoy qualified privilege at common law, as recently explained by this House in *Reynolds v. Times Newspapers Limited* http://www.bailii.org/uk/cases/UKHL/1999/45.html [2001] 2 AC 127. In the present case the role of the press is different. It is that of reporter. The press then acts,

in a very literal sense, as a medium of communication. Since 1881 a series of statutory provisions cited above has granted newspapers* qualified privilege in relation to certain reports in certain closely defined circumstances [emphasis added]… The privilege is lost if malice is proved. By section 7(2) the enjoyment of qualified privilege is conditional on the grant of a right of reply to the complainant, if the case falls within Part II of the Schedule. By section 7(3) there is no privilege if the publication is of a matter the publication of which is prohibited by law, or if the matter published is not of public concern or if its publication is not for the public benefit. By section 7(4) any privilege enjoyed at common law is preserved. The reports of proceedings privileged under Part I of the Schedule have to be fair and accurate and have (subject to one very limited exception) to be of proceedings in public. … The grant of privilege inevitably deprives a complainant of a remedy he would otherwise enjoy if a defamatory statement is made concerning him, but section 7 and paragraph 9 give a very considerable measure of protection to those liable to be injured.

3. The effect of the legislation in 1955 was to grant qualified privilege to newspaper* reports of public meetings, subject to the stringent conditions just noted. This grant (as in 1881, 1888 and 1952) must have been intended to enable citizens to participate in the public life of their society, even if only indirectly, in an informed and intelligent way. Since very few people could personally witness any proceedings or attend any meeting in question, it was intended to put others, by reading newspaper* reports, in a comparable position. The privilege was not extended to newspaper* reports of the proceedings of private bodies and private meetings, because those are proceedings which by definition the public do not witness and to which the public do not have access: the object was not to put the newspaper* reader in a better position than one who was able to attend the proceedings or meeting in person".

66. I have put an asterisk against the word newspaper in that extract, and omitted a passage relating specifically to newspapers, because in the 1996 Act Parliament omitted any references to newspapers, thereby according to all persons engaged in the activity of journalism the privilege which had previously been available only to the proprietors of newspapers. So the passage should now be read as if the word newspaper was omitted wherever it occurs.

67. Mr Warby notes that the defendant bears the burden of proving the elements of the defences of statutory qualified privilege. So no further restrictions should be imported by the court into the defence, and there is no basis for submitting that the 1996 Act in this respect fails to strike a fair balance between the Art 10 rights of defendants and the Art 8 or reputation right of a complainant.

68. In my judgment Mr Warby is clearly correct on this point. What is fair and accurate is to be judged by comparing the words complained of with the document from which the words complained of are said by the defendant to be an extract. Where the complaint is of unfairness arising out of the omission to publish information extraneous to that document, such as another document or comments of the complainant, then that issue is to be decided under s.15(3) (public concern and public benefit) or s.15(1) (malice).

69. Mr Warby (citing Gatley on Libel and Slander 11th ed paras 13.37 to 13.41 and 16.4) submits that a publisher is entitled to be selective, but must be fair about the claimant, and that if the whole publication is substantially accurate the fact that there are a few slight inaccuracies or omissions is immaterial. He submits that a publication which does not purport to be by a lawyer is not be judged by the same strict standards

of accuracy as would a publication by a lawyer. Such differences as there are between the account in the Particulars of Claim and the words complained of are not material inaccuracies and are not unfair.

70. Further, Mr Warby submits that it is clear that the words complained of are not investigatory journalism, but reporting.

71. I accept that there are the differences between the Particulars of Claim and the words complained of identified by Mr Bennett. But in my judgment, these differences alone would not be of such materiality as to lead to the conclusion that the words complained of are not a fair and accurate extract from the Particulars of Claim. The Particulars of Claim in the Penthouse action refer to Doyle Investments Ltd as a non-existent company (para 16(1)), and they allege that it was Mr Qadir and his associates that gained control of the company that owned the nightclub. The precise order of the transfer of the shares and the other incidents is not material. (In fairness to Mr Qadir I record that it is his case that Doyle Investments Ltd is an offshore investment vehicle for a Mr Aslam based in Nevis).

72. But in my judgment Mr Qadir is on stronger ground with his point (made in the original Reply) that the words complained purport to be not just the publication of an extract from the "writ" (as the Particulars of Claim are referred to) but to be the result of a journalistic investigation as well.

73. In my judgment the first Article is in fact the product of a journalistic investigation, one part of which is a report of what is in the Particulars of Claim: it is not just a report of what was on the court file. This is clear from the extraneous information that is included, relating to Mr Qadir, and to the results of Mr Watkins' attempts to obtain comments from the three claimants and the two defendants.

74. I feel no hesitation in finding that the first Article is the product of an investigation, because that is how Mr Watkins treated it himself at the time. He did investigate. If the first Article had been no more than the publication of an extract from the court file, there would have been no requirement for ANL to approach the parties to the Penthouse litigation to verify whether what counsel, a solicitor or a witness had said was accurate. Mr Warby makes this point part of his submissions in another context, citing *Burnett & Hallamshire Fuel Ltd v Sheffield Telegraph & Star Ltd* [1960] 1 WLR 502, at p506. If a journalist reporting on a trial chooses to approach the lawyers, parties or witnesses, then he is carrying out his own investigation.

75. However, the parts of the first Article that are the product of the investigation do not themselves add to the sting of the libel, save for the final sentence "All other parties declined to comment". The other words underlined in para 5 above seem rather to be directed to explaining why the publication of the words complained was a matter of public interest, or, in the words of the 1996 Act, of public concern and for the public benefit.

76. It follows in my judgment that ANL has proved that the words complained of (other than the extraneous matter, and in particular the last sentence) are a fair and accurate extract from the Particulars of Claim in the Penthouse action which was a document required by law to be available to public inspection."

46. I was then taken to Asifi v Amunwa [2017] EWHC 1443 which related to a publication derived at least in part from a reported judgment. At paragraphs 39 onwards Warby J (as he then was) held that meaning can be made the subject-matter of summary or strike-out determination although that is not the usual modern course which is to favour full

trial of it (see above). However, he held that the claimant's contentions as to defamatory meanings were reasonably arguable and had real prospects of success.

47. However, at paragraphs 60 onwards Warby J granted summary judgment in favour of a Qualified Privilege defence having considered the applicable principles as follows:

" 62. **Fairness and accuracy**. The applicable principles were not the subject of any argument in writing on the part of Mr Harding, or any exploration before me at this hearing. Mr Alsaifi did submit extensive written argument on the applicable principles. They are well-established and familiar, and I have also been reminded of them in the course of argument in a second case brought by Mr Alsaifi in which I heard argument a few days after the hearing in this case, and in which I have been preparing a reserved judgment at the same time as the present one.
63. The principles are clearly stated in the following authorities, all of which I have considered in the course of preparing this judgment: *Cook v Alexander* [1974] 2 QB 279 (CA), *Tsikata v Newspaper Publishing* [1997] 1 All ER 655 (CA), *Ismael v News Group Newspapers* [2012] EWHC 3056 (QB) and *Qadir* (above). Key points for present purposes are that fairness and accuracy are matters of substance not form. A report does not need to be verbatim. It may to an extent be impressionistic. Fairness is to be tested by reference to the impact on the claimant's reputation. Minor inaccuracies will not deprive a defendant of the privilege.
64. I have also had regard to Mr Alsaifi's skeleton argument on this issue, which cites the following well-known authorities: *Turner v Sullivan* (1862) 6 LT 130, *Kimber v Press Association* [1893] 1 QB 65 at 71 (Lord Esher MR), *Adam v Ward* [1917] AC 309, *Grech v Odhams Press Ltd* [1958] 2 QB 275 at 285, *Kingshott v Associated Kent Newspapers Ltd* [1991] 1 QB 88 at 98, *Maccaba v Lichtenstein* [2003] EWHC 1325 (QB) at [12], *Curistan v Times Newspapers Ltd* [2008] EWCA Civ 432, [2009] QB 231 and *Henry v BBC* [2005] EWHC 2787 (QB). The main points made by Mr Alsaifi by reference to this body of authority are that the article is not a report but a commentary; that it misrepresents the effect of the proceedings by omission; and that it includes extraneous material which is not privileged and is intermingled with reporting, so as to defeat the privilege."

48. I note that as part of this, Warby J considered at paragraphs 79 onwards certain words which were not part of the reporting of the previous judgment, and treated them as separate from it. Warby J held those words not to be capable of founding any successful claim in defamation, and that, even if they were capable of being defamatory, there were other defences which clearly existed and were bound to succeed. In his analysis, he included the following statements:

"81. If I am wrong in these conclusions, and in my conclusions about meaning, then the most that could be said, in my judgment, is that the words in the "Mind the gap" section contain, in context, an implicit comment to the following or similar effect: that Mr Alsaifi was guilty of professional misconduct involving a child which should have attracted investigation and sanction; and that the outcome of his case shows that there is a concerning gap in the legal regime for protecting children in educational settings.

"82. This is plainly comment. It is manifestly comment based on the factual scenario presented in the Appeal Judgment. Any reader would understand that. Such imputations

would inevitably be held defensible as honest opinion pursuant to s 3 of the Defamation Act 2013…"

I note that Warby J did not regard this additional (and hostile and defamatory) expression of opinion as defeating the Qualified Privilege argument; its being clearly merely a comment on what had been fairly and accurately reported to be the privileged judgment in that case.

49. I was then taken to the decision in Harcombe v Associated Newspapers [2022] EWHC 543 where a defence of Qualified Privilege regarding reporting of Parliamentary proceedings was advanced; and Nicklin J had to consider whether that might be determined after disputes as to meaning.

50. In paragraphs 6-9 Nicklin J said:

"6 The complicating factor is the Court of Appeal's decision in ***Curistan -v- Times Newspapers Ltd*** **[2009] QB 231**. That decision, which predated the Defamation Act 2013, is authority for the position that the court must resolve the extent to which the publication complained of is protected by privilege before the court can determine meaning. In other words, when performing the test of deciding what is the meaning, the natural ordinary meaning of an article, the court must first remove from its consideration such parts of that article as the court finds is protected by qualified privilege.

7 There has been some criticism of that decision. The authors of *Gatley* suggest, at para.30.8:

"The full consequences of this iconoclastic approach to the determination of meaning remain to be seen."

8 One of the consequences of the ***Curistan*** principle in relation to this claim is that it stands as a fairly significant impediment to the court determining the natural and ordinary meaning of the article. To do so, the court would have to resolve the question of qualified privilege. The determination of whether the pleas of qualified privilege protect parts of the publications complained of, in turn, would require the court to determine also the plea of malice that the Claimants have advanced. There are other implications of ***Curistan*** which have emerged only since the Defamation Act 2013. As the objective meaning of a publication is likely to be an integral part of the assessment of serious harm under s.1 Defamation Act 2013, that means that any dispute as to serious harm to reputation could also only be carried out after the issues regarding qualified privilege have been resolved.

9 There is no doubt that the impediment that ***Curistan*** represents has significant implications for this case and its case management. The court now has the benefit of full statements of case filed by the parties. It is no exaggeration to say that the parameters of this litigation are very substantial. Indeed, this is the most significant piece of defamation litigation that I have seen in a very long time."

51. Nicklin J was particularly concerned that the Curistan principle meant that a single publication might have two different meanings in defamation law i.e. one taking account of all the words fully, and one taking account of all the words except those

protected by Qualified Privilege which words would be relevant only as to the context in which the other words were to be viewed. He considered the Curistan principle conflicted with a fundamental principle of defamation law, namely that a single publication could only have one meaning but also recognised (and held) that the Curistan principle was binding at High Court Judge level:

"40 One significant downside of having the two trials that I have identified is that there is a very real risk of an appeal that will arise following the determination of the issues at Trial 1. I say that because there has got to be at least a prospect that the ***Curistan*** decision, when applied to these proceedings, will mean that here could be two rival meanings: one natural and [ordinary?] meaning, arrived at by excluding what the ***Curistan*** privilege material, and one in which the ***Curistan*** material is taken into account. ***Curistan*** is a decision of the Court of Appeal which a first instance Judge would be bound to follow. I have already referred to the fact that ***Curistan*** as a decision has received some criticism. There are respectable arguments that the decision profoundly conflicts with a fundamental principle of defamation law; the single natural and ordinary meaning of a publication. That issue alone could lead potentially to an appeal, and there would be several other issues that the parties could well seek to appeal after Trial 1."

52. Those considerations led Nicklin J to direct a different order for determination of issues i.e. Qualified Privilege first, than that which he might have otherwise found to be appropriate.

Mr Blackburn's Asserted Principle Argument

53. I now return to Mr Blackburn's contention that it is logically impossible for the Qualified Privilege defence to be made out, and therefore that it has no real prospects of success, advanced in essence as follows:

i) The Excalibur Judgment and Excalibur Transcript do not contain meanings defamatory of the claimant; and, while the defendants do not accept that they are incapable of being defamatory, the defendants have not accepted that they are defamatory or pointed to any manner in which they are said to be, and therefore I should proceed on the basis that they are not;

ii) If the Article (whether or not as amended) does not contain meanings defamatory of the claimant (a) the claim will simply fail and so there will be nothing to resist by way of a Qualified Privilege defence and so (b) the pleaded defence both cannot arise and is pointless;

iii) If the Article (whether or not as amended) does contain any meaning(s) defamatory of the claimant, such meaning(s) cannot be derived from the Excalibur Judgment and the Excalibur Transcript. In consequence either (a) such meaning(s) is not derived from a reporting of the Excalibur material in which case it cannot be used to give rise to a Qualified Privilege defence to such meaning(s) or (b) there has been an intermingling of extraneous material with the Excalibur material, such as to give rise to a defamatory meaning, which means that there is not a "fair and accurate reporting" of the Excalibur material and Qualified Privilege is lost;

iv) It is therefore logically impossible for there to be a Qualified Privilege defence and so it has no real prospect of success.

54. Mr Price points out that this analysis is not presented or considered in any authority or text-book and he submits that it has no foundation.

55. I do not think that Mr Blackburn's Asserted Principle is correct but rather that it is inconsistent with authority and in particular the Curistan decision and underlying principle even assuming, as I do for the purposes of my analysis, that the Excalibur Material does contain nothing defamatory of the claimant. This is for the following reasons.

56. First, the Curistan judgment at its Proposition (v) and the following paragraphs of Arden LJ's judgment makes clear that the Qualified Privilege operates so that the relevant privileged words are ignored for defamation purposes, at least as far as meaning is concerned, except insofar as they provide context for non-privileged words. That that was laid down by the Court of Appeal was affirmed in Harcombe in the paragraphs which I have cited above, and where Nicklin J held that that reasoning is binding at High Court Judge level (and where I am sitting as a KBD Master).

57. Thus Qualified Privilege is a matter which has to be dealt with, as stated in Harcombe, before meaning can be considered. That is because the meaning which the court is to arrive at is of the words other than those protected by Qualified Privilege (but in the context of those privileged words having been used). Therefore it is logically necessary to identify which, if any, words are protected by Qualified Privilege (at least where, as here, meaning is in dispute). Thus the question of what is subject to Qualified Privilege simply has to be resolved in order for the court to then progress on to determine meaning; and it cannot be ignored simply because (which is Mr Blackburn's contention) it is common ground that whatever may turn out to be subject to Qualified Privilege is not itself defamatory. If Qualified Privilege is simply ignored, the question of meaning cannot be properly considered.

58. Second, Mr Blackburn's argument ignores, in my judgment, the way in which this type of Qualified Privilege operates. As is stated in Curistan this type of Qualified Privilege operates by granting protection to words used as long as they constitute a fair and accurate report of protected subject-matter. That approach reflects the wording of section 15 of the 1996 "… the publication of the statement or other report is privileged…" Thus as long as the reporting is fair and accurate, the use of the relevant words cannot found any claim in defamation i.e. they are simply to be ignored as if they had not been said (except insofar as they provide context for other non-privileged words; and which otherwise might have their meaning distorted if that context was to be ignored).

59. The consequence of this is that Qualified Privilege is not necessarily best termed as being a "defence" to a claim in defamation (and so that it is only relevant, according to Mr Blackburn, if there is a valid claim in defamation which might be met by a defence). Rather it is more of a (disruptive) response to an asserted claim in defamation in the form of a right which prevents the claimant from relying upon the relevant words in order to found the claim itself. It does not matter whether the privileged words used are defamatory or not, they simply cannot be used to found a claim (except by way of providing context to other words or where an exception e.g. malice, applies); and the

privilege operates to limit what the claimant can rely upon. It seems to me to be perhaps better to categorise Qualified Privilege in this context as being an "issue" (both generally and for the purposes of CPR24.3) rather than a "defence".

60. Thus this type of Qualified Privilege is a freestanding right of a defendant and has to be determined at an early (indeed prior to meaning) stage (albeit that the question of determining what it is that has been published and by who and to whom comes logically prior even to this). In my judgment this reflects the wording of the statute, and also of the case law binding upon me, and also principle since part of the purpose of section 15 of and Schedule 1 to the 1996 Act is to enable those who report fairly and accurately simply to be free from any risk of any claim (whether otherwise justified or unjustified) being made against them in relation to their reporting. That reporting is simply not to be capable of being used against them.

61. Third, I do not agree with Mr Blackburn's analysis of logic so as to conclude that the ostensibly reported words can only matter if they contain defamatory material. The process of arriving at meaning is an holistic one. It is perfectly possible, and indeed is effectively contemplated in Curistan, that if the privileged words are merely treated as context, the non-privileged words will be insufficient to give rise to a particular (and perhaps any) defamatory meaning while, if the privileged words had been considered with the non-privileged words, they would give rise to a particular combined meaning(s) which would have been defamatory.

62. For example, if privileged words amount to assertions of certain acquisitions of money by a person which the reasonable reader would regard as innocent in themselves, and non-privileged words refer to assertions of general unreliability on the part of that person (which either might not be defamatory or might be expressions of (honest) opinion), using the privileged words as mere "context" might well be insufficient to give rise to a (defamatory) meaning that there had been dishonest (or at least unjustified) acquisitions, while if the words were all taken together such (defamatory) meaning(s) might well be held to be the case. Thus it is potentially important to identify and "remove" (apart from giving context) the privileged words; and it is potentially not determinative whether those privileged words are defamatory in themselves.

63. I have borne in mind Nicklin J's concern that Curistan is inconsistent with the longstanding principle that a publication only has one meaning, and the Curistan analysis enables a publication to have one set of meanings if the privileged words are taken into account and a different set of meanings if they are not (other than as mere context). However, as to this:

    i) Nicklin J holds that that is the Curistan principle and binding on any judge below the level of the Court of Appeal;

    ii) I am not sure that there is necessarily an invasion of long-standing principle. Rather there is a statutory deeming, in effect, that, at least as far as meaning of the publication is concerned, certain words have not been used (except that they supply context – and context will exist to some degree in relation to any publication) with meaning(s) only to be derived from the remainder, although that may give rise to the particular problem which I note in the following sub-paragraph;

iii) I have not been asked to determine, or even to consider, the situation where non-privileged words on their own (even with privileged words giving them context) would have a defamatory meaning but when taken fully (i.e. with the privileged words not just giving context) with privileged words would not do so. My first thought would be that the publisher, whose right and protection qualified privilege is, would be able to choose to rely upon all of the words together; although they might be faced with a difficulty if the privileged words either on their own or with the non-privileged words would give rise to some other defamatory meaning. In that latter case, the underlying policy of the operation of Qualified Privilege might still protect them from such a defamatory meaning being relied upon against them; but I do not need to and I make no determination as to any such matters.

64. Fourth, Mr Blackburn's Asserted Principle does not have any express support in text-books or authority. While not determinative, that point supports my analysis which is conventional and simply applies Curistan and Harcombe.

65. It therefore seems to me that both principle and authority require the court to determine what, if anything, is subject to Qualified Privilege so that it can then effectively be removed from the case against the defendants (except by way of giving context to non-privileged words), at least as to meaning, and so that meaning (and perhaps also other matters) can then be determined on that restricted basis. It does not matter for these purposes whether that removed material is defamatory or not defamatory either in itself or with (save for giving context to) the non-privileged material; it is simply to be so removed from such consideration (except for giving context). That removal may, depending on the case, very much affect the meaning(s) to be given to any non-privileged words (and I have not been invited to determine whether or not that would be the case here, and where such a determination would result in my having to consider meaning in detail and which would involve a different consideration to what has been advanced on this limited summary judgment application and would also be potentially inconsistent with paragraph 6 of PD 53B).

66. I would add that, in addition to my tentative analysis above regarding a publisher seeking actually to rely upon and use the privileged words in relation to meaning in an appropriate case, it may be that a publisher would wish to and could use the privileged words for other purposes e.g. in relation to damage where the privileged words themselves might have very much affected the defamed (by non-privileged words) person's reputation. However, I again do not have to and do not decide that.

67. I therefore do not consider that Mr Blackburn is correct in contending that a Qualified Privilege "defence" cannot arise in this case and therefore has no real prospect of success. Rather the true position is that a Qualified Privilege "issue" does arise in this case and I have to consider (see the next section) whether it has any real prospect of success. In the light of that conclusion, it does not seem to me to be necessary, or appropriate, for me to consider whether the defendants can properly advance a contention that the Excalibur Material "is not incapable of being defamatory" without actually asserting that it is defamatory or identifying any way in which it might be said to be defamatory. I suspect that the defendants may have taken that stance because they would be concerned that they might be thought to be impliedly accepting some of the claimant's arguments that the Article is defamatory if they sought to assert that elements of the Excalibur Material were defamatory of the claimant. The possibility of

defendants being faced with such a difficulty tends to reinforce the conclusion that I have already reached (for the reasons given above) that Mr Blackburn's Asserted Principle does not exist in law, and actually would involve placing the order of analysis of "fair and accurate report" and "meaning" the wrong way round. However, I do not need to consider that aspect any further having reached my conclusion above on the assumption that the Excalibur Material does not contain anything defamatory of the claimant.

Whether the Article (as unamended) is a "fair and accurate report" of the Excalibur Material

68. The claimant contends that, in any event, the Article is not a "fair and accurate" report of the Excalibur Material for a number of reasons set out in the documentation which I required the parties to provide following the June Hearing.

Principles to be Applied

69. It does seem to me, as was essentially common-ground, that, in one sense, I do have the necessary material to consider this argument on a summary judgment basis as it essentially involves a consideration of the Excalibur Material, where the defendants have the entirely of it and have been able to adduce all that they rely on to me, and the Article itself. It is difficult to see what further material could be relevant, and none has been suggested to me.

70. However, I feel that I can only approach the matter from a summary judgment perspective with a degree of caution since, not only is the matter one of evaluation, but I do not feel that I can be entirely sure as to (i) what particular points of interpretation of the Article, on whatever bases, would be advanced at a full trial which included meaning and (ii) which parts of the Article are being said to be derived from the Excalibur Material (and to which I refer further below). There are also further difficulties to which I refer below.

71. It was further, I think, common ground, although in my judgment it is right anyway in the light of the case law which I have cited above, that I should approach the question of whether the defendants have a real prospect of success on the Qualified Privilege issue on the following bases:

    i) The question is an evaluative one of whether the words used in the Article are "a fair and accurate report";

    ii) The report (see Curistan at paragraph 26) :

        a) Can (but need not) be verbatim, and

        b) Can be selective and concentrate on one (or more) particular aspects, but

        c) Must report fairly and accurately the impression that the reporter would have received as a reasonable spectator in the proceedings;

    iii) Fairness means "fairness in terms of presentation" (Curistan @ paragraph 27);

    iv) Fairness will be lost if "there is a substantial or material misstatement of fact which is prejudicial to the claimant's reputation" (Curistan @ paragraph 27).

72. It is further clear from Curistan and the other case law that Qualified Privilege can be lost as a result of "intermingling" of extraneous material which is not privileged; and where Laws LJ referred to Lord Denning's statement of a publisher who has "put the meat on the bones" or who has "produced a critically different text". However, it is also clear that mere addition of non-privileged material is not of itself enough to defeat Qualified Privilege, as Curistan itself decides that there can be both privileged and non-privileged material, and that the non-privileged material can itself be defamatory (even when construed, as stated in Curistan, with the privileged material just giving it context).

73. This gives rise to potential difficulties in situations where, as here, the published Article (i) includes elements which purport to be or are part of a report of some Excalibur Material (ii) includes different sections which contain different elements of what is said to be Excalibur Material each with other material and (iii) has some sections which are wholly distinct from the Excalibur Material. The questions then arise as to (1) whether the Court should seek to divide up the Article and analyse each section of the Article separately to see whether it contains a fair and accurate report of the Excalibur material and (2) how the Court should approach a section (or the whole) of the Article to consider whether an "intermingling" has occurred such that Qualified Privilege is lost.

74. With regard to the first question of whether the Court should seek to divide up the Article into sections, it seems to me to be consistent with the authorities that I should do this when, but only when, there is some clear division. Not to do that would create an unreal distinction between the publication of two sets of material and of one combined set of material or even of a book which contains a number of distinct chapters dealing with different subjects; and would also be inconsistent with the concept that there must be "intermingling". However, and in particular as the boundaries between sections can be blurred and as sections can overlap and the content of one can feed off another, the court has to be cautious and this is still all conditioned by the over-arching question of whether what appears which is said to be from the Excalibur Material is a "fair and accurate report".

75. With regard to the second question as to what is an "intermingling" and what is simply a combination of privileged and non-privileged material, this seems to me to be a fact-sensitive evaluation, but that the court must construe the publication (here the Article or a relevant section) to ask itself as to what is said objectively (expressly or impliedly) to be being "the report" and then to consider whether that is "fair and accurate". However, it may be that the inclusion of extra matters are such either as to purport to be part of "the report" itself so that it is no longer "fair and accurate" or to render "the report" something which is not "fair and accurate". On the other hand, it does also seem to me that the relevant extra or incorrect material must be something of substance; the inclusion of something immaterial (e.g. perhaps, although there may be situations where this would be material, the colour of a coat which a witness was said to have been wearing) would not affect overall fairness and accuracy.

76. So, for example, to write that "the judge said [something of substance which the judge did not say]" would be an "intermingling" as it purports to be part of the report and has rendered it such that it is not fair and accurate; but to say (correctly) "the judge said X" and to add "but which was not covered in the court case, event Y also happened" would probably be a clear distinction and not an "intermingling" although the latter statement might be defamatory in its own right.

77. A commentary might be seen to amount to a precis of what the judge had said or a modification to what would otherwise have been the meaning of words which did record accurately what the judge had said (e.g. perhaps, a headline to an article of "judge finds X to have lied" when the (accurate) text of the article was merely that the judge had held that there had been an innocent mis-statement), and so as to be an "intermingling" which, because it was incorrect, destroyed the fairness and accuracy of the report.

78. However, some headlines or commentaries might clearly not be part of the report. For example, "disgraced politician has their divorce case heard" might leave a clear boundary between the "disgraced politician" statement and what was being reported about their divorce litigation. In Amunwa (see above), Warby J clearly regarded the inclusion of an implied statement (the claimant was guilty of professional misconduct) by way of "manifest commentary" on material which was a fair and accurate report of the privileged judgment, as separate from the "report" and not affecting the existence of the Qualified Privilege.

79. The difficulty in practice arises where it may not be clear as to what is being said in the publication to have been part of the report and not to have been part of the report. This seems to me to be a matter of what the reasonable reader would take from it (applying the usual approach which is taken in defamation law to ascertaining meaning) but where, once an article had purported to be reporting potentially Qualified Privileged material, the reasonable reader might well assume that it was continuing to do so unless told otherwise. However, it all depends on the particular words used.

80. As stated above, I do not need to consider the concept of "adoption" as such, and where Arden and Laws LJJ in Curistan may have differed to some extent as to the nature and existence of such a concept.

Application of Principles to the Article (original form)

81. I consider first the Article in its unamended form, applying the principles and approaches set out above. However, while it does seem that I have before me all the material available to the hypothetical trial judge, I consider that I should be cautious not only for the reasons given above but also as:

    i) The Article is not directed to the claimant. He is someone who is mentioned within it, but its thrust is towards Mr Kozel. The Article's references to the Excalibur Material are with regard to what is drawn from that which is asserted to be relevant to Mr Kozel, not the Claimant. That does not prevent the Article from being defamatory of the Claimant and, more importantly, does not mean that what is purportedly drawn by the Article from the Excalibur Material is a "fair and accurate report" of the Excalibur Material – but the words used in the Article do need to be seen in that context;

    ii) There is something of an overlap (even if limited for the reasons which I give above) between questions of "fair and accurate report" and "meaning" since both involve questions of what the reasonable reader would take from the words used. I need to be careful to avoid, or at least to seek to avoid, determining questions of meaning as part of the process of determining whether there is a "fair and accurate report". I do make clear in this judgment that I am not

determining any question of construction or meaning of the Article (in amended or unamended form) so as to the bind the parties in the future (except in relation to the Qualified Privilege defence to, but only to, the extent that I actually reject it);

iii) I am only dealing with the question of whether the Qualified Privilege argument has a real prospect of success;

iv) The terms and structure of the Article may lead to the defendants having real prospects of success for contending that it should be divided up into parts (and as stated is a possible course in my analysis of applicable principles and approach set out above) and so that a mis-statement or omission in one part of the Article may not mean that the Qualified Privilege cannot be asserted in relation to another part where what is said there is a "fair and accurate" report in relation to that part.

82. There is also the point that, while I have required the defendants to produce a document setting out what they say are elements (by individual paragraphs or sentences) of the Article which do report (fairly and accurately) elements of the Excalibur Material and so attract Qualified Privilege, the claimant's application is primarily based on an assertion that Qualified Privilege does not exist at all (either never having existed in the first place as not being a report of potentially privileged material or as having been lost in its entirety due to an absence of "fair and accurate reporting") but in the alternative seeks to attack (and on those two different bases) specific elements of what the defendants say does attract Qualified Privilege. However, it seems to me that, where I am concerned with whether the defendants have a real prospect of success on this issue, it is more convenient, rather than going through each element which the defendants rely upon, to consider the claimant's various points as to why it is said that Qualified Privilege does not exist or is limited.

83. The claimant has set out in the documents which I have required to be filed (and I have considered their entirety of which the following is only a summary of what I see as being the main or material points) why he contends that the Article generally, and particular elements within it, is not a "fair and accurate report" of Excalibur Material. I have considered his points holistically (as fairness and accuracy involves an overall reading of the Article as well as of individual statements within it). His complaints are essentially as follows.

84. First, that in the opening summary Paragraph 5 of the Article there are references to the RA being a vehicle to "kick back huge revenues to an Iraqi Kurdistan politician's company". It is said that the Excalibur Material does not justify such a statement as "kick back" has a connotation of illegal, corrupt and secret payments, and no such words were used in the Excalibur Judgment which merely stated that the RA was regarded within the KRG as being contrary to KRG law and was treated as void. It is also said that paragraph 31 of the Article exacerbates this when it suggests that the Shaikan PSC could have lasted for 25 years when the Excalibur Judgment was silent on its term, and that the Excalibur Judgment does not justify the reference to "huge revenues".

85. I do not see this as leading to a conclusion that the Qualified Privilege argument has no real prospect of success. The Article makes clear (e.g. @ paragraph 27) that the RA

was with Dabin which was Berwari's company and which was unlawful under KRG law because of the involvement of Berwari (the "Iraqi Kurdistan politician"); and that appears within the Excalibur Judgment (@ paragraph 116).

86. The Excalibur Judgment refers to what can be regarded as "huge revenues" simply where Dabin was to be entitled to 10% of the net revenues of the Shaikan block in the RA which was entered into at virtually the same time as the Shaikan PSC (@ paragraphs 740-741); and the Excalibur Judgment refers to millions of dollars in the context of the Shaikan PSC (indeed one could calculate the potential net revenues from use of the percentages quoted and ETAMIC's original liability of $40 million for expenses – and which calculation would suggest very large sums). I have no evidence before me to say that the Shaikan PSC, which was read by the court in the Excalibur Trial, did not have a term of 25 years.

87. The Article does not state that the Excalibur Judgment used the words "kick back". Rather the words "kick back" are, at least arguably, simply a characterisation by way of manifest comment on those facts, which are contained in the Excalibur Judgment, as they are stated in the Article. It is correct that the Excalibur Judgment (see @ paragraphs 1311-1313) held only that GKP, KRG and Dabin had accepted that the RA was, as a result of Berwari's involvement, contrary to KRG law; rather than holding that it actually was contrary to KRG law, but that seems to me to be of no real moment especially where no point is taken on that distinction.

88. For all those reasons, I do not see it as at all clear-cut that the relevant report is not "fair and accurate". In any event, this is all only relevant to the claimant if his asserted meanings are correct, and I am not prepared to investigate meaning where, in relation to these passages, I see it as unclear, for the reasons stated above and below.

89. Second, that in the opening summary Paragraph 5 of the Article and in paragraph 41 of the Article there are references to the RA being deemed illegal and cancelled shortly before the coming into effect of the UK Bribery Act. The claimant says that it is implied that this was done in order to avoid the consequences of the Bribery Act; and that no reference was made in the Excalibur Judgment to the Bribery Act at all.

90. I do not see this as leading to a conclusion that the Qualified Privilege argument has no real prospect of success. The Article, at first sight, at its paragraphs 41 and 42 only gives the timings of the relevant legislation and suggests a contravention of predecessor legislation, but otherwise does not at first sight make the implication which the claimant seeks. Further, I cannot see it as being remotely clear that it is being suggested by the Article that the Excalibur Judgment stated either expressly or impliedly that there was any such connection. Again this seems to be (or at least arguably to be) manifest comment and manifestly not something which was said to have been stated in the Excalibur Material; and so that I do not see it as at all clear-cut that the relevant report is not "fair and accurate".

91. Further, at first sight this is only (at most) a matter which attacks Kozel and Berwari. For it to be relevant to the claimant would tend to require me to engage in a meanings determination which I am not prepared to do for the reasons given below, and all the more so where I do not regard the relevant asserted meaning as being at all clear-cut as there is no express suggestion of the claimant receiving any personal benefit, at least at this point.

92. Third, that at various points the Article links the Shaikan PSC and the RA to each other where the Excalibur Judgment does not do so. Further, paragraph 28 of the Article referred to the RA (which was a document read in the Excalibur Trial) including an "expansive confidentiality clause", when it merely contained an ordinary commercial confidentiality clause, and referred to the RA providing for Dabin to provide services "related to securing and subsequently managing" the Shaikan PSC, when, while the RA did provide for that, the Shaikan PSC had already been granted before the RA was signed. Further in paragraph 30, the Article correctly stated that clause 2(c) of the RA provided that Dabin would arrange meetings with and introductions to organisations and individuals in Kurdistan and Iraq but without mentioning that that was limited to actions "which will assist the development of GKI's business in Kurdistan."

93. I do not see this as leading to a conclusion that the Qualified Privilege argument has no real prospect of success. First, I am not sure that the Excalibur Judgment (in particular paragraphs 739-741) cannot be read to impliedly link the two to one another in terms of their creation (at least as far as Kozel and Berwari, whom the Article is, or arguably is, about at this point, were concerned). The Excalibur Judgment sets out the very close temporal and other relationships between the two transactions, and it might well be said to be obviously implicit in it that Berwari had assisted in securing the Shaikan PSC on the understanding that GKP would enter into the RA with Dabin, and which would render the Article on the claimant's construction an accurate report. Second, the statements in the Article do not expressly extend to a statement that the Excalibur Judgment has linked the two transactions together. Thus this may very well be a situation of manifest comment on the facts which have been derived from the Excalibur Judgment. Third, the words quoted from the RA are seemingly accurate. It is a matter of construction of the RA as to what they relate, and whether they are only (then) forward-looking, and that is a potentially a complex process where I do not even have the RA itself before me. Fourth, again for this to be relevant to the claimant would tend to require me to engage in a meanings determination which I am not prepared to do for the reasons given below, and all the more so where I do not regard the relevant asserted meaning as being at all clear-cut as there is no express suggestion of the claimant receiving any personal benefit, at least at this point.

94. I do not see the points on the confidentiality argument as of weight. The word "expansive" seem to be, at least arguably, manifestly comment; and also, arguably, accurate. I do not see the points on clause 2(c) as of weight or how it is at all clear that the omitted words make any difference to anyone's view or assessment of the RA.

95. Fourth, that in the opening summary Paragraph 5 of the Article there are references to GKP being allowed to continue with the Shaikan PSC notwithstanding that the RA was illegal. This is linked to points made on paragraph 37 of the Article and I deal with them altogether below.

96. Fifth, that the Article did not state that the parties to the Excalibur Litigation had all agreed that the claimant was "a man of integrity and someone who would appreciate what was in the best interests of the KRG in considering bids and awarding contracts" (see paragraph 360 of the Excalibur Judgment) and "a man of integrity. It is highly unlikely that he (or Mr Howard) would be parties to some underhand Kozel stratagem" (see paragraph 1339 of the Excalibur Judgment"). The claimant says that the Article has the meaning that the claimant is not such a man of integrity and that these omissions render the report not "fair and accurate".

97. I do not see that I should decide that this, as of itself (and see below), should lead me to a conclusion that the Qualified Privilege argument generally has no real prospect of success for the following reasons. First, the Article is not about the claimant but rather Mr Kozel and GKP's activities. Thus a "fair and accurate report" does not necessarily require anything to be said about the claimant at all. Second, the argument rather depends upon the Article having the meaning that the claimant is not a man of integrity, or at least something close to that, otherwise the omitted material is of no real relevance or importance. However, that is a question which is hotly in issue between the parties. While, in theory (and see above), I could seek to construe the Article as a whole, including what might be privileged material, in order to find its meanings, that would come very close to my reaching my own meanings determination (which I am not permitted to do, and which the parties have not asked me to do) especially as if I rejected the Qualified Privilege defence there would be a risk that my judgment as to meaning (for the purposes of Qualified Privilege) could conflict with a later judgment as to meaning (for the purposes of whether the Article included defamatory meanings). Third, I do not regard the issue of meanings, at least with regard to whether there is a general meaning of the Article that the claimant is not a man of integrity, to be appropriate for summary determination where the usual rule and practice is that there should be a trial (and where factual questions of wider context allegedly known to the reasonable reader might be of relevance) and I do not see the answer to this issue of meaning to be at all clear-cut. That is all the more so where paragraph 58 of the Article contained the claimant's lawyers' statement that there was no basis to attack the claimant's integrity. Fourth, even if the Article has the asserted meanings, I do not see it as at all clear that those meanings are to be derived from the elements of it which purported to be from the Judgment (and there is no apparent statement in the Article that the Judgment held that the claimant was not a man of integrity).

98. Sixth, that the Article did not state that it had been held in the Excalibur Judgment that the claimant had not known about the RA, and Berwani's involvement in it at or around the time of its creation (see paragraph 1312 of the Excalibur Judgment), and had required its informal cancellation with its remuneration being effectively forfeited to KRG once he had learnt of those matters (see paragraph 1313 of the Excalibur Judgment). However, the Article in paragraphs 33 and 34 referred to the Excalibur Judgment stating that: a day before the Representation Agreement was signed, Kozel had had a barbeque at Berwari's house and where the claimant was present; the claimant owned a "large home in the well-heeled British town of Henley-on-Thames"; and that the claimant had had a relationship with Kozel from prior to the claimant's KRG ministerial appointments and a subsidiary of the claimant's company had prepared a report for GKP ahead of a share issue three years earlier. Those statements are in the Excalibur Judgment (see paragraphs 24 and 739-741) except for the asserted facts that the claimant owned the house in Henley-on-Thames and that that place is "well-heeled".

99. I do not see that I should decide that this, as of itself, should lead me to a conclusion that the Qualified Privilege argument has no real prospect of success for the following reasons. First, the Article is not about the claimant but rather Mr Kozel and GKP's activities; and at this point much more about those activities as connected with Berwani (and also a possible connection between Dabin and the then president of the KRG – that being derived from paragraph 119 of the Excalibur Judgment). Thus a "fair and accurate report" does not necessarily require anything to be said about the claimant at

all. Second, the argument again rather depends upon the Article having the meanings for which the claimant contends (i.e. that the claimant had acted improperly regarding the entering into of the Shaikan PSC due to his knowing of the fact of the (imminent and linked entry into) the RA) and which are hotly disputed and which I do not think I should, for the reasons given above, and have not been asked to, determine. Third, I do not regard the asserted meanings, which are said to relate to and be defamatory of the claimant, at least insofar as they are derived from these matters, as being at all clear. At first sight, the only relevant meaning may be that Berwari was using his connections with the claimant, being the oil minister, to assist GKP to obtain the Shaikan PSC in return for GKP entering into the RA with Dabin. However, that does not necessarily suggest either that the claimant had relevant knowledge or indeed anything untoward on the part of the claimant. Fourth, I cannot see the statements about the claimant's home as clearly adding anything material, they are well arguably just matters of "colour" and immaterial embellishment.

100. Seventh, that in relation to the cancellation of the RA, no mention was made of the fact that the claimant had procured that the relevant 10% of the net revenues from the Shaikan PSC should go to the KRG. This is linked to points made on paragraph 37 of the Article and I deal with them altogether below.

101. Eighth, that in the opening summary Paragraph 5 of the Article there are references to $12 million being "funnelled" by GKP to a company connected with Kozel and the KRG (being ETAMIC). Further: in paragraph 76 it was said that Kozel had said that the ETAMIC agreement "was a strange deal"; and in paragraph 78 it was said that the claimant had brought ETAMIC to GKP; and in paragraph 81 it was said that it was unclear how ETAMIC would assist GKP to acquire further rights and "what influence it had in Kurdish oil circles" (when it was said the Excalibur Material did not deal with this); and in paragraph 82 it was said that GKP relinquished "the new oil licences" in 2016 (when the Excalibur Judgment was silent as to this) and described ETAMIC (in paragraphs 72 and 82) as another/the "mysterious company" when "mysterious" was not used in the Excalibur Judgment.

102. I do not see that I should decide that this, as of itself, should lead me to a conclusion that the Qualified Privilege argument has no real prospect of success for the following reasons. First, paragraph 1296 of the Excalibur Judgment clearly states that the claimant introduced ETAMIC to GKP (although the claimant says that that is in fact incorrect) and merely says that ETAMIC had been formed by "a group of Middle Eastern investors", and the witness and documentary evidence in the Excalibur Transcript and material used at the Excalibur Trial (quoted in paragraphs 77 and 78 of the Article) was that the claimant and KRG had introduced ETAMIC. Anything more (including the statement that ETAMIC was connected with KRG, and which I note was not, at least expressly, a statement of connection with the claimant; and the statement that it was unclear what influence ETAMIC had in Kurdish oil circles) is at least arguably simply manifest comment upon an absence of anything else concrete having been said. Second, having looked at the Excalibur Transcript, it does seem that Kozel and others said what was attributed to them in the Article in this context. Third, the word "mysterious" could have numerous meanings and at first sight would seem well arguably to be manifestly a mere comment. Fourth, the argument that this is relevant to the claimant's claims again rather depends upon the Article having the meanings for which the claimant contends and which are hotly disputed and which I do not think I

should, for the reasons given above, and have not been asked to, determine. Fifth, I do not regard the asserted meanings, which are said to relate to and be defamatory of the claimant, at least insofar as they are derived from these matters, as being at all clear. At first sight, the only relevant meaning may be that the claimant had introduced ETAMIC and knew more about it than did the board of GKP, and where I do not see that as being of any obvious importance, and where it is all potentially implicit from the statement in the Excalibur Judgment and statements made by the witnesses in the Excalibur Material that the claimant had introduced ETAMIC.

103. There is, however, one further Tenth aspect (which to an extent I have referred to above but I need to consider it globally across the Article) which I have found more difficult. That is paragraph 37 of the Article, which reads:

"37. Hawrami knew the oil law well, as the official responsible for pushing it through Iraqi Kurdistan's parliament in 2007. Despite the conclusion that the Representation Agreement was illegal, the Kurdistani government did not cancel Gulf Keystone's oil production deal as required by law."

And where paragraph 38 went on to say:

"38. Instead, in August 2010, Gulf Keystone and the government signed an amended contract that included a new anti-bribery clause, which explicitly stated that no public or party official was being paid as part of the agreement."

Although it is also important that the Article: (1) in paragraph 5 as part of its "Key Findings" stated in the context of the RA having been "voided" that "Still, Gulf Keystone was allowed to keep exploiting the field." And (2) later refers to "the corruption issue" and to a "whistleblower" and says (following a statement in its paragraph 46 that the claimant, through lawyers, had said that he was not aware of any "illegality" in relation to the RA):

"47. The London judge did not address the corruption issue, which was not central to the claim made by Wempen, the former U.S. special forces soldier.

48. The corruption evidence was not discussed officially again until March 2014, when a whistleblower in Iraqi Kurdistan contacted the U.K.'s Serious Fraud Office (SFO) about Gulf Keystone. OCCRP has seen a copy of the complaints filed with the U.S. Securities and Exchange Commission, the Department of Justice, and the FBI, as well as correspondence that followed.

49. The whistleblower wrote that the Representation Agreement appeared to be a "written corruption agreement." In follow-up correspondence, he said the deal may have "constituted a serious crime, in multiple legal jurisdictions."

50. The deal, the whistleblower wrote, would have "violated US, UK and Iraqi corruption laws, because when Gulf Keystone signed it, they had contracted with Mr. Berwari, who is himself a high level official — never mind his connection, or the Dabin Group's connection, to the Prime Minister."

51. The whistleblower also pointed to Article 56 of the Kurdish oil law, which specifically states that when a minister finds a breach of corruption laws, he "shall cancel" the offender's contracts.

52. "The word 'shall' indicates that the Oil Minister is given no discretion," the complaint said. "If he finds out about corruption, he must cancel."

104. The claimant points out that the Excalibur Judgment: (1) did not say that there was any requirement of KRG law that the relevant minister (here the claimant) should have cancelled GKI's Shaikan PSC because of a breach of corruption laws regarding the RA; (2) did say, but which was not stated in the Article, that all parties to the Excalibur case had agreed that the claimant was a "man of integrity" and someone who would consider the best interests of KRG in considering bids and awarding contracts (paragraph 360 of the Excalibur Judgment); and (3) did say, but which was not stated in the Article, that the claimant arranged for what would have been Dabin's entitlement under the RA to go to KRG. The claimant accordingly asserts that all this renders the entire Article not a "fair and accurate report" and so that Qualified Privilege is lost.

105. I note also, although it does not seem to me to affect the question before me which is as to the availability of Qualified Privilege, that the defendants do not appear to seek to contend that the Article (or the whistleblower) was correct with regard to its statements of KRG law in terms of the position regarding the RA requiring the cancellation of the Shaikan PSC. If the defendants were to wish to assert that such statements were correct then they should clarify their position (and possibly seek to amend) as a matter of urgency.

106. I am not directly (although I am indirectly) concerned in this judgment with the question of what are alleged defamatory meanings of the Article but rather (as a result of the way in which Qualified Privilege operates) with what cannot be used (other than as context) for the purpose of deriving those meanings. It seems to me that the defendants have no real prospect of relying on the Qualified Privilege in respect of the contents of the above-cited elements of the Article. I do not see how they can be possibly be said to be a "fair and accurate report" of the Judgment when the essential underlying statement i.e. that there was a legal requirement on the claimant to cancel the Shaikan PSC, did not appear in the Excalibur Material and, further, the Article did not say what the Judgment did state that the claimant had done in the circumstances for the benefit of KRG i.e. ensure that the benefits under the RA actually went to KRG (and not to either Dabin or GKP/GKI) being somewhat equivalent of a forfeiture of them.

107. However, the more difficult question is as to whether this affects Qualified Privilege being asserted with regard to other parts of the Article. That raises two sub-questions: (1) whether the relevant statements are purportedly a, or part of a, report of the Excalibur Judgment/Material at all; and (2) if so, whether they render all or a greater amount of the Article not a "fair and accurate report".

108. It seems to me that the first sub-question is an important one. If the relevant statements are not purporting to be said to be part of the Excalibur Material, then it is difficult to see how a mis-statement of KRG law or an omission of something in the Excalibur Judgment/Material renders what else is reported not a "fair and accurate report" (although there is an holistic aspect which I consider below).

109. At first sight, paragraph 37 of the Article can be read as purporting to set out matters in the Excalibur Judgment/Material. It is in a section of the Article which referred to matters from the Excalibur Judgment (e.g. expressly in paragraphs 32, 34, 35 and 40). Moreover, the previous paragraph has the words "the judgment detailed a series of events" which might suggest that paragraph 37 was reporting what was said in the Excalibur Judgment.

110. However, I consider that the defendants have a real prospect of success in contending to the contrary. Even looking at paragraph 37 in the context of the other paragraphs (and there is a break between paragraphs 35 and 37 with the insertion of a picture of the Claimant), it does not necessarily follow that it is purporting to report that the Excalibur Judgment held that a cancellation of the Shaikan PSC was required by law as a result of a conclusion (which the Article did say in paragraph 35 was something said in the Excalibur Judgment to have been agreed by GKP and KRG) that the RA involved a violation of KRG law. Even with the other paragraphs, the assertion that there was a resultant requirement of KRG law to cancel the Shaikan PSC can arguably, in my view, be read as a matter of manifest comment where what is being said to be stated from the Excalibur Judgment is a "series of events". However, the defendants' argument is substantially reinforced by the later paragraphs regarding "corruption" and the "whistleblower". At first sight they are saying that "corruption" (and presumably its consequences) was not dealt with in the Excalibur Judgment and that the assertion that KRG law required the cancellation of the Shaikan PSC was a matter (subsequently) raised by the whistleblower alone.

111. As to the second sub-question, if I was wrong on the first, I again think that the defendants would have real prospects of success in contending that the Qualified Privilege was only lost in relation to the elements of the Article dealing with the cancellation or voiding of the RA, and its short-term aftermath. In circumstances where the thrust of the Article is directed towards Kozel, it seems to me that the section relating to ETAMIC is at first sight very distinct from the RA and what happened to it. It is correct that the earlier section (paragraphs 33 and 34) regarding the formation of the RA can be more easily linked to this section (paragraphs 37 and 38) relating to its avoiding, especially where the claimant contends that the earlier section when read with this section has a defamatory meaning itself. However, that contention itself involves my going into matters of meaning which I am not prepared to determine (see above) and where I see the defendants' contentions as to relevant meaning as being arguable (see above).

112. I have also considered this aspect holistically as against everything reported in the Article which is said to be a report of the Excalibur Material (whether the Excalibur Transcript or the Excalibur Judgment). However, it does seem to me that the defendants do have a real prospect of succeeding in their assertion that it would not so taint the remainder of what is said to be a report so as to render the (or any part of the) remainder not a "fair and accurate report". It seems to me that the other elements of the "report" within the Article are arguably distinct; and, further, for me to conclude otherwise would involve my going into matters of meaning which I am not prepared to determine (see above) and where I see the defendants' contentions as to relevant meaning as being arguable (see above).

113. I have also considered the Article generally as against the parts of the Excalibur Material to which my attention has been drawn and the claimant's various contentions.

I consider that the defendants do have real prospects of success (except in relation to the Tenth aspect) in contending that the Article to the extent that they assert that it reports elements of the Excalibur Material is a "fair and accurate report"; in essence for the reasons given above.

114. As stated above, in this judgment I have sought to analyse what I regard as being the claimant's main points. I do note that the claimant asserts that the defendants have in the document which I directed to be produced gone too wide in identifying elements of the Article by way of paragraph or sentence which they contend are within the "report" of the Excalibur Material, and contend that particular elements of what was stated were not within the Excalibur Material. I have considered the claimant's arguments but do not regard it as appropriate to undertake a more detailed exercise than I have carried out above as: (1) the points are ones of detail and (a) appear to me to be generally arguable by the defendants as to whether sufficient mention was made of the various matters in the Excalibur Material which I have and (b) it seems to me that the defendants might well when more time is available for argument (i.e. a trial) wish to and be able to deploy more Excalibur Material (including documents read by the court at the Excalibur Trial) to support their case on Qualified Privilege; (2) accordingly the defendants do appear to have real prospects of success but also (3) (a) this all needs to be considered together in a trial where it can be seen as to what is important to the actual substantive issues in the case, and (b) it seems to me to be wasteful, and contrary to the CPR overriding objective, for there to be cost and time spent on immaterial elements and matters, and (c) there is therefore a compelling reason for a trial and, in any event, those matters are not appropriate for summary judgment.

115. In the light of what I have concluded as to the defendants having real prospects of success, I am not going to grant reverse summary judgment in favour of the claimant on the Qualified Privilege issue subject to the Tenth Aspect point. I add that in view of the interaction between questions of meaning and Qualified Privilege, even if I had held that the defendants did not have real prospects of success, I would have been concerned that there was a compelling reason for there to be a trial of the Qualified Privilege issue due to those interactions. However, none of that applies to the pure Tenth Aspect point with regard to the particular paragraphs and sentences which I have identified above as falling within it. As stated above, they clearly do not fall within the Excalibur Material and I do make a determination, which should be recorded in the consequentials order, that they do not attract the Qualified Privilege.

The Amended Versions of the Article

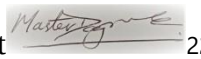
116. In the light of my conclusions above, I do not think that the Amended Versions of the Article, with their additional wordings, require any separate analysis. However, I do note that the words included in the First Amended Version do result in the Article including: (a) the facts that (i) the Excalibur Judgment recorded the agreement of the parties to the Excalibur litigation that the claimant was a man of integrity (ii) the Excalibur Judgment stated that the claimant had not been aware of the imminent RA when the Shaikan PSC was signed; (b) the claimant's disagreement with the whistleblower's assertion as to the requirements of KRG law; and which could be said to make clear that the only statement being suggested that the law did require the cancellation of the Shaikan PSC came from the whistleblower and not from the Excalibur Judgment. In consequence of the inclusion of those words in the First Amended Version and in the Second Amended Version (the extra words in which are,

at least arguably, clear references to Berwari), it seems to me that the defendants have even more real prospects of success on the Qualified Privilege issues with regard to these two publications.

Conclusion

117. For all these reasons, I am going to dismiss the claimant's application for reverse summary judgment against the Qualified Privilege issues; except that the order will record that the court has determined that the Tenth aspect sentences and paragraphs cannot be relied upon as being a report which attracts Qualified Privilege. The parties may well wish to consider whether or not it would be appropriate for the court to direct a preliminary issue trial on both (combined) Qualified Privilege and meaning.

118. As stated when circulating the draft of this Judgment I am handing it down at 10am on 22 February 2024 without attendance from the parties but with an adjournment of the hearing and of (with general extensions of time until further order) all questions of permission to appeal and time to appeal, form of orders and costs, as well as other directions, to the previously agreed date and time of 10.30am on 8 April 2024.

ApprovedJudgment  22.2.2024

ANNEX 1 – The Original Text of the Article (paragraph numbers added)

1. INVESTIGATIONS · THE RISE AND FALL OF A U.S. OILMAN IN IRAQ

2. [picture of a drilling rig operating near Erbil, Kurdistan]

3. A secret kickback deal with an Iraqi Kurdistan politician made Todd Kozel rich. But an affair and his bitter divorce led him to disgrace.

4. by **Daniel Balint-Kurti and Will Jordan** 22 May 2021

5. Key Findings

o Todd Kozel, founder of London-listed oil company Gulf Keystone, struck a deal to kick back huge revenues to an Iraqi Kurdistan politician's company in 2007.

o The Kurdistan deal was later deemed illegal and was voided just weeks before the U.K.'s Bribery Act, which brought tougher rules against international corruption, was passed in April 2010. Still, Gulf Keystone was allowed to keep exploiting the field.

o U.S. and U.K. authorities failed to act after a whistleblower informed them of the deal and said it amounted to "written corruption."

o Not long after the deal was voided, Gulf Keystone funnelled $12 million to an offshore company that was secretly connected to both Kozel and the Kurdistan Regional Government.

o Kozel used another offshore trust to secretly buy millions of shares in Gulf Keystone the same day the company made its first oil find in Iraq, and three days before

it was publicly announced.

6. The Iraq war was good to American oil baron Todd Kozel. As the country was in the midst of a full-blown insurgency in 2007, his London-listed firm Gulf Keystone signed an agreement with the government of the autonomous region of Kurdistan to exploit its "oil field of dreams."

7. The very same day in November, OCCRP has discovered, he struck a deal to kick back potentially huge revenues to a veteran Kurdistan politician's company in order to secure the oil block.

8. The deals — one public and official, the other secret and illegal — transformed the fortunes of Gulf Keystone and its founder. The company's operations are now entirely based on the block in question, named Shaikan.

9. Kozel made more than US$100 million and began to live a lavish lifestyle, flying by private jet and splashing out thousands on fine wines and strippers. He also began an affair that would sow the seeds of his downfall when his subsequent divorce pitted the playboy against his socialite ex-wife in court. The case dredged up previously unknown details of Kozel's finances, which eventually led to charges against him.

10. Kozel pleaded not guilty in 2019 to fraud and money laundering. After a secret plea deal, prosecutors downgraded his charges to failure to file tax returns, saying he owed over $22 million on the fortune he made between 2011 and 2015. He pleaded guilty to the lesser charges. Now suffering from throat cancer, Kozel is scheduled to be sentenced at a hearing in New York this summer.

11. Kozel's deal with a company controlled by Izzeddin Berwari, a member of the governing Kurdish Democratic Party's (KDP) politburo, has not been reported until now. By 2010, Gulf Keystone and the government of Kurdistan had privately agreed that the deal was illegal, and treated it as void, but kept the broader oil concession in place.

12. ["marginal picture of Todd Kozel with his wife''']

13. A spokesman for Kozel told OCCRP the deal had "nothing to do" with Gulf Keystone receiving the oil production contract.

14. "These claims from more than a decade ago have been investigated, litigated and adjudicated, with no findings of corruption, fraud, or a failure to disclose by Mr. Kozel," the spokesperson said.

15. With the help of a whistleblower, sources familiar with Kozel's years at the helm of Gulf Keystone, and hundreds of court records and corporate filings, reporters have pieced together the story of Kozel's rise and fall.

16. As well as the kickback deal, Kozel is also connected to a company that received a controversial $12 million payment from Gulf Keystone in 2010, according to documents seen by reporters. The finding supports the suspicions of Kozel's ex-wife that he personally benefited from the arrangement.

17. A spokesman for Kozel said that he was neither a shareholder nor executive of the company that received the $12 million, nor did he have any management control.

18. Court papers also show how he profited from insider trading, secretly buying and

selling shares through an offshore trust in Jersey, a British Crown Dependency. One trade took place the same day oil was first struck at Shaikan — but three days before shareholders were informed.

19. A spokesperson for Kozel said the trades were investigated by British officials, who found no violations. (Stock exchange officials and financial regulators would not confirm or deny the existence of any investigation to reporters).

20. The fact that Kozel got away with the trades highlights the City of London's blind spot for secretly-owned offshore companies. Despite a stream of scandals, often centered around these opaque corporate vehicles, London's Alternative Investment Market, where Gulf Keystone was listed until 2014, has done little to address the issue.

21. War and Oil

22. When the U.S. and the U.K. invaded Iraq in 2003, Kozel was just another "wildcat" explorer looking for black gold beneath the sand. He had an operation in Algeria, but it was nothing compared to what he would go on to establish.

23. "I thought I had been a master of the universe," he later said. "But I found out there was a much bigger universe than I was even aware of."

24. The new universe began opening up in Kurdistan, an autonomous region in northern Iraq that welcomed international oil exploration. On November 6, 2007, Gulf Keystone landed the rights to the Shaikan oil field, which Kozel claimed could yield up to 15 billion barrels — more than 20 times the eventual reserves figure. It was what he described as "virgin territory… an oil man's dream."

25. [image of the Shaikan oil field taken from a Gulf Keystone]

26. After it announced its first find in August 2009, the oil company was transformed into a hotly traded multimillion-dollar enterprise. Its market value leapt from 359 million British pounds to 3 billion. Kozel's yearly compensation peaked at $22 million in 2011, one of the highest CEO pay packages in the U.K., and nearly $7 million more than the head of Shell received that year.

27. But such generosity would not have been possible without a secret agreement Kozel signed on November 6, 2007, with Berwari, the Kurdish KDP politician, who also ran an influential company called Dabin Group, based in Iraqi Kurdistan.

28. Under the terms of this deal — which was called a "Representation Agreement" and contained an expansive confidentiality clause — Dabin Group, with Berwari as executive chairman, was to provide "general consulting and government relations services related to securing and subsequently managing" the oil concession.

29. [marginal picture of promotional material about Dabin Group]

30. Dabin would also be tasked with "arranging meetings with and introductions to political and financial organisations and individuals in Kurdistan and Iraq."

31. In exchange, it was promised 10 percent of Gulf Keystone's net revenues from operating the oil field, for up to 25 years.

32. The existence of the agreement between Kozel and Berwari has never before been reported.

However, it was presented as evidence in a London court case that ran from 2011 to 2013, which was brought by a company run by former U.S. special forces soldier Rex Wempen, who had acted as a fixer for Gulf Keystone and claimed he was owed millions for helping it obtain the oil field.

33. The judgment in the court case revealed that on November 5, 2007, a day before the Representation Agreement was signed, Kozel enjoyed a barbeque at Berwari's home. They were joined by Iraqi Kurdistan's Minister of Natural Resources Ashti Hawrami, who along with the prime minister and his deputy, was in charge of granting oil concessions.

34. An oil consultant before the Iraq war, Hawrami owned a large home in the well-heeled British town of Henley-on-Thames. As the judgment noted, the minister had a relationship with Kozel going back to before his appointment, and a subsidiary of Hawrami's company had prepared a report for Gulf Keystone ahead of a share issue three years earlier.

35. While Gulf Keystone won the case against the ex-soldier, the judgment detailed a series of events in early 2010 that led the company and the Ministry of Natural Resources to agree that the profit-sharing agreement with Dabin violated Kurdish oil law. The law prohibits a public officer like Berwari from acquiring "a benefit or an interest" in an oil concession, directly or indirectly

36. [picture of the Claimant]

37. Hawrami knew the oil law well, as the official responsible for pushing it through Iraqi Kurdistan's parliament in 2007. Despite the conclusion that the Representation Agreement was illegal, the Kurdistani government did not cancel Gulf Keystone's oil production deal as required by law.

38. Instead, in August 2010, Gulf Keystone and the government signed an amended contract that included a new anti-bribery clause, which explicitly stated that no public or party official was being paid as part of the agreement.

39. But as Dabin Group was dropped, a new offshore company with no history or track record called Etamic Limited, which had signed an agreement with Keystone a year earlier, would grow in prominence.

40. In the judgment, Lord Justice Christopher Clarke said the Dabin Group also appeared to have had connections to Nechirvan Barzani, prime minister of Iraqi Kurdistan at the time.

41. Gulf Keystone wrote to the Dabin Group cancelling the agreement only months before the U.K.'s Bribery Act, which brought tougher rules against international corruption, was passed in April 2010.

42. But the deal may have breached an earlier law, the Prevention of Corruption Act 1906, under which anyone who "agrees to give or offers" inducements for showing favor "to his principal's affairs" is committing a crime. The Act was extended in 2001 to specifically cover bribery of foreign public officials.

43. The agreement may also have breached the U.S. Foreign Corrupt Practices Act, which makes it illegal to offer or authorize bribe payments to public officials, whether or not the money is ultimately paid.

44. While it was Berwari's position in the KDP politburo that was at issue in this case,

wider allegations have been made against the Dabin Group. A Kurdistani academic said in his 2017 PhD thesis that the Dabin Group runs the ruling party's businesses. He cited a KDP official saying it was the only KDP-controlled company in Iraqi Kurdistan, although others were controlled by individual party officials.

45. OCCRP contacted Izzedin Berwari and the Kurdish Democratic Party about the 2007 deal, but did not receive any comment. Lawyers for Hawrami and the Kurdistan Regional Government said neither of them had any relationship with Dabin Group or received payments from the company.

46. "Moreover, neither the KRG nor Dr. Hawrami is aware of any illegality in arrangements between GKP [Gulf Keystone] and Dabin (to which they were not party)," the lawyers said.

47. The London judge did not address the corruption issue, which was not central to the claim made by Wempen, the former U.S. special forces soldier.

48. The corruption evidence was not discussed officially again until March 2014, when a whistleblower in Iraqi Kurdistan contacted the U.K.'s Serious Fraud Office (SFO) about Gulf Keystone. OCCRP has seen a copy of the complaints filed with the U.S. Securities and Exchange Commission, the Department of Justice, and the FBI, as well as correspondence that followed.

49. The whistleblower wrote that the Representation Agreement appeared to be a "written corruption agreement." In follow-up correspondence, he said the deal may have "constituted a serious crime, in multiple legal jurisdictions."

50. The deal, the whistleblower wrote, would have "violated US, UK and Iraqi corruption laws, because when Gulf Keystone signed it, they had contracted with Mr. Berwari, who is himself a high level official — never mind his connection, or the Dabin Group's connection, to the Prime Minister."

51. The whistleblower also pointed to Article 56 of the Kurdish oil law, which specifically states that when a minister finds a breach of corruption laws, he "shall cancel" the offender's contracts.

52. "The word 'shall' indicates that the Oil Minister is given no discretion," the complaint said. "If he finds out about corruption, he must cancel."

53. Authorities in the U.S. and U.K. stayed in contact with the whistleblower for another two years, but then lost touch and did not take any public action.

54. Ed Davey, of the anti-corruption group Global Witness, said the arrangement raised red flags and should be fully investigated.

55. "The existence of a written agreement promising to pay a senior political official as part of an oil field deal is highly concerning," Davey said.

56. "It beggars belief that the Serious Fraud Office would not fully investigate a U.K.-listed company in such circumstances."

57. The SFO told OCCRP it could not comment on the case.

58. Lawyers for the former oil minister, Dr. Hawrami, say there is "no basis to allege any wrongdoing or lack of integrity" on his part. "On the contrary, the integrity of the KRG [Kurdistan Regional Government] and Dr. Hawrami is a matter of record and beyond reproach."

59. They added that the Kurdistan government "has a rigorous policy and practice of conducting negotiations" for oil contracts and does not work through agents or middlemen but "directly with parties that have an established track record."

60. A spokesman for Gulf Keystone said: "The questions raised concern the period when Mr Todd Kozel was CEO of Gulf Keystone Petroleum Ltd, with a particular focus on events between 2007 and 2010. This predates the appointment of any of the current board or management team."

61. "The Company is committed to the highest standards of corporate governance including ensuring we undertake appropriate due diligence and third party professional advice and has an appropriate share dealing code, disclosure and compliance procedures, including for all officers and employees of the Company. In accordance with these standards, the Company considers with all due process any new matters that are supported by credible evidence."

62. A spokesman for Kozel denied Dabin had played a role in Gulf Keystone securing the oil contract, and stressed that the deal had been voided.

63. Trusts and Lies

64. As Kozel was becoming a very rich man, he met Inga Buividaite, a Lithuanian student and model, then in her early twenties. They began an affair that ended his 18-year marriage to his wife at the time, Ashley.

65. In a January 2012 divorce settlement, Kozel agreed to hand his former wife 23 million shares in Gulf Keystone, worth well over $100 million. But she accused him of delivering three quarters of the shares late, and sued him in Florida.

66. The delay was notable because Gulf Keystone shares peaked on February 20 that year, but their value had begun to plummet by the time Ashley acquired most of them in late February and early March. She alleged that her ex-husband had stalled in order to stash money away via a trade involving a secretive Jersey trust.

67. Ashley Kozel won the case in September 2015, and was awarded $38.5 million. Todd Kozel said he couldn't pay, so she began hunting for his money through the courts.

68. The lavish lifestyle of Todd Kozel and his new wife, Inga, was swiftly exposed. There were payments for two Hermès "Birkin bags" for 28,000 British pounds ($38,493), another 24,000 euros ($28,539) to French fashion house Chanel Haute Couture for a black wool dress, and $1.54 million on a diamond and a pair of earrings from Graff Diamonds in New York.

69. The Gulf Keystone chief executive was also claiming major work-related expenses. In his deposition, he admitted to spending nearly $8,000 at a strip club in Zurich, "where we entertain our customers and company members, which is reimbursable."

70. "When we do it, we take a lot of people and we do it properly," he said.

71. [Article in New York Post]

72. Ashley Kozel's lawyers also began asking questions about another mysterious company, based in the British Virgin Islands, that had dealings with Gulf Keystone.

73. They suspected her former husband secretly owned the firm, called Etamic Limited, and used it to siphon money from his investors.

74. The company seemed to appear out of the blue in July 2009, when Gulf Keystone suddenly announced it would be handing Etamic — which it described as its new "strategic investment partner" — half of the subsidiary holding its Iraqi Kurdistan assets.

75. Etamic was described only as a "private investment fund in the Middle East," and there was no mention of its owners or directors. Gulf Keystone's finance director, Ewen Ainsworth, said the fund's owners had "asked us not to say too much about them," according to Gulf States Newsletter.

76. There were also no records of the deal. Kozel later claimed that this was because it had been concluded verbally. "It was a strange deal," he told a London court.

77. Minutes of a September 2009 board meeting said the government of Iraqi Kurdistan had approached Kozel with the proposal.

78. John Gerstenlauer, Gulf Keystone's chief operating officer at the time, told a judge Etamic had been brought to his firm "by Dr Ashti [Hawrami] and The Ministry of Natural Resources and the KRG."

79. Kozel also told the court that Hawrami had "brought the investors and the idea" and that he had then asked his lawyer "to try to put together a structure."

80. Dr. Hawrami's lawyers strongly deny that he introduced Etamic to Gulf Keystone. "On the contrary, the policy and practice of the KRG prohibit the use of such intermediaries."

81. In return for obtaining a major stake in the valuable Shaikan oil field, Etamic would help Gulf Keystone acquire rights to two unproven fields in Iraqi Kurdistan, called Sheikh Adi and Ber Bahr. It is not clear how Etamic would do that, or what influence it had in Kurdish oil circles.

82. Eight months later, Gulf Keystone said it was ending the relationship with Etamic "following a material default," and would need to pay the mysterious company $12 million "for them to go away," as the finance director put it. Gulf Keystone said it was left saddled with further costs, including $40 million owed to the Iraqi Kurdistan government in "infrastructure support payment." Gulf got to keep the new oil licences, but relinquished them in 2016, by when it had become clear they were essentially worthless.

83. Ashley's lawyers suspected that Etamic was one of Kozel's "alter egos," used to "funnel money away from the company and into his pockets. The Evening Standard reported in 2009 that there were "scurrilous questions over whether Etamic might in fact be linked to Gulf Keystone directors." Gulf Keystone denied this.

84. But a draft trust document seen by OCCRP shows that Kozel did have a direct personal connection to the offshore company. It states that he was to be the legal "enforcer" of the Etamic Trust, based in the tax haven of Jersey and owning Etamic Limited in the British Virgin Islands.

85. The trust was tasked with handling infrastructure payments and Kozel was specifically allowed to receive money from it. His ex-wife alleged that Etamic was actually a secret way for Kozel to hide his wealth.

86. There were further connections too.

87. Etamic's trustee was a Lebanon-based entity called Mediterranean Trust SARL, headed by a Swiss banker named Dominique Lang. Lang was a close business partner of Kozel's Swiss lawyer, Markus Hugelshofer.

88. Other evidence in court documents supports the idea that Kozel secretly controlled Etamic. Quizzed on the company during the divorce case, he was cagey, saying he believed his Swiss lawyer had helped form the Etamic Trust, and that the trustees were "two bankers in a bank in Beirut."

89. It turned out that Kozel actually had close connections to these "two bankers."

90. The bank in question, it eventually transpired through cross-examination, was the Near East Commercial Bank, which was owned almost entirely by Lang and two of Hugelshofer's close legal partners. It was Lang who signed the $12 million "termination agreement" on behalf of Etamic.

91. One month before the July 2009 deal with Gulf Keystone was announced, Etamic's name was changed in the British Virgin Islands corporate registry to Limonara Ltd. But in public statements, Gulf continued using the old name. The Swiss bankers and lawyers linked to Kozel had made it almost impossible for anyone to track Etamic down.

92. [Diagram of structure of Etamic Limited]

93. A spokesman for Kozel said Gulf Keystone was unaware of the name change, adding that all aspects of the Etamic deal were approved by the government of Kurdistan and Gulf Keystone's board.

94. The IRS Arrives

95. Ashley Kozel failed in her legal bid to get documents about Etamic, but she had more luck with another Jersey trust, named Gokana, that she and her lawyers suspected was controlled by her former husband.

96. Gokana was formed in 2009, and in August that year became a 6.4-percent shareholder in Gulf Keystone. It was later established that Kozel was issuing instructions to Gokana. But contrary to stock market rules on "related parties," he did not declare his links to it. All directors, including Kozel, regularly informed the stock market of their direct or indirect holdings in Gulf Keystone, but Gokana was treated as an independent entity and never included in Kozel's tally.

97. This allowed him to hide the shares not only from his ex-wife, but also from stock market authorities and investors. Court transcripts and corporate filings show that Kozel secretly bought millions of Gulf Keystone shares through Gokana on August 3, 2009 — the same day the company made its first oil find in Iraq, and three days before the find was publicly announced.

98. Kozel used his Swiss lawyer, Hugelshofer, to hide his hand, court documents show. First he lent Hugelshofer — as the Gokana trustee — 968,000 British pounds, then Gokana bought the shares.

99. The announcement of the oil find on August 6, 2009, immediately sent Gulf Keystone shares rocketing, doubling in value in just a day.

100. By April 2011 the company's stock had risen by over 1,000 percent, by which time Gokana had sold some 1 million of its shares, according to calculations by OCCRP. This sale alone, which exhibited all the signs of insider trading, could have earned Kozel over 1 million pounds in profit.

101. Kozel's maneuvers with Gokana bore the hallmarks of "related party fraud" — secret self-dealing through which company officials funnel investors' money into their own pockets.

102. Kozel's divorce, meanwhile, had also caught the attention of the Internal Revenue Service.

103. A September 2015 Florida court judgment awarding Ashley Kozel $38.5 million said Todd Kozel had falsely claimed in court that he had no authority over Gokana. The same court said that Kozel dealt in shares through the trust, and tied it to Kozel's purchase of a luxury Manhattan apartment.

104. The 2015 judgment was later overturned on the basis of the couple's divorce agreement, but that decision did not call into question the fact that Kozel secretly controlled Gokana.

105. Kozel was arrested at New York's JFK airport just before Christmas in 2018 and charged with fraud and money laundering. The New York indictment said he had "lied in sworn affidavits and documents filed in the Florida Court when he said he had no interest in the Foreign Trust," referring to Gokana, which was used in "a scheme to defraud his Ex-Wife."

106. The prosecution maintained its fraud and money-laundering charges for eight months, but then signed a plea agreement, which was placed under court seal until journalists working with OCCRP successfully applied for it to be unsealed.

107. The document shows the court will accept a guilty plea on five counts of failure to file tax returns and Kozel will face a sentence of 60 months in prison at most, and no further charges. He will have to pay around $22 million in back taxes.

108. "Looking back now," the whistleblower in the case told OCCRP, "it seems almost certain that his luck would eventually run out, and that he would ultimately suffer a very hard fall."

109. "In reality, however, there are countless businessmen out there just like Todd Kozel, and they do in fact get away with it."

ANNEX 2 - WORDS ADDED TO THE FIRST AMENDED VERSION OF THE ARTICLE

Editor's Note: Dr. Ashti Hawrami, through his lawyers, has disputed the accuracy of some statements in the following article. OCCRP stands by its reporting. Nonetheless, OCCRP has agreed to add his lawyers' statement at the end of the article.

Statement on Behalf of Dr. Ashti Hawrami

Dr Ashti Hawrami categorically denies any allegation or insinuation of wrongdoing either on his part or that of the KRG. As found by the English Court in the Excalibur judgment, Dr. Hawrami "is agreed, on all sides […] to be a man of integrity" who acted with complete propriety and in accordance with the law.

The English Court made the finding that "[w]hen the Shaikan PSC was signed, Dr Hawrami was not aware that [Gulf Keystone] was about to enter into its agreement with Dabin". However, contrary to some of the statements in the article which refer to findings of the English Court in proceedings where Dr Hawrami was neither a party nor a witness, nor in attendance, and in which he had no opportunity to correct statements in evidence by others made in furtherance of their own private interests:

(1) Dr Hawrami has no recollection of meeting Mr Kozel and Mr Berwari (the "Iraqi Kurdistan politician" referred to in the sub-title) at a barbecue in 2007 and believes it to be most unlikely that he did so; whilst serving as Minister of Natural Resources he did not ordinarily attend

such events, precisely in order to avoid allegations such as those now made.

(2) Dr Hawrami did not introduce Gulf Keystone to Etamic or any investors and it is inconceivable that he would have conducted himself in the manner insinuated. Nor was any "secret kickback" payment made to the KRG or to any KRG official.

Moreover, Dr Hawrami disagrees with the alleged whistleblower's assertion: Dr Hawrami's informed understanding is that the relevant written law of Kurdistan does not require cancellation of an entire production sharing contract (such as the Shaikan PSC) following the cancellation of a profit-sharing sub-contract found to be contrary to KRG policy. Nor, in any event, was such a cancellation of an entire production sharing contract within the sole power of Dr Hawrami.

Dr Hawrami is highly regarded by many senior ministers, prime ministers and presidents, business leaders and the international media around the world. The Kurdistan oil and gas law and production sharing contract regime that he pioneered are among the reasons that the Kurdistan Region has attracted more than $4bn in audited international oil company capacity building contributions. Those contributions have been applied directly to humanitarian and poverty-alleviation measures throughout the Kurdistan Region for the benefit of its most vulnerable communities. The transparency and trust established under Dr Hawrami's leadership whilst serving as Minister of Natural Resources have bolstered the Kurdistan Region's reputation as a place to do business.

ANNEX 3- WORDS ADDED TO THE SECOND AMENDED VERSION OF THE ARTICLE

"(A response to this story is included at the bottom of the page.)"

These added words appeared near the head of the Article, immediately below the introductory words "A secret kickback deal with an Iraqi Kurdistan politician made Todd Kozel rich. But an affair and his bitter divorce led him to disgrace", and above the Author's by-line**.**

Approved  22.2.2024