

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 March 2014

Before :

SIR DAVID EADY
(Sitting as a High Court Judge)

Between :

DESMOND JOHNSTON

Claimant

- and -

(1) LEAGUE PUBLICATIONS LIMITED

(2) RICHARD DE LA RIVIERE

(3) NEDZAD CATIC

Defendants

Godwin Busuttil (instructed by **Heatons LLP**) for the **Claimant**
Jacob Dean (instructed by **FrontRow Legal**) for the **First and Second Defendants**
The Third Defendant was not represented

Hearing date: 28 February 2014

Judgment

Sir David Eady :

1. The court is asked to determine the meaning(s) of the words complained of in this libel action by way of preliminary issue. It is generally thought that such hearings are likely to become more common in future, having regard to the recent removal of the (qualified) “right” to jury trial. This was brought about by the amendment to s.69(1) of the Senior Courts Act 1981 contained in s.11 of the Defamation Act 2013. (See e.g. the observations of Tugendhat J in *Cruddas v Calvert* [2013] EWHC 1427 (QB), at [100], and the commentary in *Gatley on Libel & Slander* (12th edn) at para 30.14.)

In this instance, it was Tugendhat J who made provision for the preliminary issue in an order dated 25 November 2013.

2. Where a judge is called upon to determine meaning, it is important that there should be clarity as to the scope of enquiry. In this case, it is accepted that I should address not only meaning but also any issues as to whether any given meaning is defamatory or not, and whether it is to be classified as fact or comment: cf. *Cammish v Hughes* [2012] EWCA Civ 1655 at [43]. It was agreed, however, that I should not venture into resolving what the consequences of my rulings would be for the legitimate scope of any pleaded defence, such as justification or fair comment (or honest opinion).
3. It has long been recognised that the principles to be applied by a judge are the same whether the task is to determine actual meaning, as here, or simply to rule that the words complained of are, or are not, capable of bearing any particular meaning: see e.g. *Waterson v Lloyd* [2013] EWCA Civ 136, at [17], per Richards LJ. Those principles are to be found summarised in various cases, including e.g. *Gillick v Brook Advisory Centres* [2001] EWCA Civ 1263, at [7], and *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 at [14]. I need to bear them in mind throughout this exercise.
4. It will generally be helpful, when a judge is called upon to determine meaning, to read the words complained of untrammelled by any gloss put upon them by the parties, and before addressing any legal submissions, since it should be easier to approach the task as an ordinary fair-minded reader – with an open and fresh mind. Also, one has to recognise that a judge is faced with something of a dilemma when resolving issues as to meaning. It is necessary to give reasons, as in any judgment, for the conclusions arrived at. On the other hand, the assessment of meaning is essentially a matter of impression and it is important for a judge (or, for that matter, a jury) embarking on such a task not to be over-analytical about it: see *Charman v Orion Publishing Group Ltd* [2005] EWHC 2187 (QB) at [11].
5. It is well established that in coming to a conclusion on either the actual meaning or the scope of possible defamatory meanings a judge is not confined in any way by the meaning(s) pleaded by counsel on behalf of their clients: *Slim v Daily Telegraph Ltd* [1968] 2 QB 157. The test is that of the “ordinary reader”. That concept is wide enough to embrace, in cases such as the present, the readers of a specialist publication, who are likely to bring a degree of specialist background knowledge to their interpretation. This factor is likely to be of particular significance when considering possible innuendo meanings. The court will not, of course, simply ignore the parties’ meanings or counsel’s submissions about them. It is, however, when these come to be addressed in the course of a judgment that the risk becomes most acute of being drawn into too much analysis – especially when explaining why any of those submissions are being rejected. These are the factors which Gray J particularly had in mind in the passage in *Charman*, cited above.
6. The Claimant is a businessman, who is the managing director of a recruitment company. He was also, between August 2008 and September 2011, the chairman of Barrow Raiders RLFC which is, as the name suggests, a professional rugby league football club based in Barrow-in-Furness in Cumbria. (I understand that shortly before he resigned as a director of Barrow Raiders he had been found guilty by a disciplinary tribunal of the Rugby Football League (“RFL”) of breaching the RFL’s rules regarding salary caps, financial recording and contractual transparency as to

players' payments. He was then banned from involvement in rugby league for eight years.)

7. The First Defendant is the publisher of a journal known as the *Rugby Leaguer & League Express* (generally referred to as the *Rugby Leaguer*) which is a weekly journal published in both print and digital formats. It is accepted that it has a very substantial readership among those interested in the sport and indeed that it is the leading periodical published in the United Kingdom on rugby league. The Second Defendant is a freelance journalist who contributes regularly to the journal. It is accepted for the purposes of the present proceedings that the First Defendant is vicariously liable for his acts or omissions.
8. The Third Defendant is a professional rugby league player who was employed by Barrow and played for them between April 2009 and August 2011. So far, he has played no part in these proceedings and now lives in Australia.
9. In the issue of the *Rugby Leaguer* dated 22 August 2011, on pages 3, 10 and 11, there were published two articles written by the Second Defendant referring to the Claimant. These form the subject-matter of the present claim. The first, published on pages 3 and 11, was headed "BARROW STAR CLEARED OF WRONGDOING" (referred to by counsel as "the story"). The second, published on page 10, was headed "IN THE SPOTLIGHT – TRIALS AND TRIBULATIONS" ("the interview"). It will thus be apparent that the second half of the story appeared inside the journal on the page opposite to that containing the interview. The Third Defendant was the source of the information contained in the articles and the second article took the form of an interview with him.
10. The proceedings were launched on 8 August 2012. The claim form was served on the First and Second Defendants on 26 and 29 November 2012 respectively. The Third Defendant was served with the proceedings on 24 January 2013 in New South Wales, pursuant to an order of Master Fontaine dated 26 November 2012. He has not acknowledged service.
11. Because of the nature of the exercise I am embarked upon, it is necessary to set out the words complained of. Those contained in the story are set out in the particulars of claim at paragraph 6:

"BARROW STAR CLEARED OF WRONGDOING

BARROW forward Ned Catic, who is currently suspended by the club, has been cleared by police of any wrongdoing relating to an event that occurred in the club's offices in July.

Raiders Chairman Des Johnston had visited the police, claiming that the Australian had intimidated two members of staff in the club's office, before grabbing some cash, although Johnston did not claim that Catic (right) had stolen any.

Catic, 33, has not played for the Raiders since the incident, even though he was not charged. The police questioned him

over the incident, but accepted his version of events. The police have since written (left) to Catic to confirm that: “There was insufficient evidence to substantiate that any criminal offence had occurred.”

According to Catic, he had not been paid for three months. Johnston had withheld his salary after Catic was found guilty by the Rugby Football League of abusing a drugs tester earlier in the season, a charge Catic denied.

He said: “I got suspended for four weeks earlier in the season, and that’s when things changed for me with Des. I got sent into a tribunal with the RFL with no representation. I pleaded not guilty, but the RFL found me guilty and banned me.

“Before that, Des thought what I was accused of was funny and he congratulated me for it! But he got serious when he found out I could be banned, and he spent the best part of ten weeks telling me I was going to be fined heavily. But he never did anything, it was just threats. There was nothing in my contract that would enable Des to take further action, but he told me that the RFL had fined the club £4,000 for the way I spoke to them. Then he changed his argument, claiming that my suspension was costing the club £8,000 in lost game money. It had somehow doubled!

“When I wasn’t budging, he even used to threaten me with deportation. That’s when I realised I needed legal advice. He owed me three months’ wages. I went to his house for a meeting, but when I spoke he kept telling me to shut up because he was watching the racing on Sky. He still insists that it was an official disciplinary hearing! There wasn’t even someone taking notes.

“So I thought my best bet was to get back to playing rugby and playing well. I played two games against Sheffield and Halifax.

“The following Monday, I rang the office and Marian from the shop answered and said [club secretary] Karen would ring me back. I’d heard that before, so I drove over and me and Zeb Luisi went in. Marian told me to go upstairs where Karen was. I used to go upstairs all the time – in fact earlier in the season she’d been crying on my shoulder because of the horrible situation she was always in, with players turning up for wages that weren’t there. I gave her a hug and a kiss on that occasion. It’s very common for players to go into Karen’s office – it happened all the time.

“I went upstairs, sat in the chair that I always sat in, and started a bit of small talk. Then I told her I needed my money because

it was three months overdue. She was counting the weekend's takings, but I hadn't realised that before I went in. I gave Des a call from Karen's office, but he told me to call him back because he was in a meeting. But he always fobbed us off like that. I told him I'd just take it if he didn't pay me, although I wouldn't have done and I didn't.

"We were swearing at each other. I asked him how he'd feel if I just picked up the cash I could see – see how he would feel for someone to steal off him, just like he was not paying me.

"I picked up some cash to prove the point that I could, but I wasn't going to actually take it. I was showing him how I could. At that point Karen said it wasn't my money, and she'd have to call the police. When I heard that word [sic] 'police' I just put the money back. I hung up on Des, didn't say anything to Karen, and Marian was halfway up the stairs. I explained to her he owed me three months' wages and that it had nothing to do with her – it was between Des and me. She went back and said to Zeb that she wasn't going to call the police.

"I said to Marian downstairs that she wouldn't be happy if she didn't get paid, and she agreed with me. I went for a bite to eat and rang the club. I spoke to Marian and told her I loved her and John – someone else at the club – but I explained that the club owed me three months' wages. I apologised for swearing, but pointed out again that it was best to stay out of things that didn't concern her. That was the last time I spoke to anyone at the club.

"I went to Des's workplace and once again he made himself unavailable to see me. I went home and got a phone call from the police, who wanted me to go and see them. Des had told them a pack of lies. If his version had been true, I'd have been arrested. I was in the station for three whole minutes! There was no case at all, and the police told me straightaway that I was obviously innocent of the three things Des had accused me of – forced entry, threatening behaviour and taking money – and I have the letter from the police to prove it...".

12. The meanings relied upon as defamatory by the Claimant are to be found in paragraph 7 of the particulars of claim, as follows:

"In their natural and ordinary and/or inferential meaning the said words meant and were understood to mean that:

- 7.1 the Claimant was guilty of making a malicious complaint to the police concerning the Third Defendant arising from his supposed conduct at Barrow's offices on 12 July 2011, falsely accusing the Third Defendant of forced entry, threatening behaviour and of taking money when,

as the Claimant knew, the Third Defendant was obviously innocent of all three allegations and there was no case against him at all;

7.2 the Claimant, as chairman of Barrow, had behaved towards the Third Defendant, a player and an employee of the club, in a manner that was wholly at odds with basic tenets of good employment practice and employer-employee relations and had mistreated, harassed and/or victimised the Third Defendant in the following ways:

- (i) he had initially reacted with amusement on being informed that the Third Defendant had been accused of behaving abusively towards a drugs tester and had congratulated the Third Defendant for his misbehaviour in this regard;
- (ii) then, upon finding out that the Third Defendant could be banned from playing for the club if found guilty of such conduct by the Rugby Football League ("RFL"), with the result (as the Claimant saw it) that for the duration of such a ban the club would be getting nothing from the Third Defendant in return for paying his wages, he changed his tune and spent the best part of ten weeks repeatedly threatening the Third Defendant with the prospect of being fined heavily by the club in addition to any sanction the RFL might impose, despite the fact that the club had no contractual right to take any such further action against the Third Defendant;
- (iii) when the Third Defendant was found guilty by the RFL and suspended from playing, the Claimant variously demanded, without any contractual or other lawful justification, that the Third Defendant refund the £4,000 the club had been fined by the RFL for the way in which the Third Defendant had spoken to them and/or the £8,000 it had supposedly lost in terms of game money as a result of the Third Claimant's suspension;
- (iv) when the Third Defendant refused to budge and pay those sums, the Claimant without any lawful justification threatened the Third Defendant with deportation and withheld payment of the Third Defendant's salary for three months; and
- (v) when the Third Defendant attempted to raise the issue of his unpaid wages with the Claimant, the Claimant responded contemptuously including on one occasion, when the Third Defendant raised the

issue with the Claimant in person, by continuing to watch horseracing on television and repeatedly telling the Third Defendant to shut up while he did so; and

7.3 the Claimant had behaved in a similar manner towards other players at the club, failing duly to pay them their wages or to make them available for collection as they fell due, and had thereby put Karen, the club secretary, in a horrible situation in her dealings with the players.”

13. The terms of the interview relied upon are contained in paragraph 8 of the particulars of claim:

“IN THE SPOTLIGHT

TRIALS AND TRIBULATIONS

RICHARD DE LA RIVIERE speaks to NED CATIC about his experiences in Barrow

You signed for Barrow in 2008. What were your early experiences of the club and its Chairman?

Des chased me for three or four weeks telling me the club was going places. We agreed a contract over the phone, and he promised me a job with his recruitment firm and a car. I got to Barrow, played in my first game and asked him about the job. He told me things were really slow with his business and that he couldn't offer me one. That's when I started thinking 'what's going on here?' I asked about the car, and he gave me a pushbike, and that me that's all I'd need in Barrow. The brakes didn't even work.

But things were OK on the field?

We had a good team, and were winning games. But midway through the year we started losing a few games, so Des decided to sack Dave Clark and he brought in Steve Deakin. Under Steve, we beat Leigh 74-6, then Doncaster 64-0, and after the game I remember Des coming up to me saying, 'this is an effing joke'. I asked him what his problem was and he said, "He's gone – who does Steve Deakin think he is?" I couldn't believe it, but Des said, "How dare he tell me who I can't put in the team" just because Jamie Rooney hadn't played – he hadn't trained all week because of injury. I found out later that he had put money on Rooney to score the most points in the game. Two weeks later, Deakin was sacked, even though he was doing a great job. Des fired him because he didn't choose the team he wanted.

Then Dave Clark came back...

I expressed my concerns to Des, although I have no problems with Dave, and I was dropped for the next game. Dave came back and we went on to win the comp, but the cracks were starting to appear. There were a few people who played for us that year who still haven't had their medal from winning that final, yet Des had three or four. We didn't even get our jerseys – he auctioned them off in 2010. The club made over £145,000 in prize money that year, but none of us got any.

What happened in 2010?

Dave left after the 2009 Grand Final, saying he didn't have the confidence to continue in the job, but I think it was Des's decision, because he wanted Steve McCormack. We started OK and were winning games, and then we had the Andrew Henderson debacle... Steve then left – sacked – and enter Dave again. It was a joke. Des's motto is once he's got everything out of you, he'll throw you to the wolves. He's preached to me "BBB – bullshit baffles brains" since the day I got here. I'd say that should now stand for "bullshit backfires badly" – as Des is now discovering.

You beat Cas in the Cup, so things can't have been too bad?

We beat Cas – one of the best wins of my career – but shortly after that he sacked Hendo. After that we drew Saints away. Des came to training and promised us all £150 regardless of the result just for getting there. To this day, we've not seen a penny of that. He also cut back on giving tickets to players for home games. We usually got two tickets for each game, but he found out that I'd given one of mine to another player because I don't have family here. He went mad, and completely cracked down on it – he cut it from two to one, and players had to specify who would get the ticket. If they weren't a direct relative, they wouldn't get in. For away games, he stopped the complimentary tickets.

Steve then left...

Just going into the semis, Steve left and Dave came back for a third time, to the surprise of every player in the joint. We got to the qualifying semi, but lost to Sheffield at home and Hendo had a great game for them. Again, Des sold our kits instead of giving them to us. At the end-of-season presentation, I picked up pretty much every award going, but then Dave decided to leave.

How was your relationship with Des at that point?

It was OK. He confided in me at the start of the year that he'd never been in such a bad position with his gambling. He told me that he was absolutely skint, and had to quit but then I'd see his car outside William Hill. I'd go in and tell him to stop, but he wouldn't. The local bookies love him because he's a hopeless gambler and they make so much money out of him.

Were you surprised when Garry Schofield was appointed your new coach?

Yes. There was a lot of speculation over the new coach. Des kept talking about Brian Noble, but he settled for Garry, who's a great bloke, a great fella and great company, but I don't think his philosophy really suited us. He believed that we should all know the basics, so didn't teach us them, but the truth is that players at this level don't all know the basics. Des thought he'd bought himself the dream team, but we were playing well under par and we went out of the Northern Rail Cup. There were also a lot of loan players at the club. We'd train three times a week, and every time there were different faces – the only time we were all together was on Saturday mornings.

How was morale?

It was a shambles. There was backstabbing left, right and centre. We had a meeting before every training session to sort out some problem Des had discovered about dramas over contracts or whatever. The whole thing was Des's fault, not the coach's. His mismanagement of the club tore the dressing room apart with so many problems cropping up.

Such as?

For instance, we got one training top. One! And that didn't even come at the start of the year. When we came to get paid, we'd often discover that we'd been fined, and when we asked why it was because we'd been seen in the wrong shirt. We only had one, so it had to be washed. One wasn't enough for three sessions a week, but if we wore last year's top, anything from £25 to £75 would be deducted from our pay.

What were you beginning to think of Des by this stage?

I've never known someone who thinks he knows so much about the game but knows so little. Never have I been to a club that mismanages money so badly, and reneges on so many agreements. You're then forced to spend the year fighting the club. He holds money as a means of control, and manipulates people. I've seen him hold money in front of a player and practically have him begging for it. I've learned that money

isn't the be all and end all if you have to put up with all this shit.

What other examples do you have of his mismanagement?

Zeb Luisi went home for his granddad's funeral. Des promised to pay for his flights, that Zeb could pay him back over the year and that his wages would continue. Zeb missed the flight back and missed the Featherstone game, so Des took money from his next two wage packets and then, when Zeb was back playing, he still took money from the next payment. Zeb was sending money back home to his mum and needed every penny. When he went to ask what was happening, Des just pulled £100 out of his pocket and said, "that's all you're getting." Another thing I've heard is from a policeman who witnessed Des take money from a cash point, throw it onto the ground and saying to a player "There's your money."

How did you feel seeing players and coaches being treated like this?

I know how they feel now, because he's now screwed me over and I'm angry about it, but beforehand, my attitude was not to bite the hand that feeds you, so I would just say nothing. I regret that now and I feel bad for the players and coaches that have been shit on. I want the truth to come out so this won't happen to other players.

Back to the rugby. Garry didn't last too long with Nigel Wright taking over.

We were a laughing stock by then. Schoey got sacked because a player didn't turn up to training. Garry wanted to discipline him by dropping him, but Des wouldn't have it and wanted to deal with it himself. He didn't want the side weakened even for one game, and totally opposed Garry's suggestion. He spoke to all the players and said: "If you want to f*** around, don't do it in my town." He thinks it's his town! Anyway he and Schoey couldn't agree, so Garry got sacked. Nigel then took over and was barely at training, so Martin Clawson, the conditioner, was coaching us during the week with Nigel in charge at gamedays. He didn't turn up for one game because he got stuck in traffic and coached us over the phone.

What did the players think of Wright's attendance at training?

When he got sacked, a few players thought "serves him right, only coming up once a week." Nigel has since told me that he wanted to be up all the time by moving to Manchester, but Des kept putting him off. Nigel also wanted to get rid of a couple

of players and buy a few, but Des didn't agree and sacked him. Another problem was that Des used to text the players before a game with messages like "You'd better play well today" and he once texted me to say "You owe this club big time," right before a game. Nigel went to Des and told him to stop, and they had a big blow-up about it.

You must have thought things couldn't get any worse by this time?

Yes, but they did. He even took down posters advertising the Paul Larkin Memorial Tournament. Paul was the father of Chris, who plays for us, and he died in February. We had a touch rugby tournament for Paul, but Des ordered the posters advertising it to be taken down. The response given was that Sky had requested them to be taken down because they were televising a game, but Sky have clarified to someone I know that this isn't true."

14. The defamatory meanings said to be derived from the interview are pleaded at paragraph 9 of the particulars of claim:

"In their natural and ordinary and/or inferential meaning the said words meant and were understood to mean that:

9.1 the Claimant, by his gross mismanagement of Barrow as its chairman, had made the club an unpleasant, unstable, disharmonious and demoralising place to work as a player or a coach, in particular by conducting himself in the following manner:

- (i) by repeatedly reneging on his promises to players:
 - (a) he reneged on a promise to and/or breached an agreement with the Third Defendant to provide him with a job at his recruitment firm and a car in return for the Third Defendant's agreement to sign for Barrow; (b) he reneged on a promise to give all the players £150 each for beating Castleford ('Cas') in the Cup in 2010, in fact giving them not a penny of this sum; and (c) he reneged on a promise made to Zeb Luisi (a New Zealand player) to pay for the player's flights to attend his grandfather's funeral, to allow Luisi to pay him back over the subsequent year, and to continue meanwhile to pay Luisi his full wages, instead deducting money from three of Luisi's wage packets, even though, as he knew, Luisi was in the habit of sending money home to his mother and desperately needed every penny of his wages;

- (ii) by ruthlessly, capriciously, repeatedly and without good reason, sacking coaches, specifically: Steve Deakin in 2008, sacked at a time when the time was enjoying success; Dave Clark, sacked on two occasions during 2008 and 2009, in the latter instance just after the club had won the 2009 Grand Final; Steve McCormack, sacked at a time when the team was playing well and winning games; and also Garry Schofield and Nigel Wright;
- (iii) by sacking Steve Deakin as coach, even though he was doing a great job, because Deakin would not pick the team he wanted and had ignored his demand that Jamie Rooney be played in a match in the 2008-9 season against Doncaster, a demand issued to Deakin despite the fact that Rooney, as the Claimant was aware, had not trained the week prior to the match because of injury;
- (iv) by insisting that Jamie Rooney be played in the said match against Doncaster only because he had placed a bet on Rooney to score the most points in that match;
- (v) by discouraging coach Nigel Wright in his plan to move to the north of England, with the consequence, as the Claimant was aware, that Wright barely undertook any coaching other than on match days;
- (vi) by interfering in other ways, officiously and counterproductively, in coaching, team selection and player disciplinary matters: specifically, (a) he sacked Garry Schofield as coach when Schofield disagreed with him about how to discipline a player who had failed to turn up for training; and (b) he habitually sent threatening text messages to players shortly before matches and had a big blow-up with coach Nigel Wright when Wright asked him to desist;
- (vii) by generally behaving towards players in a thoroughly ungenerous and mean-spirited way: (a) he failed, as he ought, to give each player who had played in the 2008-9 season his Cup winning medal and jersey, but instead retained three or four medals for himself and auctioned off the jerseys; (b) despite the club having won £145,000 in prize money in the 2008-9 season, he failed, as he ought, to give the players any financial reward for their success; (c) pettily, vindictively and for no good reason, he reduced players' home game complimentary ticket

allowance from two tickets to one and stopped the away game allowance altogether; (d) he sold the players' kit again instead of giving it to them after the team lost to Sheffield in the Cup qualifying semi-final during the 2009-10 season; (e) he provided players with only one training top each even though there were three training sessions a week and then deducted £25 to £75 from their wages by way of a fine if they wore the wrong shirt to training; (f) he reneged on money-related promises he had made to players as described at paragraph 9.1(i)(b) and (c) above; and (g) he gratuitously took down posters advertising a touch rugby tournament being played in memory of Paul Larkin, the recently deceased father of player Chris Larkin, then sought dishonestly to explain his mean-spirited actions by claiming untruthfully that Sky, the broadcaster, had asked for them to be taken down when, as he knew, they had done no such thing; and

(viii) by habitually using money as a means of humiliating, manipulating and/or exercising control over players: (a) on one occasion he held a player's wages in front of the player in cash form and practically made the player beg for them; and (b) on another occasion he took out a player's wages from a cashpoint in the presence of the player, before throwing the cash on the ground and saying "There's your money".

9.2 The Claimant had behaved as described in paragraphs 9.1(vii) and (viii) above because he had an out of control gambling habit, such that he had continued to visit bookmakers and place bets even though, as he confessed to the Third Defendant, he was absolutely broke and had to quit."

15. I turn next to my own assessment of the defamatory meanings to be found in the story. My conclusions, largely as a matter of impression, are as follows. First, the words mean that the Claimant had told the police "a pack of lies" about the Third Defendant's behaviour at the club's offices on 12 July 2011. That phrase can only convey the imputation that what he told them was known by him at the time to be false or exaggerated.
16. I would add, by way of explanation, that the use of the phrase "pack of lies" makes it quite clear to the reader that it is not merely being alleged against the Claimant that he passed on what he had been told by someone else who (unlike him) had actually been present (i.e. Karen). He is said to have been knowingly responsible for misleading the officers, presumably with a view to persuading them that criminal offences had been committed. That is not necessarily to say that he knew that there was "no case to

answer” at the time he made the report. He might have been unsure as to the legal position but, in my judgment, there can be no doubt that he is being accused of dishonesty.

17. Secondly, the article alleges that the Claimant had withheld three months’ salary from the Third Defendant, when there was no justification for doing so, and was thus in breach of contract. The explanation is put forward in the article that this was done because the player had been found guilty by the Rugby Football League of abusing a drugs tester. Although it does not mention breach of contract specifically, the article is recording the Third Defendant’s complaint, from which it is implicit that the Claimant had not been entitled to withhold his salary. Moreover, it is expressly stated that there was nothing in the contract to justify “further action” on the Claimant’s part.
18. Thirdly, it is said that the Claimant spent the best part of ten weeks threatening to fine the Third Defendant heavily, even though he must have known that there was nothing in the contract that would enable him to do so.
19. Fourthly, following the RFL finding against the Third Defendant and the fine of £4,000 it imposed upon the club, it is alleged that the Claimant demanded (again without any lawful justification), at various times, that the Third Defendant should reimburse the club in respect of the fine or, on other occasions, that he should compensate the club for the loss of approximately £8,000 lost in game money (or takings) during the period of his suspension.
20. Fifthly, the article accuses the Claimant of repeatedly threatening the Third Defendant with deportation (again without any lawful basis for so doing).
21. Sixthly, there is the allegation that the Claimant behaved unprofessionally and rudely towards the Third Defendant during a meeting, which he later claimed was an official disciplinary hearing, by continuing to watch racing on Sky television and telling him to “shut up”.
22. All six of these allegations are defamatory, in my view, and also to be characterised as factual rather than the expression of opinion or comment.
23. I turn next to the meanings to be attributed to the interview published on page 10. There are certain passages which clearly refer, expressly or impliedly, to the Claimant and convey defamatory imputations of a general nature. The first I would identify is, “Never have I been to a club that mismanages money so badly and reneges on so many agreements”.
24. Secondly, under the heading “How was morale?” it is said, with specific reference to “Des”, that it was a “shambles” and that his mismanagement of the club tore the dressing room apart with so many problems cropping up. One of the principal arguments between counsel at the hearing was as to the extent to which these general assertions could be confined to mismanagement directly affecting man management and staff morale (as Mr Busuttill contends). No doubt, this is a debate which may be relevant potentially to the scope of justification, but I have already made clear that I am not to resolve any disputes of that kind. My own conclusion, however, is that it would be artificial to construe the interview as attributing mismanagement to the

Claimant *only* to the extent that it affects staff morale. To draw fine distinctions of that kind would be over-analytical and, what is more, quite contrary to any reasonable interpretation of the Third Defendant's words. It would involve the reader having to seek out fine lines where none are to be found. Moreover, it would be extremely difficult to divide up instances of "mismanagement" into those which adversely affected morale and those which did not. The tone of the interview does not lend itself to careful distinctions and the content is general. To put it another way, the Third Defendant's attack resembles a blunderbuss rather than a scalpel. A reader may well have inferred (if he/she thought about it) that there must have been some aspects of mismanagement which would not ordinarily come to the attention of the staff or players, and which could therefore not in themselves have impacted directly on morale, but it is not reasonable to separate out those categories into separate and distinct allegations. There is nothing in the wording of the interview to justify that approach.

25. A number of examples are contained in the interview to back up the charge of mismanagement, but these do not detract from the generality of the meanings to which I have so far referred. Some of the examples given, however, do represent specific defamatory allegations in themselves. To these I now turn.
26. There are listed specific examples of promises which the Claimant is alleged to have reneged on:
 - a) to provide the Third Defendant with employment at his recruitment company and also with a car;
 - b) to let each of the players have £150 for beating Castleford in 2010;
 - c) to pay for Zeb Luisi's flights so as to be able to attend his grandfather's funeral, refundable over the following year, and to continue paying his wages in the interim (which he knew the player required in order to send money home to his mother).
27. It is said that the Claimant on several occasions sacked coaches capriciously and without good reason (Messrs Deakin, Clark, McCormack, Schofield and Wright).
28. In the case of Mr Steve Deakin, the Claimant is said to have sacked him because he had refused to pick the team chosen by the Claimant and, specifically, had refused to pick Jamie Rooney in a match against Doncaster – even though he (the Claimant) had been aware that, because of an injury, Rooney had not trained in the week prior to the match. What is more, in pressing for Rooney to play, he had been motivated by self-interest, since he had placed a bet on the player to score most points in that very match.
29. In the case of Mr Schofield, it is said that the Claimant sacked him simply because he disagreed with him as to how a player should be disciplined after he failed to turn up for training.
30. A further allegation is that the Claimant was responsible, at least in part, for the inadequacy of Nigel Wright's coaching because he had discouraged him from moving to the north of England.

31. It is also alleged in the interview that the Claimant had interfered officiously in the running of the club's affairs by way, for example, of sending text messages to players shortly before matches, which were threatening and unsettling, and that he had a row with Nigel Wright when he tried to discourage this behaviour.
32. Other examples were given of the Claimant's meanness towards players, such as:
- a) withholding in 2008-2009 their cup winners' medals and jerseys, while selling off the jerseys and retaining some of the medals for himself;
 - b) failing in 2008-2009 to give the players any financial reward for their success, despite the club having won £145,000 in prize money that season;
 - c) pettily reducing the players' complimentary ticket allowance (from two to one) for home games and removing their away game allowance altogether;
 - d) in the 2009-2010 season selling off the players' kit, instead of giving it to them, after they lost to Sheffield in the cup qualifying semi-final;
 - e) being so mean as to allow the players only one training top each, despite the fact that they had three training sessions per week, and yet deducting a sum from their wages (between £25 and £75) if they did not wear the right shirt when training; and
 - f) taking down, out of meanness, some posters advertising a touch rugby tournament to be held in memory of the father of one of the players (Paul Larkin) and then pretending that this had been required by Sky television.
33. It is also alleged that the Claimant habitually humiliated players by, for example, holding out his wages to one of them and practically making him beg and, on another occasion, drawing out a player's wages from a cashpoint dispenser and throwing the money on the ground in front of him.
34. Some of the Claimant's financial mismanagement was said to be accounted for by his uncontrollable gambling habit, which meant that he was "broke". (I would add that this is one factor which would disincline any reasonable reader to conclude that such mismanagement was confined to that which happened to impact on the treatment or morale of employees.)
35. All these meanings conveyed by the interview, both general and specific, seem to me to be defamatory in that they reflect adversely either upon the Claimant's competence or upon his treatment of other people (in particular, employees and players). I would again characterise these defamatory imputations as being factual in nature, rather than comment.
36. So far I have been addressing the natural and ordinary meanings of the words complained of. It will be seen that those selected by me correspond very closely, although not exactly, to those relied upon by the Claimant. (As I have explained

above, I do not consider that the allegation of mismanagement can be confined artificially by reference to its impact on morale. The article simply conveys the natural and ordinary meaning, which is general in character, that the Claimant was responsible for mismanagement – including financial mismanagement). There is now a further issue to be resolved as to the Claimant’s true innuendo meaning pleaded at paragraph 10 of the particulars of claim. This is to the effect that:

“ ... The Claimant, in seeking to ensure that Jamie Rooney be played in the match against Doncaster because he had placed a bet on Rooney to score the most points in that match, was guilty of committing an offence or offences of misconduct under the RFL’s Betting Code and Operational Rules.”

37. Under the facts pleaded in support of the innuendo, there are set out passages from Section E5 of the so-called Betting Code. I would accept, as pleaded at paragraph 10.3, that most readers of the publication would be persons with a specialist interest in and knowledge of rugby league football. In the circumstances, it is reasonable to suppose that a substantial proportion of those readers would have a good knowledge of the rules governing the sport, including the substance of the rules contained in the Betting Code. Some may have had a detailed knowledge, but what matters for present purposes is the substance of the rules which prohibited a bet on Jamie Rooney’s performance such as that described in the words complained of. Accordingly, I would uphold the true innuendo meaning. In the circumstances, I can see no reason for the pleading to be amended (as was at one stage canvassed) to enable the Claimant to add the words “contrary to rule E5.3.1.1.1 and/or E5.3.1.1.3 of the RFL’s Betting Code”.
38. I have already made clear that the role of the court at the recent hearing did not extend to commenting or ruling upon the scope of the First and Second Defendants’ plea of justification. Nevertheless, a general point was raised as to the appropriateness of a defendant pleading a true innuendo with a view to justifying that meaning. Although I have no recollection of such a point having arisen before, or of any domestic authority directly relevant, I see no reason in principle why a defendant in identifying *Lucas-Box* meaning(s) should be confined to those which can be classified as “natural and ordinary”.
39. Counsel referred to *Gatley on Libel & Slander* (12th edn) at para 27.10, where the learned editors refer to a claimant’s legal innuendo constituting a separate cause of action. They go on to add the comment:

“It is submitted that a defendant wishing to meet this separate cause of action with a plea of justification must confine himself to the legal innuendo meaning contended for by the claimant.”

What seems to me to matter primarily, however, is not the somewhat technical point as to whether the claimant happens to plead separate causes of action, but simply whether there is a defamatory meaning (not separate and distinct from that pleaded by the claimant) which the defendant would be able to justify, thereby depriving the claimant of any right to compensation in respect of that aspect of his reputation: see e.g. *Polly Peck v Trelford* [1986] 1 QB 1000, at 1032C-D.

40. I note, however, that in a different chapter, at para 3.23, the editors appear expressly to acknowledge a defendant's right to plead extrinsic facts in support of his own innuendo, but they go on to suggest that "... he must show that all the persons to whom the words were published knew the facts, since otherwise the claimant will have been defamed to those persons who did not know the facts". The potential impact of this point on the First and Second Defendants' case is considerable. A claimant obviously "... need *not* show that all of the persons to whom the words were published knew the facts" (emphasis added): see *Gatley* at para 3.22 and the well known cases of *Cassidy v Daily Mirror* [1929] 2 KB 331, CA, and *Hough v London Express* [1940] 2 KB 507, CA. As to a defendant's innuendo, the editors refer to a Singapore case: *Chiang See Tong v Xin Zhang Jiang Restaurants* [1995] 3 SLR 196. They also cite some 19th century cases from various jurisdictions, including *Hankinson v Bilby* (1847) 16 M&W 422. The principle seems clear, however, despite the dearth of recent English cases. A claimant who can show that the extrinsic facts were known to *some* of the readers will *ex hypothesi* have established a defamatory publication to them at least; whereas a defendant who can only show that some readers knew the extrinsic facts he prays in aid will, by the same token, only be able make out a partial defence of justification. It cannot avail him in respect of any readers who were unaware of the relevant facts.
41. The First and Second Defendants plead at paragraph 11 of the amended defence what is in effect an innuendo meaning dependent upon the Betting Code but expressly confined to one incident (which in context can only be referring to that involving Jamie Rooney). It is pleaded simply that the Claimant had placed "a bet" (i.e. in the singular) in breach of the Betting Code. Yet Mr Dean in his pleading uses this innuendo as a peg on which to hang a raft of particulars, from paragraph 91 onwards, setting out other examples of such breaches. The pleading is one to which Mr Busuttil objected, particularly on the basis that it reflects a different innuendo from that raised by the Claimant and thus, he submits, goes to a cause of action not relied upon. I would have thought, however, that the real point is not so much the right or otherwise of a defendant to plead a true innuendo, but simply whether the Defendants' formulation represents a general or a specific libel.
42. This is an issue relevant to the scope of justification, and thus not one that I am now asked to resolve. What Mr Dean wishes to do is to rely upon a number of other bets placed by the Claimant which are said to have been contrary to the Betting Code (and in respect of which he has already, I am told, been found guilty by the RFL). Whether he should be permitted to do so would appear to depend on whether the meaning he seeks to justify is general (with the Jamie Rooney bet being merely an "exemplar" of such misconduct) or whether it relates to one specific instance (and can thus only be justified by reference to Jamie Rooney): see e.g. *Rothschild Ltd v Associated Newspapers Ltd* [2013] EWCA Civ 197. That is a point which does not seem to me to turn on whether the meaning in question happens to be a true innuendo or a natural and ordinary one.
43. No other specific examples of "improper betting" (i.e. contrary to the Code) are to be found in the words complained of and, moreover, even the First and Second Defendants' innuendo meaning, at paragraph 11, is pleaded by reference to the one incident ("a bet"). It is true that the allegation of a gambling habit is general, but the reference to the Betting Code, relevant to the innuendo, is confined to that one

occasion. Mr Dean argues that it would be wrong for the Claimant to recover compensation in respect of the improper betting allegation – given his past conduct in respect of which he has been found guilty. That may be, but he is unlikely to do so if the Jamie Rooney bet is proved at trial. Thus, these Defendants would not need to go beyond that instance in order to avoid the risk of false vindication. (Another factor that may be relevant in this context is the Claimant’s general reputation, but that is not a matter for me to comment upon for the purpose of the present preliminary issue.)

44. My role, as I understand it, in relation to paragraph 11 of the amended defence, is to rule whether it represents a meaning to be found in the words complained of. I have upheld the Claimant’s innuendo meaning, but the court has to apply a different test for a defendant’s innuendo. It is necessary to go further than showing simply that a “substantial proportion” of readers knew of the substance of the rules contained in the Betting Code. If para 3.23 of *Gatley* states the law correctly, as I believe it does, Mr Dean would at some point have to satisfy the court that *all* readers had, at least, a general knowledge of the relevant rules. So far, however, he has not pleaded “all readers”: he has merely adopted the Claimant’s formulation in paragraph 10.1 to 10.4 of the particulars of claim (i.e. “a substantial number”). This plea of justification could thus only ever amount to a partial defence. I doubt if he would be able to establish a clean sweep of “all readers”, although counsel did not address me on the point. I was not asked by Mr Dean for permission to amend. (After the parties had seen this judgment in draft, Mr Busuttil invited me to rule that Mr Dean’s innuendo, as currently formulated, is untenable as a matter of law. Yet that would, I believe, be to shift the goal posts. His argument may ultimately prevail, for the reasons canvassed above, but Mr Dean did not have an opportunity to address that particular submission during the hearing before me. It is too late to reargue the case now.)
45. Be that as it may, a quite distinct hurdle remains to be overcome, as I have pointed out; namely, that Mr Dean’s innuendo relates to one instance only and does not reflect a general meaning (such as, for example, the habitual placing of bets in breach of the Betting Code). That may, therefore, be more critical for his wide ranging defence, in the long run, than the extent of readers’ knowledge.
46. I believe that I have now completed the limited task that I was asked to carry out in relation to the preliminary issue as defined.