

Case No: HQ10D00267

Neutral Citation Number: [2012] EWHC 756 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/03/2012

Before :

MR JUSTICE BEAN

Between :

CHRIS LANCE CAIRNS

Claimant

- and -

LALIT MODI

Defendant

Andrew Caldecott QC and Ian Helme (instructed by Collyer-Bristow) for the Claimant
Ronald Thwaites QC and Jonathan Price (instructed by Fladgate LLP) for the Defendant

Hearing dates: 5-9, 12, 14 and 16 March 2012

Judgment

Mr Justice Bean:

1. The Claimant, who was born in 1970, is a well known New Zealand cricketer who won 62 Test caps and captained his country in 7 Test matches. When the shorter formats of the game are included he represented New Zealand on 267 occasions. He is one of only a handful of men who have reached the “all rounders’ double” of 200 wickets and 3000 runs in international cricket. His last appearance for New Zealand in a Test match was in June 2004 and in a one day international in January 2006.
2. The Defendant was formerly the Chairman and Commissioner of the Indian Premier League (IPL) and Vice-President of the Board of Cricketing Control for India (BCCI). He was suspended from these positions in April 2010 and removed from them in September 2010. The IPL operates Twenty20 competitions in India which attract an enormous following and have changed the face of cricket. At the time of the events in question Mr Modi was a very powerful figure in world cricket. He is now resident in England.
3. In his closing submissions Mr Ronald Thwaites QC for the Defendant described the case as an example of libel tourism. The criticism is misguided. The Claimant went to school in England, as did his children, and he played county cricket in England for Nottinghamshire in 7 seasons during a period of 15 years. The Defendant has since mid-2010 been resident in England. A trial in India would have involved very long delays. No application was made to stay the proceedings on “forum shopping” grounds, and if it had been I consider that it would have failed. The case is properly before the court in England.

4. The Indian Cricket League (ICL) was formed prior to the IPL and without the approval of the BCCI. It was not officially recognised by the International Cricket Council (ICC) nor by several national cricket boards including the BCCI. Players who took part risked losing official registration, and accordingly most of the international players involved had retired from their national sides.
5. The ICL organised three international tournaments (curiously referred to as “editions”): the first from 30 November to 16 December 2007, the second from 9 March to 6 April 2008, and the third from 10 October to 16 November 2008. These were Twenty20 games between sides which consisted partly of international players and partly of Indian ones. The Claimant was hired to be captain of the Chandigarh Lions in each of the three editions, and in the third edition he was also the coach. The ICL also held two domestic tournaments, not involving players from other countries, between the international editions.
6. On 5th January 2010 the Defendant published on his official personal page of the social networking service Twitter the following words:

“Chris Cairns removed from the IPL auction list due to his past record in match fixing. This was done by the Governing Council today.”
7. On the same day a journalist from the online cricket magazine Cricinfo who had seen this Tweet asked the Defendant to confirm that the Claimant had been removed from the IPL auction list because of involvement in match-fixing. Mr Modi replied:

“We have removed him from the list for alleged allegations [sic] as we have zero tolerance of this kind of stuff. The Governing Council has decided against keeping him on the list.”
8. The same day Cricinfo published on its website an article entitled “There is no place in the IPL for Chris Cairns”, in which the allegation was repeated.

9. On 8 January 2010, in response to a media enquiry, Mr Modi stated: “We know what we are doing and at the end of the day he is not going to be allowed to play and that’s it. Let him sue us, then we will produce what we have to in court.”
10. Mr Cairns has sued Mr Modi for defamation in respect of the Tweet and the comment to Cricinfo. The defamatory meaning of the Tweet is obvious, namely that the Claimant had fixed cricket matches. The meaning of the statement to Cricinfo is not quite as clear because of the garbled reference to an “alleged allegation”. I accept the submission on behalf of the Defendant that the meaning of the statement to Cricinfo is that there were “strong grounds to suspect” that the Claimant was guilty of match fixing.
11. A pre-trial hearing took place on 10 November 2010. The Defendant had applied to strike out the claim on the principles set out in *Jameel v Dow Jones and Co* [2005] QB 946, namely that in view of the limited number of Twitter followers in this country which the Defendant had in January 2010 the publication within the jurisdiction did not amount to a real and substantial tort. That application was withdrawn before the hearing. Instead the Defendant applied for the ambit of publication to be determined as a preliminary issue prior to a potential *Jameel* application. Tugendhat J rejected the application to order a preliminary issue. He subsequently ordered that the case should be tried by a judge sitting alone. Neither of these orders has been the subject of an appeal.
12. My task is therefore to decide whether or not Mr Cairns was a match fixer; or, alternatively, whether at the material time there were strong grounds for suspicion that he had been a match fixer.

13. Match fixing in the strict sense is ensuring a particular outcome of the match. Spot fixing is more specific and easier to bring about: it may consist, for example, of arranging for a bowler to bowl a no ball at the start of a particular over. Sportsmen involved in match fixing or spot fixing are in league with bookmakers and their clients who have bet on the desired event occurring. Betting on sporting events is illegal in India (except where the sport concerned is horse racing) but it is widely believed that such betting remains widespread.
14. Spot fixing came before the English courts last year when three Pakistani Test cricketers and an agent were sentenced by Cooke J to terms of imprisonment for involvement in spot fixing. More recently a player in the Essex county side was sent to prison after pleading guilty to a similar offence.
15. Before me the parties did not make a distinction between match fixing and spot fixing, and neither shall I. Both are cheating. As Mr Andrew Caldecott QC for the Claimant put it, if Mr Cairns was a cheat, he loses his case.
16. At a directions hearing on 4 April 2010 Master Kay QC made an order permitting each party to call expert evidence on cricket, with the Defendant serving any such evidence by 31 July 2010 and the Claimant then having the opportunity to serve expert evidence in reply. In fact no cricketing expert evidence has been served. The Defendant's case that Mr Cairns was indeed a match fixer must therefore depend on evidence of statements made or instructions given by him indicating that he was corrupt or seeking to influence members of his team to act corruptly.
17. Captains of cricket teams have to make a large number of tactical decisions in the course of a match which may prove to be wrong. In the absence of expert evidence it is not open to the Defendant to argue, for example, that an instruction by the captain

to a player to bowl yorkers aimed at the batsman's leg stump must have been given in an attempt at match fixing or even spot fixing. It does not require expert evidence for me to know – indeed the Claimant readily accepted in evidence - that there can be no legitimate reason for a captain in a Twenty20 match to instruct a bowler to bowl a no-ball or a wide. But this apart, almost every instruction is a matter of opinion.

18. I have set out the Claimant's distinguished cricket career. It is of course sadly well known, inside and outside the world of cricket, that distinction is not a guarantee of honesty. The South African cricket captain Hansie Cronje was just one recent example of a great sporting figure who turned out to have feet of clay.

The standard of proof

19. In *Re D* [2008] 1 WLR 1499 Lord Carswell approved observations of Richards LJ in *R(N) v Mental Health Review Tribunal (Northern Region)* [2006] QB 468:

“Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a high degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.”

20. Lord Carswell continued:

... “In my opinion this paragraph effectively states in concise terms the proper state of the law on this topic. I would add one small qualification, which may be no more than an explanation of what Richards LJ meant about the seriousness of the consequences. That factor is relevant to the likelihood or unlikelihood of the allegation being unfounded, as I explain below.....[A] possible source of confusion is the failure to bear in mind with sufficient clarity the fact that in some contexts a court or tribunal has to look at the facts more critically or more anxiously than in others before it can be satisfied to

the requisite standard. The standard itself is, however, finite and unvarying. Situations which make such heightened examination necessary may be the inherent unlikelihood of the occurrence taking place (Lord Hoffmann's example of the animal seen in Regent's Park), the seriousness of the allegation to be proved or, in some cases, the consequences which could follow from acceptance of proof of the relevant fact. The seriousness of the allegation requires no elaboration: a tribunal of fact will look closely into the facts grounding an allegation of fraud before accepting that it has been established. The seriousness of consequences is another facet of the same proposition: if it is alleged that a bank manager has committed a minor peculation, that could entail very serious consequences for his career, so making it the less likely that he would risk doing such a thing. These are all matters of ordinary experience, requiring the application of good sense on the part of those who have to decide such issues. They do not require a different standard of proof or a specially cogent standard of evidence, merely appropriately careful consideration by the tribunal before it is satisfied of the matter which has to be established.”

The obtaining of evidence for this trial

21. An important aspect of this case is that some of the evidence on which the Defendant relies is hearsay (as is the statement of one of the Claimant’s witnesses who did not attend the trial). In a criminal case a witness alleging dishonesty is generally required to be available for cross-examination. Under the Civil Evidence Act 1995 there is no such rule. But by s 4 of that Act:

(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence. .

(2) Regard may be had, in particular, to the following— .

(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness; .

(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated; .

(c) whether the evidence involves multiple hearsay; .

(d) whether any person involved had any motive to conceal or misrepresent matters; .

(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose; .

(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.”

22. Another aspect of the case which has differed sharply from a criminal prosecution, at least in this jurisdiction, is the way in which evidence of alleged match fixing was assembled and disclosed. The ICL had an anti-corruption officer, Mr Howard Beer, a former police officer in Victoria, Australia, employed by a private investigation firm “Once Blue” under contract to the ICL. According to the Defendant’s pleaded case, in answer to a request for further information, Mr Beer and a colleague Mr Reilly interviewed 23 people about the alleged match-fixing. Mr Beer does not speak Hindi or Punjabi, and some of the Indian players had only poor English: so in those cases Mr Beer was dependent on the assistance of an ICL lawyer or official to tell him what the witness was saying.

23. Mr Beer's brief appears to have been to look only for evidence of guilt. Where potential witnesses had no such evidence to offer he would sometimes simply note them as being "n/v", that is to say "of nil value."
24. During the litigation the Defendant has been in contact with Mr Himanshu Mody, who had been the chairman of the ICL at the material time. As a result of discussions with Mr Mody the Defendant was given to understand that the ICL was in possession of tapes of interviews that it had with various players around 26 and 27 October 2008, immediately before the ICL suspended the Claimant and Dinesh Mongia. He was provided with transcripts of "some of those interviews", namely those of TP Singh, Amit Uniyal, Rajesh Sharma and Love Ablish. These were disclosed to the Claimant's solicitors, Collyer-Bristow.
25. Only 5 of the signed statements made in 2008 (Sharma; Hall; TP Singh; Ablish; Campbell), 2 unsigned statements (Yadav; Abbas Ali) and some "situation reports" (attendance notes by Mr Beer about meetings with particular individuals) have been disclosed to Collyer-Bristow. In June 2010 Mr Beer visited the London offices of Carter-Ruck, solicitors then acting for Mr Modi, to make a witness statement. He had with him a complete file of the statements made to him in 2008. Carter-Ruck were given the opportunity to examine them and make notes, but did not take copies. This kept them and their client just on the right side of the line beyond which there would have been an obligation to disclose all the statements to Collyer-Bristow. Mr Beer then returned them to his employers, "Once Blue".
26. By an order of Deputy Master Bard dated 24 August 2011 made on the application of Carter-Ruck, that firm came off the record as solicitors for the Defendant. Mr Modi instructed Fladgate LLP in their place.

27. The witness statements served on the Defendant's behalf in the course of 2011 contained no direct evidence of alleged match-fixing by Mr Cairns in support of the pleaded defence of justification. On 9 February 2012, following a visit by Fladgate to India, signed witness statements from three former Chandigarh Lions were served. Each gave evidence by videolink from Delhi.
28. Mr Modi was present at the trial and had made witness statements but was not called to give evidence.

The Claimant's finances

29. There is evidence that during the three international editions some ICL players had been in contact with bookmakers, including one by the name of Robin Talwar. It is common ground that there is no evidence to show that the Claimant had any contact with such bookmakers.
30. By letter of 1 December 2011 Fladgate sought disclosure of the Claimant's bank statements. No previous request had been made. There was some delay in providing them and on 3 February 2012 Tugendhat J ordered disclosure by 13 February of bank statements for the period 1 September to 30 November 2008. The statements disclosed included one with the Emirates NBD Bank in Dubai. The Claimant's address is given as "Vijay Dimon, PO Box 54437, Dubai." Payments equivalent to £63,000 and £50,300 were made on 19 August and September 2008 from "Vishal Shah, Vijay Dimon. PO Box 54437, Dubai, UAE".
31. The skeleton argument for the Defendant dated 1 March 2012 stated that "the Defendant does not set out to prove that there existed any corrupt financial arrangement involving the Claimant". Nevertheless, for the first two hours of the

Claimant's cross-examination Mr Thwaites did exactly that. It was suggested that the sums received allegedly from Vijay Dimon were in fact advance payments for match fixing, or at least give rise to strong suspicion that they were. Mr Cairns' evidence, supported by an internet printout of a newspaper interview he gave in 2010, was that as his cricketing career was drawing to a close he had taken the opportunity offered by a part time job with a diamond trader who had become a personal friend: all the more so after a house fire in 2007 (again evidenced by a newspaper printout) in which his children and members of Mr Dimon's family had all been in danger. The payments were for the deposit on a house in Dubai and his first year's salary.

32. In his closing submissions Mr Thwaites repeated the argument that these payments "only serve to increase the suspicions about the Claimant". He argued that if there was nothing suspicious the Claimant could and should have called Mr Shah to give evidence, either in person or by videolink. That might have been a more persuasive point if the issue had been raised earlier.
33. Mr Thwaites submitted that advance payments would be the sensible way for a corrupt bookmaker to obtain match fixing services. I do not understand this point: surely the most effective *modus operandi* would be to make payment by results after each corrupted match as an incentive for the next one. But perhaps there is not much in this argument either way.
34. I accept the Claimant's evidence that the payments by Vijay Dimon were genuine payments for his services to that company, and to assist him in renting a property in Dubai when providing services to that company, not the laundering of advance payments for match fixing. The position therefore remains as it was when the skeleton

argument was lodged on 1 March: if the Claimant was indeed a match-fixer, there is no evidence showing that he profited from it.

The Claimant's injury

35. Mr Cairns' participation in the three editions of the ICL was pursuant to contracts with the ICL's promoters, Essel Sports Private Limited (ESL). The contract which governed the second and third editions was dated 31 January 2008. The contract was to run for three years at a fee of US \$350,000 per year. Mr Cairns was to render services for "a maximum of 302 days for the term of the agreement, ie approximately 102 days each year" excluding travel time. The undertakings by Mr Cairns in clause 1.5 included the following:-

"h. That the Player shall use his best endeavours to maintain his form and fitness so as to be available for regular selection for Matches and to perform his duties to the best of his ability under this Agreement.

i. That, during the Term of this Agreement, the Player shall not engage in any activity or pursuit which is or may be prejudicial to ESL or to his health or cricketing form or the performance of his duties under this Agreement, including but not limited to winter sports (such as skiing, snowboard, tobogganing), scuba-diving, mountaineering, rock climbing, parachuting, racing on wheels or horseback, potholing or bungee jumping unless otherwise agreed in writing by without the consent of ESL (which will not be unreasonably withheld by ESL).....

k. That the Player shall upon becoming aware that he is, or is reasonably likely to be, suffering any illness, injury or other ailment, he will notify ESL and the ICL Therapist Team in writing and wherever practicable, the details of that illness, injury or other ailment which, in their reasonable opinion, may affect the Player's performance or his ability to fulfil his obligations under this Agreement."

36. The second edition finished at the end of March 2008. The Claimant's plans for the next eight months were to play for Nottinghamshire in the Twenty20 Cup in June

2008, then to go on a 1000 km charity walk in New Zealand in August and September; then to play in the ICL third edition in October and November.

37. In April 2008 he had a scan on his left ankle. Doctors told him that he needed an operation if he wished to continue his bowling career. He informed Nottinghamshire, who took the view that they were content for him to play as a batsman and fielder only. He had cortisone injections in his ankle in May 2008. He was told that he needed to have the operation before the ICL third edition if he wanted to sort the ankle out.
38. However, the charity walk was to raise funds for a foundation he had established in memory of his sister who had been killed in a rail accident, and he had been planning it for over a year. He therefore went ahead with it. He said in evidence that “the charity walk created many ailments throughout my body and aggravated my ankle injury but I was determined to complete it. I have struggled through injuries all through my career and I felt that with injections I would be able to get through the ICL Third Edition by batting only, and maintaining my important role within the side as captain”.
39. He arrived in Chandigarh on 4 October 2008. He says that “everyone knew” that he had ankle trouble and would not be able to bowl: this is clearly true, as the injury was even mentioned in the television commentary on the first match of the third edition. Nevertheless, in my view he was in clear breach of his contract. He had not informed ESL in advance of his ankle injury, hoping that it would improve in time for the ICL season. To have undertaken a 1000 km walk with a bad ankle, starting only two months before the third edition, was asking for trouble; or, in the words of the contract, was activity prejudicial to his cricketing form. Of course he was of some

value to his team even as captain, coach and batsman; and of course professional sportsmen often suffer injuries. Mr Cairns said that he had often had to play through pain. But the package which the ICL had bought for \$350,000 a year was incomplete.

40. At times in cross-examination it was suggested to the Claimant that he should not have been involved in the diamond trade while under contract to the ICL. I see no reason why not. The contract with the ICL required his services for up to 102 days per year: and prohibited certain activities, in particular endorsement and marketing activities in India. It did not prevent him from working for Vijay Dimon. Whether it would have prevented him from marketing in the sense, for example, of meeting Vijay Dimon clients in India between ICL editions is an interesting question which it is unnecessary to resolve.

The third edition and the Claimant's dismissal

41. Mr Cairns was the best known international player in the Chandigarh Lions team. The most senior of the Indian players in the team was Dinesh Mongia. Mr Mongia acted as an unofficial vice-captain, not least in assisting communications between Mr Cairns and those Indian members of the squad whose English was limited.
42. The first match played by the Chandigarh Lions in the third edition of the ICL was on 13 October 2008 against the Mumbai Champs. This game is the subject of a spot fixing allegation by Gaurav Gupta which I deal with below.
43. Mr Beer says that was told by Kiran More of the ICL in the course of this match that he had “good information” that the game had been fixed. Two days later Mr More asked Mr Beer to give a talk to each team in the third edition “about the repercussions should they breach their ICL contract”. He duly addressed the Chandigarh Lions on

17 October and said that there were allegations that the 13 October match had been fixed.

44. Mr Beer began his inquiries concentrating on the Mumbai Champs team. His diary records that he was told by Kiran More of the ICL executive “not to go barging in next time”. On 18 October the ICL took over the investigation. Mr Beer said in evidence before me that “there was obviously an agenda: what it was I don’t know”. He also said that “they only wanted to tell me what they wanted me to know”. He agreed in cross-examination that this process was profoundly unsatisfactory, as it plainly was.
45. 18 October 2008 was also the day of the Lions’ second match, against the Chennai Superstars. Rajesh Sharma alleges an incriminating conversation with the Claimant and Dinesh Mongia after that match.
46. The third match was on 26 October 2008 against the Hyderabad Heroes. Late that evening, at the Shangri-La Hotel, Mr Cairns was called to the suite occupied by Himanshu Mody, the ICL chairman. Apart from the chairman four other ICL executives were present: Tony Greig, Ajay Kapoor, Kiran More and Bharat Reddy. None of these five gentlemen has given evidence in this case, although it is clear that the Defendant has been in contact with Himanshu Mody in connection with preparations for this case. Mr Beer, who has given evidence, says he was present for part of the meeting, although he merely observed and did not say anything. The Claimant does not remember him having been there at all. Neither of them was asked to recall in detail what had happened at the meeting until more than a year after it occurred, and there is no contemporaneous record. Mr Beer’s diary, which he used on occasions as an abbreviated form of policeman’s notebook, refers to this meeting in a

single line: “Cairns meeting till wee hours”. It is therefore hardly surprising, and does not indicate dishonesty on the part of either witness, that the two accounts of the meeting put before me differ considerably.

47. Mr Cairns’ version, in his second witness statement made on 18 August 2011, was as follows:

“I went upstairs and those present in the room were Tony Greig, Himanshu Mody, Ajay Kapoor, Kiran more and one other of the ICL executive committee I believe, whose name I cannot remember. All present were always very courteous and I would describe the working relationship between us all as healthy. They are all strong individuals and they, like me, had taken a big risk in joining with the ICL and between us all there was a common bond. The meeting was cordial and lasted approximately 20 minutes. Everyone was seated in a circle around a central coffee table, having either a wine or a beer.

Himanshu Mody was the ‘host’ when I arrived and he led the discussions. He offered me a drink. After a bit of chit-chat he asked me about rumours that had stretched back to the Second Edition of the ICL when a Pakistani team, the Lahore Badshahs, had come into the tournament led by Izamam-Ul-Haq. Rumours had circulated at the time about their performance in that tournament. Himanshu Mody then said that there had been rumours that my name, along with others, had been mentioned in connection with match-fixing. He did not say where the rumours came from. I said any such rumours were laughable and completely untrue. Himanshu Mody accepted this and so as I could tell so did the others present. All were quite uncomfortable when Himanshu mentioned the match-fixing claims. When I refuted them there was almost an audible sigh and a more relaxed attitude pervaded thereafter. I do recall at some point during the meeting I told those present that I had had a concern about levels of performance of three of my players when my team played the Kolkota Tigers on 26 March 2008 and I had given those players a dressing down in the toilets.

There was no mention of any specific games in the Third Edition, we just talked about murmurings and rumours of match-fixing in general. There was no reference to witness statements or affidavits being given by players in my team. There was no request by me or them to hear what other players had said about either match fixing or me. It was a general conversation about the rumours of match fixing and the tone of the meeting was more a sounding out of my views. I was a senior figure in the tournament as well as being one of the first ICL recruits. In addition I was captain of the ICL international team. When I raised the dressing down conversation I have to three of my players I was not

asked to name the players involved. I was not accused of anything during this meeting.

In my [first witness] statement made on 11 October 2010 at paragraph 22 I said “allegations of match fixing did not arise” in this meeting. I have reflected upon my wording. What I said in that statement was true. There was no allegation. There was instead a sounding out of my views about the rumours of match fixing.

The conversation then turned to my injury and my below par performance in the Third Edition of the ICL. It would be fair to say that the tone of the conversation changed at this point. Himanshu Mody said he felt I was undermining the credibility of the tournament. Before this meeting nobody had asked me why I had not been bowling at the tournament. However, Tony Greig, for one, knew about the injury because in his [television] commentary of our first match on 13 October 2008 he says: “Chris Cairns has not bowled. He has got a problem with his ankle apparently. He has been doing a lot of charity walking and he suffers a fair bit of pain with his ankle.” The commentary indicates that Tony Greig’s co-commentator, Dean Jones, was also fully aware of the situation. By the time of the meeting on 26 October 2008 I believe my injury was common knowledge.

Himanshu Mody then said he was terminating my contract because I had not disclosed the extent of my injury. It was clear to me that the ICL Executive Committee had made its final decision regarding my ankle injury, so I reluctantly accepted it. They left the door open for me, telling me to go away get fit and come back for the 2009 tournaments. We parted on good terms. I was disappointed that I was no longer able to participate, but encouraged by being told by Himanshu Mody that I should get myself fit and return for the 2009 ICL tournaments. Unfortunately the ICL then folded. I said that whilst I understood his decision I did not agree that it was the right call. There had been talk in the Indian media that the ICL was a joke league and a retirement home for past cricketers. In hindsight, I suppose this was the ICL taking a tough stance to show they were serious and in effect I was a high profile casualty to get this message across that this was a serious league.

I tried to persuade the Committee to let me try to complete the tournament and get through it, as I had got through injuries throughout large parts of my career, and then we could sit down and have further discussions at the conclusion of the tournament. This was to no avail.

Himanshu Mody said the ICL did not want to be taken for a ride and they were paying me a serious amount of money (US\$350,000) to participate in the ICL and from their point of view it was not a good investment given my fitness. It was Himanshu Mody in particular who was adamant and said he had been watching my performances and I was not bowling. Although I maintained that I would be able to soldier on, the decision was made to terminate my contract for fitness reasons.

This decision had nothing to do with any allegations of match fixing, which were our discussions in the first half of the meeting.”

48. Mr Beer says:

“In the early hours of the morning on 27 October, I was summoned to an adjacent room in the hotel where I met ICL executive Tony Greig, Ajay Kapoor, Himanshu Mody and Bharat Reddy, who were with Chris Cairns. They were discussing the allegations made by various players of Chris Cairns’ involvement in match-fixing. (I found out a couple of days later that the ICL had also spoken to other players in the evening of 26/27 October) Chris Cairns was also questioned about giving instructions to a senior Chandigarh player, Dinesh Mongia. It was put to Chris Cairns that he had used fear tactics with some players in order to persuade them to under-perform in certain games, and that he promised money or a guarantee of their place in the team for under-performing. He denied this and denied that he had any involvement in match-fixing. Tony Greig asked Chris Cairns if he could offer any explanation as to why members of his team had implicated him in match-fixing. Ajay Kapoor informed Cairns that he would bring in the players and have them face him and repeat their allegations in his presence. Chris Cairns declined that offer. When Cairns was defending himself of [sic] these allegations, Tony Greig reminded Cairns that people could not believe that Hansie Cronje had been involved in match fixing..... Following this discussion, Chris was taken into another room at the hotel by Ajay Kapoor and Himanshu Mody. As I believed my presence was no longer necessary, and because it was very late, I left before the three men returned to the room and before any findings were arrived at.”

49. In cross-examination Mr Beer added for the first time that Mr Greig told the Claimant that the ICL were in possession of signed affidavits from players accusing him. This had not been mentioned in his witness statement, nor his evidence in chief, nor put to the Claimant in cross-examination. He also mentioned for the first time at trial that he remembered the words “help me here, Howard” being used by Mr Cairns.

50. Mr Beer gave evidence, which I accept, that he was present when Mr Cairns returned to the room with Mr Kapoor and Mr Mody; that the Claimant seemed “a bit more relaxed and not as forthright” as before leaving the room; and that Mr Cairns said to

Mr Greig “Look, let me finish the tournament”, but was told that this would not be possible.

51. After the meeting was over Mr Cairns rang Andrew Fitch-Holland, an English barrister who was a personal friend of the Claimant and acted as his unofficial legal adviser. According to Mr Fitch-Holland the Claimant said that his contract had been terminated because he had hidden the true state of his fitness. “He said he thought he was being made an example of, and he wanted my view”. At no stage during the telephone call did Mr Cairns mention or refer to match fixing.
52. Mr Mongia was also dismissed in the course of the evening, apparently after refusing to answer questions. It is not suggested that he was seen by the executive together with Mr Cairns.
53. The Shangri-La Hotel meeting occupied a good deal of time at the trial, because in Mr Thwaites’ submission the demeanour of Mr Cairns as described by Mr Beer was of a guilty man who knows he has been found out and has no answer to the charge. He also put it to the Claimant that when in his first witness statement he had said that allegations of match fixing did not arise, he had been lying.
54. In so far as findings about the meeting are necessary, I make them as follows. I accept Mr Beer’s evidence that he was present as a silent observer for part of the meeting. But I do not accept that the Claimant was directly accused of persuading players to underperform (whether by using fear tactics or offering financial inducements or the promise of a place in the team if they complied). If he had been, he would have relayed that to Mr Fitch-Holland and sought his advice on *that* accusation, with its obviously grave potential consequences. Also, he would not have asked Mr Greig, as I find he did ask, to allow him to finish the third edition tournament. After an outright

allegation of match-fixing combined with fear tactics amounting to bullying and gross abuse of his position of trust as captain and coach, such a request would have been absurd, and Mr Greig would have said so.

55. With no evidence from four out of six men present, the other two first seeking to recall the meeting in 2010 or 2011, and no contemporaneous record, it is impossible to be precise about what was said. I accept that Mr Mody probably made reference to rumours of match-fixing and said that some people were implicating Mr Cairns. It is not suggested that any of the accusers was referred to by name; and I do not accept that Mr Kapoor or anyone else seriously proposed to bring in them one by one to confront the Claimant. It is possible that Mr Kapoor may have said something on these lines: “of course we could bring in the people who are saying this and question them, but that would be pointless, because we are terminating your contract anyway because of your injury”. The likelihood is that after a brief reference to the rumours, and an enquiry as to whether Mr Cairns had any comment to make about them, the ICL executive moved on to Mr Cairns’ injury. Since the tournament began he had not bowled; as batsman he had scored only 23 in three matches; and the Lions were only in sixth place.

56. I have already referred to the charity walk in the context of the Claimant’s contractual obligations. The ICL could hardly be criticised if they decided to remove him on that ground alone.

57. It may well be that the Executive were in fact influenced by the body of evidence against Mr Mongia; by the rumours that the Mumbai Champs game had been fixed and that Mr Cairns was involved; and by a view, not supported by expert evidence before me, that some of the tactical decisions made by the Claimant during that game

were inexplicable. However, this is a libel trial, not an unfair dismissal claim by Mr Cairns against the ICL. I find on the balance of probabilities, and on the limited evidence available to me, that the reason they gave him for his dismissal was his breach of contract relating to the injury, as set out in paragraph 39 above.

58. I accept that the probable reason given for Mr Mongia's dismissal was the evidence that he had been directly involved in match fixing for some time: and that the ICL did not wish this to be publicly admitted, for fear of discrediting the tournament as a whole. But Mr Mongia's case was different. Mr Thwaites asked the rhetorical question in closing: why (did the Claimant's team) not call Mongia? There is no reason why they should have done. One might as well ask why the Defendant did not call Mr Himanshu Mody.
59. Although Mr Thwaites put it to the Claimant that the remark "Help me, Howard" was a plea for help, Mr Beer did not maintain that stance in his own cross-examination. If the remark had been a true plea for help by a cornered guilty suspect, Mr Beer would certainly have made a contemporaneous note of it and the remark would have featured prominently in his witness statement for the trial. If those words were indeed used they were an insignificant request for assistance on a point of detail.
60. As for the suggestion that Mr Greig said anything about signed affidavits, I reject it. I note that only one signed statement dating from 26 October 2008 or earlier has been produced, namely that of Mr TP Singh, to whom I shall come later.
61. It follows that I find that nothing said or not said by the Claimant at the meeting amounted to an express or implied admission of guilt.

62. The next day Cricinfo published an article headed “Cairns and Mongia suspended by ICL”, which read:

“Chris Cairns and Dinesh Mongia, both of the Chandigarh Lions, have been suspended by the ICL. Andrew Hall, the South African allrounder, will replace Cairns as Chandigarh's captain.

A brief statement issued by the ICL did not specify the reason but sources have told Cricinfo that the action was taken by the ICL's executive board "on disciplinary grounds".

Cairns arrived for the current Twenty20 tournament carrying an ankle injury, and did not disclose his fitness status to the ICL, it has been learnt. "This violates the player's contract, which clearly states that he needs to be fit when appearing for the tournament, or should inform the ICL in case of an injury," the sources said. "Cairns has been sent back and will no longer take part in this particular tournament. His ICL contract remains intact, though we will take a final call after this tournament ends (on Nov 16)."

Mongia was suspended because he knew about Cairns' injury in advance but did not share the information with tournament officials. "Dinesh will also not be part of this particular tournament," the sources said, also justifying the action against both players. "We wanted to send a strong message that nobody can take the ICL for granted, whatever may be the player's record and reputation." Apparently, this was conveyed to Cairns and Mongia today by senior ICL officials who had separate meetings with both.

Cairns, 38, has flopped in the second season, scoring just 23 runs in three matches. Mongia has scored 90 runs at 30.00, with a wicket as well. Chandigarh are currently sixth in the ICL points table.”

63. On 27 October the Lions were due to have a team meeting at 6 pm. Mr Cairns saw Andrew Hall, who had been appointed to take his place, and Jock Campbell, the fitness coach, shortly before the meeting and told them he was innocent and had been made a scapegoat. According to Mr Hall in a statement made on 26 November 2008, Mr Cairns asked them to stick up for him when they heard stories about his involvement in match fixing. He went to address the team, said they would hear a lot

of rumours about his suspension, broke down in tears, and departed. He left the country the same day.

64. At this stage Mr Hall believed that Mr Cairns had been set up by the local players, to take the blame off them. Next day he and Mr Campbell had an important conversation with Mr Beer. Mr Hall asked whether the process had been done correctly and was told that “all was done to the letter”, which, said Mr Hall, “eased some concerns that I had”. He went on:

“I then started to have doubts regarding Chris’ innocence and Jock asked Howard what was his view on Chris’ involvement in the match fixing was, and he told Jock he had no doubt concerning Chris’ involvement in match fixing. Jock said, “That’s good enough for me” as he walked away. I asked Howard who was involved and he told me that it was not his position to divulge the names of the players.”

65. At Mr Beer’s suggestion Mr Hall told the team that he now had the names and the information regarding the match-fixing allegations. On the team bus Mr Hall produced an envelope supposedly containing witness statements (which was in fact stuffed with blank paper) and said that people should feel free to come and talk to him. He was then visited or spoken to by Rajesh Sharma, who admitted corruption together with TP Singh in the first edition, and mentioned a corrupt approach by Dinesh Mongia in the second edition, but made no allegations against Mr Cairns; by Love Ablish, Gaurav Gupta and Amit Uniyal who separately made various allegations against Mr Cairns, which I consider below, regarding the Mumbai Champs match, and Chetan Sharma and Karanveer Singh, who jointly told him that they had not been involved in match fixing and this was why they had not been picked for the first three games of the third edition.

66. On 29 October the captains of the third edition teams, including Mr Hall, were called to a meeting, and were told that Mr Cairns and Mr Mongia had been sacked for match fixing.
67. Himanshu Mody and the Claimant exchanged a few emails in the ensuing months. On 6th December 2008 Mr Mody wrote “have a good flight Chris, call me once you get back to Dubai and we will surely meet.” On 17th December he emailed to wish Mr Cairns “all the best for your surgery” [on the ankle]. On 20 March 2009 they had a conversation about the Claimant’s contract, after which Mr Cairns emailed to say that he had not been paid anything by ICL since September. The next day Mr Mody replied: “Chris, you cannot impose the same contract on us as that was terminated the same day we had our discussions in Delhi. We have to work towards a new contract if we agree to work again with each other.” These would be curious emails for the chairman of the ICL to have sent to someone who was thought to have been a match fixer, engaged in what Mr Thwaites described as a diabolical scheme.

The evidence of match fixing

68. Various witnesses have given evidence of attempts at match-fixing by Indian players who were taking part in the ICL tournaments. In particular, there is quite a substantial volume of evidence against Dinesh Mongia, but this is logically irrelevant unless the evidence demonstrates that the Claimant was involved with him. Some players - notably Mr TP Singh - confessed their involvement. They had an obvious incentive to put forward by way of mitigation that they were only obeying orders, or at least giving into pressure from their charismatic captain.
69. It should be borne in mind that those who did not give evidence before me have had no opportunity to defend themselves. It is in any event unnecessary for me to make

findings about corruption by individuals other than Mr Cairns. The issue is whether he was a match fixer, not whether anyone else was.

70. Mr Thwaites emphasised the difficulties which his client faced in obtaining evidence from Indian witnesses to support a plea of justification. I am sceptical about this. At the start of 2010 the Defendant was resident in India and had both great influence and great financial resources. Witnesses can give evidence by videolink, as three of the former Chandigarh Lions have done. Another prospective witness, Mr Sandhu, was in touch with the Defendant's solicitors at the very end of the evidence within 24 hours of reading reports of the case in the Indian media.

Howard Beer

71. I have already referred to Mr Beer's expression of view to Mr Hall and Mr Campbell that everything had been done to the letter and that he had no doubt about the Claimant's involvement in match-fixing. Mr Beer's cross-examination included the following striking exchanges:

Q: On the basis of what material did you tell these two gentlemen that you had no doubt that Mr Cairns was involved in match-fixing?

A: Probably on the strength of TP Singh's statement.

Q: But you told me earlier that TP Singh was a man whose word was to be treated with extreme caution, Mr Beer.

A: Correct.

Q: Why didn't you simply say "There is one allegation made against him by a witness over whom, it must be said, there are some doubts about his credibility"? That would have been a perfectly straight and fair answer, wouldn't it?

A: It may well have been, but I didn't say that.

72. Mr Beer eventually accepted in cross-examination, and rightly so, that he had certainly not given Mr Hall and Mr Campbell a fair assessment of what was known to him about the Claimant's involvement in match-fixing.
73. Mr Beer made a witness statement for this trial on 29 June 2011. In it he mentioned a number of hearsay statements made to him which were adverse to Mr Cairns, but none which was favourable. (Among those he did mention was TP Singh, but he said nothing about TP Singh's admissions of his own dishonesty.) He gave a detailed account of his dealings with ICL executives on various occasions, but said nothing about being told to stop his investigations on 18 October; nor about his view that the ICL executive had an agenda, and were only telling him what they wanted him to know.
74. Mr Beer was put forward as an independent anti-corruption officer with no axe to grind, and emphasis was placed on his long experience with the police. But he had, as I have noted, given the Defendant's then solicitors access on a privileged basis (in both senses) to his file of witness statements in June 2010; and both that action by him and his own 2011 witness statement were partisan to the point of being unprofessional. I was not impressed with his evidence.

Andrew Hall

75. Mr Hall had no first hand knowledge of match fixing by Mr Cairns. His view was decisively changed by the assurances given to him by Mr Beer immediately after the Claimant's departure that proper procedures had been followed to the letter and that he, Beer, had no doubts about Mr Cairns' involvement in match fixing.
76. A comparison between the 2008 and 2010 statements of Mr Hall shows some significant changes. Mr Hall's concerns about TP Singh are mentioned in the first but not the second. Some of the incriminating conversations involving Dinesh Mongia are moved from the ICL domestic tournament when the Claimant was not present, to the second international edition when he was. Nevertheless I consider that Mr Hall was an essentially honest witness. So many people made allegations of match fixing to him, some inconsistent with one another and some inconsistent with other things said by the relevant player, that he could not be blamed for a degree of confusion, particularly with the passage of time since 2008.

Andrew Fitch-Holland

77. I accept his evidence about the conversation with Mr Cairns immediately after the Shangri-La Hotel meeting. He has no first-hand evidence to give about match-fixing itself.

Melanie Cairns

78. Like Mr Fitch-Holland, Mrs Cairns told me that on the night of the Shangri-La Hotel meeting the Claimant said that he had been dismissed because of his injury. She was also able to provide supporting evidence about his relationship with Vijay Dimon. I accept her evidence as far as it goes, but it is not central to the case.

Daryl Tuffey

79. Mr Tuffey was a fellow New Zealand cricketer and friend of the Claimant who played in the Chandigarh Lions team. He has made a witness statement to the effect that he had no reason to suspect that Mr Cairns was, nor indeed that any of his team mates were, involved in match fixing or cheating of any kind, including match fixing. He was not asked to make a statement during the investigation, and it is not suggested by either side that he was.
80. Mr Tuffey was playing cricket in New Zealand during the trial and neither attended nor gave evidence by videolink, and accordingly the weight to be given to his evidence is substantially reduced. The Defendant does not suggest that other international players in the Chandigarh Lions team were fellow-conspirators with the Claimant. And it is plain from the evidence of Mr Hall that, whether for language or other reasons, the international members and the local members of the team tended to operate as two separate groups.

Gaurav Gupta

81. Gaurav Gupta was the first of three Indian cricketers who gave oral evidence at the trial by videolink. The only allegation made by Mr Gupta against Mr Cairns concerns the match against the Mumbai Champs on 13 October 2008, the first of the third edition. Mr Gupta alleges that Mr Mongia told him that he could earn Rs 10 Lacs (about £12,000) per game if he would simply follow Chris Cairns' instructions.
82. Mr Gupta made 4 runs: all singles, though incorrectly recorded on the scorecard as one 4. After the second single he had come close to scoring 4 more (a ball stopped on the boundary by a sprinting fielder), which would have taken his score to 6. When his score had reached 4 the batsman at the other end, Matthew Elliott, was out and Mr Cairns came to the crease. He and Mr Gupta can be seen on the DVD of the match

exchanging very brief words. Mr Gupta was caught soon afterwards without further score.

83. Mr Gupta is one of the players whose contemporaneous interviews by ICL board members were taped. His appears to have been very short. He was asked what he knew about the Bombay match. Amit Uniyal, already in the room, told him that they (the ICL) had proof of the Bombay match. Mr Kapoor asked “what did the captain tell you?” and Mr Gupta replied “nothing”. Mr Mody said something about tearing up his contract and moments later he was told to leave the room. (This transcript and others were the subject of an unsuccessful pre-trial application by the Defendant to Tugendhat J to admit them as hearsay evidence under the 1995 Act. He held, rightly if I may say so, that the transcripts were insufficiently authenticated. However, in cross-examination the witness accepted that he had indeed said that the captain had told him nothing: as to that piece of evidence, the technical issue therefore disappears.)
84. On 28 October, the day after Mr Cairns’ departure, Mr Gupta spoke to Mr Hall, who had been appointed the new captain. Mr Gupta told him about corrupt approaches by Dinesh Mongia during the second tournament, Mr Mongia adding that “everyone else was involved” and that he would be given instructions at the appropriate moment. Then, according to Mr Hall:

“Gaurav told me that during the break in innings during the game on 13 October 2008 he was told by Dinesh Mongia to get out before he got to five runs. When Gaurav was batting and was on four, the Chandigarh Lions lost a wicket and Chris Cairns came in to bat. Gaurav told me that he and Chris Cairns had a meeting in the middle of the wicket and Chris had asked him at this point how many runs he had. Gaurav had told Chris that he had four; Chris responded and said in that case, it was time for Gaurav to get out and walked away without saying another word. Gaurav told me that he then got caught out the next ball as per his instructions”.

85. This version, apart from being inconsistent with the next one, includes a manifest absurdity. The Mumbai ground had, as most modern cricket grounds do, a large scoreboard visible to everyone. Not even a spectator, let alone the captain of the batting side, would have had to ask Mr Gupta what his score was. (Indeed, on the assumption that Mr Cairns was indeed party to spot fixing which made it necessary for Mr Gupta to be out for less than five, he would surely have been thinking of little else as he came to the wicket.)
86. The next account Mr Gupta gave was on 7 November 2008 when he was telephoned by Mr Beer. This time he said that Mr Cairns came to him during the break in innings in the Mumbai game and told him not to make any more than 5 runs. Mr Gupta “was upset at this and when he was 4, got out even though he did not mean to get out”. He made no mention to Mr Beer of any conversation at the crease with Mr Cairns. Instead, the instigator of the alleged corrupt conversation between innings had changed from Mongia to Cairns.
87. Mr Gupta did not make a witness statement for this trial until 9 February 2012, more than three years later. He stated:

“In the interval we all came back in to have some snacks. I was in between the dressing room and the exit when Chris Cairns came over to me. He said “Dinesh Mongia must have talked to you” and I said “yes”. He then told me “not more than 5 runs” to which I replied “ok”. I felt like I would have to do this, otherwise I would not be playing again. I was also nervous as I understood what I was being asked to do.....

[When a wicket fell] Chris Cairns came to the middle of the crease. He then asked me how many runs I was on, to which I replied that I had 4 runs. He then said “you should get out” and walked away. I was thinking that this is a good wicket, and that I wanted to play a few more balls. Even if I didn’t score, I wanted to stay out a little while longer. So I decided to play some non-scoring shots and then try and get to 5 and then get out. But for one ball from Nathan Astle I tried to play a normal shot along the ground but ended up hitting it for a catch.”

88. Thus we have: first interview, the captain said nothing; second interview, the captain made a corrupt request on the pitch; third interview, the captain made a corrupt request between innings (all these versions within the space of a fortnight or so); fourth version, in a last-minute witness statement three years later, the captain made both the corrupt requests.

89. I regret to say that I cannot place any reliance on a word Mr Gupta said.

Rajesh Sharma

90. Rajesh Sharma, who on his own admission was involved in receiving a loan and gifts from TP Singh in dubious circumstances, also gave oral evidence by videolink, using an interpreter. I have already noted that Mr Sharma spoke to Mr Hall after the “stuffed envelope” manoeuvre and did not implicate Mr Cairns. Mr Sharma was interviewed by Mr Beer in Ahmedabad on 10 November 2008 with the assistance of Milind Pradhan of the ICL who acted as translator, and all three men signed copies of the witness statement recording what he said. It outlines corrupt approaches made by a bookmaker, Robin Talwar, before and during the first ICL tournament, to him and TP Singh; and says that TP Singh was apparently match-fixing. Mr Sharma says that during the second tournament he was not being selected; he became upset and expressed the view that some matches looked fixed. He was told by Mr Cairns and Mr Mongia that if he continued in this vein he would be made to leave. He was selected to play against Hyderabad, and was not asked to do any fixing by anyone. He alleges that during the domestic tournament Mr Mongia said that if he was not going to get involved in fixing he would “continue to carry the water bottles” and not be selected. Mr Sharma said he was not interested.

91. His November 2008 statement says: “I only know that TP Singh has been involved in match fixing. I do not know that Chris Cairns or Dinesh Mongia were involved, only my cricketing sense in watching the games.”

92. The same statement also contains this passage concerning a meeting with the Claimant, Mongia, TP Singh, Surabjit Singh and Ishant Malhotra in Mr Cairns’ hotel room after the 18 October match against Chennai, the day after Mr Beer’s talk on match-fixing to the Chandigarh Lions team:

“Chris asked me, why did I want to go to Kiran More? I told Chris Cairns, why am I not playing, what is my fault, and why are you blaming me regarding match fixing when I am not playing? Chris told me that he was giving fair chance to everyone, don’t go to anyone and to shut up. Mongia said during the meeting. “Whoever gets a chance, grab it.” He said that in Hindi. The next game I am playing against Hyderabad, straight after my outburst.”

93. In this version of the meeting Mr Cairns’ remarks about “giving a fair chance to everyone” clearly refer to his selection policy as captain; as does Mr Mongia’s comment “whoever gets a chance, grab it”. The version in Mr Sharma’s witness statement of February 2012 is significantly different. After referring to a conversation among the Indian players in the team bus about their concerns that matches were being fixed and the need to tell Kiran More of the ICL, which he thought may have been overheard by Mongia, he describes the conversation in the hotel room as follows:

“TP Singh said to us, what are you trying to say? It was apparent to us that Chris Cairns, TP Singh and Dinesh Mongia were asking us about our conversation on match fixing which had been overheard. I replied that I knew what was going on, and Sarabjeet said “I know everything”. Chris Cairns told Dinesh Mongia something close to his ear. Dinesh translated it into Hindi and said “whatever you people want to do, you are free to do and will get your opportunity, but do not interfere with us”.

94. There is no evidence from Surabjit Singh or Ishant Malhotra about this incident. Neither of them is alleged to have been a match fixer.
95. Mr Sharma did not make any allegation to Mr Hall in 2008 that the Claimant was involved in match fixing.
96. I am suspicious of witnesses who profess to have perfect recall, three years afterwards, of a conversation of which no contemporaneous record was made. That suspicion is increased if the witness has made one statement a fortnight after the conversation, not mentioning an incriminatory remark, and then includes the incriminatory remark in a second statement made three years later. Mr Sharma's explanation for not mentioning the "do not interfere with us" remark and attributing it to the Claimant in his 2008 statement is that he was scared. But by the time that statement was taken by Mr Beer on 10 November 2008, Mr Cairns had been removed from the team (as had Mr Mongia); and it was widely rumoured that the real reason was involvement in match fixing: indeed Mr Hall and Mr Beer had made it tolerably plain to the team that this was why Messrs Cairns and Mongia had left. Mr Sharma had already made clear allegations against TP Singh, the second most senior Indian player in the team (Mongia being the most senior), and he told Mr Beer that his "cricketing sense in watching the games" made him wonder whether Mr Mongia and Mr Cairns might be involved too. There is no reason why Mr Sharma should have kept the true content of the 18 October conversation secret. I cannot accept his new evidence as being true.

Karanveer Singh

97. Karanveer Singh is a young cricketer who was on the fringes of the Chandigarh Lions team. He was not suspected of match fixing. I have already noted that he and Chetan

Sharma approached Mr Hall to assure him that they were not involved in match fixing, but neither of them made a statement to Mr Beer, nor implicated Mr Cairns.

98. Karanveer Singh did not make a witness statement in this case until 9th February 2012. Much of what he said in that statement was not in dispute. For example, he said, and I accept:-

“I would have done whatever Chris Cairns had asked me to do throughout the ICL. To me he was one of the biggest names and I was not going to question his decisions. A lot of my friends felt the same way. This is the way we have been trained throughout our playing careers.”

99. Karanveer Singh’s evidence is that his father was at that time the most important person for him and that any decisions on money or career would be made in consultation with his father and with his blessing. One evening before the third ICL tournament Mr Singh senior was visiting Karanveer at the team hotel when Dinesh Mongia asked to speak to the older man. There was a long conversation in a corridor in the course of which Mongia told the two men that people in the ICL were “making some extra money” and that “everyone was doing it including the captain Chris Cairns, the ICL executive, TP Singh and other members of our team and other ICL teams”. Mongia took the father into his hotel room and the young man was told to go back to his own room. After more than half an hour the father came back and told the son that according to Dinesh Mongia, if he (Karanveer) did not get involved he would probably continue carrying the water bottles and not play for the team. But if he agreed to become involved he would be told what to do when the moment came by either Mr Mongia or Mr Cairns. Karanveer Singh’s witness statement continues:-

“After this conversation Dinesh Mongia did not mention it to me again. I think he believed that he had been able to convince my father. A few days later Chris Cairns came to talk to me while we were in Chandigarh. He said “have you had a word with Dinesh?”, to which I

said yes. He then asked me, “what do you think?”. I was not going to say yes or no to him. I did not know what to say. I would never had said no to his face, but my conscience would not allow me to say yes,”

100. Some aspects of this evidence are, as Mr Caldecott submitted, bizarre: if Mr Singh senior, who has not given evidence, is a respectable man, why should he spend more than half an hour discussing a corrupt proposal with Mr Mongia in his hotel room? Why, if Karanveer Singh was willing to go to Mr Hall to assure him that he had not taken part in match-fixing, did he say nothing for three years about Mongia’s attempt to corrupt him, nor about the brief conversation with Mr Cairns?
101. The conversation with Mr Cairns which the witness describes is at worst ambiguous, at best entirely innocuous. Mr Mongia was the unofficial vice-captain and a regular channel of information between the Claimant and the Indian players. “Have you had a word with Dinesh? What do you think?” are the sort of remarks the captain could have made to any player at any time.
102. I accept Karanveer Singh as an honest witness: if he had been making up the story, he would have made it more colourful. But I am very doubtful about even an honest witness having precise recall after three years of the words used and the nuances of the conversation. I do not consider that this evidence adds anything to the Defendant’s case on justification.

Amit Uniyal

103. Amit Uniyal did not give evidence at trial and did not make a witness statement. What he had to say to Mr Beer is recorded in a “situation report” on attendance note by Mr Beer dated 7th November 2008:

“I spoke to UNİYAL at room 615 of Hotel Pride in company with Miland PRADHAN. UNİYAL confirmed that he had been approached

by MONGIA and informed that if he did not want to be “water boy” he would do what his Captain Chris CAIRNS informed him during games. MONGIA informed UNİYAL, that he (MONGIA) had a huge influence in team selection and that if he did not carry out instructions, there were others in the squad who would carry them out.

It was during the Mumbai game, on Monday October 13th at Hyderabad that UNİYAL was given the ball, to bowl during the game. Captain CAIRNS approached UNİYAL and informed him that he had to bowl some “loose” bowls, short of a length, during his spell. CAIRNS told him it did not matter if he went for a lot of runs, as he would be picked for the next game and he may only have to bowl in this manner for two games only. UNİYAL stated that he was not happy with this, but did what he was told by his Captain, fearing for his position in the team.

UNİYAL said that he was not promised any money for not performing in the games, just his position in the team. I have been informed that during a subsequent interview with UNİYAL, which I was not privy to, he had admitted that he was to receive money as a result of being part of the match fixing scam. He would not partake of a written statement, having been advised by his father not to do so.”

104. Mr Uniyal made a different allegation to Mr Hall immediately after the game on 28 October, as recorded in Mr Hall’s signed witness statement to Mr Beer dated 26th November 2008. This was that he had been told by Mr Cairns at a particular moment in the Mumbai game, when Mr Uniyal was at the back of his bowling mark, to bowl a no ball during that over. The DVD of the match does show one glaring no ball by Uniyal, with his leading foot a long way over the line. The camera then cuts to the captain looking dismayed, as well he might. It was not suggested to the Claimant in cross-examination that this was play-acting, (It was noted by Mr Hall in his November 2008 witness statement that he had learned from Mr Campbell that both Mr Uniyal and Mr Ablish had had problems with bowling no balls during the domestic tournament.)

105. Both the allegations are serious and relatively contemporaneous, but they are inconsistent. There is no explanation of why Mr Uniyal said nothing to Mr Hall about an instruction to bowl loosely, that is to say concede runs generally, nor of why he said nothing to Mr Beer about any instruction leading to the spectacular no ball. Mr Uniyal has failed to give even a signed statement in this case, still less oral evidence. I cannot attach any weight to his hearsay statements.

Love Ablish

106. Mr Ablish made a detailed signed statement to Mr Beer on 27 October 2008, with the assistance of Mr Pradhan as translator. It alleges an instruction from Mongia, given during the domestic tournament before the third edition (when the Claimant was abroad), telling him that during one match they would play to lose and he was to cooperate or be dropped from the team. Mr Ablish says: “I asked what about the captain and Dinesh told me, no, only we are doing it, meaning only Dinesh, me, Amit Uniyal [and] TP Singh.”

107. In this statement Mr Ablish says that after he had bowled the first ball of one over in the Mumbai game on 13 October Mr Cairns came up to him and told him to bowl a yorker on the leg stump. “I bowled as Chris wanted”, said Mr Ablish, “and bowled two wides. I did not mean to bowl the wides, it was just that I was bowling how the captain wanted me to bowl. Chris told me not to worry and keep going for the Yorker. Then I bowled the rest of the deliveries of the over normally”. He gives a similar account of his next over: Mr Cairns told him to go for the leg side yorker, but he bowled one wide and one full toss which was hit for four.

108. The next day Mr Ablish spoke to Andrew Hall. He repeated what he had said about leg stump yorkers but added a second and more serious allegation, that he had also

been told by the Claimant before the start of one over in the Mumbai game that he should bowl a no ball during that over. If this had been true, it is inconceivable that he would have failed to mention it to Mr Beer the previous day. It bears a striking similarity to the allegation of Mr Uniyal made to Mr Hall on the same day.

109. In the absence of expert evidence the leg stump yorker point cannot succeed, and in the absence of Mr Ablish I reject his hearsay statement to Mr Hall about the no ball.

TP Singh

110. Tejinder Pal Singh made a written statement to Mr Beer on 26 October 2008. He describes how he was introduced to a corrupt bookmaker by Rajesh Sharma during the first edition tournament. TP Singh was paid substantial sums for following spot fixing instructions in the first and second editions. He does not allege that the Claimant was involved.
111. He does allege that before the Mumbai game on 13 October Mr Cairns “asked me to do loose bowling, so the batsmen can hit” and said that he would be paid if he did so. Notwithstanding this, according to Mr Singh, he bowled normally. He also says that before the second game, at Delhi, Mr Cairns asked him to bat slowly. Mr Singh does not seem to have done that either, since on his own account he played his normal cricket and he made 19 runs, including a 6, off 21 balls. He too has not given evidence in this trial.
112. The closing skeleton argument for the Defendant concedes that “a court would be unlikely to be swayed by TP Singh’s evidence unsupported by that of anyone else”. Mr Beer, who was not otherwise critical of the players from whom he had taken

statements, accepted the description of him as “an out and out cheat and a man whose word could not be trusted”. I agree and have nothing to add.

Mr Cairns

113. Mr Thwaites submitted that the Claimant’s credibility has not survived the trial and that he has given “incredible evidence” on a number of points. I reject these submissions. Despite prolonged, searching and occasionally intrusive questioning about his sporting, financial and personal life he emerged essentially unscathed.
114. I have dealt with the Shangri-La Hotel meeting and the Claimant’s statements about it, and with the Vijay Dimon payments. The only other specific credibility issues raised in the Defendant’s closing submissions are these.
115. Firstly, that Mr Cairns had not mentioned that he and Mongia had played together in a tournament in Dubai in February 2008. What this proves was never made clear. They played together in each of the three ICL editions; and plainly there were opportunities, had the two men been co-conspirators, for them to be in contact by telephone or otherwise between those editions. That does not begin to prove that they *were* co-conspirators. Nor does the Claimant’s evidence, which I accept, that he believed Mr Mongia to be an honest man.
116. Secondly, that he had not mentioned his trips to Dubai in 2008 prior to his dismissal from the ICL. Again, I do not follow why he should have done.
117. Thirdly, the “obviously false assertion” in the witness statements that the Claimant and his fiancée (as Mrs Cairns then was) had spent the short period between the charity walk and the start of the Third Edition recuperating in Canberra. In fact Mr Cairns spent 48 hours recuperating in Canberra, then made a short visit to see his

children in South Africa and stopped off in Dubai before going to India for the Third Edition. The inaccuracy is immaterial and, coming in witness statements made so long after the events in question, far from indicative of dishonesty.

Conclusion

118. In my judgment Mr Modi has singularly failed to provide any reliable evidence that Mr Cairns was involved in match fixing or spot fixing, or even that there were strong grounds for suspicion that he was. Gupta, Sharma and TP Singh are not to be believed for the reasons I have given; the hearsay evidence of Uniyal and Ablish is inconsistent and unreliable; and Karanveer Singh's last-minute evidence falls well short of sustaining the Defendant's case.

119. Even if I were applying a simple balance of probabilities test, the plea of justification would fail in both respects. The Claimant is accordingly entitled to damages.

Damages

120. In a well-known passage in *John v MGN* [1997] QB 586 Sir Thomas Bingham MR, giving the judgment of the Court, said:

“The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation ; vindicate his good name ; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel ; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any

retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way.”

121. It is obvious that an allegation that a professional cricketer is a match fixer goes to the core attributes of his personality and, if true, entirely destroys his reputation for integrity. The allegation is not as serious as one of involvement in terrorism or sexual offences (to take two examples from recent cases). But it is otherwise as serious an allegation as anyone could make against a professional sportsman.

The extent of publication

122. The original Tweet was received by only a limited number of followers within England and Wales. One expert calculated that they numbered 95, the other 35. The parties have sensibly agreed that I should take the figure of 65. The second publication, to Cricinfo was on their website only for period of hours. The expert's figures for numbers of readers of this publication are respectively 450 and 1500. I shall proceed on the basis that about 1000 people read the second publication, which I have found carried the less grave but nonetheless serious meaning that there were strong grounds for suspecting that the claimant had been involved in match fixing. In respect of the second publication I also bear in mind that Cricinfo have settled with the Claimant, paying him £7,000 damages and a further sum for costs.

123. But although publication was limited, that does not mean that damages should be reduced to trivial amounts. In 1935, long before the internet was thought of, Lord Atkin said in *Ley v Hamilton* (153 L.T. 384, cited by Lord Reid in *Broome v Cassell* [1972] AC 1027 at 1092G):

“It is precisely because the ‘real’ damage cannot be ascertained and established that the damages are at large. It is impossible to track the scandal, to know what quarters the poison may reach...”

This remains true in the 21st century, except that nowadays the poison tends to spread far more rapidly.

Vindication in the judgment

124. Mr Thwaites refers me to the judgment of Laws LJ in *Purnell v Business FI Magazine* [2008] 1 WLR 1, in which he said that “the existence of a prior reasoned judgment rejecting a justification defence and so holding that the claimant has indeed been libelled is at least capable of providing some vindication of a claimant’s reputation”. I note that Laws LJ went on to say that:-

“The effect of such [a] judgment no doubt depends on all the circumstances and, generally speaking, the effect in relation to vindication will I think most likely be marginal. Where there has been a fiercely contested trial on the facts, perhaps attended with much publicity, and the defendant’s witnesses have been roundly disbelieved and there is a positive and unequivocal finding in the claimant’s favour on the merits, those circumstances will be relevant as amounting to some vindication.”

The Claimant’s reputation

125. The Defendant argues that the claimant’s reputation was “not completely unblemished” prior to the Tweet sent in January 2010. On Mr Cairns’ own evidence there was an incident in late 2009 when the famous cricketer Rodney Marsh refused to autograph a bat already signed by the claimant. The Claimant went on to say that shortly afterwards he and Mr Marsh resolved their differences.

126. Mr Thwaites accepts that he cannot rely upon the rumours themselves, but relies on the Rodney Marsh episode as evidence of the Claimant’s diminished reputation. It is plain that in late 2008 and 2009 Mr Cairns *was* the subject of rumours about his

involvement in match fixing. Some internet comments from that period were included in the documents before me, but they are of little significance compared with a comment made by the then chairman of the IPL. I do not consider that there is evidence of a generally blemished reputation such as to reduce the Claimant's damages.

127. Mr Thwaites also submits that Mr Cairns never challenged his dismissal from the ICL; that it was "connected with match fixing"; and that he "acquiesced with the ICL to present his dismissal (upon grounds that have never been properly explained) as having been brought about by his failure to disclose an ankle injury, when this was patently ludicrous". I have already held that the ICL were entitled to dismiss the Claimant for his breach of contract in aggravating his ankle injury on the charity walk and arriving for the ICL tournament unfit to bowl as a result, and that this was the reason they gave him at the time. That issue is in my judgment irrelevant to the assessment of damages for these libels.

128. Finally on this subject the Defendant maintains the argument that the receipt by the Claimant of the Dubai payments from Vijay Dimon, even if (as I have held) not contributing to a finding of strong grounds to suspect the claimant of match fixing, was nevertheless suspicious. I disagree. It proved a handy weapon with which the Claimant's character could be attacked, but no more than that.

129. The damages are to be assessed on the basis that the Claimant was a professional cricketer of good character and reputation.

Aggravating features

130. In *Rantzen v Mirror Group Newspapers [1994] QB 670 at 684* Neill LJ said:-

“... if one looks at the matter not from the point of view of the state of mind of the defendant but for the purpose of assessing the injury to the plaintiff’s feelings, it is easy to see that a contest which involves justification or fair comment may increase the injury and add greatly to the anxiety caused by the proceedings which the plaintiff has had to bring to clear his name.”

131. Mr Caldecott relies on a number of matters as aggravating the damages which should be payable. The first is the statement issued by the Defendant on 8th January 2010 saying “we know what we are doing, and at the end of the day he is not going to be allowed to play, and that’s it. Let him sue us, then we will produce what we have to in court”. I accept the submission on behalf of the Defendant that this comment is not in itself defamatory. I do not consider that it is an aggravating factor of the kind that the Court of Appeal had in mind in the *John* and *Rantzen* cases.
132. The next matter pleaded in aggravation is that following the convictions of the Pakistan players and agent in London in November 2011 Mr Modi tweeted his followers (by this time numbering about 420,000 with a significant number of these within the jurisdiction) saying “media needs to go into depth about match fixing and the modus operandi... for investigative reports wanting to know more, please see public records of filings so far in *Chris Cairns v Lalit Modi* in the UK.”. He also wrote “why can’t I say more? See *Chris Cairns v Lalit Modi* in UK. ... Match fixing must be stopped”.
133. The Claimant did not give evidence about the effect on him of these further tweets and they cannot, therefore, be relied on as increasing his damages for injury to feelings.
134. Reliance is next placed on the reference which Mr Thwaites made from time to time to this case being one of libel tourism. I have stated my findings about this issue at the beginning of my judgment. Although the Defendant has been at all times aware of

the Claimant's personal and family connections with this jurisdiction I do not regard these forensic comments, though unwarranted, as aggravating the damage to the Claimant.

135. Mr Caldecott also complains of the attack on the claimant based on the Vijay Dimon payments. Mr Cairns gave evidence in re-examination that he was sad and angry that these allegations have been put and in particular that the good name of his friend Vishal Shah had been attacked without Mr Shah having any opportunity to reply. He has a point, but in my judgment the effect on a third party who is a friend of the Claimant cannot aggravate the damages. The relevant allegation for present purposes was in effect that the Dubai account was being used by the Claimant to launder advance payments for match fixing, or at any rate that there were strong grounds for suspecting that it was. This was one aspect of the way in which the plea of justification was advanced at trial, which I deal with next.

136. The flavour of the way the defence was run at trial is most vividly conveyed by the closing speech on behalf of the Defendant. As Mr Caldecott submitted, Mr Thwaites could hardly have pitched it higher. The words "liar", "lie" and "lies" were used in all 24 times. One passage, as Mr Caldecott rightly says, stands out as particularly offensive to the Claimant:-

"In our submission it was nothing short of a diabolical scheme that involved blackmailing young players of ability and integrity into match fixing when that was the last thing they wanted to do. ... So they were prisoners. They were being abused. There was a breach of trust by the captain and the vice-captain. They were like children in an orphans' home who, abused by everyone around them, can trust no one, can report to no one."

137. This attack, with the benefit of absolute privilege, must be taken to have been made on the instructions of Mr Modi. I take the view that the sustained and aggressive

assertion of the plea of justification at the trial increases the damages recoverable by a factor of about 20%.

Conclusion on damages

138. My starting point for damages, before the aggravation to which I have just referred, is £ 75,000. After taking account of the aggravation I award the sum of £ 90,000. The Claimant is also entitled to an injunction, and I invite counsel to submit a draft in appropriate terms.