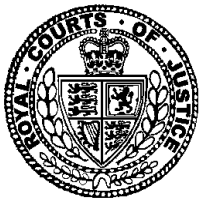

Neutral Citation Number: [2024] EWHC 2194 (KB)

Case No: QB-2022-001596

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/08/2024

Before :

THE HON. MRS JUSTICE STEYN DBE

- -

Between :

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

- -
- -

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

Hearing dates: 17-18 June 2024

- -

Approved Judgment

This judgment was handed down remotely at 14:00 on 23 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON. MRS JUSTICE STEYN DBE

Mrs Justice Steyn DBE :

A. Introduction

1. This is a libel claim brought in respect of an article which has been published online (subject to two amendments) since 22 May 2021, under the heading "*The Rise and Fall of a U.S. Oilman in Iraq*" ('the Article'). Appendix A to this judgment sets out the original text of the Article, as published on 22 May 2021 ('Version 1'). Appendix B contains the additional text added to the end of Version 1 and published on 30 August 2022 ('Version 2'), while Appendix C contains a further sentence added to Version 2 and published on 12 September 2022 ('Version 3'). Save where it is necessary to distinguish between the three versions, I shall refer to 'the Article'.

2. In accordance with an order of Master Dagnall dated 8 April 2024, this has been the trial of the question whether parts of the Article (as pleaded by the defendants) are protected by qualified privilege pursuant to s.15 of the Defamation Act 1996 ('the 1996 Act'), and of the issue of meaning.

3. The claimant, Dr Ashti Hawrami, has had a lengthy career in engineering and production in the oil and gas industry, having been awarded a doctorate in Oil and Gas Reservoir Engineering by the University of Strathclyde in 1978. He served as the Minister of Natural Resources in the newly formed Kurdistan Regional Government of Iraq ('the KRG') from May 2006 until July 2019, and then as the Assistant Prime Minister for Energy Affairs in the KRG from July 2019 until early 2022.

4. The first defendant, Journalism Development Network, Inc, is incorporated in the state of Maryland, USA. It publishes as "*The Organised Crime and Corruption Reporting Project*" ('the OCCRP'). It operates a website at https://www.occrp.org which is freely accessible to the public and has a substantial readership in England and Wales ('the Website'). The Article was, and continues to be, published on the Website. The OCCRP describes its mission, on the Website, as being "*to expose crime and corruption so the public can hold power to account*". The second and third defendants are journalists based in London.

B. The procedural history

5. The claim was issued on 19 May 2022. It was served on the defendants, together with Particulars of Claim dated 13 September 2022, within the four-month time limit. A Defence was filed, pursuant to agreed extensions of time, on 5 December 2022, and an Amended Defence was filed on 18 April 2023. The defendants deny the Article bears (or bore) any meaning defamatory of the claimant at common law, and pleaded defences of statutory reporting privilege under s.15 of the 1996 Act and publication on a matter of public interest under s.4 of the Defamation Act 2013 ('the 2013 Act').

6. The s.15 defence is based on the judgment given by Christopher Clarke LJ on 13 December 2013, following a lengthy trial in the Commercial Court, in *Excalibur Ventures LLC v Texas Keystone Inc and others* [2013] EWHC 2767 (Comm) ('the *Excalibur* judgment'), and transcripts of the *Excalibur* proceedings.

7. On 13 February 2023, the claimant applied for summary judgment seeking dismissal of the s.15 defence. In short, the claimant contended that the s.15 defence had no real

prospect of success because the *Excalibur* judgment and proceedings contain nothing capable of being defamatory or in any way discreditable to the claimant, but, on the contrary, the judgment records statements to the claimant's credit. So, if the Article is defamatory of him (as the claimant contends), it cannot be a fair and accurate report of the *Excalibur* judgment or proceedings. Whereas, if it is not defamatory of him, the s.15 defence is otiose.

8. Master Dagnall heard the summary judgment application on 2 June and 11 December 2023. He gave judgment on 22 February 2024 (*Hawrami v JDNI* [2024] EWHC 389 (KB)), dismissing the application save in respect of two passages of the Article (§5, second bullet point and §37) which he ruled were not protected by qualified privilege. In respect of those passages, he observed at [106]:

> "I do not see how they can possibly be said to be a 'fair and accurate report' of the Judgment when the essential underlying statement i.e. that there was a legal requirement on the claimant to cancel the Shaikan PSC, did not appear in the Excalibur Material and, further, the Article did not say what the Judgment did state that the claimant had done in the circumstances for the benefit of KRG i.e. ensure that the benefits under the [Representation Agreement] actually went to KRG (and not to Dabin or GKP/GKI) being somewhat equivalent of a forfeiture of them."

9. Master Dagnall's order dated 8 April 2024 records that the claimant confirmed, through his Counsel, that it is no part of his case that the defendants, or any of them, published the Article with malice; and the parties confirmed, through their respective Counsel, that they did not propose to adduce witness evidence on the issue of whether the Article was of public interest and/or whether its publication was for the public benefit for the purposes of s.15(3) of the 1996 Act. In those circumstances, Master Dagnall made the following order:

> "6. There shall be a trial of the following preliminary issues ('the Preliminary Issues Trial'):
>
> a. The natural and ordinary meaning of the Article;
>
> b. Whether the Article, in the meaning found at subparagraph (a) above is defamatory of the Claimant at common law; and
>
> c. Whether the paragraphs of the Article pleaded in the Defendant's second schedule served pursuant to paragraph 3 of the Order of 2 June 2023, with the exception of the statements at paragraph 2 above, are protected by s.15 of the Defamation Act 1996.
>
> 7. The order and manner in which the issues at paragraphs 6(a)-(c) above are determined at the Preliminary Issues Trial shall be reserved to the Judge hearing the Preliminary Issues Trial upon consideration of the parties' submissions."

10. The paragraphs (or parts of paragraphs) of the Article pleaded in the defendants second schedule (as identified in paragraph 6(c) of Master Dagnall's Order) are shown as shaded in Appendix A, with the exception of the two passages in respect of which the summary judgment application succeeded. There is no issue as to whether any part of the Article is a statement of opinion as it is common ground that it contains statements of fact.

C. The order in which the issues should be determined

11. The claimant submits that, applying *Curistan v Times Newspapers Ltd* [2008] EWCA Civ 432, [2009] QB 231, the court first needs to answer the question whether and to what extent the Article attracts qualified privilege. Secondly, having done so, the court can then determine the meaning(s) of the Article (in each version), either applying the modified approach to meaning identified in *Curistan* (if any part of the Article is protected by qualified privilege) or applying the ordinary approach (if the qualified privilege defence has been rejected). Thirdly, the court should then determine whether the Article is defamatory of the claimant at common law, in the meaning(s) found.

12. The defendants contend that, in circumstances where they have put in issue whether the Article bears any meaning defamatory of the claimant, the court should first determine the natural and ordinary meaning of the Article and whether it is defamatory of the claimant at common law, without reference to any issues arising from their reliance on statutory qualified privilege. Only if that exercise leads to the conclusion that the Article is defamatory at common law should the court then address the issue of whether and to what extent the Article is protected by qualified privilege. If it is, the defendants contend the court should then determine the meaning afresh applying *Curistan* and decide whether that meaning is defamatory of the claimant at common law.

13. *Curistan* concerned an article published in *The Sunday Times*. Gray J held that certain passages attracted qualified privilege under s.15 of the 1996 Act, as a report of statements made by Peter Robinson MP in Parliament; and the publication bore a *Chase* level one meaning. The Court of Appeal dismissed the claimant's appeal against the former ruling, finding that the passages in question were protected by privilege. The Court allowed the defendant's cross-appeal, holding that the publication bore a *Chase* level two (rather than *Chase* level one) meaning. In reaching those conclusions, the Court of Appeal addressed the approach to the determination of meaning of a publication comprised of privileged and non-privileged material ('a hybrid publication').

14. The initial stage of the defendants' proposed approach requires the court to determine the natural and ordinary meaning of the whole Article, applying the repetition rule (pursuant to which reports of allegations made by a third party will generally bear the same meaning as the underlying allegations themselves) to the whole Article. Not only does this approach potentially lead to the court determining meaning twice, in my judgment, it is inconsistent with *Curistan*.

15. As Nicklin J observed in *Harcombe v Associated Newspapers Ltd* [2024] EWHC 1523 (KB), at [35], *Curistan* "*is authority for the position that the court must resolve the extent to which the publication complained of is protected by privilege before the court can determine meaning*" (underlining added). Section 15 of the 1996 Act constitutes a mandatory rule of law that fair and accurate reports to which it applies and which satisfy the conditions set out in that section are entitled to qualified privilege; it does not require any act of the parties to become applicable: *Curistan,* Arden LJ, [22], [25]. The repetition

rule does not apply to any passages of the Article which are protected by s.15 (*Curistan*, [59] (Arden LJ), [84] (Laws LJ), [97] Lord Phillips). Before the court can determine meaning, it is necessary to ascertain the extent, if any, to which the repetition rule is to be disapplied; as well as, more broadly, whether the *Curistan* approach to determining the meaning of a hybrid publication is applicable.

16. I therefore agree with the claimant that the first issue is whether and to what extent the Article attracts qualified privilege. In any event, in accordance with the established practice, I read the Article (in each version) and captured broadly the messages that they conveyed to me before I considered the parties' skeleton arguments or any other materials in the case, and without any knowledge of the arguments or defences being pursued. Having done so, it is clear to me that the initial exercise urged upon me by the defendants would inevitably lead to the conclusion that the Article (in each version) is defamatory of the claimant at common law, and so it is necessary to address the issues in the order proposed by the claimant.

D. Qualified Privilege

Section 15 of and Schedule 1 to the Defamation Act 1996

17. Section 15 of the 1996 Act provides so far as relevant:

> "(1) The publication of any report or other statement mentioned in Schedule 1 to this Act is privileged unless the publication is shown to be made with malice, subject as follows.
>
> (2) In defamation proceedings in respect of the publication of a report or other statement mentioned in Part II of that Schedule, there is no defence under this section if the plaintiff shows that the defendant –
>
> (a) was requested by him to publish in a suitable manner a reasonable letter or statement by way of explanation or contradiction, and
>
> (b) refused or neglected to do so.
>
> For this purpose "in a suitable manner" means in the same manner as the publication complained of or in a manner that is adequate and reasonable in the circumstances.
>
> (3) This section does not apply to the publication to the public, or a section of the public, of matter which is not of public interest and the publication of which is not for the public benefit.
>
> …"

18. Unlike s.14 of the 1996 Act (which protects fair and accurate reports of judicial proceedings with absolute privilege) there is no contemporaneity requirement in s.15.

19. Part I of Schedule 1 to the 1996 Act provides, so far as material:

> "STATEMENTS HAVING QUALIFIED PRIVILEGE WITHOUT EXPLANATION OR CONTRADICTION
>
> …
>
> 2. A fair and accurate report of proceedings in public before a court anywhere in the world.
>
> …
>
> 5. A fair and accurate copy of or extract from any register or other document required by law to be open to public inspection."

20. Although Part II of Schedule 1 is not relied on by the defendants, the language of paragraph 15 may be of relevance in interpreting paragraph 5 of Part I: see *Harcombe*, [300]-[302] (Nicklin J). Paragraph 15(1) of Part II makes provision in respect of:

> "A fair and accurate report or summary of, copy of or extract from, any adjudication, report, statement or notice issued by a body, officer or other person designated for the purposes of this paragraph by order of the Lord Chancellor."

21. The primary focus is on paragraph 2 of Schedule 1, as that is the provision which is relevant to the defendants' reliance on the *Excalibur* judgment and transcripts of the *Excalibur* proceedings. Paragraph 5 of Schedule 1 is of potential (albeit limited) relevance insofar as the defendants rely on the Representation Agreement ('RA') directly (rather than as reported in the judgment or transcripts).

22. The defendants bear the burden of proving the elements of the defence of statutory qualified privilege that are in issue in this case, namely, that the Article was, or contained, a fair and accurate report of the *Excalibur* judgment/transcripts (or a fair and accurate copy of or extract from the RA), and that publication was of public interest and for the public benefit. But these are not issues in respect of which the burden of proof is of any great consequence.

23. In applying s.15 of the 1996 Act, the court "*must have particular regard to the importance of the Convention right to freedom of expression*", bearing in mind that the qualified privilege is a "*buttress of free expression*": s.12(4) of the Human Rights Act 1998 ('HRA') and *Curistan*, [82] (Laws LJ). Mr Price has placed heavy emphasis on article 10 in his arguments. However, I agree with Ms Page that the relevant domestic law is entirely compatible with that Convention right, and reliance on article 10 does not give rise to any separate and distinct issues. The statutory conditions that have to be met for a publication to be protected by s.15 ensure that a fair balance is held between freedom of expression on matters of public interest and the reputation of individuals.

Fairness and accuracy

24. Warby J summarised the well-established principles for determining whether a publication is "*fair and accurate*" for the purposes of the statutory privilege in *Alsaifi v Amunwa* [2017] 4 WLR 172 at [63]:

> "… fairness and accuracy are matters of substance not form. A report does not need to be verbatim. It may to an extent be impressionistic. Fairness is to be tested by reference to the impact on the claimant's reputation. Minor inaccuracies will not deprive a defendant of the privilege."

25. The *Excalibur* judgment is 323 pages (or 1476 paragraphs) long; and the trial ran for about six months. The relevance of the principle that a publication need not be a verbatim account to attract the privilege is particularly obvious in the context of a judgment and proceedings of such length. Nor does the publication have to be in the nature of a précis: see *Cook v Alexander* [1974] QB 279, in which the Court of Appeal held that privilege attached to a parliamentary sketch which (unlike a report of proceedings in Parliament) was not a précis. So long as the publication is fair, a journalist is entitled to be selective about what they include: *Charman v Orion Publishing Group Ltd* [2006] EWHC 1756 (QB), [164] (Gray J; overturned on appeal but there was no challenge to the principles applied: [2008] EMLR 16, [42]); *Curistan*, [26] (Arden LJ).

26. While slight inaccuracies will not render a publication unfair, "*if there is a substantial or material misstatement of fact that is prejudicial to the claimant's reputation, the report will not be privileged*": *Curistan*, [27] (Arden LJ).

27. The court is not concerned with fairness in the abstract. A report of court proceedings will be unfair if it is unbalanced in relation to the claimant's reputation as compared with the impression of him that would be gained by a reader of the judgment or observer of the proceedings (as the case may be). Extraneous matters – such as the opportunity for the claimant to comment prior to publication pleaded in paragraph 35 of the Amended Defence – are irrelevant to the assessment of fairness within the meaning of paragraphs 2 and 5 of Schedule 1 to the 1996 Act.

28. It is not enough that the proceedings are a *source* of information. It must be sufficiently apparent from the publication that it is reporting those proceedings. Thus in *Shakil-Ur-Rahman*, a programme which made no mention of the proceedings could not be regarded as a report falling within paragraph 2 of Schedule 1 to the 1996 Act: *Shakil-Ur-Rahman v ARY Network Ltd* [2016] EWHC 3110 (QB), [2017] 4 WLR 22, [39] (Sir David Eady), citing *Rogers v Nationwide News Pty Ltd* [2003] HCA 52, [18] (Gleeson CJ and Gummow J).

29. A defendant may claim privilege in respect of parts of a hybrid publication, as the publisher was able to do in *Curistan*. However, if an account of a judgment or court proceedings is so embellished that it cannot be said to be a fair and accurate report, the privilege will be lost in respect of the whole publication: *Curistan* [36] (Arden LJ), [87] (Laws LJ); *Harcombe* [305] (Nicklin J).

30. In *Associated Newspapers Ltd v Dingle* [1964] AC 371, in which the issue directly before the House of Lords concerned the correct approach to damages, Lord Denning stated at 411:

> "If a newspaper seeks to rely on the privilege attaching to a parliamentary paper, it can print an extract from the parliamentary paper and can make any fair comment on it. And it can reasonably expect other newspapers to do the same. But if

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

31. Both Arden LJ and Laws LJ relied on this passage in *Curistan*. Arden LJ stated:

> "22. …(ii) one of the requirements of a fair and accurate report is that the quality of fairness must not be lost by intermingling extraneous material with the material for which privilege is claimed; …
>
> 28. Fairness can also be lost by the presence of extraneous material. This proposition is supported by a memorable passage in the speech of Lord Denning in the Dingle case…
>
> 34 … Lord Denning clearly thought that in the absence of over-embellishment the passages which merely contained a fair and accurate report would be privileged and outside the scope of liability for defamation. …
>
> 35 The position, therefore, is, as Kirby J observed in the High Court of Australia in *Chakravarti v Advertiser Newspapers Ltd* (1998) 193 CLR 519, para 153 that: 'Excessive commentary or misleading headlines which amount to commentary run the risk of depriving the text of the quality of fairness essential to attract the privilege.'
>
> 36 Thus I conclude that reporting privilege will be lost if the quality of fairness required for reporting privilege is lost by intermingling extraneous material with the material for which privilege is claimed."

32. Laws LJ observed at [87]:

> "It is plain that there will be no qualified privilege in an account of parliamentary speech if the publisher has so embellished the material that it cannot be said to be a fair and accurate report."

33. Laws LJ explained at [88] that "*a publisher who embellishes parliamentary speech*", and who may be said to have put the meat on the bones, "*has produced a critically different text. Since what he has produced cannot be said to be a fair and accurate report of parliamentary speech, the law gives him no shield of qualified privilege.*" (It was unnecessary, in Laws LJ's view, to have recourse to the concept of a publisher *adopting* the parliamentary speech as his own.)

34. Lord Phillips appears to have taken a different view on whether embellishment (or over-embellishment) may result in the privilege being lost (*Curistan* [98]-[99]), although all members of the Court agreed it was not lost on the facts. However, Arden LJ's and Laws

LJ's conclusions on the potential loss of privilege as a result of embellishment were to the same effect and represent the view of (at least) the majority. See too *Harcombe* at [305] (Nicklin J), citing Arden LJ at [36] and Laws LJ at [87]-[88].

Public interest and public benefit

35. In *Qadir v Associated Newspapers Ltd* [2012] EWHC 2606 (QB), [2013] EMLR 15, Tugendhat J observed at [68]:

> "What is fair and accurate is to be judged by comparing the words complained of with the document from which the words complained of are said by the defendant to be an extract. Where the complaint is of unfairness arising out of the omission to publish information extraneous to that document, such as another document or comments of the complainant, then that issue is to be decided under s.15(3) (public concern [now public interest] and public benefit) or s.15(1) (malice)." (Emphasis added.)

36. See, for example, *Tsikata v Newspaper Publishing Plc* [1997] EMLR 117 in which the question whether a report of a judicial inquiry into a coup in Ghana, chaired by the former Chief Justice of Ghana, was of "*public concern*" and for the "*public benefit*" was finely balanced in circumstances where it omitted compelling extraneous information refuting the allegation that the claimant had masterminded the abduction and murder of three High Court judges and a retired army officer. Nonetheless, the public interest in the publication of the inquiry findings was such that the report was privileged.

37. What is or is not of public interest or for the benefit of the public (s.15(3)) is to be decided objectively: *Qadir* [78]. Its application must be informed by due regard to articles 8 and 10 of the European Convention on Human Rights. In *Qadir*, Tugendhat J noted at [100]:

> "The effect of s.15(3) is to give the court trying a defamation action the power and duty to consider a balancing exercise on the particular facts of the case. In effect … Parliament has required the court to carry out a balancing exercise similar to the one which has now become familiar under the HRA, namely art.10 and art.8 (see *Re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593, Lord Steyn at [17])."

38. A report (untainted by malice) of a judgment given or court proceedings held in this jurisdiction is inherently likely to be a matter of public interest and public benefit: *Crossley v Newsquest (Midlands South) Ltd* [2008] EWHC 3054 (QB), [23] (Eady J). In *Khuja v Times Newspapers Ltd* [2019] AC 161, Lord Sumption JSC (with whom Lord Neuberger PSC, Baroness Hale DPSC, Lord Clarke and Lord Reed JJSC agreed) observed at [16]:

> "It has been recognised for many years that press reporting of legal proceedings is an extension of the concept of open justice, and is inseparable from it. In reporting what has been said and done at a public trial, the media serve as the eyes and ears of a

> wider public which would be absolutely entitled to attend but for purely practical reasons cannot do so."

The Excalibur judgment

39. To compare the impact of the *Excalibur* judgment on the claimant's reputation with the impact of the Article, it is necessary first to address the impression given by the *Excalibur* judgment.

40. In the *Excalibur* proceedings, the claimant, Excalibur Ventures, unsuccessfully claimed an entitlement to an interest in a production sharing contract ('PSC') in respect of an area of Kurdistan (the Shaikan block) where very large quantities of oil had been found, as well as three other blocks (Akri-Bijeel, Sheikh Adi and Ber Bahr) which had been acquired for the purpose of exploring for oil.

41. Excalibur Ventures was described by the trial judge, Christopher Clarke LJ ('the Judge'), as being "*in essence, a nameplate for the Wempen brothers*", Rex Wempen ('Mr Wempen') and his brother Eric ([11]). The Judge stated that Excalibur Ventures "*is not an oil company and has no track record in respect of oil exploration or production, nor any oil and gas expertise*", it has "*no working capital*", and the Wempen brothers "*have no relevant management experience*" ([11], [65]).

42. The first defendant, Texas Keystone Inc ('Texas'), was incorporated in Texas, USA, and founded by Todd Kozel ('Mr Kozel') and his brother, David. Since 1999, Texas had been beneficially owned by the three Kozel brothers, Robert, David and Todd. Their father, Frank Kozel, who "*had built up his own business – Keystone Energy Oil & Gas Inc - from nothing to one worth tens of millions of dollars*" was entitled to a 25% share of the profits ([13]). By 2006 Texas was a "*well-established oil company*" with gross revenue for that year of over $40 million ([16]).

43. The second defendant, Gulf Keystone Petroleum Ltd ('Gulf'), was incorporated in 2001, in the name Gulf Algeria before a name change in 2004 ([19]-[20]), by Gulf Keystone Petroleum LLC (a company founded by the Kozel family and other United Arab Emirates (UAE) and Kuwaiti investors in Sharjah, UAE, to pursue oil and gas development opportunities outside the United States [17]). On 8 September 2004 Gulf floated on the Alternative Investment Market (AIM) of the London Stock Exchange. At the material time, Gulf was a public, AIM-listed company incorporated in Bermuda ([23]).

44. The Judge regarded Mr Wempen as "*cagey*" ([60]) and "*evasive*" ([61]). He was "*not a satisfactory witness*" ([58]). He also lacked "*business acumen*" and was "*long on assertion and confidence, but short on analysis and understanding*" ([58]). Eric Wempen was "*not a wholly reliable witness*" ([63]). He devised (albeit he did not put into effect) litigation strategies involving "*conduct unacceptable for a member of the Californian (or any) Bar*" ([941]), such as "*the idea of blackmailing Mr Kozel*" ([64]). The Judge summarised at [940]:

> "In essence what was being contemplated (although never put into effect) was to blackmail Mr Kozel, to take advantage of difficulties in his private life and to put pressure on him by including his wife in a draft complaint of fraud, alleging or implying infidelity on Mr Kozel's part, and send it to him and

> his wife, and to create a scandal by use of a press release referring, *inter alia*, to a pay off by Gulf to Barzani, the Prime Minister, when nothing of the kind had ever happened."

45. Mr Kozel was "*a credible witness*" ([67]). The judge preferred his evidence to that of Mr Wempen where there was a dispute (see, e.g. [139], [391], [553], [559]). The Judge concluded that "*Mr Kozel was not guilty of any fraud or dishonesty*" ([616]). The Judge described Mr Kozel as having "*spent his life in the oil industry*" ([67]) and as being "*something of an adventurer*" ([67]), with a "*more entrepreneurial management philosophy*" than others on the Gulf Board ([380], [415]). Robert Kozel, the eldest brother, was "*a straightforward and reliable witness*" ([66]). Mr Gerstenlauer, the Chief Executive Officer of Gulf from 1 October 2008, was described as "*a plainly honest, impressive and engaging witness*"; and as "*an oil man through and through*" ([68]). Dr Hawrami was not a witness.

46. In December 2004 and January 2005 Excalibur entered into a Memorandum of Understanding and then a services agreement with the Dabin Group ('Dabin'). Dabin was a Kurdish investment development company based in Erbil. It had no geological or petrochemical experience. The President of Dabin was Izeddin Berwari ('Mr Berwari'), a retired member of the KRG and a continuing senior member of the Kurdistan Democratic Party ('KDP'). The Vice President of Dabin was Khaled (Azzat) Othman (Spindari). The parties agreed to use their best efforts to raise financing for co-managed funds with pre-planned or pre-approved projects, and Dabin agreed to provide general consulting and fundraising services to Excalibur ([116]-[118], [402]). Through Dabin, Excalibur had contacts with the KDP.

47. In March 2005, Nechirvan Barzani, who was then the Prime Minister of the KDP-controlled region of Kurdistan, and who became the Prime Minister of the unified KRG the following year, wrote to Mr Wempen inviting him to Erbil to discuss investment opportunities. The KRG was interested in attracting foreign, particularly American, capital. Mr Wempen met Prime Minister Barzani in May 2005, and that led to meetings between Mr Wempen and Dr Yacu, who was then the Prime Minister's senior oil and gas adviser. Dr Yacu suggested bringing in an independent US oil company to Kurdistan with whom Excalibur could co-invest during exploration and development ([119]-[120]).

48. In December 2005, Mr Wempen first met Mr Kozel ([134], [144]). On 16 February 2006, Excalibur and Texas entered into a Collaboration Agreement, by which they agreed to collaborate in bidding for petroleum blocks. It is that agreement which formed the foundation of Excalibur's unsuccessful claim ([2], [189], [262], [292]).

49. The prospect of any award of a concession was on hold in early 2006 pending the formation of a new government ([360]). In May 2006, the KDP-controlled governates of Erbil and Dohuk and the Patriotic Union of Kurdistan ('PUK')-controlled Suleimaniyah merged into the unified KRG ([358]). The leader of the KDP was Mr Massoud Barzani, and he became the President of the KRG, while his nephew, Nechirvan Barzani, was appointed Prime Minister ([359]).

50. The *Excalibur* judgment records at [360]:

> "…in May 2006 Dr Hawrami became Minister for National Resources, one of the most important portfolios in the KRG. …

> Dr Hawrami is a qualified oil engineer with a PhD in oil reserve engineering. He had significant international upstream experience having worked in the oil industry in the UK since 1975. He is agreed, on all sides, to have detailed technical knowledge, to be a man of integrity and someone who would appreciate what was in the best interests of the KRG in considering bids and awarding contracts. In practice it would be he who would decide who would get the award of any contract."

51. Dr Hawrami had earlier in the judgment been introduced as the Chairman of Exploration Consultants Ltd ('ECL'), a company based in Henley-on-Thames, providing consultancy and operations services to exploration and production companies. A subsidiary of ECL produced a "*Competent Persons Report*", describing and assessing Gulf's assets, for the purposes of the initial public offering when Gulf was floated on AIM ([24]). The Judge stated that Dr Hawrami was "*of the PUK*". That was of concern to Mr Wempen because all his connections were with the KDP ([360]). Dr Hawrami, who did not give evidence in the *Excalibur* proceedings, states that in fact he was not a member of any political party. However, for these purposes, as his Counsel acknowledges, it is what was said about him, and the impression conveyed of him, in the *Excalibur* judgment that matters. The Judge stated that "*attempts by Mr Wempen to procure influence did not go down well with Dr Hawrami*" ([397]), who disapproved of Excalibur's engagement in "*some serious non-transparent practices to manipulate the system to influence the decision-making process to include them in oil activities of the Kurdistan Region*" ([1337]). The Judge considered that the "*serious non-transparent practices*" to which Dr Hawrami referred "*are likely to include attempts to obtain influence with the Prime Minister in some form*" ([1339]).

52. In June 2006, Mr Wempen (for Excalibur) and Mr Kozel (for Texas), accompanied by Gulf's head of exploration, visited Erbil to explore the possibility of obtaining a concession for oil exploration. They had a meeting at the Oil Ministry with Dr Hawrami and Dr Yacu. Dr Hawrami made clear during the discussion that no new contracts would be awarded until a new oil law had been put in place ([373]).

53. On 6 August 2007, the Kurdistan Regional Oil and Gas Law ('KROGL') was passed by the Kurdistan National Assembly. The Judge described this as:

> "… a culmination of Dr Hawrami's efforts to make the bidding process transparent and compliant with international norms. KROGL set out the framework by which petroleum operations would be regulated in the KRG and paved the way for the grant of PSCs" ([619]).

KROGL "*prohibited participation of any individual or organisation linked to government officials, political parties or influential individuals*" ([1312]).

54. Dr Hawrami's approach to the grant of concessions, applying Article 24 of KROGL, was to:

> "require each member of the group to have what he regarded as a sufficient degree of financial capability and/or technical knowledge and ability. … I use the phrase 'and/or' because both

> capabilities would be desirable; both would be likely to be required by Dr Hawrami, and, at the very least, one of them. …
>
> Dr Hawrami was well aware that the participants in any PSC would be subject to public scrutiny, particularly in Baghdad, which challenged their legal validity. Awarding a PSC to financially or technically incompetent contractors would be most unwelcome to him." ([626]-[627])

55. In July 2007, at Dr Hawrami's invitation, Mr Kozel visited Erbil for a second time ([549]). Mr Kozel met Dr Hawrami for dinner at his government residence, during which Mr Mackertich (Executive Vice-President (Technical and Exploration) of Gulf [416]) gave a technical presentation ([551]). After that meeting, Gulf brought in MOL Hungarian Oil & Gas Public Company Ltd ('MOL') because Dr Hawrami "*wanted a company with a big balance sheet*" ([1249]). Mr Kozel informed Mr Wempen that "*it looked strongly as if they would get one block; and that they were waiting for Dr Hawrami to get back to them (having spoken to the PM) on the possibility of two*". Mr Kozel told Mr Wempen that he did not think Excalibur would be acceptable to Dr Hawrami on the consortium because he wanted bigger companies and, if Mr Wempen wanted Excalibur to be approved, he "*would have to get himself sorted out, with the assistance of Dabin and any other contacts*". Mr Wempen said it was not necessary or made no difference to him whether Excalibur was on the PSC ([557]).

56. On 19 July 2007, Dr Hawrami rang Mr Kozel and offered him the choice between block 5 (Shaikan) and block 6 (Ain Sifni). Mr Kozel chose Shaikan ([573]). In late July or early August 2007, Mr Kozel met Dr Hawrami at the Lanesborough Hotel in London. Dr Hawrami made it clear that he would not approve Excalibur as a party to the Shaikan PSC because it was "*not an oil company or a serious player*". The Judge observed: "*It is clear that [Dr Hawrami], in fact, had a low opinion of Excalibur*" ([578]-[583]). Excalibur's name was removed from the draft PSC [587].

57. A new model PSC was promulgated on 7 September 2007 ([646]) and the following day the KRG entered into the first PSC since KROGL was passed with Hunt Oil Company and Impulse Energy in respect of Ain Sifni ([642]).

58. On 30 October 2007, the Shaikan PSC was signed and initialled in London by the KRG, Gulf International (a subsidiary of Gulf ([29])), Kalegran Ltd ('Kalegran', a subsidiary of MOL), and Texas ([723]). On the same day, the Akri-Bijeel PSC was signed by KRG and Kalegran; and MOL and Gulf International entered into a side-letter agreeing to the exchange of a 20% interest in Shaikan for a 20% interest in Akri-Bijeel, Dr Hawrami having agreed to approve such an assignment ([719]). The latter exchange occurred on 31 December 2007 ([5]).

59. The formal signing ceremony for the Shaikan PSC took place on 6 November 2007 in the Prime Minister's office in Erbil. No press or spectators were present. The Shaikan PSC was executed by Texas (which gained a 5% interest), Gulf International (which gained a 75% interest), Kalegran (which gained a 20% interest), and the KRG. Gulf was named as the Operator. Under the terms of each PSC, a signature bonus of $25 million was payable to the KRG within 30 days. The Judge described as "*absurd*" the apparent suggestion by Eric Wempen (in the course of devising unacceptable litigation strategies)

that Excalibur could contend that payment of the signature bonus was a violation of the Foreign Corrupt Practices Act ([936(iii)]).

60. The day before the signing ceremony, Mr Kozel and representatives of MOL attended a barbecue at the home of Mr Berwari (President of Dabin). According to the judgment, Dr Hawrami was in attendance (albeit in these proceedings this is another fact he has challenged), and he mooted the possibility of the KRG taking shares in Gulf as an alternative to payment of the signature bonus in cash ([739]). There were further discussions in November and December 2007 about this proposal, and as a result Dr Hawrami agreed to postpone the date for payment of the signature bonus to 31 January 2008. In the event, the idea went no further ([739], [1056], [1110]). Gulf paid the signature bonus in respect of the Shaikan PSC, and MOL paid the sums due under the Akri-Bijeel PSC, on 4 February 2008 ([1092]).

61. Immediately after the signing ceremony for the Shaikan PSC, Mr Kozel:

> "went to see Dabin and signed the agreement for Dabin to be Gulf's representative in Kurdistan [i.e. the RA]. Dabin was to provide 'consulting and government relations services', advice as to political developments, arranging meetings and introductions to political and financial organisations and individuals in Kurdistan and Iraq and consulting service for transportation, accommodation and security. The agreement granted Dabin a 10% share in Gulf International's net profits from the Shaikan PSC on account of the services which Dabin was to provide in relation to it – a potentially valuable (if distant) benefit. Since it involved Gulf in carrying the expenditure it amounted to something like a 17% equity interest. Gulf obviously thought Dabin would be valuable to it in providing political and strategic information, including introducing Gulf to local leaders. Dabin also had a construction company which could build drilling locations and a security company." ([741], [949])

62. Prior to this point, Dabin had been working with Excalibur. But for a number of months Mr Wempen had been suggesting that Texas should make an agreement with Dabin ([949]). The Judge observed that:

> "When the Shaikan PSC was signed, Dr Hawrami was not aware that Gulf was about to enter into its agreement with Dabin. Shortly afterwards Dr Hawrami indicated to Mr Kozel that Dabin could not participate in a PSC because locals and local companies should not benefit from a PSC." ([1312])

63. KROGL prohibited participation in a PSC of, amongst others, any individual linked to a political party. In light of Mr Berwari's links to the KDP, that prohibition applied to Dabin ([1312]). The RA has "*for practical purposes been treated as void, and Dabin has not challenged that. Dr Hawrami took the view that the 10% net profit interest payable to Dabin should be paid to the KRG and that is what Gulf ended up having to do*" ([1313]). As Master Dagnall observed, in effect, Dr Hawrami ensured that Dabin's interest was forfeited to the state (see paragraph 8 above).

64. In Spring 2009, shortly before the commencement of drilling of the first Shaikan exploration oil well, Mr Kozel asked Dr Hawrami if he had any interesting available blocks. Dr Hawrami brought the Sheikh Adi and Ber Bahr blocks, which had been relinquished by another company, to Mr Kozel's attention. According to the *Excalibur* judgment (again, a point on which Dr Hawrami would give contrary evidence), Dr Hawrami introduced Gulf to Etamic, a company that had been formed by a group of Middle Eastern investors, who were contemplating a water plant project in Dohuk in Kurdistan and who wanted to obtain an interest in an oil and gas licence. The investors remained anonymous to Mr Kozel, who never met them. Dr Hawrami said that they had no oil and gas experience. He introduced them on the basis that he would not approve Etamic going on the PSC, but, if a structure was worked out to involve them, Gulf International would be entitled to obtain an interest in these two blocks. Mr Kozel asked Gulf's lawyer, Marcus Hugelshofer, to put together such a structure ([1296]).

65. On 16 June 2009, the Gulf Board approved a transaction under which Etamic would become a 50% shareholder in Gulf International in return for the latter acquiring interests in Sheikh Adi and Ber Bahr blocks, which had been earmarked for Etamic. Etamic would pay 50% of all costs payable by Gulf International ('the Etamic agreement'). The Etamic agreement was never recorded in writing ([1297]-[1298]). On 16 July 2009, Gulf International entered into the Sheikh Adi PSC with the KRG under which it acquired an 80% interest in the Sheikh Adi block, with the KRG retaining a 20% interest. The same day, Gulf International entered into an assignment and novation agreement with the KRG and Genel, whereby KRG assigned a 40% interest in the Ber Bahr block to Gulf International ([1299]).

66. The Judge found at [1300]:

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

67. In August 2009, after extensive drilling and exploratory works, costing $254 million up to the date of Mr Gerstenlauer's first statement, oil was discovered at Shaikan, and the discovery was announced to the market ([1285]-[1286]).

68. The impression that the *Excalibur* judgment gives of Dr Hawrami is of a man of integrity who has stepped up to serve the KRG following unification, in a field in which he has

long experience and deep expertise. The Judge twice observed in express terms that Dr Hawrami "*is accepted, on all sides, to be a man of integrity*", noting that he was held in the "*highest regard*" by many (see [360], quoted in paragraph 50 above, and [1339]). It is plain that the Judge accepted that assessment: see, for example, his observation that it was "*highly unlikely*" that Dr Hawrami would have been party to an alleged underhand strategy ([1339]).

69. The impression that Dr Hawrami was acting in the interests of the autonomous region of Kurdistan comes across strongly. For example, an award had been made by the previous administration which Dr Hawrami considered to be too large for one company, and so he required the company to give up certain areas [399]. The impression is conveyed that he is serious and hard-working in his approach to preparing for negotiations with the Federal Government ([426 fn.45] and [434]). In accordance with Article 24 of KROGL, he was intent on ensuring that any PSCs were awarded only to those who had the requisite technical knowledge and capability in the oil and gas field, and who had the large financial resources necessary to undertake oil exploration and production ([626]-[627]).

70. Dr Hawrami's "*low opinion of Excalibur*" ([584]) appears to reflect his principled intolerance of Mr Wempen's improper attempts to influence the KRG ([536], [1337] and [1340]) and is indicative of good judgement, given the Judge's poor assessment of Excalibur and the Wempen brothers. His acquaintance with Mr Kozel and preparedness to work with him does not give rise to any suspicion of corruption. It is natural that they would be acquainted as both men have spent their lives working in the oil sector, and there is no suggestion in the *Excalibur* judgment that Mr Kozel or any of the defendants have, or may have, used corrupt means to obtain any of the concessions they acquired. Eric Wempen's suggestion that Excalibur could allege that the signature bonuses were corrupt was dismissed as "*absurd*".

71. Dr Hawrami was credited with being the force behind the anti-corruption measure, KROGL ([619] quoted in paragraph 53 above), and he took the need to prevent corruption seriously (see e.g. [373], [397], [536], [1337]-[1340], and paragraph 51 above). From the judgment, it does not appear that there was anything suspicious about Dr Hawrami's attendance at the barbecue on the evening prior to the formal signing of the Shaikan PSC. The Judge referred to it because it was the first occasion on which the possibility of the KRG taking shares in Gulf in lieu of cash payment of the signature bonus was mooted, and it was discussion of that possibility which led to the 30-day period for payment being extended. The Judge found that Dr Hawrami was not aware that Gulf was about to enter into the RA with Dabin when the Shaikan PSC was signed ([1312]). When he found out, he told Mr Kozel that Dabin could not participate in a PSC. He did not allow Dabin to receive the 10% net profit payable in accordance with the RA, requiring Gulf to pay that money to the state instead ([1313]).

72. As regards the Etamic deal, the impression is that two years on from the first PSCs granted post-unification, Dr Hawrami was seeking to shift the remaining available blocks. The KRG wanted to obtain other benefits for the state ([640]), and through Etamic there was the potential to obtain a water plant project in Dohuk. Although those behind Etamic are not known to Mr Kozel, the impression given is that Dr Hawrami approves of them as a financial backer, but he is not prepared to have Etamic on a PSC because of its lack of experience in oil and gas.

73. The Etamic deal made sense for Gulf/Gulf International because it would, in effect, swap half its interest in Shaikan (at a time before oil had been discovered there) for interests in two other blocks, thus spreading the risk, and Etamic would pay half of all the (huge) costs (see [1297]-[1298]). In the event, Etamic defaulted on its obligations. The judgment conveys the impression that the termination payment of $12 million to Etamic was a reasonable settlement sum in circumstances where Gulf was alleging default and claiming reversion of 50% of Gulf International ([1300]). Dr Hawrami ensured the state received all the payments due to it, including Additional Infrastructure Support Payments.

74. I do not accept Mr Price's submission that the *Excalibur* judgment gives rise to "*question marks over the claimant's involvement*" or that it is "*capable of being defamatory of the claimant*". On a fair reading of the *Excalibur* judgment as a whole, the impression is clearly conveyed that Dr Hawrami is a man of honour and integrity, working against corruption and in the interests of the autonomous region of Kurdistan.

Is the Article a fair and accurate report of the Excalibur judgment and proceedings?

75. I will first address the extent to which it would be apparent to the reader that the source of a shaded passage is the *Excalibur* judgment or proceedings before considering whether those passages accurately and fairly reflect the claimed sources, and whether the Article as a whole can be regarded as a fair and accurate report.

76. This is a hybrid publication. Qualified privilege is not claimed in respect of more than three-quarters of the Article. Unarguably, most of the Article is not a report of the *Excalibur* judgment or proceedings. The reader is given to understand that this is a piece of investigative journalism from the outset, with the header incorporating the word "INVESTIGATIONS" and the reporters summarising their "*Key Findings*". This impression is reinforced by phrases such as "*OCCRP has discovered*" (Article §7), "*Kozel's deal … has not been reported until now*" (Article §11), "*documents seen by reporters*" (Article §16), "*a draft trust document seen by OCCRP*" (Article §84), and by the nature of the Website.

77. I accept Mr Price's submission that a reader will read the Article as a whole, and so may understand a point to be attributable to a particular source even though the point was first made before the source was identified. That is particularly likely to be true of the "*Key Findings*". Nevertheless, given the investigative nature of the piece, and the multiplicity of sources identified, it is highly pertinent that until a third of the way through the Article (§32) - by which stage the reader has read close to half of the passages for which qualified privilege is claimed - there is no reference to the *Excalibur* judgment or proceedings.

78. The Article refers to numerous sources other than the *Excalibur* proceedings (which are identified as "*a London court case*" involving Mr Wempen and Mr Kozel). The reader ascertains that the primary sources of the Article are a "*whistleblower*", "*sources familiar with Kozel's years at the helm of Gulf Keystone*", "*corporate filings*" and "*hundreds of court records*" (Article §15). The reader would understand those "*court records*" to be derived from Mr Kozel's divorce case (Article §9). The latter impression is reinforced by reference to "*documents seen by reporters*" supporting the "*suspicions of Kozel's ex-wife*" (Article §16; and §88). Other sources identified include: criminal proceedings; complaints filed by the whistleblower with the US Securities and Exchange Commission, the Department of Justice and the FBI, and subsequent correspondence; press statements;

companies' promotional materials; a Gulf States Newsletter; a PhD thesis; newspaper articles; Mr Kozel's (new) wife's Instagram account; the anti-corruption group Global Witness; and responses by spokespersons/lawyers.

79. As regards the "*Key Findings*" in §5 of the Article, the reader would gain the impression that "*the London court case*" (i.e. the *Excalibur* proceedings) is one of the sources from which bullet points 1, 2 and 4 are drawn, but not bullet points 3 and 5.

80. However, in my judgment, the multiplicity of sources identified in the Article, and the primacy given to sources other than the *Excalibur* proceedings, is such that the reader would not understand any of the shaded passages in §§6-27 to be derived from the *Excalibur* judgment or proceedings. Although *Shakil-Ur-Rahman* concerned a publication in which the court proceedings were not mentioned at all, the principle that it must be sufficiently apparent to the reader that the publication is reporting court proceedings applies here, in the context of a lengthy article drawn from multiple sources, to the extent that the reader would not gain the impression that parts of the Article are reporting the *Excalibur* judgment or proceedings.

81. The impression conveyed by the quotations in §§28 and 30, and the précis of the terms of the RA in §§28 and §§30-31, is that the source is the RA itself. There is still, at this point, no reference to the *Excalibur* judgment, albeit such reference follows in §32. It follows that this passage falls to be considered by reference to paragraph 5 of Part I of Schedule 1 to the 1996 Act. At §29 is a photograph of Mr Berwari: the caption identifies the source as a promotional article for Dabin.

82. The reader is given the impression that the source of §§32-43 and the first line of §44 is the *Excalibur* proceedings (save for the photograph at §36). Although qualified privilege is not (or no longer) claimed in respect of some of those paragraphs (specifically, §§37-38, 42-43 and the first line of §44), there is nothing in them to indicate a shift to reliance on another source.

83. At §47, the *Excalibur* case is clearly flagged again as the source, with other sources identified in the following paragraphs. The next shaded passage, §74, is preceded by a long section (§§48-73) for which privilege is not claimed and in which no reference is made to the *Excalibur* proceedings; and it is followed by §75 in which the only identified source is a Gulf States Newsletter. There is no reference to the *Excalibur* proceedings in §74 of the Article, the reader gains the impression that the source is a public statement made by Gulf, perhaps reported in the Newsletter, and I note that the quoted words are not, in fact, derived from the paragraphs of the *Excalibur* judgment relied on ([1296]-[1297]), or indeed any other part of the judgment.

84. The reversion to discussing the *Excalibur* proceedings in §76 and 78-79 is clearly flagged, with the shift to other sources equally clearly identified in §77 and §80. However, the same cannot be said in respect of §§81-82 which make no reference to the *Excalibur* proceedings. The reader would not assume that the source of material regarding Etamic is the *Excalibur* proceedings given the multiplicity of other sources relied on in the Article, including in discussing that company. The reference in §82 to how the "*finance director put it*" appears to link back to what Mr Ainsworth is reported to have said in the Gulf States Newsletter (*cf* Article §75), and I note that the quotations are not from the passage of the transcript (TX 17.12.12, p.5) relied on, or from the *Excalibur* judgment (at [1300] or otherwise). Moreover, the reader would understand that

the final sentence of §82 could not be sourced from the *Excalibur* proceedings, as it refers to events in 2016, and the reader has been told the case ran from 2011-2013. There is no reference to the *Excalibur* proceedings after §79. The final paragraph in respect of which privilege is claimed is §82.

85. In summary, it is not sufficiently apparent to the reader that the *Excalibur* judgment, proceedings or the RA are the source of §§6-8, 11, 24, 26, 27, 74 or §81-82 (or the shaded parts thereof) for the defendants to claim qualified privilege in respect of any of those paragraphs. Whereas that is sufficiently apparent in respect of the following shaded passages: §§5 (bullet points 1 and 4), 28, 30-31, 32-35, 39-41, 47, 76 and 78-79. In addition, in considering fairness and accuracy, it is necessary to bear in mind that the reader would also understand the following passages (in respect of which qualified privilege is not claimed or summary judgment has been given) to be drawn from the *Excalibur* judgment: §§5 (bullet point 2), 37-38, 42-43 and the first line of §44. Against this background, I will address the issue of fairness and accuracy.

86. The first shaded section is the first bullet point of §5. It is in the "*Key Findings*" box. This is a reference to the RA which was disclosed during the *Excalibur* proceedings and discussed in the judgment. However, the characterisation of the RA as entailing a "*kick back*", which the ordinary reader would understand to mean a bribe, cannot be derived from the paragraphs of the *Excalibur* judgment relied on (or the judgment as a whole) or the RA. The *Excalibur* judgment makes clear that it was Dr Hawrami who would decide who would get the award of a PSC ([360]), and the Shaikan PSC was awarded, and the formal signing ceremony had taken place, before Dr Hawrami became aware that Gulf had entered into an agreement with Dabin ([741]).

87. The claim of qualified privilege has already been rejected, on the summary judgment application, in respect of the second bullet point of §5. As Master Dagnall observed, this passage could not possibly be said to be a fair and accurate report of the *Excalibur* judgment given that the essential underlying statement that there was a legal requirement on Dr Hawrami to cancel the Shaikan PSC did not appear anywhere in the *Excalibur* judgment (or other *Excalibur* materials relied on); and the Article omitted to say, as Christopher Clarke LJ did, that Dr Hawrami had ensured the benefits of the RA were forfeited to the state.

88. The second shaded section is the fourth bullet point of §5. The defendants rely on p.95 of the 17 December 2012 transcript of the *Excalibur* proceedings as the source. It was day 35 of the trial and Mr Kozel was being cross-examined. In the part of the transcript relied on, Counsel for Excalibur read out a press release issued by Gulf on 10 March 2010:

> "Q. Under the second bullet point it reads:
>
> 'Following default by ETAMIC, GKPI will pay $40 million to the KRG … (Reading to the words) … interest in Sheikh Adi and 40 per cent interest in Ber Bahr.
>
> Then the third bullet point:
>
> 'GKP will make a termination payment of $12 million to ETAMIC in full and final settlement of all their rights which is

> payable within 30 days of completion by GKP of a significant fundraising after Q1 2010.'
>
> Then the final bullet point:
>
> 'The KRG shall also be entitled to receive an additional infrastructure … (Reading to the words)… share of profits in all four production sharing contracts…'"

89. The reference in the fourth bullet point to the "*deal*" being voided is a reference to the RA being treated as void, while the reference to a payment of $12 million is to the termination of the Etamic deal. The passage relied on is not a source of any information about the RA, but that information can be derived from the *Excalibur* judgment ([1313]).

90. However, there is nothing in the passage relied on (or the *Excalibur* judgment) to indicate that Etamic is an "*offshore company*": that assertion appears to be based on a "*draft trust document*" (Article §84). More importantly, the third bullet point conveys to the reader that the "*funnell[ing]*" of $12 million offshore is linked to the corrupt deal to "*kick back huge revenues*" to an Iraqi Kurdistan politician's company, in which Mr Kozel and members of the KRG are involved. That is unsupported by the *Excalibur* judgment or the passage of the transcript relied on. The judgment and the transcript make clear that payment of $12 million was in full and final settlement of any claims arising from Gulf's termination of its contract with Etamic, and the Judge observed that was "*a reasonable price for the certainty of unencumbered rights to the two new blocks*" ([1300]). There is no suggestion in the transcript or the judgment that the termination payment was corrupt.

91. The alleged secret connection between Mr Kozel and Etamic, and description of him secretly controlling Etamic (Article §88), is drawn from the divorce proceedings and documents obtained in those proceedings, not from the *Excalibur* judgment or proceedings. While the investors behind Etamic come across in the *Excalibur* judgment as somewhat mysterious, as their identities are not known to Mr Kozel (fn.100) and the deal was not recorded in writing ([1298]), and the judge records that Mr Kozel was introduced to Etamic by Dr Hawrami ([1296]), there is no suggestion in the judgment of any corrupt connection between Dr Hawrami (or other members of the KRG) and Etamic. On the contrary, as I have said, the impression conveyed by the judgment is that Dr Hawrami was acting in Kurdistan's interest in introducing Etamic, with a view to shifting the remaining blocks and progressing a desired water plant project.

92. I have accepted that three bullet points in §5 are sufficiently flagged to the reader as having the *Excalibur* judgment and proceedings as their source, that qualified privilege is not excluded for that reason. However, for the reasons I have given, none of those three bullet points can be regarded as a fair and accurate report of those proceedings for the purposes of paragraph 2 of Part I of Schedule 1 to the 1996 Act. As they are all "*key findings*", that is important in assessing whether the Article as a whole meets that standard.

93. As the source of §6 of the Article, the defendants rely on [740] of the *Excalibur* judgment which paragraph refers to the official signing ceremony for the Shaikan and Akri-Bijeel PSCs on 6 November 2007, and so supports the reference to Gulf signing an agreement with the KRG in 2007. The fact that Gulf was a "*London-listed*" company could also be derived from the *Excalibur* judgment ([23]), albeit not from the paragraph relied on.

However, whatever the source of the quotation ("*oil field of dreams*") may be (and it is not identified in the Article) it is not the *Excalibur* judgment or either of the transcripts relied on. Nor does it convey the sense of the *Excalibur* judgment which emphasises that Gulf's investment in the PSCs "*was a high risk venture, a wild cat play, which might fail utterly, and which would require years of expenditure on exploration and then, hopefully, production to bring to fruition*" (*Excalibur* judgment [1364]; and more generally [82]-[101]). Nor is the reference to the security situation ("*full-blown insurgency in 2007*") derived from the judgment. The *Excalibur* judgment does not address the state of the Iraq war in 2007, save for noting that Kurdistan was, in general, safer than the rest of Iraq; in April 2006 there was an article in *the Times* commenting on insurgent attacks in and around Kirkuk; but from 2007 onwards the position eased although personal security remained a concern (*Excalibur* judgment [99]). This augments my conclusion that it is not sufficiently apparent to the reader that §6 is a report of the *Excalibur* judgment for qualified privilege to apply.

94. The defendants rely on [116] and [741] of the *Excalibur* judgment as the source of §7 of the Article. The *Excalibur* judgment provides the information that the RA was entered into on the same day in November 2007 as the signing ceremony for the Shaikan and Akri-Bijeel PSCs ([740]-[741]). But it cannot be the source of the allegation that Mr Kozel entered into the RA "*in order to secure the oil block*" because the Judge's findings that it was for Dr Hawrami to decide who would be awarded a PSC ([360]), and that he was not aware when the PSCs were signed (or, *a fortiori*, when he decided to whom to grant the Shaikan and Akri-Bijeel PSCs) that Gulf was about to enter into an agreement with Dabin ([1312]), are inconsistent with that allegation. I conclude that §7 is insufficiently flagged as being a report of court proceedings, and in any event, it is not a fair and accurate report.

95. The defendants rely on [1312]-[1313] of the *Excalibur* judgment as the source of the first sentence of §8 of the Article. The "*deals*" which are said to have transformed the fortunes of Gulf and Mr Kozel are the Shaikan PSC (which is described as "*public and official*") and the RA (which is described as "*secret and illegal*"). It is apparent from the *Excalibur* judgment that the RA was unlawful in public law terms because the President of Dabin was a KDP politician, and so it was contrary to KROGL for Dabin to participate in a PSC, but there is nothing in the judgment to indicate it was secret; nor, as I have said, that it was by means of a corrupt kickback deal that Gulf obtained the Shaikan PSC. The first sentence of §8 is not only insufficiently flagged as being a report of the *Excalibur* proceedings, it is also not a fair and accurate report of the *Excalibur* judgment.

96. The defendants rely on [116] and [1312]-[1313] of the *Excalibur* judgment as the source of §11 of the Article. Read in context, §11 conveys the impression, contrary to the *Excalibur* judgment, that the oil concession which was obtained by means of a corrupt kickback deal has been kept in place despite the parties recognising that the corrupt deal had to be treated as void because of tougher foreign corruption laws. As I have said, there is no support in the judgment for the allegation that the Shaikan PSC was obtained by corrupt means, nor any suggestion in the judgment that the law required Dr Hawrami to cancel the Shaikan PSC. In addition, there is a striking omission to mention that when the RA was voided Dr Hawrami ensured the benefits payable under the RA to Dabin were forfeited to the autonomous region of Kurdistan. I conclude that §11, too, is both insufficiently flagged and not a fair and accurate report of the *Excalibur* judgment.

97. At §§23-24, the only sources cited are statements made by Mr Kozel. However, what he is reported to have said is not alleged to have been given as evidence in the *Excalibur* proceedings, and none of the quotations appear in the judgment. Nevertheless, the defendants contend that the first sentence and a half of §24 is protected by qualified privilege. This augments my conclusion that it is not sufficiently apparent to the reader that any part of §24 is a record of the *Excalibur* judgment for qualified privilege to apply. However, taken alone, the shaded part of §24 is not an inaccurate or unfair record. The facts stated in the first sentence, that Kurdistan is an autonomous region, and that it welcomed oil exploration, can be found in the *Excalibur* judgment (at [91] and [1], rather than the paragraphs relied on). The first half of the second sentence is reflective of information given in the paragraphs relied on, namely [4] and [740].

98. In respect of §26 of the Article, the defendants contend that eight words ("*it announced its first find in August 2009*") are derived from [1285] of the *Excalibur* judgment, where the announcement to the market on 6 August 2009 of the discovery of oil at Shaikan is described. The words are not an inaccurate or unfair report, but there is no indication in §26, or the surrounding paragraphs, that the eight shaded words – which on their face appear to come from a press statement – are drawn from the *Excalibur* judgment. This underlines my conclusion that it is not sufficiently apparent to the reader that those eight words in §26 are a report of the *Excalibur* judgment for qualified privilege to apply.

99. The defendants contend that §27 of the Article is drawn from [116] and [741] of the *Excalibur* judgment. The opening part of the first sentence ("*such generosity*") is a reference to Mr Kozel's pay package, a subject which is not touched on in the *Excalibur* judgment. The paragraphs of the *Excalibur* judgment relied on provide the information that the RA was entered into on 6 November 2007, that Mr Berwari was a senior Kurdish KDP politician, and that he ran Dabin, a company based in Kurdistan which had connections to senior members of the government. But the judgment cannot be the source of the allegation that Gulf's fortune, and Mr Kozel's pay package, was only possible because of the RA as that allegation is inconsistent with the Judge's findings for the reasons given in paragraph 94 above. I conclude that §27 is not only insufficiently flagged for qualified privilege to apply, it is not a fair and accurate report of the *Excalibur* judgment.

100. The defendants rely on [4] and [741] of the *Excalibur* judgment and §2(a) of the RA as the source of §28; and [741] and §2(c) of the RA as the source of §30. They rely on [741] alone as the source of §31. Reliance on [4] of the judgment, which concerns the Shaikan PSC and makes no reference to the RA, Dabin or Mr Berwari is erroneous. There is reference in [741] to the RA, but that paragraph says nothing about it containing a confidentiality clause (still less an expansive one) and makes no reference to services "*related to securing*" the oil concession. Two of Dabin's duties and responsibilities (as per §2(a) and (c) of the RA) are identified in §§28 and 30, but the Article – unlike the *Excalibur* judgment – ignores the duties at §2(b) and (d) of the RA, which concern advice as to political developments and consultation services regarding transportation, accommodation and security.

101. Those differences are such that if §§28 and 30-31 fall to be addressed on the basis that they are a record of the *Excalibur* judgment, those paragraphs fail the test of fairness. By including reference to terms that the judge evidently considered irrelevant, and by omitting reference to other terms, the Article creates a very different impression of the purpose of the RA to that conveyed by the judgment.

102. However, as I have said, the impression conveyed by the Article is that the source of §§28 and 30-31 is the RA itself. Consequently, it seems to me that the question is whether those paragraphs are a "*fair and accurate … extract*" from the RA under paragraph 5 of Part I of Schedule 1 to the 1996 Act.

103. In *Qadir*, Tugendhat J held that the term "*extract*" could include a "*summary*", in the sense that the extract need not be a word for word citation from the relevant document. That interpretation is questionable in circumstances where Parliament has limited the privilege to "*copies of or extracts from*" some types of publication in Schedule 1 (including paragraph 5), while (subsequent to *Qadir*) extending the privilege to a "*report or summary of, copy of or extract from*" the type of publication identified in paragraph 15 of Part II of the same Schedule.

104. Nevertheless, I am prepared to assume, without deciding, that §§28 and 30-31 constitute extracts within the meaning of paragraph 5, as in my view, in any event, they do not meet the requirement of fairness and accuracy. The terms of the RA are contained in just ten paragraphs. A key term of the RA identifies Dabin's duties and responsibilities. As I have said, the Article omits two of the four identified duties. It also omits to mention that the services are to be provided on an exclusive basis, and so Dabin is precluded from assisting any other company to compete with Gulf International in the oil and gas business in any part of Kurdistan: §2 of the RA. I recognise that it is in the nature of an extract that it is not a complete copy of the document from which it is drawn. Even so, the partial explanation in the Article of Dabin's duties gives a significantly different impression of what that company is required to do, and precluded from doing, in return for the payment due under the contract, to the impression given by the RA itself.

105. At §32 of the Article, the "*London court case*" is referenced for the first time. The whole judgment is relied on as the source. The first sentence of §32 supports the impression that the RA was a secret and corrupt agreement, and the sentence does not reflect anything in the *Excalibur* judgment. The remainder of the paragraph broadly reflects information provided in the judgment. Mr Wempen is described in positive terms as a "*former U.S. special forces soldier*" and an "*ex-soldier*" (Article §§32, 35, 47). The Article notes that Gulf won the case against him (§35), without conveying any impression of the serious criticisms made of him by the judge, or that it was his company - which Dr Hawrami was not prepared to have on a PSC - which was working with Dabin in the period prior to the formal signing ceremony (*Excalibur* judgment [116]-[117], [118], [353], [395], [397], [580]).

106. The facts *expressly* stated in §33 of the Article accurately reflect the judgment. However, it is not a fair report. In context, having repeatedly described the RA as a kickback deal, the clear impression conveyed is that Dr Hawrami was involved in that corrupt deal, by which Mr Kozel and Gulf secured from him the grant of an oil concession. As I have said that impression is inconsistent with the *Excalibur* judgment. Moreover, there is a striking omission of the judge's express finding that Dr Hawrami was not aware when the PSCs were signed (or, *a fortiori*, when he decided to whom to grant the Shaikan and Akri-Bijeel PSCs) that Gulf was about to enter into an agreement with Dabin ([1312]).

107. In §34, the reference to Dr Hawrami owning "*a large home in the well-heeled British town of Henley-on-Thames*", and by inference that he is wealthy, would appear to the reader to be drawn from the *Excalibur* judgment, but in fact there is no reference to the size or location of Dr Hawrami's home in the judgment. The reference to Dr Hawrami

having a relationship with Mr Kozel going back to before his appointment as minister accurately reflects the judgment. However, the impression conveyed is different because the reader of the Article is given to understand that Mr Kozel is dishonest and corrupt, in contrast to the essentially positive impression of Mr Kozel given in the *Excalibur* judgment.

108. The references to Mr Berwari being a member of the "*governing [party's] politburo*" (Article §§11, 44), a "*public officer*" (Article §35), and "*a high level official*" (Article §50), give the impression that he has a role in government, whereas the *Excalibur* judgment states he is retired from government, but remains a senior member of his political party, the KDP.

109. The largest photograph of an individual in the Article (at §36) is of Dr Hawrami. It is immediately followed by §37 which Master Dagnall has already ruled at the summary judgment stage cannot possibly be said to be a fair and accurate report (see paragraph 8 above). It is unfair and inaccurate because the Article gives the impression that there was a legal requirement on Dr Hawrami (to whom the reader would understand the reference to "*the Kurdistani government*" in §37 to refer) to cancel the Shaikan PSC, and that he knowingly failed to comply with it, whereas there is nothing in the *Excalibur* judgment (or passages of the transcript relied on) to support the suggestion that there was any such legal requirement. It is also unfair because of the omission to state (as the judgment had done) what Dr Hawrami had done to secure the benefits payable to Dabin under the RA for the autonomous region of Kurdistan.

110. The reader would gain the impression that §38 of the Article is drawn from the *Excalibur* judgment, although it is (admittedly) not. The impression given by §39 of the Article is that "*the new anti-bribery clause*" referred to in the previous paragraph was mere words, and that a new route to pay public or party officials was sought with the introduction of Etamic. Etamic is described as "*a new offshore company with no history or track record*" (§39). The judgment does not record that Etamic is a new company, or that it is offshore (in [1296], or otherwise). The judgment records that Etamic has no oil and gas experience, but not that it is a company with no history or track record. The impression given by the judgment is that Dr Hawrami would only have been prepared for Etamic to be involved, given the company's lack of oil and gas experience, if they appeared to have the large financial resources necessary to undertake oil exploration and production; and also that Etamic was capable of undertaking a water plant project.

111. The statement in §40 of the Article accurately reflects the judgment. But its fairness has to be judged in the context of the Article as a whole. As I have said, the context is that the Article conveys the impression that the RA, to which Dabin was a party, was a corrupt agreement, by which Mr Kozel and Gulf secured the grant of an oil concession from Dr Hawrami. That is not a fair report of the *Excalibur* judgment.

112. The ordinary reader would understand §41 to be drawn from the judgment, but the only part of it that is capable of being derived from the judgment is the reference to Gulf writing to Dabin to cancel the RA in early 2010. There is no reference to the UK's Bribery Act, to the date on which it was passed, or to its effect, in the *Excalibur* judgment. The ordinary reader would also understand §§42-43, in which reference is made to the Prevention of Corruption Act 1906 and the US Foreign Corrupt Practices Act, to be drawn from the *Excalibur* judgment, although they are (admittedly) not.

113. In §47, the Article states that the "*London judge did not address the corruption issue, which was not central*" (emphasis added) to Mr Wempen's claim. In §48 the Article states that the "*corruption evidence was not discussed officially again*" (emphasis added) until raised by a whistleblower. Together with the first line of §44 of the Article, in which it is said that "*Mr Berwari's position in the KDP politburo … was at issue in the case*", these passages give the reader the impression that evidence of corruption, although not central to the *Excalibur* judgment, was heard and discussed, and the passages of the Article in which the case is flagged are drawn from that discussion. Whereas the allegations of corruption in the Article are unsupported by the judgment, and in particular any suggestion that the grant of the Shaikan PSC was corrupt sharply contradicts the impression given by the judgment.

114. As I have said, although qualified privilege is claimed in respect of §74, the quotation is not from the *Excalibur* judgment, and the impression given is that the source is a public statement made by Gulf, perhaps reported in the Gulf States Newsletter that is flagged as the source of the following paragraph.

115. The defendants rely on [1298] of the *Excalibur* judgment, in which the judge stated that the Etamic agreement was never recorded in writing, and p.72 of the transcript of 17.12.12, in which Mr Kozel is recorded as saying that "*it was a strange deal*", as the source of §76 of the Article. The paragraph is accurate and, although it omits Mr Kozel's explanation for his description of it as strange, not in and of itself unfair. They rely on [1296] of the judgment and pp.42-43 of the transcript for 19.12.12 as the source of §78; and [1296] and pp.69-70 of the transcript for 17.12.12 as the source of §79. Again, those paragraphs accurately reflect the judgment and transcripts.

116. In respect of §81 of the Article, the defendants rely on pp.29 and 49-50 of the transcript for 19.12.12 as the source, although as I have said, it would not be apparent to the ordinary reader that the *Excalibur* proceedings were the source of this paragraph. Although the description of Etamic acquiring a stake in the Shaikan block in exchange for stakes in Sheikh Adi and Ber Bahr is accurate, the commentary that this involved exchanging a major stake in a valuable oil field for rights in unproven fields does not fairly reflect the passage of the transcript relied on or the *Excalibur* judgment because, at the time, oil had not been struck at Shaikan and so all three blocks were unproven but valuable. It also ignores the highly important benefit to Gulf that the Etamic deal was intended to bring of Etamic bearing 50% of all of the costs. The final sentence of §81 contains the journalists' commentary that it is not clear how Etamic would help Gulf acquire rights to Sheikh Adi or Ber Bahr, or what influence it had in Kurdish oil circles. The Article makes no reference to the explanation in the judgment that KRG had an interest in dealing with Etamic with a view to securing a water plant for Dohuk, or to Mr Kozel's understanding that part of the deal by which Etamic had acquired the rights to the Sheikh Adi and Ber Bahr blocks involved the obligation to pay $40 million to the KRG in infrastructure support payments (TX 19.12.12, p.51).

117. As I have said, the quotations in the final shaded paragraph, §82, are not from the passages relied on by the defendants ([1300], TX 17.12.12, p.95), and they would appear to the reader to be derived from what Gulf's finance director is reported to have said to the Gulf States Newsletter. The circumstances in which Gulf relinquished the Sheikh Adi and Ber Bahr blocks in 2016 are not, and would not appear to the reader, to be a report of the earlier *Excalibur* proceedings.

118. As I have identified, although there are passages that are accurately drawn from the *Excalibur* judgment, the transcripts or the RA, there are also shaded passages which do not accurately reflect any of those materials. More importantly, as I have identified in respect of numerous passages, both by reason of what it asserts and by reason of important omissions, the Article is not a fair report of the *Excalibur* judgment or proceedings, or a fair extract from the RA. The unfairness infects all the key elements of the narrative in respect of which reliance is placed on the *Excalibur* judgment, transcripts and RA, namely, what is alleged in the Article about the role of a corrupt kickback deal (the RA) in securing the Shaikan PSC for Gulf, the circumstances in which that corrupt deal was voided without cancellation of the Shaikan PSC, and the steps taken after that corrupt deal was voided to introduce an offshore company (Etamic) and then funnel $12 million through it.

119. In my judgment, it is manifest that the Article is a "*critically different text*" in which the material contained in the *Excalibur* judgment and materials has been so embellished, indeed contradicted, and so intermingled with extraneous material, that the quality of fairness required for reporting privilege has been entirely lost. The Article fundamentally alters the impression which the reader would have gained had they read the *Excalibur* judgment or been present when the evidence relied on was given during the proceedings.

120. I have determined the question of fairness and accuracy under paragraphs 2 and 5 of the Part I of Schedule 1 to the 1996 Act. In my judgment, this is not a case in which the complaint of unfairness falls to be decided under s.15(3). Insofar as the unfairness arises from *omissions* to publish information, it is based on the omission of important information contained in the *Excalibur* judgment, not on extraneous information (see paragraph 35 above).

121. In answer to the preliminary issue identified in paragraph 6(c) of Master Dagnall's order, I conclude that none of the paragraphs of the Article pleaded in the defendant's second schedule are protected by s.15 of the 1996 Act.

E. The natural and ordinary meaning of Versions 1, 2 and 3 of the Article

Legal principles

122. As the defence of qualified privilege has failed, it is unnecessary to consider the approach to the determination of the meaning of a partially protected hybrid publication. Instead, I must determine the natural and ordinary meaning of each version of the Article, applying the well-established and uncontroversial principles, and the repetition rule. The natural and ordinary meaning is the single meaning the words would convey to the hypothetical ordinary reasonable reader ('the reader').

123. The key principles derived from the authorities were helpfully distilled and re-stated by Nicklin J in *Koutsogiannis v Random House Group Ltd* [2019] EWHC 48 (QB), [2020] 4 WLR 25 at [12] (and approved by Warby LJ in *Millett v Corbyn* [2021] EWCA Civ 567, [2021] EMLR 19, [8]):

> "i) The governing principle is reasonableness.
>
> ii) The intention of the publisher is irrelevant.

iii) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.

iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.

v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.

vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.

vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.

viii) The publication must be read as a whole, and any 'bane and antidote' taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic 'rogues gallery' case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (e.g. bane and antidote cases).

ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.

x) No evidence, beyond publication complained of, is admissible in determining the natural and ordinary meaning.

xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication's readership.

> xii) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.
>
> xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant's pleaded meaning)."

The principles that are of greater relevance in this case are (iii), (iv), (viii), (ix), (x) and (xi).

124. In *Feyziyev v JDNI* [2019] EWHC 957 (QB), Warby J considered two articles published, as in this case, by the JDNI on a website at the address https://occrp.org. He observed at [17] that it was "*obviously right to have regard to the nature of the readership at which the publication is aimed, and the nature of the speech under consideration*". The Article, like those considered by Warby J, is a lengthy piece of serious reporting on political and financial issues, of public interest, "*published by an investigative body on its own dedicated website, in terms which are clearly considered and measured*" (*Feyziyev*, [17]).

125. Invoking the hypothetical ordinary reasonable reader reminds the judge to make allowance for the possibility that the impression made on them may, or may not, reflect the response of the ordinary reader of the publication. In this case, it was common ground that the reader of the Article would be intelligent, literate, and capable of understanding reasonably complex political and financial analysis; and would have an interest in efforts to expose and counter corruption (*cf Feyziyev*, Warby J, [26]).

126. The claimant emphasises that the natural and ordinary meaning of the words includes any implication which a reasonable reader, guided only by general (not special) knowledge, and not fettered by any strict legal rules of construction, would draw from the words: *Jones v Skelton* [1963] 1 WLR 1362, 1370-1371 (Privy Council)*; Allen v Times Newspapers* [2019] EWHC 1235 (QB), [28] (Warby J). If the author invites the reader to adopt a suspicious approach, the reader may gain the impression that the author is "*anxious to wound but fearful to strike too obviously*", and may be guided to an explanation which the author did not care, or did not dare, to express in direct terms: *Jones v Skelton*, 1372; *Lloyd v David Syme and Co Ltd* [1986] 1 AC 350, 363-364 (Privy Council).

127. The defendants emphasise that "*modern readers should be treated as having more discriminating judgment than has often been recognised*", especially in the context of serious factual reporting: *Allen v Times Newspapers*, [14] (Warby J). As regards principle (viii), the defendants point out that whether the antidote has removed the bane is very much a matter of impression. The potency of the antidote will depend on how effectively it "*steers one away*" from a more serious conclusion: *Tayler v HarperCollins Publishers Ltd* [2022] EWHC 3376, [11] (Pepperall J); *Horan v Express Newspapers* [2015] EWHC 3550 (QB), [17] (Dingemans J). This will depend on factors such as its location in the publication, its wording (including how directly it addresses any allegations), and the authority of its source: see e.g. *Tayler* [38]-[39].

128. The submissions identified in paragraphs 126-127 above were not in dispute, and I agree with them. It is also pertinent to note that when setting out the meaning of a statement, the court should focus on what it says about the claimant: *Sharif v Associated Newspapers Ltd* [2021] EWHC 343 (QB), [33] (Nicklin J).

129. One of the issues between the parties is the level of gravity at which the meaning, whatever it is, is pitched. The claimant's meanings are at *Chase* level one, whereas the defendants contend that the meaning is, at its highest, at *Chase* level three. These terms come from *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1772, [2003] EMLR 11, in which Brooke LJ identified at [45] three types of defamatory allegation. Broadly, (1) the claimant is guilty of the act, (2) reasonable grounds to suspect that the claimant is guilty of the act; and (3) grounds to investigate whether the claimant has committed the act. They are a helpful shorthand and should not be treated as a straitjacket forcing the court to select one of the three prescribed levels of meaning. Where words convey a meaning that falls between the *Chase* levels, this should be recognised in the court's determination.

130. One point of contention was the defendants' reliance, in the context of submissions on the principles applicable when determining natural and ordinary meaning, on the wider acceptable limits of criticism of a high-ranking official, under article 10. However, despite the location of those submissions in the defendants' skeleton argument, Mr Price's oral argument on this point was, at least primarily, to the effect that article 10 was relevant to the question whether the Article is defamatory at common law, rather than to the determination of meaning. To the extent that the defendants maintain the proposition that article 10 is a relevant consideration at the meaning stage, I reject their submission. As Nicklin J observed in *Zarb-Cousin v Association of British Bookmakers* [2018] EWHC 2240 (QB), at [23] (citing *Barron v Collins* [2015] EWHC 1125 (QB), [54] (Warby J)), "*The law of defamation must give due effect to Article 10 but … this is done by other means than the rules governing meaning*".

The parties' proposed meanings

131. The claimant contends that there is no distinction between the meaning of the various versions of the Article. The claimant's pleaded meaning is:

> "Dr Hawrami, whilst serving as Minister of Natural Resources in the government of the KRG of the autonomous region of Iraqi Kurdistan, had:
>
> a) in November 2007, granted a highly lucrative contract to Gulf Keystone Petroleum ('GKP') because of and/or knowing of a secret, corrupt and illegal agreement entered into between Todd Kozel ('Kozel') of GKP and the company of Izzedin Berwari ('Berwari'), a member of the governing Kurdistan Democratic Party ('KDP') politburo and a high level and senior public official with connections to the Prime Minister of the KRG ('the kickback agreement'), whereby potentially huge revenues from the oil concession would be paid by GKP in kickbacks to Berwari's company for securing the Shaikan Production Sharing Contract ('PSC') for GKP;

> b) in 2010, been privy to a private agreement between GKP and the KRG to treat as void for illegality the kickback agreement just weeks before the UK Bribery Act was passed in 2010, but, corruptly and in violation of a Kurdish oil law, that which [sic] Dr Hawrami had pushed through the Iraqi Kurdistan Parliament, allowed GKP to retain the contract, instead of cancelling the contract by reason of GKP's corruption, as the oil law required him to do; and
>
> c) shortly thereafter, facilitated the secret funnelling of US$12m from GKP, a public company quoted on the London Stock Exchange, to an offshore company secretly connected to Kozel and the KRG, by introducing Kozel to a group of investors operating under the name of Etamic and to the idea of the transaction."

132. The defendants' primary pleaded case is that the Article bore no meaning defamatory of the claimant at common law. In the alternative, the defendants have pleaded the following meaning in respect only of Version 1 (albeit this meaning, too, they contend is non-defamatory):

> "there were grounds to investigate whether the Claimant, through his office, had come to know about but failed to properly investigate and act upon an illegal agreement which benefitted a high-ranking member of Iraqi Kurdistan's ruling party."

The parties' submissions

133. The claimant submits that what the reader learns at the outset of the Article is that Mr Kozel is corrupt, and that in order to secure an oil concession for his company, he struck a deal to kick back potentially huge revenues to a veteran Kurdistan politician's company. The remainder of the Article tells the tale in detail. The claimant is presented as centrally involved, first, in the corrupt kickback deal by which Gulf obtained the oil concession; secondly, in unlawfully allowing Gulf to keep the oil concession notwithstanding that the deal by which it had been obtained was corrupt and illegal, and he was required by law, as he well knew, to cancel it; and, thirdly, in introducing Etamic, an offshore company to which both Mr Kozel and the KRG were secretly connected, to which Gulf funnelled $12 million (which the reader would have understood was or may well have been a kickback to KRG officials).

134. The reader is explicitly told that Gulf and Mr Kozel's dazzling success, with the company's market value leaping from £359 million to £3 billion after the first find in August 2009, and Mr Kozel's yearly compensation peaking at $22 million on 2011, was the result of corruption. The grant of a fabulously lucrative oil concession in Kurdistan was only obtained because of a secret and illegal agreement to kickback a potentially enormous sum of money to Mr Berwari. The reader is also explicitly told that the claimant was in charge of granting oil concessions, along with the Prime Minister and his deputy; that he already had a close business relationship with Mr Kozel and Gulf; and that he attended a convivial barbecue at the home of Mr Berwari, the beneficiary under this corrupt kickback agreement, the day before it was signed. The claimant submits that the defendants are willing to wound him but afraid to strike and so they do not state

expressly that he granted the oil concession because the RA was entered into. Nonetheless, the claimant contends the implicit assertion to that effect is inescapable. The narrative regarding the barbecue is central: it ties each of the three parties attending to the signing of the secret kickback deal the following day.

135. Moreover, with the words "*the judgment in the court case revealed*" (Article §33), and further references to the judgment in §§34-35, the defendants give their narrative the imprimatur of Christopher Clarke LJ (who is identified in §40), conferring authority on their assertions.

136. The claimant submits that §§37-38 convey, quite unambiguously, that the claimant knew perfectly well that the RA was illegal, yet (despite his responsibility as Minister for Natural Resources) he did not cancel the oil concession as he was required by law to do. On the contrary, he facilitated an amended agreement between the KRG and Gulf.

137. With respect to Etamic, the claimant submits the overwhelming impression conveyed by §§73-77 is of a secret and corrupt arrangement: who in their right mind would hand over half of Gulf's Kurdistan assets without documentation? The defendants make clear that Mr Kozel had a significant involvement in, and perhaps even overall control of, Etamic. But the KRG and the claimant were also involved. The Article states that it is not clear how Etamic would help Gulf acquire rights to further fields, or what influence it had in Kurdish oil circles, but the claimant contends that it is implicit that Etamic must have had considerable influence in Kurdish oil circles, and it is the claimant, who was also in charge of granting oil concessions, who is said to have introduced Etamic to Gulf. It is the claimant who is identified as the instrumental party in the various events that are attributed to the KRG in the Article.

138. With respect to the reported statements by the claimant's lawyers at §§45, 46, 58, 59 and 80, the claimant contends that these mere denials provide no balance, and are not an effective antidote, in the face of the forceful imputation of corrupt conduct on the part of the claimant. The lawyers' statements do not cause the journalists to retract or soften their categorical allegations. The reader would understand that Dr Hawrami's integrity was under attack in the Article and the denials issued through his lawyers are contradicted by the Article.

139. As regards the additional text first included in Version 2, Ms Page submits that any mitigating value the lawyers' statement might otherwise have had is wholly negated by the editor's note in which the defendants state "*OCCRP stands by its reporting*" (i.e. 'we are in the right'), but as Dr Hawrami wants to have his say they make clear to readers that they are prepared to tack his lawyers' statement onto the end of the Article. She contends that the further sentence included in Version 3 merely reduces the extent to which the editor's note puzzles the reader by referring to "*the following article*", despite the Article *preceding* the editor's note and lawyers' statement; it does not alter the meaning of the Article.

140. The defendants submit that the Article will strike the reader as a careful piece of investigative journalism, and so the reader will understand that allegations will not be made lightly, and words will be chosen carefully. Given the agreed attributes of the reader, they will be capable of distinguishing when the defendants are prepared to make a clear allegation of corruption and when they have stopped short of doing so.

141. The reader will immediately appreciate that the main character is Mr Kozel (the eponymous "*US Oilman in Iraq*"). A further key character, an "*Iraqi Kurdistan politician*" with whom Mr Kozel struck a kickback deal, is introduced in the standfirst and key findings section. That character is Mr Berwari, not the claimant, as the reader would understand. Mr Price contends that the Article is concerned with those two protagonists: it is not about the claimant, albeit he features because he was the Minister for Natural Resources.

142. Mr Price submits that Mr Kozel and Mr Berwari are explicitly called "*corrupt*", alleged to be profiting from that corruption, and their integrity is straightforwardly called into question in the Article. In contrast, the defendants did not say that the claimant was corrupt. Nor did they ever say, or imply, that that the claimant stood to benefit or profit from the RA or the Etamic arrangement, or that he had any interest in Dabin. A reasonable reader would not be oblivious to this contrast (*cf Feyziyev*, [28]). There are no clear allegations against the claimant, and in those circumstances the reader would not reach for a potential inference that he is corrupt. The ordinary reasonable reader is capable of suspending judgement if they are unsure what, if anything, is being alleged.

143. Mr Price contends that the Article is silent as to the claimant's knowledge of the RA and, at most, the Article might imply that there is a question whether or not he knew about it, and the defendants included his answer to that question (in Versions 2 and 3). His denials cannot be ignored in ascertaining the meaning of the Article. Version 1 sits no higher than *Chase* level three.

144. The reader would understand the Article to be saying that the RA was unlawful in public law terms. Mr Price submits that the Article does no more than suggest to the reader that there are questions to answer surrounding the extent of the claimant's involvement with Dabin and the RA. Insofar as a question is expressly raised regarding the KRG's response to the acknowledged invalidity of the RA, the defendants submit that the Article is careful (in the paragraphs immediately above and below the photograph of the claimant) to focus on the claimant's office, rather than the claimant personally.

145. Mr Price contends that the intervention of the claimant's lawyers, setting up a number of propositions that they say are not true, and teasing those into prominence, where perhaps they would not have been alighted upon by the ordinary reasonable reader, has created a real imbalance. He points out that in Versions 2 and 3 there are 25 references to the claimant by name, but of those 18 appear in statements from his lawyers. He submits that it would be perverse if the denials were treated as elevating the meaning and, on the contrary, they extinguish any defamatory meaning, if there was one. In particular, the inclusion of the lawyers' statement in Versions 2 and 3 lowers the level below *Chase* level three, such that those versions (at least) bear no defamatory meaning.

146. Overall, the defendants submit that fundamentally the Article is not about the claimant, and only a reader avid for scandal would derive, from the fleeting mentions of him, an imputation that he was at the heart of various corrupt and illegal deals. No reasonable reader would or could derive so much from so little.

Decision

147. In accordance with established practice, I first read the Article to form a provisional view as to its meaning, prior to the hearing, and before I turned to consider the parties'

submissions or any other materials. For the purposes of addressing the s.15 defence, I considered materials (such as the *Excalibur* judgment and transcripts) that are inadmissible in determining the natural and ordinary meaning of the Article. I had not read those materials when I formed a provisional view and, at this stage of the analysis, I have put those materials out of my mind and focused on the Article itself.

148. I will first address Version 1 before considering what, if any, impact the additional text in Versions 2 and 3 has on the meaning. I have already referred, in the context of considering the qualified privilege defence, to some of the impressions that I consider the hypothetical ordinary reasonable reader of the Article would have gained.

149. In my judgment the natural and ordinary meanings of Version 1 are as follows:

> (1) There are strong grounds to suspect that the claimant, while serving as Minister of Natural Resources of the Kurdistan Regional Government ('the KRG') granted a highly lucrative oil concession (the Shaikan oil concession) to Todd Kozel's AIM-listed company, Gulf Keystone, knowing of and because Mr Kozel had entered into a secret, corrupt and illegal agreement ('the kickback deal') with the Dabin Group, the company of Izzedin Berwari, a high level public official, involving the payment of potentially huge bribes to Mr Berwari's company for securing the Shaikan oil concession for Gulf Keystone.
>
> (2) The claimant subsequently failed to cancel the Shaikan oil concession, knowingly violating a Kurdish anti-corruption oil law that he had publicly supported, after the KRG and Gulf Keystone privately agreed to treat the kickback deal as void in light of tougher international corruption laws coming into force.
>
> (3) There are reasonable grounds to suspect that the claimant introduced Gulf Keystone to an offshore company, operating under the name Etamic, and proposed a secretive transaction which resulted in Gulf Keystone funnelling US §12 million to Etamic.

150. As regards the allegation concerning the grant of the Shaikan oil concession, there are features of the Article which cast a dark cloud of suspicion over the claimant. The RA is presented, unequivocally as a secret, corrupt and illegal deal by which the Shaikan oil concession was secured and without which it would not have been secured (§§3, 5(1), 7, 8 and 27). Although the Article contains a denial by a spokesman for Mr Kozel that the grant of the oil concession had anything to do with the RA (§§13-14), this mere denial does not in any way mitigate the force of the clear, unequivocal and repeated imputation to the opposite effect, which the reader understands to be the result of a thorough investigation which has enabled the journalists to piece the story together (§15).

151. As the defendants acknowledge, Mr Kozel and Mr Berwari are expressly accused of corruption. But it is plain to the reader that neither of them granted the lucrative oil concession: the corruption worked by means of the oil concession being granted by another. There is no express statement that it was the claimant who granted the oil concession, or that he did so because of the kickback deal. But I agree with Ms Page that it is the claimant who is identified as the instrumental party in the various events that are

attributed to the KRG in the Article, and the omission of an explicit allegation against him smacks of a fear to strike too obviously, despite an obvious intent to wound.

152. The reader learns that the claimant "*was in charge of granting oil concessions*" (albeit along with the prime minister and his deputy), and it was he alone of those with such power who joined the two other unequivocally corrupt protagonists at a barbecue just one day before the kickback deal was signed (Article §33). The prominent photograph of the claimant in this piece of investigative journalism on a website dedicated to investigating corruption, the claimant's long-standing relationship with Mr Kozel (who the reader would understand to be deeply dishonest and corrupt), the suggestion that the claimant is wealthy, the forceful implication that he chose not to cancel the oil concession, in knowing violation of the law, together with the impression that the authoritative source of this "*corruption evidence*" is Christopher Clarke LJ's judgment (albeit the reader understands the corruption issue was not central to the case), have persuasive power. Together, they suggest to the reader that the claimant has a compelling case to answer in respect of the grant of the oil concession, which I have encapsulated as strong grounds to suspect in meaning (1) above.

153. For the most part, I agree with the claimant's submissions regarding the grant of the oil concession, which are broadly consistent with my initial reaction on reading the Article. However, I am not persuaded that the Article would convey the impression to the reasonable reader, who is not unduly suspicious or cynical, that the claimant is guilty of the matters identified in meaning (1). The reader would appreciate the contrast between the direct and explicit allegations against Mr Kozel and Mr Berwari on the one hand, and the veiled accusations levelled against the claimant, and would draw from that difference an understanding that the case against him is one of strong grounds for suspicion.

154. In my view, the number of times the claimant was referred to in the Article (on which the defendants relied), whether in the context of the journalists' own narrative or statements from his lawyers, is misleading and irrelevant. It is misleading because it ignores those occasions where the claimant is expressly referred to other than by his name, for example, by the title of "*minister*" or "*Oil Minister*", as well as instances where reference to him is made implicitly. It could equally be said that the Article refers by name to Dr Hawrami more often, even in Version 1, than it refers to Mr Berwari, but that too would ignore those instances where Mr Berwari is referred to other than by his name. More importantly, the number says nothing about the natural and ordinary meaning that the reader – who would not analyse the Article in such a way – would understand it to bear. A publication could name a person once while making a clear and unequivocal allegation of corruption: indeed, in relation to Mr Berwari, the Article does so by the time he is first named in §11.

155. Version 1 contains denials by the claimant's lawyers that he has any relationship with or has received any payments from Dabin; or that he was aware of any illegality in the arrangements between Gulf and Dabin. It also contains an assertion that his integrity is a matter of record and beyond reproach. Those matters appear interspersed in the Article, in reasonably close proximity to the allegations against the claimant. As regards the denial of receipt of payments, I agree with Mr Price that there is, in any event, no allegation that the claimant profited. These general denials and assertions, coming from the claimant's lawyers, do not come across as authoritative or independent, and the Article gives the reader the impression that it is the thorough investigation by the journalists, supported on key aspects by Christopher Clarke LJ's judgment, that is to be

believed and trusted rather than statements by the claimant's lawyers. The denials do not reduce meaning (1) below the level of strong suspicion that I have found.

156. As regards cancellation, in my judgment, there is a categorical statement of guilt. In §§5(1) and 11 the Article informs the reader of the private agreement between the KRG and Gulf that the kickback deal was illegal (in the sense of being corrupt), and of the decisions to treat it as void while keeping the oil concession in place, without yet introducing the claimant or attributing any decisions to him. However, in §33 the claimant is identified as having been the Minister of Natural Resources, in charge of granting oil concessions, in 2007. So, the reader would understand that the reference in §35 to "*the Ministry of Natural Resources*" agreeing the RA violated Kurdish oil law (due to its provision for a public officer to benefit), was a reference to the claimant. Any doubt about that would be swept away by the assertion in the following paragraph (§37) that the claimant "*knew the oil law well*" (§37), immediately below a prominent photograph of the claimant. His knowledge of the oil law would be irrelevant if he was not in post and responsible for the specified decisions.

157. The reference to the claimant's Ministry in §35, to the claimant's knowledge of the oil law in §37, together with the categorical statement in §§51-52 that on finding a breach of Article 56 of the Kurdish oil law (also referred to as "*corruption laws*" (§51)), it is "*the Oil Minister*" (§52) who has no discretion but to cancel, appears clearly calculated to put into the mind of the reader the idea that the claimant knew the RA violated the oil law, and so had to be treated as void, but he decided not to cancel the oil concession despite knowing it was unlawful not to do so.

158. The stated response of the claimant's lawyers in §58 is in very general terms, asserting that there is no basis to allege any wrongdoing on his part and that his integrity is beyond reproach. This bare response does not reduce the toxicity of the bane or poison.

159. In relation to the introduction of Etamic, I consider that the reader would understand the allegation against the claimant to be at *Chase* level two: reasonable grounds to suspect. The reader learns from §§77-79 that the claimant "*brought*" Etamic and the "*proposal*" or "*idea*" (the thrust of which is explained in §81) to Gulf. A specific "*strong*" denial by the claimant follows immediately at §80 which has the effect of lowering the otherwise categorical assertions to one of reasonable grounds to suspect. The denial is effective in reducing the statement by a *Chase* level because of its location and specificity, and because the reader would appreciate that the sources of the allegation are all connected to Gulf.

160. However, the denial is insufficient to reduce the level of the allegation further to *Chase* level three or otherwise. Typically, a *Chase* level three meaning would be expressed with tentativeness, with the writer giving reasons to be cautious about the material. Here, the writers do not express caution or raise questions. The allegation is supported by evidence given to a court by Gulf's (then) Chief Operating Officer, whose statement the Article does not call into question. It is also supported by evidence given to the court by Mr Kozel. The reader would give less weight to his statement, having been given the impression throughout the Article that he is dishonest, but no specific cause for caution about this statement is given. Further support for the allegation is provided by contemporaneous minutes which record the KRG had approached Mr Kozel with the proposal, and the reader understands that within the KRG the claimant was the minister with responsibility for the grant of oil concessions. Finally, the allegation is of a piece

with what the reader has been told about the claimant in the context of the earlier allegations regarding the grant and failure to cancel the concession.

161. The assertion that Etamic is "*an offshore company*" to which Gulf "*funnelled $12 million*" is clearly asserted. The impression that the transaction was secretive is conveyed by the reference to there being no records, by the reference to Etamic being mysterious and to the fund's owners asking the Gulf States Newsletter not to say too much about them, and by the lack of transparency regarding the influence Etamic had in Kurdish oil circles which enabled it to help Gulf acquire two blocks.

162. Does Version 2 bear any different meanings? In my judgment, it does not. The meat of the Article is wholly unaltered. The claimant's lawyers' statement is buried away at the end of a lengthy publication. It is preceded by an editor's note which signals to the reader that what the journalists have written remains accurate and unshaken by the statement that follows, and any contradiction between what they have written (based on thorough research) and the lawyers' statement should not be believed or trusted. The strongest part of the lawyers' statement is the reference to the court's finding that the claimant was not aware that Gulf was about to enter into an agreement with Dabin when the Shaikan PSC was signed. However, any potential mitigating impact is quickly overwhelmed by the impression that the claimant's lawyers are taking issue with the court's findings, reinforcing the impression that the Article has drawn on authoritative "*corruption evidence*". The statement that the claimant "*has no recollection*" of attending the barbecue appears weak in the context of the Article as a whole, and in the face of a contrary judicial finding. Taken together with the strong signal given in the editor's note and its location, I consider that this antidote is ineffective to reduce meaning (1) below the level of strong grounds for suspicion.

163. With respect to cancellation and meaning (2), the claimant's asserted opinion regarding the oil law, and disclaimer of sole responsibility, would appear to the reasonable reader to be a feeble and ineffective antidote in the face of the citation of the relevant provisions by the whistleblower, whose account the reader is given no cause to doubt. It is not independent and would come across, in the context of the Article, as self-serving rather than authoritative. Again, in view of its location and the effect of the editor's note, I am unpersuaded that it reduced the *Chase* level.

164. As regards meaning (3), the denial of the introduction of Etamic appears, more effectively, immediately following the assertion that he did so. I have found, considering the earlier denial, that the meaning is at *Chase* level two. The further denial in the lawyers' note, given its location and the editor's note, does not negate the allegation or further lower the level of it.

165. The sentence added to Version 3 plainly makes no difference to the meanings. Accordingly, I conclude that the natural and ordinary meanings of Versions 2 and 3 are the same as those I have set out in paragraph 149 above.

F. Defamatory at common law

166. A statement is defamatory at common law if (i) it satisfies the "*consensus requirement*" (i.e. it would tend to lower the claimant in the estimation of right-thinking people generally) and (ii) it would tend to have a substantially adverse effect on the way that people would treat the claimant: *Millett v Corbyn* [2021] EMLR 19, [9] (Warby LJ).

167. The defendants' contention that the words complained of are not defamatory at common law was based on the contention that, at its highest, the natural and ordinary meaning was at the level of "*grounds to investigate*". It is unnecessary to address their submission that, having regard to the claimant's status as a high ranking politician, and the strength of the right to free speech in this context, an allegation to the effect that a politician has questions to answer, given the general importance of such scrutiny, would not be defamatory at common law. I have not found that any of the meanings are at *Chase* level three, and so the question does not arise.

168. Each of the meanings that I have found is obviously defamatory at common law.

G. Conclusion

169. In short, I conclude that the defence of qualified privilege fails; the natural and ordinary meanings of the Article are the same in each version, and are set out in paragraph 149 above; and those meanings are defamatory at common law.

Appendix A – Version 1 of the Article (original, published on 22 May 2021)

The paragraph numbers have been added for ease of reference. The shading has been added to indicate the parts of the Article which the Defendants contend are protected by qualified privilege pursuant to s.15 of the 1996 Act). The references in square brackets following the shaded passages are to the paragraphs of the Excalibur judgment, or to the transcript of the Excalibur proceedings ('TX'), and to the Representation Agreement ('RA'), relied on by the Defendants in support of the qualified privilege ('QP') claim.

"[*Header*] OCCRP | INVESTIGATIONS · THE RISE AND FALL OF A U.S. OILMAN IN IRAQ

[1] **The Rise and Fall of a U.S. Oilman in Iraq**
[*Heading on large font across the photograph at [2]*]

[2] [*Photograph bearing the caption:*] An aerial view of a drilling rig operating near Erbil, Kurdistan.

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

[4] [*Marginal note:*] by Daniel Balint-Kurti and Will Jordan 22 May 2021

[5] **Key Findings**

- Todd Kozel, founder of London-listed oil company Gulf Keystone, struck a deal to kick back huge revenues to an Iraqi Kurdistan politician's company in 2007. [**116, 740, 741, 1300, 1312, 1313, RA**]

- The Kurdistan deal was later deemed illegal and was voided just weeks before the U.K.'s Bribery Act, which brought tougher rules against international corruption, was passed in April 2010. Still, Gulf Keystone was allowed to keep exploiting the field. [**QP ruled out by Master Dagnall**]

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

- Not long after the deal was voided, Gulf Keystone funnelled $12 million to an offshore company that was secretly connected to both Kozel and the Kurdistan Regional Government. [**TX 17.12.12, p.95**]

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

[6] The Iraq war was good to American oil baron Todd Kozel. As the country was in the midst of a full-blown insurgency in 2007, his London-listed firm Gulf Keystone signed an agreement with the government of the autonomous region of Kurdistan to exploit its "oil field of dreams." [**740**]

[7] The very same day in November, OCCRP has discovered, he struck a deal to kick back potentially huge revenues to a veteran Kurdistan politician's company in order to secure the oil block. [**116, 741**]

[8] The deals — one public and official, the other secret and illegal — transformed the fortunes of Gulf Keystone and its founder. The company's operations are now entirely based on the block in question, named Shaikan. [**1312, 1313**]

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

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

[11] Kozel's deal with a company controlled by Izzeddin Berwari, a member of the governing Kurdish Democratic Party's (KDP) politburo, has not been reported until now. By 2010, Gulf Keystone and the government of Kurdistan had privately agreed that the deal was illegal, and treated it as void, but kept the broader oil concession in place. [**116, 1312, 1313**]

[12] [*Photograph in margin bearing the caption:*] Todd Kozel with his wife Inga in a photo posted to her Instagram account.

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

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

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

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

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

[18] Court papers also show how he profited from insider trading, secretly buying and selling shares through an offshore trust in Jersey, a British Crown Dependency. One trade took place the same day oil was first struck at Shaikan — but three days before shareholders were informed.

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

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

[21] **War and Oil**

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

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

[24] The new universe began opening up in Kurdistan, an autonomous region in northern Iraq that welcomed international oil exploration. On November 6, 2007, Gulf Keystone landed the rights to the Shaikan oil field, which Kozel claimed could yield up to 15 billion barrels — more than 20 times the eventual reserves figure. It was what he described as "virgin territory… an oil man's dream." [**4, 740**]

[25] [*Photograph bearing the caption:*] An image of the Shaikan oil field taken from a Gulf Keystone promotional video.

[26] After it announced its first find in August 2009, the oil company was transformed into a hotly traded multimillion-dollar enterprise. Its market value leapt from 359 million British pounds to 3 billion. Kozel's yearly compensation peaked at $22 million in 2011, one of the highest CEO pay packages in the U.K., and nearly $7 million more than the head of Shell received that year. [**1285**]

[27] But such generosity would not have been possible without a secret agreement Kozel signed on November 6, 2007, with Berwari, the Kurdish KDP politician, who also ran an influential company called Dabin Group, based in Iraqi Kurdistan. [**116, 741**]

[28] Under the terms of this deal — which was called a "Representation Agreement" and contained an expansive confidentiality clause — Dabin Group, with Berwari as executive chairman, was to provide "general consulting and government relations services related to securing and subsequently managing" the oil concession. [**4, 741, RA §2(a)**]

[29] [*Photograph in margin bearing the caption:*] Izzedin Berwari pictured in a promotional article for the Dabin Group.

[30] Dabin would also be tasked with "arranging meetings with and introductions to political and financial organisations and individuals in Kurdistan and Iraq." [**741, RA §2(c)**]

[31] In exchange, it was promised 10 percent of Gulf Keystone's net revenues from operating the oil field, for up to 25 years. [**741**]

[32] The existence of the agreement between Kozel and Berwari has never before been reported. However, it was presented as evidence in a London court case that ran from 2011 to 2013, which was brought by a company run by former U.S. special forces soldier Rex Wempen, who had acted as a fixer for Gulf Keystone and claimed he was owed millions for helping it obtain the oil field. [**Whole Jgt**]

[33] The judgment in the court case revealed that on November 5, 2007, a day before the Representation Agreement was signed, Kozel enjoyed a barbeque at Berwari's home. They were joined by Iraqi Kurdistan's Minister of Natural Resources Ashti Hawrami, who along with the prime minister and his deputy, was in charge of granting oil concessions. [**24, 360, 739**]

[34] An oil consultant before the Iraq war, Hawrami owned a large home in the well- heeled British town of Henley-on-Thames. As the judgment noted, the minister had a relationship with Kozel going back to before his appointment, and a subsidiary of Hawrami's company had prepared a report for Gulf Keystone ahead of a share issue three years earlier. [**24**]

[35] While Gulf Keystone won the case against the ex-soldier, the judgment detailed a series of events in early 2010 that led the company and the Ministry of Natural Resources to agree that the profit-sharing agreement with Dabin violated Kurdish oil law. The law prohibits a public officer like Berwari from acquiring "a benefit or an interest" in an oil concession, directly or indirectly. [**1312, 1313, 1476**]

[36] [*Photograph of the Claimant bearing the caption:*] Ashti Hawrami at Chatham House in London in 2010.

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

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

[39] But as Dabin Group was dropped, a new offshore company with no history or track record called Etamic Limited, which had signed an agreement with Keystone a year earlier, would grow in prominence. [**1296**]

[40] In the judgment, Lord Justice Christopher Clarke said the Dabin Group also appeared to have had connections to Nechirvan Barzani, prime minister of Iraqi Kurdistan at the time. [**119**]

[41] Gulf Keystone wrote to the Dabin Group cancelling the agreement only months before the U.K.'s Bribery Act, which brought tougher rules against international corruption, was passed in April 2010. [**1312, 1313**]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[63] **Trusts and Lies**

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

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

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

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

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

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

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

[71] [*Screenshot of an article in the New York Post bearing the caption:*] The divorce case became fodder for tabloids like the New York Post.

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

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

[74] The company seemed to appear out of the blue in July 2009, when Gulf Keystone suddenly announced it would be handing Etamic — which it described as its new "strategic investment partner" — half of the subsidiary holding its Iraqi Kurdistan assets. [**1296, 1297**]

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

[76] There were also no records of the deal. Kozel later claimed that this was because it had been concluded verbally. "It was a strange deal," he told a London court. [**1298, TX 17.12.17, p.72**]

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

[78] John Gerstenlauer, Gulf Keystone's chief operating officer at the time, told a judge Etamic had been brought to his firm "by Dr Ashti [Hawrami] and The Ministry of Natural Resources and the KRG." [**1296, TX 19.12.12, pp.42-43**]

[79] Kozel also told the court that Hawrami had "brought the investors and the idea" and that he had then asked his lawyer "to try to put together a structure." [**1296, TX 17.12.12, pp.69-70**]

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

[81] In return for obtaining a major stake in the valuable Shaikan oil field, Etamic would help Gulf Keystone acquire rights to two unproven fields in Iraqi Kurdistan, called Sheikh Adi and Ber Bahr. It is not clear how Etamic would do that, or what influence it had in Kurdish oil circles. [**TX 19.12.12, pp.29, 49-50**]

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

in 2016, by when it had become clear they were essentially worthless. [**1300, TX 17.12.12, p.95**]

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

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

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

[86] There were further connections too.

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

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

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

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

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

[92] [*Diagram bearing the heading* "How Etamic Ltd Was Structured"*, incorporating photographs of Dominique Lang, Markus Hugelshofer and Todd Kozel*]

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

[94] **The IRS Arrives**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appendix B – Version 2 of the Article (published on 30 August 2022)

Version 2 of the Article, at the conclusion of the text as set out in Annex A, contained the additional words set out below. The square brackets, and text therein, in [112] and [113], were contained in Version 2 (and 3).

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

[111] **Statement on behalf of Dr. Ashti Hawrami**

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

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

[114] (1) Dr Hawrami has no recollection of meeting Mr Kozel and Mr Berwari ("the Iraqi Kurdistan politician" referred to in the sub-title) at a barbecue in 2007 and believes it to be most unlikely that he did so; whilst serving as Minister of Natural Resources he did not ordinarily attend such events, precisely in order to avoid allegations such as those now made.

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

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

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

leadership whilst serving as Minister of Natural Resources have bolstered the Kurdistan Region's reputation as a place to do business.

Appendix C – Version 3 of the Article (published on 12 September 2022)

Version 3 of the Article is the same as Version 2, save for the addition of the following words below [3] and above [5] ([4] appearing in the margin next to [3]):

[3A] **(A response to this story is included at the bottom of the page.)**