Neutral Citation Number: [2020] EWHC 1325 (QB)

Case No: QB-2019-002773

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

Date: 14 May 2020

Before:

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between:

(1) GREENSILL CAPITAL (UK) LIMITED **(2) ALEXANDER GREENSILL**	**Claimants**
- and –	
REUTERS NEWS AND MEDIA LIMITED	**Defendant**

- -

Adrienne Page QC and **Jonathan Barnes** (instructed by **Schillings International LLP**) appeared on behalf of the **Claimants**
Catrin Evans QC (instructed by **Pinsent Masons LLP**) appeared on behalf of the **Defendant**

Hearing date: 14 May 2020

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Approved Judgment

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MR JUSTICE NICKLIN :

1. This is a claim for libel. As set out in the Particulars of Claim, the First Claimant is a financial services company that specialises in supply chain finance and securitising future guarantee cashflows. The Second Claimant founded the First Claimant in 2011 and he is its Chief Executive Officer.

2. The Defendant is a well-known international news publisher. The UK edition of its website can be found at uk.reuters.com ("the Website").

3. From around midday on 7 July 2019, the Defendant published an article on the Website in the Business News section under the headline: "**Exclusive: Greensill issued false statement on bonds sold by metals tycoon Gupta**" ("the Article"). The Article, with paragraph numbers added, is set out in the Appendix to this Judgment. It appears to be common ground that, at some point after its original publication, the Article was amended to add some further information. Nothing turns on this. The parties are agreed that the amendments do not alter the meaning of the Article. The Appendix contains the Article in its amended form. In this Judgment when I refer to paragraph numbers, they are to paragraph numbers that have been added to the Article as shown in the Appendix.

4. The Claim Form was issued on 2 August 2019. In their original Particulars of Claim, dated 9 December 2019, the Claimants contended that the Article bore the following natural and ordinary meaning which defamed both the corporate and individual Claimants ("the Claimants' Meaning"):

> "…the First and Second Claimants and each of them had knowingly provided false information to bond market investors and brokers in their May 2018 update to the effect that the Scottish Government had granted a guarantee which would have substantially inflated the value of bonds it had issued in 2017 when they knew this was not the case and thereby committed a serious criminal offence of market abuse for which they could be convicted, heavily fined or banned from undertaking regulated activities".

5. It is not necessary for today's purposes to go into the history, but I merely note that the Claimants have recently amended their Particulars of Claim to add a claim that the Article bore, further or alternatively, the Claimants' Meaning by innuendo.

6. The Defendants' solicitors denied that the Article bore the Claimants' Meaning and disputed that the Article bore any meaning that was defamatory of the Second Claimant. In their letter of 22 January 2020, they contended on behalf of the Defendant that, read in full, the Article bore the following meaning ("the Defendant's Meaning"):

> "(a) That in 2018 [the First Claimant] had provided a false statement to bond market participants relating to bonds issued on behalf of Sanjeev Gupta, which said that the Scottish Government had approved a guarantee related to a Scottish hydro plant (Kinlochleven) owned by Gupta's GFG Alliance, against which the bonds were secured, and that GFG planned to re-purchase the bonds.
>
> (b) This statement was in addition to a pre-sale document produced by [the First Claimant] in April 2017 for GAM Holding AG, which purchased £220 million of Kinlochleven bonds, which had stated

> that a Scottish Government guarantee would allow GFG to re-purchase the bonds early.
>
> (c) In fact, the Scottish Government had not given approval of a guarantee linked to Kinlochleven.
>
> (d) Therefore, questions remain as to how [the First Claimant] came to issue the statement, that it said was based upon information provided by GFG, that the Scottish Government had approved a guarantee related to Kinlochleven when the Scottish Government says no approval was given".

7. The Defendant had not yet filed a Defence. Instead, the parties sought to have the natural and ordinary meaning of the Article determined as a preliminary issue, and, on 10 February 2020, Master Brown so ordered.

8. I have heard today submission on behalf of the parties on this issue.

Natural and Ordinary Meaning: The Law

9. There is no dispute as to the principles that the Court must apply when determining the single natural and ordinary meaning: ***Koutsogiannis -v- The Random House Group Limited*** **[2020] 4 WLR 25** [11]-[13].

10. The Claimants selected only some paragraphs of the Article for complaint. They excluded paragraphs [8]-[13], [16]-[25], [30] and [35]-[39] (shown in italics in the Appendix). That is not impermissible or wrong. CPR Part 53 PD 53B §4.2(i) requires the claimant in a defamation claim to specify the words complained of in his statement of case. It is common ground, however, that when assessing the natural and ordinary meaning, the Court must read the words complained of in the context of the publication as a whole: ***Koutsogiannis*** [12(viii)]. The practical effect of this is that the Court is assessing the meaning of the Article as a whole. It would be wholly artificial to read only the words complained of. No ordinary reasonable reader would do so; indeed, she or he would not know which words had, in fact, been selected for complaint by the claimant.

11. Ms Page QC has amplified the principle of 'bane and antidote', which is recognised in ***Koutsogiannis*** [12(viii)], by reference to Simon Brown LJ's explanation of the principle in ***Mark -v- Associated Newspapers*** **[2002] EMLR 38** [42]:

> "What view, then, is likely to be taken of a neutral report which sets out both an allegation and its denial? For my part I find it very difficult to conceive of circumstances in which the mere printing of a denial could of itself be said to constitute an antidote sufficient to neutralise the bane, let alone that it could be thought so obviously to have this effect as to entitle the court at an interim stage to withdraw the issue from the jury".

12. In this case, the issue that concerns the Second Claimant is whether the hypothetical ordinary reasonable reader would understand the Article to refer to, and to make any defamatory allegation against, him personally. I accept Ms Page QC's submission that the question of what (if any) natural and ordinary defamatory meaning of the words complained of bore of him is to be answered by considering simply what the reasonable

reader would understand the Article to say about the Second Claimant. That issue is to be resolved applying the general principles as to the determination of the natural and ordinary meaning of words.

13. When determining the natural and ordinary meaning of a publication, no evidence is admissible beyond the publication itself. This is a fundamental principle, but it appears that it needs again to be repeated. The Article occupies the first 10 pages of the Bundle for this hearing. It came as something of a surprise to find that it was accompanied by 200 other pages of material. I shall say more about this later.

Submissions

14. Ms Page QC made two general points at the outset of her submission. First, readers of the Defendant's website could be expected to be financially savvy. To such readers, an allegation of issuing a false statement to the City would be regarded as a very serious matter.

15. Ms Page QC contends the Article makes a clear and express allegation that a statement had been made to the bond market that was false, and known to be false. It follows from that, the allegation was one of commission of a serious criminal offence. She recognises that the knowledge of falsity is a necessary part both of the Claimants' meaning and the identified criminal offence. As to the falsity, the statement is reported clearly to have been false in [1]-[7], a point that is repeated in [32]-[34]. This was a statement of the conclusions of the Defendant's investigation. The Article adopted various matters attributed to the Scottish Government spokesman in [5] and various Scottish Government documents provided pursuant to a Freedom of Information Act request: [34].

16. As to knowledge of falsity, in context this, Ms Page submits, was implied to the reasonable reader on two independent bases:

    i) First, it was obvious from the Article that the Claimants were integral to the Kinlochleven funding arrangement. The effect of reporting the apparently authoritative and verified account from the Scottish Government that no relevant guarantee had been given would be to imply that the Claimants cannot credibly have believed, when they made the statement reported, that it was true. The implication in the Article is therefore that the Claimants must have known of the falsity of the statement when they made it.

    ii) Second, there is no other reason why paragraphs [14]-[16], concerning the serious criminal offence of market abuse, would have been included in the Article at all. The ingredients of that offence are stated by the words complained of to be:

        "*... knowingly provided false or misleading information about regulated securities*".

        The reader is effectively told by the Article to conclude that these elements were present in relation to the Claimants' involvement.

17. On the issue of criminality, Ms Page QC submits that the elements of the offence of market abuse is introduced in [14] where it is also said that the UK financial regulator

can levy large fines and ban companies or individuals from involvement in regulated activities. There is no suggestion in the Article there might be "*reasons to fear*" that an offence has been committed, or "*grounds to inquire*" whether that might be so. The reader is given no explanation for the introduction of the criminal offence and the potential penalty. The offence is highlighted immediately following a report of the Claimants' protest that the 2018 update was not false or misleading: [13]. However, this has to be contrasted with the unqualified and unequivocal assertions in the Article as a product of the investigation that the Claimants were guilty of having issued a false statement.

18. Ms Page QC submits that the Article's defamatory message does extend to the Second Claimant. The Article names him, he is profiled at [26]-[28] under the headline: "BILLIONS OF DOLLARS" and as "*Australian, Lex Greensill*" in [28]. The Second Claimant is identified as having founded, "*his financing firm*" in 2011 and then refers to his and his firm's participation in helping to raise billions of dollars for GFG. Mr Haywood is said to have told GAM colleagues that he had understood at an earlier stage from "Greensill" that Scotland was likely to provide a guarantee related to the Kinlochleven plant [29].

19. Ms Page QC urges a rejection of the submission that all references to "Greensill" in the Article would be understood to be a reference solely to the First Claimant company as opposed to the Second Claimant personally. She contends that this would not be a reasonable reading of these passages or the Article generally. He is the company. It is telling, she submits, that Mr Greensill is not recorded as having been one of those asked to comment. That, she submits, is because he is treated as being synonymous with the company. The passage profiling the Claimant paints a picture for the reasonable reader of the Second Claimant at the helm of "*his financial firm*" and integrally involved in the Kinlochleven funding. It is this profiling, Ms Page QC submits, that effectively provides the answer to the question posed in the mind of a reasonable reader right from the outset: to whom is responsibility being attributed, when reference is being made to "Greensill", who issued the false statement? This is an act that self-evidently requires a human involvement; so who is the person behind all this?

20. Ms Page QC argues that the Defendants' Meaning is lengthy and a product of over-elaborate analysis. Particularly what the *Chase* level 1 allegation omits is the sting that the Claimants issued the statement knowingly. Paragraph (c) of Defendant's pleading introduces what she says appears to be species of *Chase* level 3. This must be advanced on the basis of the inclusion of the Claimants' denials in the Article. However, these denials are not presented as being accepted by the Defendant; quite the contrary, she argues. The Defendant's argument therefore founders on the point made by Simon Brown LJ in this passage relied upon from *Mark* (see [11] above).

21. Ms Page QC argues that subparagraph (d) of the Defendants' Meaning is a formulation which simply does not appear anywhere in the Article. Nothing in the Article indicates to the reader that it was merely raising questions or suspicions or calling for an inquiry. She relies on my observation in ***Poroshenko -v- BBC*** **[2019] EWHC 213 (QB)** [26]:

> "… publications that result in a meaning at *Chase* level 2 or 3 tend to flag clearly to viewers/readers that there are reasons why they should be cautious before accepting allegations made by others, perhaps for motives of their own, for example."

She submits that the present case is stronger, as it is not an example of the reporting of allegations made by others. This, she submits, is a case of a Defendant publishing, as an "*exclusive*", a story about his own investigation.

22. On behalf of the Defendant, Ms Evans QC submits the Article is a paradigm example of a factual and dispassionate reporting and Reuters, and Reuters would be recognised as a serious news organisation whose typical ordinary reasonable reader therefore expects Reuters' copy to be reliable and balanced. She highlights the fact that the readers are provided with a hyperlink at the foot of every article: "*Our Standards: The Thompson Reuters Trust Principles*". The Defendant does not suggest that every reader of the Article would follow that link through, rather, she submits, it demonstrates the importance of the Trust Principles and that the average reader would be aware of Reuters' commitment to them.

23. Ms Evans QC argues that the effect of the Claimants complaining of only certain paragraphs of the Article distorts the meaning. This omits the Article's methodical inclusion of the responses of the main "protagonists" to the allegation that the First Claimant issued a false statement in the circumstances referred to in paragraphs [3] to [6] as follows:

    (1) Paragraphs [8]-[9] set out the First Claimant's response to the allegations and includes the range of rebuttals and explanations which the First Claimant had given to Reuters for the false statement including quite clearly for publication that "*Greensill never knowingly issues false statements and strongly refutes such assertions. The contents of any statements made are believed to be accurate at the time made.*"

    (2) Paragraphs [10]–[11] summarised GFG's response pre-publication, namely, that it had discussed with advisors and investors the potential for a guarantee related to the Kinlochleven power plant but declined to comment on what specifically it told Greensill and included this quote quite plainly, she submits, for publication: "*GFG did not mislead anyone as to the nature of its discussions about additional Scottish Government guarantees.*"

    (3) Paragraph [12] recorded that Gupta didn't respond to a request for comment.

    (4) Paragraph [13] included a response from the First Claimant, GFG and Mr Haywood that stated that the May 2018 update from the First Claimant was not false or misleading in the context of broader discussions involving the parties.

    (5) Paragraphs [16]–[17] stated the level of due diligence required by bond issuers depended upon the situation and their regulatory status and the FCA had declined to comment.

    (6) Paragraphs [19]–[21] set out a further response from GAM that it "*was never led to believe that the Scottish Government Guarantee had actually been put in place … nor was the May 2018 note interpreted to suggest that the guarantee was in place*".

(7) Paragraphs [35]–[39] set out further rebuttal from the First Claimant, GFG and Mr Haywood which included the statement from the First Claimant that the Article was "*based on an incomplete and misrepresentative reading of the facts*" and the May 2018 update was a "*minute of contemporaneous discussions*" and "*neither false nor misleading*".

24. As for the Claimants' Meaning, Ms Evans QC submits that the Article did not state that the First Claimant knowingly issued a false statement. The 'bane' in the Article is the central allegation that the First Claimant provided a false statement. The Defendant accepts that an imputation alleging that a false statement had been issued to the bond market participants, in the context of the Article, would be defamatory at common law. In the context of the Article, as a whole, the Claimants' Meaning can only be arrived at, she argues, by effectively cutting out or ignoring the balancing material. A reader who did this would not be reasonable.

25. She argues that this 'antidote' ensures that the Article conveys no unintended implication as to the First Claimant's motive in putting out a false statement. The balancing material in the Article includes, she argues, prominently the explanations from the First Claimant that the May 2018 update "*was based on information provided by GFG*", that Greensill "*never knowingly issued false statements and strongly refutes such assertions*" and that the "*content of any statements made are believed to be accurate at the time made*". The only inference, she urges, the ordinary reasonable reader could draw is that the false statement was not made knowingly.

26. Further, Ms Evans QC submits the inclusion of the explanation of the elements of the market abuse offence (at [14] and [15]) could be understood by a reader to have been included for background information and context. Some of the First Claimant's statements for publication, which were included in the Article, included a denial that it had knowingly issued a false statement, a comment which required this explanation so the reader could understand the significance of what the First Claimant had said in the wider regulatory context. The reader would not infer that it was being alleged that the false statement was made knowingly. Rather, s/he would expect the grounds for such a serious allegation to be laid out explicitly by Reuters, not be the subject of a 'nudge-nudge' approach, upon which Ms Evans QC suggests the Claimants' Meaning depends.

27. Accordingly, she contends it must follow that, taken as a whole, the Article conveys two principal messages:

i) that the First Claimant issued a false statement (it being stated clearly that the Scottish Government denied approving the guarantee); and

ii) that the explanations by the First Claimant for the false statement, coupled with what third party protagonists had told Reuters, left questions remaining as to how the First Claimant came to issue the statement which it said was based on information provided by GFG (that the Scottish Government had approved the guarantee related to Kinlochleven) when the Scottish Government denied such approval had been given.

28. As far as the Second Claimant is concerned, Ms Evans QC contends that the Article does not convey any defamatory meaning of him. The only reference to him is one biographical sentence in paragraph [27]. Its only purpose, which she argues would be

clear to the ordinary reasonable reader, is to add a small, human-interest dimension, namely, the citizenship and professional background the Economist found of the First Claimant. There is nothing in the Article to connect the Second Claimant to the issue of the false statement by the First Claimant let alone, as there would have to be, any implication that he had committed a criminal act of market abuse.

29. In summary, Ms Evans QC submits that the Claimants' Meaning, in so far as it seeks to embrace the Second Claimant, is so far-fetched that not even a reader avid for scandal would alight upon it. The Article simply did not convey any natural or ordinary meaning defamatory of him.

Decision

30. I read the Article before I read the submissions of the parties in order to put myself, as best as I could, in the position of an ordinary reader. I noted the impression that I got as to what the Article was saying. In light of the arguments advanced to me, it is right to record that my first impression was that the Article was directed to the actions of the First Claimant company and not the Second Claimant as an individual. Having reflected upon this with the benefit of the parties' submissions, my initial view has not been dislodged. The ordinary, reasonable reader would have understood paragraphs [26]–[30] as providing further background information of the subjects referred to earlier in the Article. I accept Ms Evans' QC submission that a reader would, in the language used in earlier authorities, have been avid for scandal to think that the acts attributed to the First Claimant company necessarily had been carried out by the Second Claimant. Generally, companies do not work like that. Some do. But, there was nothing in the Article to suggest that this was that sort of company, the every move of which has to be sanctioned by an all-powerful individual at the helm. If the Second Claimant is such a company and, more importantly, would be understood to be so by a section of the readership of the Article by reason of their knowledge of the company's affairs, then that is in the realm of innuendo. It does not affect the natural and ordinary meaning.

31. I am reassured in the conclusion I reached when I have studied the Article more carefully. I am satisfied that, when the word "Greensill" is used in the Article, it would be understood to be a reference to the First Claimant company. The only exception to this is paragraph [27] where it is clear that the Second Claimant is being referred to personally. This is a long way through the Article. The company, however, is the entity that is introduced in the first paragraph of the Article [2]. In [8] the reader is told in the second sentence that the company had provided more recent confirmation of certain facts in response to enquiries by the Defendant. Then in [35], close to the end of the Article, the Defendant refers to further statements provided by "Greensill". In the second sentence it starts, "It added" indicating that it is Greensill, the company, not the individual who provided the statements. This is probably, as I indicated in argument, to stray into being over-analytical, but it does coincide with my original conclusion, after having read the Article without the benefit of the parties' submissions, and not studying it in any great detail, that the ordinary reasonable reader would not understand the natural and ordinary meaning of the Article to convey any defamatory allegation against the Second Claimant.

32. Turning to the meaning of the Article as a whole, both sides are agreed that the Court should treat the reader of articles published by the Defendant as being reasonably sophisticated. This was a serious Article and would be treated as such by readers.

Overall, I think there is considerable force in Ms Evans QC's submission that the Claimants' Meaning can only be sustained if practically all of the other material is ignored. It is common ground – indeed it is obvious – that the Article makes a clear allegation that the First Claimant made a statement to bond market investors and brokers that was false. It is also agreed by the parties that that allegation is defamatory at common law. The dispute is over the First Claimant's suggestion in its meaning that the false statement was made by the First Claimant with knowledge that it was false.

33. I cannot accept Ms Page QC's submission that the ordinary reasonable reader would reach this conclusion. It would require him/her to ignore the rest of the Article and indeed to jump to an unjustified conclusion. The high point of the Claimants' argument has to be the possible motive for making the false statement that could possibly be attributed to paragraphs [6] and [28]. However, the reader would note the denial by the First Claimant in paragraph [8] and, perhaps more importantly, its statement that the update "*was based on information provided by GFG*" and in [9] that it "*never knowingly issues false statements … The contents of any statements made are believed to be accurate at the time made*".

34. It is certainly true that there can be cases in which Articles are written in such a way that readers are essentially compelled, by what is presented to them, to reject a denial of wrongdoing by the subject as a self-interested lie advanced for its own protection. This is not such an article. The fact that the Article was promoted as an "*Exclusive*" does not affect the overall meaning. A reader would be likely to conclude that Reuters considered its discovery of the falsity of the statement justified presentation as an "exclusive". The determination of what thereafter the Article means is more sophisticated than simply looking at the branding as an "exclusive".

35. In [10], GFG is recorded as having declined to comment on what it had told the First Claimant. I accept that Ms Page has a forceful point that GFG's comment that it had not informed any party that any such guarantees had been put in place ([11]), would cause a reader to wonder who to believe. But ultimately, the reader cannot resolve who should be believed as to whether the First Claimant knew that the investor update's statement about the Scottish Government's position on the guarantee was false. Presented with this evidence, the reader is not given a steer in the Article who should be believed. The ordinary reasonable reader would have to suspend judgment as to where the truth lay.

36. In light of what has been put before the reader, the introduction into the Article of the element of the offence of market abuse in [14] does not have the effect of leading the reader to conclude that the First Claimant is guilty of this offence. It identifies, so far as it was not already clear, that the critical point of criminal liability is whether the statement was known to be false at the time it was published. The reference in [16] to specialists commenting that the amount of due diligence that is required before issuing a statement depends upon the situation further emphasises that whether the First Claimant was guilty of the identified offence would depend on a number of factors.

37. The middle section of the Article does not significantly contribute to the overall meaning as it concerns the First Claimant. Paragraphs [19]–[25] move away from the main thrust of the statement, record GAM's response and its statement that it did not feel misled by the First Claimant's statement. Paragraphs [26]–[30], as I have already

indicated, contain background information on the various subjects mentioned in the Article.

38. Paragraphs [31] to the end would be understood by a reader to be further details provided by the First Claimant and GFG in response to the allegation that the First Claimant had provided a false statement to the market. This was simply a straightforward recitation of each party's explanation.

39. My conclusion is that overall the Article was clear that a false statement had been made. The statement claimed that the Scottish Government had approved a guarantee relating to a hydro plant in Kinlochleven, whereas the evidence demonstrated that there had been no such approval. As to the circumstances in which this statement came to be made, whether it had been based on information by GFG and, critically, whether the statement was known to be false when it was made, and whether, therefore, there was any evidence of a criminal offence having been committed, the Article does not purport to offer an answer. To that extent, colloquially, it could be said to ask a question.

40. In my judgment, therefore, the actual ordinary meaning of the Article is:

    i) The First Claimant, in its May 2018 update, provided false information to bond market investors and brokers to the effect that the Scottish Government had approved a guarantee related to a hydro plant in Kinlochleven when, in fact, no such approval had been given.

    ii) Consequently, there were grounds to investigate how this false statement had come to be made and whether the First Claimant knew that the statement was false when it was issued and whether the First Claimant had committed any offence of market abuse.

41. This meaning contains elements of both the Claimants' Meaning and the Defendant's Meaning. I have rejected the Claimants' principal submission that the Article alleges that the First Claimant was guilty of knowingly issuing a false statement and, in consequence, being guilty of the criminal offence of market abuse identified in the Article. I have also removed what I regard as the more complicated part of the Defendant's Meaning (principally from subparagraphs (a) and (b)) which did not appear to me to add anything to the defamatory sting as it concerns the First Claimant and, more importantly, not to be the meaning that the hypothetical, ordinary, reasonable reader would understand the Article to bear. The task of ascertaining meaning is to capture the essential defamatory message that is being conveyed. If meanings stray outside this, and include additional factual elements that in reality add little to the overall message, it tends to lead to complications later, particularly if a defence of truth is advanced, and arguments as to whether the defendant has proved all parts of the meaning to be substantially true. Finally, I have reformulated the "*questions remained*" from sub-paragraph (d) of the Defendant's Meaning into the more conventional "*grounds to investigate*" from *Chase* Level 3. This is so, if any defence of truth is advanced, it can focus – as it must - on the grounds to investigate rather than the more nebulous concept of whether "questions remained".

42. I have specifically considered whether the Article conveys a *Chase* level 2 meaning but, in my judgment, although the Article makes a clear allegation that a false statement was made, overall it is agnostic whether that was made with knowledge of falsity. It is not

an Article that lays before the reader clear grounds to suspect that the First Claimant did know that the update contained a false statement. The high point is the statement from GFG that it did not mislead anyone (which is capable of including the First Claimant) and had not informed any party that any such guarantees had been put in place: [11]. But the reader is given no reason to prefer the statement of GFG over the statement from the First Claimant in [8]. Overall, the reader would be left to conclude that how this false statement came to be made and whether the First Claimant knew that it was false required investigation before it could be resolved.

43. As I have noted, the parties are agreed that paragraph (1) of the meaning I have found is defamatory at common law. I do not understand there to be any dispute that paragraph (2) would also be defamatory of the First Claimant at common law. For the avoidance of doubt, the Court is not dealing with the issue of whether the requirements of serious harm under s.1 Defamation Act 2013 are met. If disputed, that is a matter to be resolved later in the proceedings.

44. Those are my reasons for the findings that I have made.

45. Finally, I wish to return to the issue of the hearing bundle in this case. Trials of Preliminary Issues on meaning are now commonplace in the Media & Communications List. A body of useful case law has grown up about how these preliminary issues are determined. These have supplemented the well-established principles of law that apply to the determination of the natural and ordinary meaning of publications in defamation claims. One of those fundamental principles is that – with very narrow exception – no evidence is admissible beyond the publication containing the words complained of. This should mean that assembling a hearing bundle for a preliminary issue on meaning is simplicity itself. The bundle should contain the publication complained of, the statements of case, and relevant orders of the Court. Occasionally, where a Defence has not been served, the defendant sets out his/her contention as to the natural and ordinary meaning of the publication in a letter. That letter should be included, but the Court is very unlikely to be assisted by the inclusion of inter partes correspondence which does little more than repeat, in solicitors' letters, submissions to be made to the Court. Nor is the Court assisted in its task with the inclusion of documents that relate to issues that the Court has already resolved. In this case, Nicol J made an Order on 6 May 2020 giving directions for the hearing that took place today. Only that Order needed to be included in the bundle. A further substantial section of the hearing bundle contains correspondence relating to the issue of costs and costs management. That issue was resolved when Nicol J made a costs management order in his order of 6 May 2020. The hearing bundle also included correspondence submitted to Nicol J, including draft letters and draft orders providing the chronological twists and turns before agreement was reached. Absurdly, the hearing bundle even contained a draft of a joint letter to the Court the only substantive change to which was the correction of the full name of the Claimants' solicitors. None of this was remotely relevant to the issue the Court had to determine and, unsurprisingly, none of these documents has been referred to during the hearing or in either side's skeleton argument. They should not have been included in the hearing bundle. Indeed, of the 200-page Hearing Bundle, I have looked at or been referred to perhaps no more than 15-20%.

46. It should not be necessary for the Court to have to start making express directions as to what should be included in a hearing bundle. The Court should be able to expect experienced litigation solicitors to make that assessment for themselves. A 200-page

hearing bundle over the natural and ordinary meaning of an article that occupies the first 10 pages of the bundle is disproportionate and wasteful. If bundles like this continue to be lodged, Judges of the Media & Communication List will have to start using powers to control this wasteful expenditure of costs and resources, including making orders disallowing parties' costs. A good rule of thumb is to ask, is the Court likely to be referred to or want to see this document in the course of the party's submissions.

Appendix A

1. **Exclusive: Greensill issued false statement on bonds sold by metals tycoon Gupta**

2. Financing group Greensill Capital, which is backed by Japan's SoftBank Group and General Atlantic of the U.S., last year provided a false statement to market participants relating to bonds it had issued in 2017 on behalf of commodities tycoon Sanjeev Gupta.

3. The May 2018 statement made to bond market investors and brokers said the Scottish government had approved a guarantee related to a hydro power plant in Kinlochleven owned by Gupta's GFG Alliance, which the bonds were secured against.

4. But Scotland says no approval was given, according to a government statement provided to Reuters. The meeting records for the committee that would need to approve such a guarantee, which are available on the committee's website, do not refer to a 2018 GFG guarantee.

5. Although the Scottish government had in 2016 provided a guarantee related to an aluminium plant owned by Gupta's GFG, "no other guarantee has been offered to the GFG Alliance by any Scottish Minister or official," a spokesman said.

6. The prospect of government support had been a key reason Swiss asset manager GAM Holding AG had purchased the 220 million pounds of bonds a year earlier, because under the terms of the bonds it potentially meant a near-term repurchase at a higher price, according to three people familiar with the matter. A Scottish government guarantee would allow GFG to repurchase the bonds early, according to representations in an April 2017 pre-sale document outlining the nature of the proposed deal that was produced by Greensill for GAM and reviewed by Reuters.

7. The false statement marks the latest development related to a series of GFG bonds purchased by GAM fund manager Tim Haywood, who was suspended and then dismissed following an internal whistleblower alerting UK regulator the Financial Conduct Authority.

8. In response to questions from Reuters, Greensill initially denied producing pre-sale documents relating to the Kinlochleven bonds or any updates regarding a guarantee. The company more recently confirmed it had produced the April 2017 pre-sale document and the May 2018 investor update but said the update "was based upon information provided by GFG."

9. Greensill added: "Greensill never knowingly issues false statements and strongly refutes such assertions. The contents of any statements made are believed to be accurate at the time made."

10. GFG said it had discussed with advisors and investors the potential for a guarantee related to the Kinlochleven power plant but declined to comment on what specifically it told Greensill.

11. "GFG did not mislead anyone as to the nature of its discussions about additional Scottish government guarantees. GFG has never informed any party that any such guarantees had been put in place, and we are clear that the Scottish Government made no such guarantees," said GFG, which is the umbrella group for the Gupta family's metals, power and banking interests.

12. Gupta didn't respond to a request for comment.

13. In statements provided Sunday following publication of this article, Greensill, GFG and fund manager Haywood said the May 2018 update wasn't false or misleading in the context of broader discussions involving the parties.

14. Under UK law, knowingly providing false or misleading information about regulated securities is considered market abuse, an offence for which the UK financial regulator can levy large fines and ban companies or individuals from involvement in regulated activities such as the arranging of bond deals, according to Damon Batten, managing consultant with London-based financial services regulatory consultancy Bovill.

15. There doesn't need to be a clear victim or loss for regulators to prosecute for market abuse, Batten said.

16. The amount of due diligence required by bond issuers depends on the situation and their regulatory status, specialists say.

17. The Financial Conduct Authority, the UK market regulator, declined to comment.

18. SoftBank didn't respond to a request for comment. Private-equity group General Atlantic declined comment.

19. GAM said it did not feel misled by Greensill.

20. "GAM was never led to believe that the Scottish Government Guarantee had actually been put in place... nor was the May 2018 note interpreted to suggest that the guarantee was in place," it said in a further statement provided after publication of this article. "GAM never received any false or misleading information from Greensill" with respect to the Kinlochleven bond transaction, it said.

21. The asset manager said: "GAM continues to value its on-going relationship with Greensill, as reflected by our joint supply chain finance fund."

22. GAM has sold or is in the process of selling around a billion dollars of bonds back to GFG, including the Kinlochleven ones, according to public statements and the three people familiar with the repurchases, who added that GAM wanted to be made whole.

23. Since GAM suspended fund manager Haywood and placed restrictions on client withdrawals following a wave of redemption requests last summer, it has seen its stock market capitalization drop by more than a billion dollars.

24. GAM announced Haywood's dismissal in February, after saying he didn't comply with due diligence procedures and had signed certain contracts by himself where internal policies required two signatures, but didn't specify the transactions that led to his dismissal.

25. A spokesman for Haywood said on Friday that the former GAM fund manager denies any wrongdoing. In an April statement to media, Haywood said that the GFG bonds had delivered the profits for fund investments that he anticipated "even if the realisation has been slower than I had expected."

26. **BILLIONS OF DOLLARS**

27. Australian Lex Greensill, a former banking executive, founded his financing firm in 2011. In recent months, it received an $800 million investment from SoftBank's Vision Fund, which a source close to the deal said valued Greensill at around $3.5 billion. That followed a $250 million investment by U.S. private equity firm General Atlantic in 2018.

28. Greensill has helped GFG raise billions of dollars via bond sales to help fund acquisitions, according to a video on Greensill's website in which Gupta features. That included the 2017 sale of the Kinlochleven bonds.

29. Haywood told GAM colleagues that he purchased the bonds, which were due to repay investors over 18 years, because he expected to be able to sell them back to GFG in about a year for more than he paid for them, according to the people familiar with the matter. That is because he understood from Greensill that Scotland was likely to provide a guarantee related to the Kinlochleven plant, which under the terms of the bond would enable GFG to repurchase the bonds and refinance with cheaper debt, the people said.

30. GFG companies are not rated by any major rating agency and carry high debts.

31. **'UPDATE FROM GREENSILL'**

32. In May 2018, Greensill put on a secure online platform accessible by bond investors and other market participants the memo titled: "Update from Greensill in relation to KLL," referring to the Kinlochleven bonds.

33. The update said the Scottish government had had several conditions before granting a further guarantee. It added that those conditions "have been met, and the guarantee has been approved by the First Minister [Nicola Sturgeon] on behalf of the Scottish Government." Therefore, GFG planned to redeem the bonds, the update continued. Sturgeon has been head of the Scottish government since 2014.

34. The Scottish government did discuss the possibility of providing an additional guarantee to support the expansion of GFG's operations in Scotland, according to minutes of an August 2017 meeting between Sturgeon and a civil servant. The minutes were among documents Scotland released following a Freedom of Information Act request filed by Reuters for all information through mid 2018 on Sturgeon's discussions relating to an additional guarantee. As of March 2018, the most recent documents provided in response to the Reuters request, no approval had been provided.

35. In its statement provided Sunday following publication of this article, Greensill said the article was "based on an incomplete and misrepresentative reading of the facts." It added that the May 2018 update "was a minute of contemporaneous discussions"..."and was neither false nor misleading."

36. In GFG's statement Sunday after publication of this article, the company said "the May 2018 update written by Greensill formed part of a broader contemporaneous verbal update...that confirmed the conditions precedent for the Scottish Government to commence a formal review to consider the issuance of the guarantee had been met."

37. GFG added in the statement Sunday that the update "was neither false nor misleading given the context of the contemporaneous verbal discussions."

38. Haywood, in his statement Sunday said: "I was never misled by Greensill, GFG or the Scottish Government on the prospect of or progress towards a potential Scottish government guarantee." The May 2018 update "was neither false nor misleading given my understanding of the transaction and contemporaneous discussions," he said.

39. He added that the Kinlochleven bonds were sold in early 2019. GFG said it purchased and refinanced the bonds early this year.

This judgment has been approved by the Judge.