



Neutral Citation Number: [2019] EWHC 1337 QB

Case No: QB/2018/00285

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2019

Before:

MR JUSTICE JAY

Between:

**TRAVEL INSURANCE FACILITIES PLC (trading
as "Tifgroup")**

Claimant

- and -

TIMES NEWSPAPERS PLC

Defendant

Hugh Tomlinson QC and Ian Helme (instructed by **Pannone Corporate LLP**) for the
Claimant

David Price QC (instructed by **David Price Solicitors**) for the **Defendant**

Hearing date: 15th May 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE JAY

MR JUSTICE JAY:

Introduction

1. The Claimant is a managing general agency in the travel insurance sector and is the UK Branch office of Union Reisersversicherung AG (“URV”). The Claimant has a binding authority with URV and provides underwriting, sales, medical screening, assistance and claims handling services. It works with a number of leading travel insurance brands including Boots, the Post Office and Holidaysafe.
2. This litigation is about two articles published in *The Times* on 20th November 2018 and a third article published on 24th November. The First Article was on the front page (although it continued onto page 2 in the print edition) and appeared under the headline “Boots travel insurer faces investigation over deaths”. The Second Article appeared on page 6 under the heading “News: Times Investigation”. The headline was “I begged, but they wouldn’t pay to bring my dad home”. The Third Article appeared four days later in the news section of the paper and was under the headline, “Insurer left my aunt to die, says Lloyds boss”.
3. The three articles are set out in the Appendix to this judgment with paragraph numbers added by me to aid orientation. In this judgment I will be referring to those paragraph numbers using square brackets.
4. My first step when opening these papers was to read the articles once before studying the skeleton arguments, the pleadings and the “Rival Meanings” document. Inevitably, I then re-read the articles before coming into court, and the process of familiarisation continued as the hearing progressed, assisted as I was by the parties’ submissions. Throughout, I have been conscious of the need to eschew over-analysis.
5. On 7th March 2019, following the agreement of the parties, Master McCloud ordered the trial of two preliminary issues, *viz.*:
 - (1) The meaning(s) of each of the Articles complained of.
 - (2) In relation to each defamatory imputation conveyed by the Articles, whether this is an allegation of fact or of opinion. (It is now agreed that this second issue arises only in relation to the Second Article.)
6. The areas of dispute have narrowed as this litigation has progressed. However, there remain a number of issues for judicial resolution, some of which are more important than others. I am grateful to Counsel for the precise and focused way in which their submissions were advanced.

The Respective Cases on Meaning

The First Article

7. The Claimant’s case as advanced in writing and as opened by Mr Hugh Tomlinson QC, is that the First Article meant:

- (1) there are reasonable grounds to suspect the Claimant of fraud;
- (2) the Claimant has improperly ignored doctors' advice to fly patients home, refused to engage with doctors and wrongfully denied patients treatment solely for the purpose of maximising profit; and
- (3) there are strong grounds to suspect that the Claimant's medical negligence and improper refusal to provide medical treatment and/or emergency flights home has wrongfully caused the deaths of a number of its customers.

8. The Defendant's case is that the First Article meant:

- (1) there are reasonable grounds to suspect that the Claimant has a practice of seeking to delay, avoid or minimise payments due in relation to medical claims under travel insurance policies, including such tactics as going against the treating doctor's advice to fly patients home, denying recovering patients suitable aftercare, deliberately avoiding contact with treating doctors and making patients pay upfront for treatment.
- (2) in consequence, there are reasonable grounds to suspect the Claimant of misleading policyholders amounting to fraud.
- (3) there are reasonable grounds to suspect that the Claimant has failed to take suitable care of policyholders, which may have resulted in avoidable deaths.

As regards (1) above, I have reflected the modest amendment put forward in a post-hearing written submission.

9. The Claimant's three meanings are, respectively, at Chase level 2, Chase level 1 and Chase level 1½. In oral argument Mr Tomlinson submitted in the alternative that the second meaning (see para 7(2)) above could be Chase 1½. In his reply he applied to amend his Particulars of Claim to bring his first meaning (currently Chase 2) in line with his second meaning. There has been some discussion of whether an amendment is strictly necessary, but in the event that I should rule that the second meaning is either at Chase 1 or 1½, I consider that I should be allowing the application on the ground that there is no prejudice to the Defendant and it is appropriate to maintain consistency across these two meanings. The first and second meanings are inextricably intertwined because proof of the allegation(s) of fraud hinges on proof of the "pattern of practice to delay, avoid or minimise payments", and the "alleged tactics" listed under [6] are examples or manifestations of that practice or those practices. It follows that the meaning must be the same throughout, and that the defence on the merits will stand or fall across these two allegations or sets of allegations. There is no room for the possibility of differential findings by the court either in connection with the defence of justification or that of public interest.

The Second Article

10. The Claimant's revised case is that the Third Article meant: the Claimant refused to transport Martin Blake and Joan Rest solely in order to delay, avoid or minimise payments due in relation to medical claims under its travel insurance policies, and there are reasonable grounds to suspect that it did so in other cases. The allegation in the principal clause is at Chase level 1 and in the subordinate clause at Chase level 2.

11. The Defendant's case is that the Second Article meant:

- (1) there are reasonable grounds to suspect that the Claimant's doctor's denial of an air evacuation or transfer to a private hospital for the seriously ill Martin Blake was motivated by the wish to avoid, minimise or delay paying the costs involved.
- (2) there are other cases, such as Ms Rest's, in which it is reasonably to be suspected that the denial by the Claimant of a flight on grounds of the risk to the patient and/or of private hospitalisation has been similarly motivated.

In relation to both (1) and (2), the Defendant's case is that these are statements of opinion rather than of fact. To the extent necessary, the Defendant's case is that these are Chase 2 allegations, but in my view this issue arises only if the primary case on opinion should fail.

The Third Article

12. The Claimant's case is that the Third Article meant:

- (1) the Claimant wrongly caused Ms Goodman's death by ignoring doctors' advice that she had to be moved from the hospital she was in or would die; and
- (2) there are strong grounds to suspect that Ms Goodman's death was not an isolated incident and that many patients may have died as a result of the Claimant's practice of delaying, avoiding or minimising payouts (there appears to be a typographical error in Mr Tomlinson's skeleton argument).

13. The Defendant's case is that the Third Article meant:

- (1) there are reasonable grounds to suspect that the Claimant failed to take suitable care of Ms Goodman, which may have resulted in her avoidable death.
- (2) there are reasonable grounds to suspect that the Claimant has a practice of seeking to delay, avoid or minimise payments due in relation to medical claims under travel insurance policies, including contact with treating doctors.
- (3) there are reasonable grounds to suspect that the Claimant has failed to take suitable care of policyholders, which may have resulted in avoidable deaths.

Applicable Legal Principles

Meaning

14. The general approach to the determination of issues of meaning has been helpfully summarised by Nicklin J in *Koutsogiannis v The Random House Group* [2019] EWHC 48 (QB), paras 11 and 12; and by Warby J in *Feyziyev v The Journalism Development Network Association* [2019] EWHC 957 (QB), paras 15-18. It is unnecessary to set these passages out in this judgment; I have them well in mind.
15. In *Lewis v Daily Telegraph* [1964] AC 234 at 280, the House of Lords made clear that the court must address not just the literal meaning but the inferences a reasonable person would draw from the context.

16. At para 17 of his judgment in *Brown v Bower* [2017] 4 WLR 197, Nicklin J discussed the issue of levels of gravity in the context of the familiar terminology in *Chase v News Group Newspapers Ltd* [2003] EMLR 11. I have already allocated the relevant Chase level to each of the meanings or sub-meanings relied on by the parties, but the relevant law should be encapsulated. In short:

“[Brooke LJ in *Chase*] identified 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. In the lexicon of defamation, these have come to be known as the Chase levels. Reflecting the almost infinite capacity for subtle differences in meaning, they are not a straitjacket forcing the court to select one of these prescribed levels of meaning, but they are a helpful shorthand. In *Charman -v- Orion Publishing Group Ltd*, for example, Gray J found a meaning of " cogent grounds to suspect" [58].”

Gray J’s “cogent grounds to suspect” has sometimes been called Chase Level 1½, and I have been content to adopt this taxonomy.

17. In the light of the parties’ submissions, I draw attention to the following additional matters.
18. First, it is common ground that the context is of crucial importance: in terms of the type of story, the location and prominence within the paper, and the publication of any previous articles (relevant in particular to the Third Article which appeared four days after the first two). In the very recent case of *Allen v Times Newspapers Ltd* [2019] EWHC 1235 (QB), Warby J stated that the court should bear in mind the nature of the publication, and in the circumstances of that case that the words complained of were factual reporting on a grave matter in the news pages of a serious newspaper: see para 14. These observations have obvious resonance.
19. Secondly, the “repetition rule” applies to this case to the extent to which the newspaper has repeated the allegations of third parties. *Hewson v Times Newspapers Ltd* [2019] EWHC 650 (QB) is authority for the proposition that if, without more, a newspaper reports the allegation(s) of X then whatever Chase level should properly be applied to X’s statement as reported should also be applied to the article itself (para 39). In a similar vein, the use of verbs such as “alleged” or “claimed” by the publisher will not in itself serve to insulate it, him or her from the effect of the rule (para 41). Even so, it is of course possible for the newspaper’s report to merit a different Chase level from X’s original allegation, and the resolution of that question will depend on the overall effect of the article (para 40), including any mitigation or antidote (para 42).
20. Thirdly, Mr David Price QC submitted that in general an article which reports that an individual or company is being investigated by a regulator in relation to alleged misconduct will not lead a reasonable reader to conclude guilt (i.e. Chase 1 is inapplicable): see *Gatley*, para 3.28. I would prefer to express the point in the same way as did Nicklin J in *Hewson*, namely that the answer depends on the overall effect of the article rather than the application of a presumption. A similar observation

applies to Mr Price's related submission, that where an article reports a claimant's clear and particularised denial of alleged conduct this will in general result in the reasonable reader not concluding that he is guilty of it. I do not read Nicklin J's judgment in *Zarb-Cousin v Association of British Bookmakers* [2018] EWHC 2240 (QB) as authority for the contrary proposition: see, in particular, paras 40-43.

Fact/Opinion

21. The Defendant relies on the defence of honest opinion in relation to the Second Article. Here, the real issue in the light of the parties' submissions is whether the statement complained of, including the imputation conveyed by it, was opinion as opposed to fact for the purposes of s.3(2) of the Defamation Act 2013. On my understanding of Mr Tomlinson's submissions, the other statutory conditions have been fulfilled.

22. Aside from the importance of context (see *Yeo v Times Newspapers Ltd* [2015] 1 WLR 971), which remains a recurring theme in this area of the law, the authority which best collects the relevant principles is Nicklin J's decision in *Koutsogiannis*, at para 16:

“... there is no dispute as to the principles to be applied. ... when determining whether the words complained of contain allegations of fact or opinion, the Court will be guided by the following points:

(i) The statement must be recognisable as comment, as distinct from an imputation of fact.

(ii) Opinion is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.

(iii) The ultimate question is how the word would strike the ordinary reasonable reader. The subject matter and context of the words may be an important indicator of whether they are fact or opinion.

(iv) Some statements which are, by their nature and appearance opinion, are nevertheless treated as statements of fact where, for instance, the opinion implies that a claimant has done something but does not indicate what that something is, i.e. the statement is a bare comment.

(v) Whether an allegation that someone has acted "dishonestly" or "criminally" is an allegation of fact or expression of opinion will very much depend upon context. There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact.”

23. Item (ii) is derived from the judgment of Cussen J in *Clarke v Norton* [1910] VLR 494 which was cited with approval by Latham LJ in *Branson v Bower* [2001] EMLR

32 at para 12. There will be situations where the opinion will be inferred to be such from a fair reading of what the author of the article in question has said. On the other hand, there will be situations where the author of the article has reported the statement of a third party in circumstances where the inference must be that the latter has expressed an opinion rather than uttered a fact.

24. An issue arises in this case in connection with [3] and [11] of the Second Article. It is common ground that these contain the opinions of third parties which, at least in the context of those paragraphs, are reported without qualification. My attention was drawn to para 18 of the decision of Nicklin J in *Morgan v Associated Newspapers Ltd* [2018] EWHC 1850 (QB), where it was stated that quotes from third parties would be recognised by readers as their opinions rather than as factual allegations. This was a case where there were no expressions of opinion beyond the specifically quoted matters, and I will therefore need to address Mr Tomlinson's submission that the instant case falls into a different category.

The Rival Contentions

25. In relation to the First Article, Mr Tomlinson submitted that his second meaning ("the Claimant has improperly ignored doctors' advice etc.") is clearly at Chase 1 in the light of the headline ("Customers denied emergency flights home"), the allegations at [4], [13] and [14] which are plainly adopted, and the quality and quantity of the evidence to which reference is made at [5], [6] and [7], in particular the 40,000 word dossier. Mr Tomlinson relied on the terminology of "whistle blower" for the reason that such an individual exposes actual wrongdoing. As for the third meaning, Mr Tomlinson submitted that the language of the headline and [1] supports the proposition that there were deaths, the only qualifier being whether these were caused by the Claimant's conduct. In his reply, Mr Tomlinson emphasised that the First Article made clear that the GMC were investigating a number of deaths in the context of medical negligence, that the allegation was that there was strong evidence of misconduct, that in the case of Mr Kingsbury the allegation was that his death was a result of misconduct, and therefore that there were reasonable grounds to suspect that the Claimant caused a number of deaths, not may have caused such deaths.
26. In relation to the Second Article, Mr Tomlinson submitted that the correct meaning is at Chase 1 and he strongly submitted that the imputations relied on were not of opinion but of fact. He accepted that the two individuals whose views were reported at [3] and [11] were expressing opinions, but he invited me to consider the article as a whole. On that basis, he submitted, it is clear that the newspaper was not expressing opinions but making statements of fact. The tenor of the piece taken as a whole was that the Claimant's motive for refusing to pay out was in order to save money.
27. In relation to the Third Article, Mr Tomlinson submitted that Ms Goodman's status lent credibility and force to her complaint, which the newspaper effectively adopted and presented as fact. Although the headline is expressed as being her words, the allegation is in terms that the Claimant "left my aunt to die". In essence, the Third Article expounded an unmitigated and unrelenting attack which was not sufficiently palliated by the limited material attributed to the Claimant at [13] – [15].
28. In relation to the First Article, Mr Price submitted that its structure was such that a distinction fell to be drawn between the allegations of medical negligence, as he put it,

which were being investigated by the GMC, and the allegations of fraud which were being similarly addressed by the FCA. As for the fraud, the evidence in support of it was contained in the 40,000 word dossier and it consisted in a practice of delaying, avoiding or minimising payouts; the tactics that were being deployed were to achieve those objectives. Mr Price submitted that the Claimant correctly ascribed Chase 2 to the overarching fraud allegation, and that the same approach should govern the further and better particulars of it. Mr Price submitted that the consistent references to these being allegations, and the fair setting out of the Claimant's ripostes to them, should lead to the clear conclusion that this was not a Chase 1 case. As for the third meaning, Mr Price submitted that the highest that the allegation was being put was that the Claimant's inaction may have caused death in a number of cases.

29. In relation to the Second Article, Mr Price's principal submission was that the utterances of Ms Sullivan and Ms Staddon were reported by the newspaper in terms which made it clear that each of them was drawing the money-saving motive as an inference from the facts as recounted by them. In the alternative, Mr Price submitted that the allegations were at Chase 2.
30. In relation to the Third Article, Mr Price submitted that the references back to the First Article indicate that the same Chase level should be applied to this later piece. Furthermore, Mr Price submitted that this should be regarded as at Chase 2 because the article fairly sets out the essence of the Claimant's case.

Discussion

31. In my judgment, the overall tenor, purport and meaning of the First Article is that the Claimant is under investigation by both the GMC and the FCA for impropriety in connection with its handling of travel insurance claims. The FCA is investigating the issue of fraud and has received a 40,000-word dossier containing relevant evidence. The nature of the fraud is that the Claimant systematically ("pattern of practice") delays, avoids and minimises the payouts which should be made to policyholders. Further, the matters particularised under [6] and described as "alleged tactics" are examples of the ways in which the Claimant has gone about achieving its fraudulent objectives.
32. I do not accept Mr Tomlinson's submission that the First Article is at Chase 1 in relation to the second meaning, viz. ignoring doctors' advice to fly patients home etc. Some limited support for the Claimant's case may be derived from the second headline, "Customers denied emergency flights home", but the article must be read as a whole: in essence, as a report of the allegations that have been made, of the evidence that exists to support those allegations, and of the subsequent investigations which are now being conducted by the two regulators.
33. I do not consider that the Claimants' case is enhanced by reference to the way in which individual cases are reported (e.g. [13]) since a reasonable reader will interpret these as examples of the pattern of conduct that has been alleged. Nor does anything turn on the use of the terminology of "whistle blower". It cannot reasonably be deduced that such individuals are always truthful. What they say is evidence not fact.
34. It is of some relevance that the article does set out an outline of the Claimant's position in the context of these serious allegations.

35. Mr Tomlinson’s skeleton argument accepted that the first meaning of this article was only that “there are reasonable grounds to suspect the Claimant of fraud”. I have had difficulty in understanding why the Claimant has been advancing a Chase 2 meaning in relation to the overall allegation, but a Chase 1 meaning in relation to the tactics which are said to amount to the furtherance of the fraudulent objective. In my view, a consistent approach falls to be adopted.
36. In my judgment, this is a Chase 1½ case. Not merely do I take into account the fact that this article raises serious issues which the editor has seen fit to place on the front page of a serious newspaper, it is obvious from the content and language of the piece that there exists a significant body of evidence in support – the 40,000-word dossier; the individual case studies; the contribution of the whistle blower etc. It is unclear at what stage the GMC and FCA investigations have reached, and it is possible that one of both of these regulators could dismiss the complaints for want of evidence, but that is not how a reasonable reader without intimate knowledge of the relevant procedures would understand the issue. The bare fact that regulators are in the process of investigating these matters is a clear indication that they are or may be serious.
37. The article does suggest that people have died after having been denied emergency flights home, but the issue of causation is more difficult to classify in terms of the Chase levels. “After” in [1] could be being used with causal force, but an alternative analysis would be that it being used prepositionally and neutrally. In relation to the case study addressed in [13] and [14], the article states – in the context of Mr Kingsbury’s evidence – that “the insurer was told that my father would die unless he was evacuated”. I have vacillated slightly between Chase 1½ and 2 in connection with the third meaning, but have ultimately concluded that Chase 1½ applies. Causation of death by omission to act may be more of an inference, but there is no real reason for differentiating for these purposes between the issues of wrongdoing and its consequences.
38. I do not think that the meaning should be diluted further to “may have caused”. At this point, the debate becomes somewhat semantic. If there are strong grounds to suspect that deaths were caused, one might say in the alternative that deaths may have been caused. But one would not fairly say that there are strong grounds to suspect that deaths may have been caused. Even so, given that we are always at the level of suspicion rather than of “guilt”, there is really not much difference.
39. Finally, it is of course correct to say that the profit-motive was not expressly attributed to the Claimant in the First Article. Even so, whole tenor of the article was that the Claimant did not have grounds to withhold payment under these insurance policies, its reason or motive (for these purposes, I use these terms interchangeably) for doing so must have been to save money and enhance its profits. Put another way, if there are serious grounds for suspecting the alleged pattern of practice, a reasonable person would infer that the Claimant’s motive was to save money and enhance its profits. In the circumstances, it is difficult to see what other motive there could have been.
40. In my judgment, the correct meaning of the First Article is therefore as follows:
 - (1) There are strong grounds to suspect the Claimant of fraud.

- (2) These grounds consist in the implementation of a pattern of practice by the Claimant in delaying, avoiding or minimising payments due in relation to medical claims under travel insurance policies, entailing the use of tactics which include going against the treating doctor's advice to fly patients home, denying recovering patients suitable aftercare, and deliberately avoiding contact with treating doctors. The motive for acting or omitting to act in this was to save money and enhance the Claimant's profits.
- (3) There are strong grounds to suspect that the Claimant's pattern of practice has caused some avoidable deaths.
41. Turning to the Second Article, [1] – [9] is a case study involving Mr Martin Blake, now deceased, and his daughter, Ms Michelle Sullivan. The overall tenor, effect and meaning of the article is that Ms Sullivan struggled inordinately to persuade the Claimant to repatriate her sick father, and that it was overly slow in meeting the financial claim which ensued because the family had to bear the cost personally. At [3] Ms Sullivan is reported as saying:
- “Everything took forever ... Eventually they found a hotel but they seemed happy to leave him in the Spanish NHS as it wasn't costing them.”
42. At [10] the article moves on to similar cases. Ms Joan Rest broke her neck whilst horse riding in Spain. The Claimant would not repatriate her by plane because, it said, the increased forces of landing and the lower oxygen would render that unsafe; and she was returned home overland in an ambulance. In Ms Standen's opinion, this was because “they didn't want to pay” [11].
43. It is common ground that the statements attributed to Ms Sullivan and Ms Standen were of opinion and not of fact. These women were really saying no more than the obvious: that, given that the Claimant had no proper basis for delaying etc., they wanted to save money. The Claimant does not rely on these specific statements and invites me to consider the article as a whole in its context: in particular, the context of the front-page article which appears in the same edition of the newspaper.
44. In my judgment, the parties' competing submissions on this point really lead nowhere. I have already held in the context of the First Article that the reasonable reader would infer that the Claimant's reason or motive in denying or delaying claims was to save money and increase its profits. The same must apply to the Second Article, seen as a whole, but this additional, identical inference adds nothing to the Claimant's overall case.
45. I have already said that the Second Article contains a number of case studies, and in my judgment they have been chosen as representative of the pattern of practice of delaying, avoiding and minimising payouts. Had there been room on the front page for the text of the Second Article, I am sure that it would have been included. Thus, the Second Article should in my view be treated in exactly the same way as the first, and the opinions of the two women directly involved in these case studies are really neither here nor there. A much better way of examining this issue would be to hold that the evidence set out in the Second Article exemplifies the pattern of practice which in turn exemplifies the fraud.

46. Not merely would I hold that the same Chase level applies to the Second Article as it does to the First, I would not differentiate, as the Claimant seeks to do, between the Blake and Rest cases on the one hand, and other cases which fall in the same category. There is no sensible basis for so doing.
47. In my judgment, the correct meaning of the Second Article is, therefore, as follows:
- “There are strong grounds to suspect that the Claimant failed to repatriate Mr Martin Blake and failed to repatriate Ms Joan Rest by plane, both in circumstances where it should have done. Further, there are strong grounds to suspect that it has acted similarly in a number of other cases. There are also strong grounds to suspect that these are examples of a pattern of practice in delaying, avoiding or minimising payments due in relation to medical claims under travel insurance policies.”
48. The correct approach to the meaning of the Third Article is dictated by the foregoing analysis. This is another case study, albeit one given slightly greater force by the overall tone of the piece, which is more strident, and the fact that the individual making the accusation is a senior figure in the insurance industry. However, I do not accept Mr Tomlinson’s submission that this brings the article into Chase level 1. It is highly relevant that the article brings readers back to the First Article, and of some relevance that the Claimant’s stance as regards the death of Ms Goodman is set out.
49. In my judgment, the correct meaning of the Third Article is as follows:
- (1) There are strong grounds to suspect that the Claimant failed to follow doctors’ advice in moving Ms Goodman from the hospital she was in, and that this failure caused her death.
 - (2) There are strong grounds to suspect that Ms Goodman’s death was not an isolated incident, that other patients have been treated in a similar way with similar consequences, and that the Claimant’s failures flowed from a pattern of practice as previously defined.

The Way Forward

50. I would invite the parties to draw up an Order which reflects this ruling, as well as the other case management directions and orders which were briefly discussed at the end of the hearing.
51. I grant the Claimant permission to amend in relation to the First Article. This needs precisely to reflect para 38 of this judgment.
52. For the avoidance of doubt, because the point was covered at the hearing, the Order for costs should be costs in the case.

APPENDIX

The First Article

Boots travel insurer faces investigation over deaths

Customers denied emergency flights home

[1] The company behind Boots travel insurance is being investigated for medical negligence and fraud after the death of customers who were denied emergency flights home, *The Times* can reveal.

[2] Doctors working for Travel Insurance Facilities, which operates claims for the high street pharmacist, are being investigated by the General Medical Council after accusations that they had denied suitable care to policyholders.

[3] The multimillion-pound business, which trades under brands including HolidaySafe and Alpha, is also being investigated by the Financial Conduct Authority after the watchdog received allegations that policyholders were being misled.

[4] In one case, a customer who broke her neck in a riding accident in Spain said that she was denied a medical flight home, forcing her to travel back over land. In total the medical council is examining at least five cases involving two doctors at the insurer.

[5] A 40,000-word dossier sent to the Financial Conduct Authority details allegations of fraud by Travel Insurance Facilities. It alleges a pattern of practice to delay, avoid or minimise payouts.

[6] These alleged tactics include:

- Going against the treating doctor's advice to fly patients home;
- Denying recovering patients suitable aftercare;
- Deliberately avoiding contact with treating doctors;
- Making patients pay upfront for treatment.

[7] The dossier includes testimony from a former claims handler at the company. The whistleblower says: "I remember patients needing life-saving or life-changing operations and [the doctor] just wouldn't pick up the phone for weeks, knowing full well they were waiting for his call.

[8] "Patients were left without contact and I was the one stuck in the middle. It was horrendous. Patients would say, and I agree, [the doctor's] general practice was to frustrate the patient's family so much that they would either give up or pay for the treatment themselves therefore saving the company money."

[9] Travel Insurance Facilities "strongly refutes" that financial considerations influence its clinical decisions and sources close to the company deny that the conduct authority has opened a formal investigation.

[10] This newspaper has established, however, that allegations against the company go beyond the complaints in the dossier. The insurer has also been accused of failing to pay

foreign hospitals for treatments, with one policyholder being chased for tens of thousands of pounds by a Singapore clinic.

[11] Last year a state hospital in the Turkish destination of Antalya became so fed up with non-payment that it refused to treat Travel Insurance Facilities policyholders, including Boots customers, unless they paid upfront. It is now accepting policyholders again but some private clinics in the country are still refusing to do so. There are also complaints about debts from hospitals and doctors in Canada, Indonesia, the Dominican Republic and Thailand.

[12] Travel Insurance Facilities' website says that its "cost-containment" scheme has produced "significant benefits" for insurers such as Boots that outsource their claims, including medical bills being "cut by 75 per cent on average".

[13] Nicholas Kingsbury, whose father died of sepsis in Ethiopia after Travel Insurance Facilities refused to evacuate him when he suffered a blood clot on the brain, said: "My father bought Boots cover but was left to die in a hospital that did not even have a defibrillator. Every McDonald's in Britain has one.

[14] The insurer was told that my father would die unless he was evacuated but it did not even bother to ask for the medical records and just said 'what he needs is peace and quiet'."

[15] James Daley, of Fairer Finance, said: "Travel insurance has seen a proliferation of new brands over the past decade with prices continuing to fall. It's been clear for some time that some providers write business at rock-bottom prices and then fight to reject or reduce every claim. But these allegations show that standards may be even worse than they appeared."

[16] Travel Insurance Facilities is understood to be co-operating with the medical council. The company pointed out that the complaints represented only a tiny proportion of claimants.

[17] It said: "When people fall ill abroad, naturally their first instinct is to want to come home. However, this may not be best for them in medical terms. Our focus is on the best clinical outcome based on expert medical advice, clinical fact, aviation medicine and our experience transporting unwell holidaymakers. We advise on the safest action in the specific circumstances of each case."

[18] The company added that its cost-containment programme was about cutting bills and eliminating fraud by hospitals, not denying cover. It said: "We are dedicated to protecting customers from unscrupulous and unethical practices by overseas private clinics."

[19] The company denies deliberately avoiding contact with treating doctors and says that when clinics insist on upfront payments, policyholders are reimbursed. Boots did not respond to a request to comment.

The Second Article

Times Investigation

I begged, but they wouldn't pay to bring my dad home

[1] When Michelle Sullivan planned a family holiday to Spain she was hoping to lift everyone's spirits after the death of her mother from cancer.

[2] Her father, Martin Blake, 72, was joining the trip to help him to recover from losing his wife. Nothing, however, could have prepared Ms Sullivan, 44, for the angst to come. Shortly after arriving in Lanzarote Mr Blake was taken to hospital after suffering a heart attack. The doctors said his heart was damaged but they did not have the facilities to treat him. Ms Sullivan said: "They told me there were two options: transfer him to the island's private hospital . . . or fly him to Gran Canaria hospital. It was terrifying because the doctors said if he didn't get treatment he would die within a month."

[3] Mr Blake had insurance with Flexicover.com, which outsources claims to Travel Insurance Facilities (TIF). Ms Sullivan said it was a nightmare from the start: "Everything took forever . . . Eventually they found a hotel but they seemed happy to leave him in the Spanish NHS as it wasn't costing them."

[4] After a week Mr Blake was out of intensive care but growing agitated. "He thought he was being left to die," Ms Sullivan said. "Once he started deteriorating we rang TIF every day. The Spanish doctors said he was fit to fly but . . . TIF said there was no way as it might cause another heart attack or organ failure. I didn't understand. I said, 'In war, patients are bought back — why are you not doing it?' TIF's doctor just said the risk was too high. When I asked why Dad was not being moved to the private hospital he told me the clinic was fraudulent. He said the only option was to wait for Gran Canaria. Naively I trusted him because he was a doctor."

[5] By this stage her father was not eating properly. "The doctors put him on a drip but said we must get him home . . . I emailed TIF begging them to reconsider but they stood by their decision. In the end Dad couldn't wait any more so he paid for his own evacuation. It cost £22,000. It was his life savings but I told TIF what we were planning and they said we should be able to claim most of it back when we got home."

[6] Mr Blake was taken to Wrexham Maelor Hospital. Ms Sullivan said: "They were outstanding but their prognosis was not good. They said it was nothing to do with the flight but because he'd had a stroke while waiting in Lanzarote."

[7] "Dad was just so relieved to be home. He was in tears. He was just grabbing the hands of nurses and saying, 'I feel safe now.' It was so upsetting." He died two days later. Ms Sullivan said: "I think he gave up. He'd just been hanging on to get back. Honestly, I believe that if he had been sent home the moment he left intensive care in Spain he could have been saved."

[8] Ms Sullivan put in a claim to TIF for the evacuation and expenses. TIF sent a cheque for £551.96 and said another department was dealing with the air ambulance claim. Three months later she had heard nothing. Only after *The Times* approached TIF did a cheque for £23,000 arrive.

[9] TIF said its medical team advised that it was unsafe to fly Mr Blake because it would put strain on his heart and lungs. It said that his doctors did not recommend repatriation but merely stated that he could be repatriated. It added that the Spanish public hospital was the best place for his needs.

[10] *The Times* has spoken to other TIF policyholders whose cases appear similar. Elinor Staddon felt “taken for a ride” after TIF transferred her mother, Joan Rest, 74, back from Spain over land after she broke her neck while horseriding. “Mum had a huge metal frame on her head and the Spanish neurologist said she was safe to fly. Yet when I spoke to TIF they said she couldn’t because of the increased forces of landing and the lower oxygen in the plane.

[11] “I didn’t know at the time there are special medical planes that fly at low altitudes to compensate for oxygen loss. In hindsight, it’s clear . . . they didn’t want to pay.” Ms Staddon is angry that TIF did not pay for a nurse to travel in the ambulance.

[12] TIF said that the combination of neck surgery and bruising to the lung meant that it was safer to repatriate by road. It added that a nurse would have been provided had one been requested but there were two paramedic drivers.

The Third Article

Insurer left my aunt to die, says Lloyd’s boss

[1] A senior figure in the insurance industry has accused one of Britain’s biggest travel insurers of abandoning her aunt to die on holiday.

[2] Leah Smith, the head of legal claims at a Lloyd’s of London syndicate, said that Travel Insurance Facilities (TIF), which operates cover for several well-known brands, did not have De Goodman repatriated after she suffered heart failure on the Greek island of Zakynthos despite doctors saying that she would die if she stayed there.

[3] Ms Smith condemned the company’s behaviour as “utterly unacceptable”, and said it ignored the hospital’s advice that her aunt urgently needed an operation that it could not perform. TIF denied the claim, insisting that Ms Goodman, 70, was too ill to travel.

[4] *The Times* revealed on Tuesday that doctors working for TIF are being investigated for medical negligence after the deaths of other customers denied emergency flights home. TIF issues more than 3.5 million travel policies a year.

[5] A 40,000-word dossier sent to the Financial Conduct Authority alleges that the company has a pattern of practice to delay, avoid or minimise medical claims that includes avoiding contact with treating doctors. The insurer said that the complaints represent a small proportion of claimants and denied there was any pattern of practice to deny cover. This week, however, Martin Lewis’s website MoneySavingExpert.com, stopped recommending HolidaySafe, one of TIF’s brands, after the revelations.

[6] Ms Smith said: “In a critical situation, a provider shouldn’t just investigate whether a claim is valid and do nothing else because people can die and that is what happened in my aunt’s case.”

[7] She explained that in the first instance, insurers should arrange for seriously ill policyholders to get treatment then look to recover costs if there was an problem with cover,

such as not declaring a pre-existing condition. “But over six days TIF did nothing,” she said. “Its behaviour was astonishing.”

[8] Ms Goodman, a retired university admissions administrator from Bromley, Kent, had cover with All Safe Insurance, which outsources medical claims to TIF. On holiday she suffered heart failure. Elaine Murphy, 69, her travelling companion, said: “The Greek doctors told me she needed urgent heart surgery but they didn’t have the facilities so she should be moved to the mainland or UK.”

[9] She called TIF but says she was met with barriers. She said TIF demanded Ms Goodman’s GP records first. It was the weekend, however, so she could not have them sent until the Monday. She said TIF then claimed that it had not received them. “They said their systems crashed,” she said. “Every time I spoke to a different person and got a different story. The Greek doctors kept saying, ‘We haven’t heard from the insurer, when will they ring?’ I called several times a day and emailed but TIF did nothing.

[10] “After days the Greek doctors emailed TIF a summary of De’s condition but heard nothing back. Eventually, the insurer said its doctor was going to look at the case but then said no doctor was available . . . It was delay after delay. TIF now says it did call the hospital but that doesn’t make sense . . . I found TIF’s inaction appalling. I couldn’t understand because 26 years ago De and I were involved in a car accident in France and our insurers got us airlifted home.”

[11] In the UK Ms Goodman’s family was frantic. Ms Smith tried to help but she got nowhere either. She said: “They just quoted data protection at me.”

[12] Six days after being admitted Ms Goodman died. Ms Murphy added: “TIF said a decision about treatment had been made but if that is the case, it didn’t tell me, the family or the doctors. Besides, it said its decision was that De would’ve been better off staying put. I believe that if De had been flown out urgently, she would still be with us.”

[13] TIF insisted that it made “multiple calls” to the treating doctor but he returned only one call. It said that it was the hospital’s duty to arrange transfer to an alternative facility.

[14] It said it did not receive the information necessary to consider a transfer but that in any case, the limited details provided suggested that Ms Goodman was too ill to be moved. It denied that finances influenced its clinical decisions and said: “The claim that we obstruct customers in an emergency or critical situation is false. We take every step to ensure customers are brought home as soon as it is medically safe.

[15] “While understandably the first instinct of anyone sick or injured abroad is to want to come home immediately, travelling in an air ambulance involves specific clinical risks. If the hospital thought a transfer within Greece was suitable, it would have been arranged by them, had they felt Ms Goodman was well enough to be moved.”