



Neutral Citation Number: [2023] EWHC 2581 (KB)

Case No: QB-2022-002660 and QB-2022-002661

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 October 2023

Before :

MR JUSTICE JOHNSON

Between (QB-2022-002660):

Jusan Technologies Limited

Claimant

- and -

(1) The Bureau of Investigative Journalism
(2) Telegraph Media Group Limited

Defendants

And between (QB-2022-002661):

Jusan Technologies Limited

Claimant

- and -

openDemocracy Limited

Defendant

Justin Rushbrooke KC and Gervase de Wilde (instructed by Boies Schiller Flexner (UK) LLP)
for the claimant in both claims

Aidan Eardley KC (instructed by Wiggin LLP) for the second defendant in claim QB-2022-002660

Adam Wolanski KC and David Hirst (instructed by Wiggin LLP) for the defendant in claim QB-2022-002661

Hearing date: 11 October 2023

Approved Judgment

This judgment was handed down by release to The National Archives on 18 October 2023 at 10.30am.

Mr Justice Johnson:

1. In each of these two claims, the claimant seeks damages in defamation. Each claim arises out of articles published in 2022. The articles address assets owned by the claimant which are said to be linked to wealth illicitly gained by Nursultan Nazarbayev when he was president of Kazakhstan. The issues that arise on these trials of preliminary issues concern the meanings of the articles.
2. It is common ground between the parties that the articles suggest corruption on the part of Mr Nazarbayev. The issue between the parties concerns the extent to which the articles convey a meaning that suggests wrongdoing on the part of the claimant. In particular, a key issue is the extent (if at all) to which the articles suggest that the claimant was complicit in Mr Nazarbayev's alleged activity in hiding his illicit wealth.
3. This judgment comes at an early stage of the proceedings, and before any contested evidence has been heard. Mr Nazarbayev is not a party to the proceedings. The judgment concerns only the meaning of the articles. It does not involve any factual finding as to wrongdoing on the part of the claimant, or Mr Nazarbayev, or anybody else.

The background

The claimant

4. The following description of the claimant is taken from the Re-Amended Particulars of Claim. It is not necessarily common ground.
5. The claimant says that it is a UK-based investment holding company which was incorporated in March 2020 and has substantial assets. These were, until recently, principally in Kazakhstan. They included assets in the banking, e-commerce, telecommunications, logistics, retail and other financial sectors. It was owned by Pioneer Capital Invest LLP which was, in turn, two thirds owned by Nazarbayev Fund or, as the articles say, the Nazarbayev Foundation.
6. The claimant was recently restructured. It no longer owns Kazakh assets, but retains substantial assets running into many tens of millions of pounds. It is now said to be 92% owned by a Nevada holding company which is in turn owned by a Nevada limited liability non-profit corporation which has the object of funding state education in Kazakhstan. The claimant says that in early 2022 it was contemplating the expansion of its operations in the UK, including by means of attracting new investors so as to expand its capital base, but that the articles thwarted those plans.

The articles

7. The articles are appended to this judgment. On 21 January 2022 openDemocracy Limited ("openDemocracy") published an article under the headline "Kazakhstan's former president linked to \$7.8bn in assets in UK company". That article (including an update that was appended from 4 July 2022) is at part 2 of the appendix to this judgment. On 17 February 2022 Telegraph Media Group Limited ("the Telegraph") published an article in the online edition of the Telegraph newspaper, under the heading "Former Kazakh dictator controlled £6bn empire from Britain." That article is at part 1 of the

appendix to this judgment. On the same day, an article was published in the print edition of the newspaper under the heading “Kazakhstan’s dictator ran £6bn empire from the UK.” The print edition had the sub headline: “Former leader hid wealth in technology firm, piling pressure for crackdown on kleptocracies in London.” Aside from the differences in the headlines, the print edition of the article was materially identical to the online edition of the article. Paragraphs 9 – 13 of the article refer to statements made in Parliament. The claimant does not complain of those passages, but it is common ground that they should be considered as part of the overall context against which the meaning of the rest of the article should be determined.

8. On 19 October 2022 openDemocracy published a further article, which forms part of the claimant’s claim but which it is not necessary to consider further in order to determine the issues that arise on these trials.
9. The Bureau of Investigative Journalism (“TBIJ”) published two articles which referred to the claimant, one on 17 February 2022 and one on 19 October 2022. Again, it is not necessary to consider those articles further in order to determine the issues that arise on these trials of preliminary issues.

The Telegraph claim

10. The claimant issued proceedings in the Telegraph claim on 16 August 2022. TBIJ is the first defendant in that action. The Telegraph is the second defendant.
11. The claimant sets out the meaning for which it contends in respect of the two versions of the Telegraph article in its Particulars of Claim. The Telegraph did not file a defence, in accordance with the practice described in *Morgan v Associated Newspapers* [2018] EWHC 1850 (QB). Instead, it again sought a trial of a preliminary issue as to meaning in respect of the Telegraph article. Both parties agree that the print and online editions of the article carry the same meaning, but they disagree as to that common meaning.
12. On 19 September 2023 Nicklin J ordered a trial of the following preliminary issue in the Telegraph claim: “the natural and ordinary meaning of the Telegraph article”. He directed that the trial be listed to be heard at the same time as a trial of the preliminary issues in the openDemocracy case (as to which see below).

The openDemocracy claim

13. The claimant issued proceedings in the openDemocracy claim on 16 August 2022, immediately after issuing proceedings in the Telegraph claim (which has the preceding case number). This was 6 weeks after the openDemocracy article had been updated. An amended claim form, to address the second openDemocracy article, was filed on 14 December 2022. Particulars of Claim were served on 15 December 2022. They identify the publications in respect of which the claim is brought. They include the first article, which is identified at paragraph 4:

“On 21 January 2022, the Defendant published or caused to be published, and continues to publish or cause to be published (subject to an insufficient “update”), an article... under the main headline “Kazakhstan’s former president linked to \$7.8bn in assets in UK company” at the URL [url given]...”

14. The Particulars of Claim set out the meaning which the claimant contends the article conveys. The Particulars of Claim were subsequently amended and re-amended, but there was no amendment to paragraph 4.
15. openDemocracy did not file a defence, for the same reason that the Telegraph did not do so. Instead, it sought a trial of preliminary issues relating to the first article. The issues it sought to be determined included:

“The natural and ordinary and/or inferential meaning of the words and image in the article complained of in the Amended Particulars of Claim at paragraph 4.”
16. openDemocracy did not seek such a trial in respect of the second article. That is because, in respect of much of that article, it intends to plead a defence of statutory qualified privilege pursuant to section 15 of the Defamation Act 1996. The issue of meaning can only be finally determined once the question of privilege has been resolved: *Curistan v Times Newspapers Ltd* [2008] EWCA Civ 432; [2009] QB 231.
17. On 24 August 2023 Nicklin J made an order for a trial of preliminary issues in the openDemocracy case. He ordered that the preliminary issues to be determined were:
 - (1) The natural and ordinary and/or inferential meaning of the words and image in the first article;
 - (2) Whether the first article comprises (or includes) statements of fact or opinion; and
 - (3) If the first article comprises or includes a statement of opinion, whether the first article indicated, whether in general or specific terms, the basis of the opinion.
18. The order states in terms that the references to “the first article” are references to “the article complained of in the Re-Amended Particulars of Claim at paragraph 4”.
19. Nicklin J did not order that the trial should determine whether the article, in its determined meaning, was defamatory of the claimant at common law. That is because there are factual issues concerning the capacity of the claimant to maintain an action in defamation, and, specifically whether it has a reputation that is capable of being defamed. All parties agree that it is not possible to resolve those issues on this trial. The meaning trial is, therefore, limited to the meaning of the words, and the question of whether they amount to statements of fact or opinion and whether the article indicates the basis of any opinion.
20. In advance of the hearing, I was provided with a copy of the first article in the form it appeared after 4 July 2022. At the outset of the hearing, it became clear that the parties were at cross-purposes as to whether the preliminary issues were to be determined by reference to this version of the article, or by reference to the article as it had appeared before 4 July 2022, or both. Justin Rushbrooke KC, for the claimant, objected to the inclusion, in the bundle, of the updated version of the article. He said that I should ignore the update. Adam Wolanski KC, for openDemocracy, disagreed. He said I should consider the article in its updated form.

21. I have concluded that the order of Nicklin J requires consideration of the article in the form in which it appeared both before and after 4 July 2022.
22. That is because:
 - (1) The order for the trial of preliminary issues that was made by Nicklin J reflects the form in which openDemocracy applied for a trial of a preliminary issue.
 - (2) Both the application, and the order, define the article to be considered (unsurprisingly) by reference to the claimant’s pleaded case as to the article about which it complains, and, specifically, by reference to paragraph 4 of the Amended Particulars of Claim.
 - (3) Proceedings were issued (and each iteration of the Particulars of Claim was served) after the article had been updated.
 - (4) Paragraph 4 of the now [Re-]Amended Particulars of Claim does not limit the claim to the article in the form in which it was originally published prior to 4 July 2022.
 - (5) On the contrary, paragraph 4 of the [Re-]Amended Particulars of Claim explicitly makes complaint both about the original publication, and its ongoing publication at the time of the [Re-]Amended Particulars of Claim (“and continues to publish”).
 - (6) Paragraph 4 of the [Re-]Amended Particulars of Claim makes explicit reference to the update, and makes it clear that complaint is made about the ongoing publication of the form of the article which includes the update (“subject to an insufficient “update”“).
 - (7) Mr Rushbrooke relies on the directions that were made for the trial of preliminary issues, which include that the trial bundle should contain a copy of the article “in the form in which it was originally published.”
 - (8) The scope of the trial of preliminary issues is defined by the order for the trial, rather than the case management directions that were made for the compilation of the hearing bundle. The direction as to what should be included in the trial bundle does not change the ambit of the trial. If there were any ambiguity in the scope of the trial then it might be arguable that the directions could assist in resolving that ambiguity, but there is no ambiguity. Anyway, paragraph 4 of the Amended Particulars of Claim effectively complains about two different articles – the article that was published up until 4 July 2022, and the updated article that was published thereafter. The direction to include a copy of the article “in the form in which it was originally published” can be taken to mean a copy of each version of the article in the form in which it was originally published.
 - (9) Neither party is disadvantaged by this approach. The order as to the trial of preliminary issues was entirely clear, and the updated article was included in the hearing bundle. I made it clear at the hearing that I would hear any submission that either party wished to make on either the original or the updated article.
 - (10) Conversely, it would be undesirable to determine the meaning of the article only by reference to the form in which the article appeared before 4 July 2022, in

circumstances where the claimant seeks to maintain a claim in respect of the form in which the article appeared thereafter. Mr Rushbrooke stressed that most of the damage would have been incurred before 4 July 2022, so that the claim in respect of the updated article may not add a great deal. I gave Mr Rushbrooke the option of abandoning the claim in respect of the updated article (in which case it would clearly not be necessary to consider the updated article). He declined to do so. It follows that both forms of the article are in issue, and so the meaning of both must be determined.

Legal framework

23. **Meaning:** The legal principles to be applied when determining meaning are summarised in *Koutsogiannis v Random House Group Ltd* [2019] EWHC 48 (QB); [2020] 4 WLR 25 *per* Nicklin J at [11]-[12]. The Court’s task is “to determine the single natural and ordinary meaning of the words”. This is “the meaning that the hypothetical reasonable reader would understand the words bear.” In making that determination the Court should apply the approach identified in the series of propositions set out by Nicklin J in *Koutsogiannis* at [12].
24. **Fact/opinion:** The principles are summarised by Nicklin J in *Koutsogiannis* at [16]-[17]. The ultimate question is the impact on the hypothetical reasonable reader (*Koutsogiannis* at [16(iii)]), in other words whether the hypothetical reasonable reader would understand the passage in question, read in context, as conveying fact or opinion. Determining whether words express an opinion, or an asserted fact, is part and parcel of determining the words’ meaning. The Court should not therefore determine these two issues separately in “too linear or compartmentalised a fashion” - see *Haji-Ioannou v Telegraph Media Group Ltd* [2020] EWHC 2922 (QB) *per* Collins Rice J at [13] (and the authorities there cited).
25. In each case, I read the article(s) (including the update of the openDemocracy article) before reading any other document, and, in particular, before reading the meanings for which the claimant and openDemocracy contend. I did so with the principles distilled in *Koutsogiannis* well in mind. On the basis of that initial reading of the articles I reached a distinct view as to the meaning that they conveyed, so far as they concerned the claimant. The parties have each engaged in a skilful and detailed deconstruction of the articles to seek to support the meaning for which they each contend. That is, as they recognise, a somewhat artificial and strained exercise, but it is a nonetheless helpful vehicle to test the views I reached on an initial reading of the articles, and whether those views were borne out of an overly analytical approach to the words, or an approach that was in any other way incompatible with the *Koutsogiannis* principles. The arguments did not change my essential view of the meaning of the articles, but it was helpful in formulating how that view of the meanings is best expressed.

The Telegraph case

The rival contentions as to meaning

26. The claimant’s case is that the Telegraph article means:

“the Claimant was set up in the UK in 2020 to act, and did until the end of 2021 act, as a corrupt vehicle through which former

President Nursultan Nazarbayev exercised control, via the Nazarbayev Fund and two other purported educational foundations, over his sprawling international business empire worth US\$7.8bn (or £5.8bn).”

27. The Telegraph says that the article means:

“the Claimant was used by the former dictator of Kazakhstan, Nursultan Nazarbayev (‘NN’) to hold business assets worth £5.8bn, acquired with funds likely obtained improperly by NN from the Kazakh state during his time in office.”

Submissions

28. Mr Rushbrooke submits that the article is all about the claimant. The key message is that the claimant is “at the centre of the financial interests of a key ally of Vladimir Putin” and that this “former dictator of Kazakhstan controlled a multibillion-dollar business empire via a British company.” The article makes it clear not just that the claimant was being used to hold Mr Nazarbayev’s assets, but also that it was the vehicle through which he controlled them – see (aside from the headline of the online edition), paragraphs 1, 3 and 16. The article also makes clear that the claimant is complicit in that activity. It explicitly states that one of Mr Nazarbayev’s associates was a director of the claimant. The fact that it had only one employee and yet sat “at the heart of a sprawling international business” indicates there is something fundamentally “dodgy” about the claimant. The same impression is given by the revelation that even its auditor was under investigation (albeit in respect of another company). Mr Rushbrooke says that the mass of incriminating material, and the damning terms in which it is presented, creates a clear overall picture that the claimant was set up and run by Mr Nazarbayev’s cronies on his behalf as a vehicle to hide the enormous wealth that he had accrued, and to control the business empire in which that wealth resided.
29. The claimant’s pleaded meaning uses the phrase “act as a corrupt vehicle” as a compendious way of capturing the fraudulent nature and purpose of the claimant’s existence and operation, as conveyed by the article. The word “corrupt” is intended to echo the reference to the Organized Crime and Corruption Reporting Project at paragraph 25. Mr Rushbrooke recognises that the point could be expressed in different language, but whatever language is chosen he submits that the meaning must properly reflect the intrinsically damaging nature of the way in which the claimant is portrayed. He says that an easy way to test the question of whether the article portrays the claimant in a damaging light is to ask whether any reasonable person would wish to transact, or be associated, with the claimant.
30. Insofar as it might be said that the recorded denials of the claimant’s solicitor amount to an “antidote” to the “bane” that the claimant is corrupt, set against the headline and the thrust of the article it has no effective neutralising impact on the message that is otherwise clearly conveyed.
31. Aidan Eardley KC, for the Telegraph, submits that (as the headline demonstrates) the article is focussed on Mr Nazarbayev and his business empire (and, to a lesser extent, the UK’s regulatory regime), not the claimant. Consistent with that theme, Mr Nazarbayev and his cronies are said to be in control of the assets, and the claimant is

presented as a purely passive vehicle, under their ownership and control. The claimant is not described as doing anything apart from holding assets, which it does only because its owners and/or controllers tell it to do so (see paragraphs 6, 23 and 27). Thus, the claimant is a passive instrument for others, and is not capable of doing anything for itself, hence the reference, at paragraph 6, to “only one employee”. It is simply a receptacle for its shareholders’ assets. Further, the article says that the claimant complies with all applicable regulatory requirements (see paragraphs 26 and 27).

32. To the extent that the connection between Mr Nazarbayev and the claimant might, in itself, cause readers to speculate that the claimant or its directors should be doing more to secure the claimant’s integrity, that is a secondary inference that goes beyond the natural and ordinary, or implied, meaning of the article: *Brown v Bower* [2017] EWHC 2637 (QB); [2017] 4 WLR 197 *per* Nicklin J at [54].

Discussion

33. Neither party suggests that there is any difference in the meaning of the online and print versions of the article. The primary difference is the sub-headline in the print version “Former leader hid wealth in technology firm, piling pressure for crackdown on kleptocracies in London.” That sub-headline is, however, reflected in the substantive content of the online article (see, for example, paragraphs 1-3). Both parties agree that part of the meaning of the article is that Mr Nabarayev hid his wealth in the claimant. The issue between them concerns the extent of the claimant’s complicity in that. The sub-headline does not assist further on that issue.
34. I do not consider it particularly helpful to focus on the question of whether the article alleges that the claimant is “doing” anything, or is “conducting itself” in any particular way. As Mr Rushbrooke pointed out, a corporate entity can be defamed without suggesting any particular activity on its part. A classic example is asserting that a company is insolvent. Here, the contrast between the parties’ positions is better addressed not through the question of whether the claimant is undertaking any particular activity, but rather through the question on whether it is aware of, or knowingly involved in, the activities that are alleged as against Mr Nazarbayev and his foundations.
35. The article does not, in my view, suggest that the claimant was merely an unwitting passive receptacle for Mr Nabarayev’s funds. It suggests that it was simply an extension of Mr Nazarbayev himself, and was positively involved in hiding his assets. That is because:
- (1) As Mr Eardley accepts, the article does not just suggest that Mr Nazarabayev’s funds were held by the claimant, but that the claimant was itself controlled by Mr Nazarbayev “and his cronies”.
 - (2) Paragraph 3 suggests that the funds were controlled “via” the claimant. The use of that word tends to suggest the claimant’s positive involvement.
 - (3) The reference to there being only one employee further supports the suggestion that the claimant does not have any real purpose, and is not undertaking any significant activities, beyond existing as a vehicle through which Mr Nazarbayev can control his assets.

36. I do not, however, consider that the article intimates that this continues to be the position as at the time of publication of the article. That is because the control of the claimant by Mr Nazarbayev is all clearly expressed in the past tense. Paragraphs 18-21 indicate that ownership of the claimant has now passed to a US non-profit organisation, and there is no clear assertion or implication that Mr Nazarbayev continues to control his assets through the claimant.
37. I consider that the meaning of the article is:
- “Up until the end of 2021 (when its ownership changed) the claimant hid and controlled assets of £5.8bn that it knew had been acquired illicitly by Nursultan Nazarbayev, the former president of Kazakhstan.”
38. This is a statement of fact, not opinion.

The openDemocracy case

The rival contentions as to meaning

39. The claimant contends that the article alleges that:
- “the claimant was allowing itself to be used as a corrupt vehicle to hide and control \$7.8bn of assets belonging to Mr Nazarbayev, via a personal foundation controlled by him, the Nazarbayev Foundation, and that the claimant had been party to a corrupt transaction whereby a three per cent stake in it worth over US\$200 million has been sold to QAZ42 Investment SPV RSC Ltd for a gross undervalue, just US\$20 million.”
40. openDemocracy contends that the article means:
- “Given, amongst other things, the lack of transparency in the ownership structure of the claimant, which includes the Nazarbayev Foundation, a charitable foundation connected to Nursultan Nazarbayev, the former president of Kazakhstan, and which holds a majority stake in the claimant, there are reasonable grounds to investigate whether Mr Nazarbayev has used the claimant as a vehicle for holding £7.8bn of the private wealth he acquired through corruption whilst in office.”
41. Alternatively, openDemocracy says that the words bear the same meaning at Chase Level 2, that is that there are reasonable grounds to suspect Mr Nazarbayev (rather than merely reasonable grounds to investigate). It says that this is not capable of being defamatory of the claimant, and that it amounts to a statement of opinion not fact.

Submissions

42. Mr Rushbrooke submits that the central theme of the article is the “link” between Mr Nazarbayev and his control of substantial assets via the claimant. The peg for the publication is the revelation that a UK company is instrumental in Mr Nazarbayev exerting this control. The relevance of the Nazarbayev Foundation is that it provides

the important link between Mr Nazarbayev and the claimant. The article leaves no room for ambiguity as to the company's complicity, because:

- (1) The headline sets out the subject matter of the article for the reader: "Kazakhstan's former president linked to \$7.8bn in assets in UK company".
 - (2) The sub headline reiterates both the improper conduct of the UK entity and the connection to Mr Nazarbayev: "Experts urge British government to unmask offshore owners of UK-registered firms after uncovering of vast assets linked to Nursultan Nazarbayev".
 - (3) The article then tells the reader that the claimant's assets are "wealth under the control of Nursultan Nazarbayev's personal foundation" and that this emerged as a result of an investigation carried out by the Organized Crime and Corruption Reporting Project. The claimant emphasises the name of that project, which, it says, leaves nothing to the imagination.
 - (4) The link to the Nazarbayev Foundation and its control by Mr Nazarbayev is then repeated at paragraphs 7 and 12.
 - (5) The heading above para 8, in large bold text is "An opaque network." That reinforces the suggestion of impropriety.
43. Mr Rushbrooke further submits that paragraphs C-C4 convey that the QAZ42 transaction was corrupt: that is the clear implication of the gross undervalue of the claimant which the article suggests underpinned the transaction.
44. Mr Wolanski KC, on behalf of openDemocracy, submits that reasonable readers of the article would not reasonably conclude that it conveys any potentially defamatory allegation concerning the claimant. The focus of the article is on Mr Nazarbayev rather than the claimant. Mention is not made of the claimant until paragraph 16, when it is said that it is merely the passive recipient of funds. It is not suggested that the claimant took any active role in dealing with Mr Nazarbayev's assets. Nor is it alleged to have miscondacted its business or to have defrauded anyone. In effect, readers are told that the company was merely a passive vehicle which did not trade. It is not alleged to have had any active part in any misconduct by Mr Nazarbayev, and is not alleged to be guilty of any misconduct, unlawful or otherwise.
45. If the article does bear any defamatory meaning then it is at a significantly lower level of gravity than Chase level 1. That is because it reports on what is said to be "an investigation" it calls for further investigation and it is couched in tentative language ("wealth that could be under Nazarbayev's control").
46. Mr Wolanski says that the claimant's meaning is strained and artificial, and that the natural and ordinary meaning is that the claimant was used by Mr Nazarbayev as a vehicle for assets he acquired through corruption.
47. As to the purchase of 3% of the shares at an undervalue, the article does not say that the sale was corrupt, only that it was a good deal. And the article explicitly says that nothing is known about the company that purchased the shares. There is nothing to indicate that the claimant was involved in the transaction.

48. Mr Wolanski further contends that the article amounts to an expression of opinion rather than a statement of fact. It presents the details of an investigation and reports on the deductions that are made on the basis of that investigation. Those deductive conclusions are naturally an expression of an opinion.

Discussion

49. Mr Wolanski identifies three issues that arise as to the meaning of the article:
- (1) Whether the words impute that the claimant took an active role in the hiding by Mr Nazarbayev of corruptly obtained assets, as opposed to being a passive recipient of those assets;
 - (2) If so, at what *Chase* level that allegation is made;
 - (3) Whether the words bear any meaning defamatory of the Claimant in respect of the sale of a 3% stake in the company to QAZ42.
50. Subject to the observation I made in the Telegraph case about the question of “doing” or “conducting itself” (which applies equally to “active role”), these three issues provide a helpful framework by which to explain the conclusion I have reached as to the meaning of the article.
51. As to the first, it is common ground between the parties that the article conveys the meaning that Mr Nazarbayev has used the claimant to hide corruptly obtained assets. The real issue between the parties is whether the claimant has been complicit in that. Mr Wolanski is right that the article does not anywhere suggest in terms that the claimant has done anything improper. Mr Wolanski went through the article sentence by sentence, and correctly submitted that no individual sentence, read in isolation, conveys a meaning that the claimant has conducted itself improperly. Further, some care should be taken in respect of the multiple potential indicators of underlying wrongdoing on which Mr Rushbrooke relies (for example, the references to the Organized Crime and Corruption Reporting Project, the reference to opacity). Those references are consistent with the agreed position of the parties that the article indicates wrongdoing on the part of Mr Nazarbayev. It does not necessarily follow that wrongdoing also attaches to the claimant.
52. But nor does the article anywhere suggest in terms that the claimant was merely an entirely passive and innocent recipient of Mr Nazarbayev’s assets.
53. I consider that the meaning it conveys falls somewhere between the meanings contended for by the parties, but rather closer to the claimant’s meaning. The factors in the article (as published before 4 July 2022) that suggest the claimant is not entirely passive or unwitting in the arrangements for hiding Mr Nazarbayev’s corruptly obtained assets are that:
- (1) The amount of the claimant’s assets that are said to derive from Mr Nazarbayev. This is up to \$7.8bn (making allowance for imprecision in the word “linked”) in the article as originally published, and \$1.6bn net in the updated version of the article. The emphasis in the article on the value of the assets implies to the reasonable reader that the company is aware of their provenance and the purpose

underpinning their being held by the company. Mr Wolanski rightly points out that it is not remotely surprising or sinister that the claimant should have substantial assets, given that it exists for the purposes of providing an endowment fund. The point, however, is that the high valuation of the assets that are said to derive from Mr Nazarbayev are such that the claimant is likely to have some detailed knowledge about them. A corporation that operates as an investment holding company for endowment funds might not have a detailed knowledge of the ultimate source of every donation to the underlying funds, but the article implies (because of the amount of the assets) that the claimant has a detailed knowledge of their provenance.

- (2) The proportion of the claimant's assets that are said to derive from Mr Nazarbayev. The article strongly suggests that a substantial proportion of the claimant's assets derive from Mr Nazarbayev. The headline says that Mr Nazarbayev is linked to \$7.8bn in assets. The body of the article says that claimant's total assets amount to \$7.8bn (clarified in the update as a gross figure). If only a small part of the claimant's assets derived from Mr Nazarbayev, then that might raise a question as to the extent of the claimant's knowledge about them. Conversely, the fact that they represent such a large proportion of the claimant's assets implies that it is not ignorant about them.
 - (3) The date of the claimant's incorporation. The article says that the claimant was set up in March 2020 and that, the same year, Pioneer Capital Invest LLP's assets (in which the Nazarbayev Foundation had taken a 75% stake, reducing to 62% by July 2021) were transferred to the claimant. That strongly suggests that, from its inception, a significant part of the claimant's purpose was to hold substantial assets that had derived from Mr Nazarbayev.
 - (4) The article says that the Nazarbayev Foundation has a controlling stake in the claimant. The article also suggests that there are close links between Mr Nazarbayev and the Nazarbayev Foundation. So, it follows that the article suggests a close link between the claimant's controlling mind and Mr Nazarbayev.
54. This involves a degree of implication, but that is properly part of an assessment of meaning. I do not consider it involves the drawing of inferences in a way that goes beyond an assessment of a publication's meaning: *Brown* at [54] (see paragraph 32 above).
55. I do not consider that the suggestion that the claimant is complicit rather than merely passive is conveyed at Chase level 1. The fact that it is largely based on implication rather than direct assertion, the use of some qualified and tentative language, and the inclusion of the response of Mr Sarinzhipov, result in a meaning that is pitched at a less definitive level than Chase level 1 (and the Telegraph article). The overall impression given by the article is that there are strong grounds to believe complicity on the part of the claimant.
56. The meaning conveyed by the article amounts to a statement of fact, rather than opinion. It is not couched or structured in the terms of an opinion, and does not read as the expression of opinion. It conveys fact, albeit fact that is in large part based on implication rather than direct assertion.

57. I do not consider that paragraphs C-C3 of the article convey the meaning for which the claimant contends, or that they bear any other meaning that is potentially defamatory of the claimant at common law. Those paragraphs say that QAZ42 Investment paid \$20m for an interest in the claimant that was potentially worth over \$200m. They appear in the context of a short discrete section of the article which identifies those who have minority stakes in the claimant. There is nothing in that section of the article, or in the rest of the article, to suggest that there was anything corrupt or otherwise improper in QAZ42's acquisition of an interest in the claimant. The mere fact that an investor purchases an interest in a company which is "potentially" worth ten times the amount paid does not, in itself, mean that there was anything improper in the acquisition. The surrounding context in the article identifies much that is discreditable, but none of that attaches explicitly or implicitly to the QAZ42 transaction.
58. I have, separately, considered the meaning of the updated article, as published from 4 July 2022. The update comprises the points made by "a representative of [the claimant] and Nazarbayev Foundation." It is a small point, but the impression is this information is provided by a single person who is a representative of both the claimant and the Nazarbayev Foundation, rather than separate representatives of the claimant and the Nazarbayev Foundation. This reinforces the impression of a close link between the claimant and the Nazarbayev Foundation, and hence knowledge by the claimant of the activities of the Nazarbayev Foundation. Given that the article suggests strong links between Mr Nazarbayev and the Nazarbayev Foundation, this reinforces the overall suggestion that the claimant is complicit in the holding of assets that derive from Mr Nazarbayev's corrupt activities.
59. The first point that is made in the update is that the representative has said that the claimant's net assets are US\$1.6bn (rather than the much larger figure in the headline). It then says, in parentheses, that the figure given in the headline represents the claimant's gross assets. This reads as the author of the article accepting the point that is made by the representative, and explaining the reason for the difference in the figures. It does not change the overall meaning of the article so far as the question of wrongdoing on the claimant's part is concerned. The figure as to the claimant's assets is still sufficiently large to justify the points made at paragraph 53(1) above.
60. The update then addresses changes that were made to the ownership of the claimant. I do not consider that this changes the meaning of the article as at the time it was originally published.
61. The update then makes assertions as to the current position concerning the claimant, the Nazarbayev Foundation and Mr Nazarbayev. Again, I do not consider that this changes the meaning of the article as it was originally published. Insofar as the update might be read as applying, historically, to the position between March 2020 and January 2022, the author of the article does not endorse any of the points that are made (in contrast to the position as to the net/gross assets). It reads as the representative denying the points that are made in the original article, but without changing the overall meaning of the (updated) article, other than pointing out that the allegations are denied.
62. The meaning that I consider the article conveys, so far as it relates to the claimant, is:
"There are strong grounds to believe that the claimant was set up in March 2020 in order to hold, via opaque arrangements, substantial assets which represent the proceeds

of illicit profiteering from Kazakhstan’s reserves of oil, gas and metals by Nursultan Nazarbayev, the former president of Kazakhstan, and that (as at January 2022) it continued to be (knowingly) complicit in the arrangements made to hold those assets.”

63. This is a statement of fact rather than opinion.

Next steps

64. I will make a direction for the listing of a Case Management Conference (“CMC”).

65. As a result of the resolution of the preliminary issues, there will need to be directions in respect of the parties’ statements of case. The claimant will need to further amend its Particulars of Claim in each case to bring its pleaded meanings into line with my findings. The Telegraph and openDemocracy will each need to plead a defence which addresses the meanings that I have set out, so that they comply with CPR PD 53B. It is likely that a Reply will need to be served. All of that should take place before the CMC. It is possible that the claimant will wish to amend its statements of case more broadly than is required to bring them into line with the rulings on meaning. If any such proposed amendments are contested then that can be addressed at the CMC.

Outcome

66. The Telegraph article means (in the form it was published in both the print and online editions):

“Up until the end of 2021 (when its ownership changed) the claimant hid and controlled assets that it knew had been acquired illicitly by Nursultan Nazarbayev, the former president of Kazakhstan.”

67. The openDemocracy article means (in the form it was published both before and after 4 July 2022):

“There are strong grounds to believe that the claimant was set up in March 2020 in order to hold, via opaque arrangements, substantial assets which represent the proceeds of illicit profiteering from Kazakhstan’s reserves of oil, gas and metals by Nursultan Nazarbayev, the former president of Kazakhstan, and that (as at January 2022) it continued to be (knowingly) complicit in the arrangements made to hold those assets.”

68. In both cases the meanings amount to expressions of fact, not opinion.

Appendix: The Articles

Part 1: The Telegraph article

Former Kazakh dictator controlled £6bn empire from Britain

A UK entity was at the centre of the financial interests of a key ally of Vladimir Putin

By Matt Oliver; Ed Siddon · Simon Lock and Franz Wild

17 February 2022 • 7:00am

1. The former dictator of Kazakhstan controlled a multibillion-dollar business empire via a British company, The Telegraph can reveal.
2. In revelations that will increase pressure on the Government to clamp down on the flow of money from kleptocracies into London, an investigation in collaboration with the Bureau of Investigative Journalism uncovered new details about the hidden wealth of Nursultan Nazarbayev.
3. Foundations linked to the notorious autocrat, who was in office until 2019, controlled \$7.Sbn (£5.Sbn) in assets via Jusan Technologies. The empire was restructured last year and is now controlled via the United States.
4. However, news that a UK entity was at the centre of the financial interests of a key ally of Vladimir Putin will increase scrutiny on the Government's pledge to tackle London's role as a safe haven for money from questionable sources.
5. Amid concern about a possible Russian invasion of Ukraine, ministers have faced criticism for allowing Russians with links to the Kremlin and a string of Kazakh elites to accumulate wealth in London - dubbed "Londongrad" for its large number of oligarchs - with little scrutiny over recent years.
6. Records filed on Companies House show that in 2020 Jusan had only one employee. Nevertheless it sat at the heart of a sprawling international business, spanning shopping centres, financial services, a telecoms network and even a pasta factory.
7. One of its subsidiaries, a Kazakh bank, received a multi-billion dollar state bailout and went on to hand a dividend to Jusan.

[Photograph of Mr Nazarbayev with Russia's President Putin, with caption: President Nazarbayev was a key regional ally of Russia's President Putin]

8. The company's shareholders included members of the Kazakh elite and businesses connected to the ruling family of the United Arab Emirates.
9. Dame Margaret Hodge, the Labour MP, claimed in Parliament that Mr Nazarbayev had used charitable foundations to "secretly control" a string of assets, which were part-owned through Jusan Technologies.
10. She said the UK had turned a blind eye to suspect wealth and claimed a string of Kazakh elites had become wealthy through crony capitalism under the Nazarbayev regime.
11. Dame Margaret told MPs: "Britain has opened our borders, our property market, our financial structures to the Kazakh ruling class, enabling them to launder their illicit wealth and to spend it.
12. "Worse, we don't even enforce our existing laws against any of this wrongdoing:'
13. John Penrose, the Conservative MP, said: "We've got to be at the leading edge of anti-corruption and anti-fraud measures, which means the economic crime bill should be an immediate, urgent priority. We will not threaten our prosperity by introducing these standards, in fact we threaten it if we do not:'

14. During his 29 years in office Nazarbayev won elections with more than 90pc of the vote, accrued enormous wealth for his family and fostered a cult of personality- the country's capital city was renamed after him.
15. He is believed to have continued to wield influence in Kazakhstan until last month's mass protests, which were met with a police crackdown and resulted in at least 225 deaths and may have resulted in shifts in power. Nazarbayev has denied reports of having fled the country.
16. The Nazarbayev foundations controlled Jusan through an Kazakh entity called Pioneer Capital.
17. Pioneer in turn was owned by three Kazakh educational foundations over which the former dictator has presided, including the Nazarbayev Fund, regulatory filings show.
18. Boies Schiller Flexner, a US law firm that represents the Nazarbayev Fund, said ownership of Jusan was handed to a US non-profit organisation as a charitable donation before the end of 2021.
19. The new owner is Jysan Holdings LCC, a company which in turn is owned by NU Generation Foundation, a non-profit group.
20. Asian Sarinzhipov, the chief executive of the Nazarbayev Fund and Nazarbayev's education and science minister between 2013 and 2016, is the president of NU Generation Foundation.
21. Boies Schiller said the people and entities involved with the new structure are independent of Nazarbayev and the purpose of the venture is to fund Kazakhstan's Nazarbayev University and other educational projects.
22. Even before the change in ownership, Nazarbayev did not personally benefit from Jusan. Although he chairs the fund bearing his name, its charter forbids him from using its assets for his personal benefit, Boies Schiller said.
23. Jusan's most recent accounts, filed in October 2021, showed \$7.8bn in gross assets, which included more than \$3bn in cash. The assets were owned through banking, telecoms and retail businesses, mainly in Kazakhstan.
24. Several of Nazarbayev's associates have connections to this booming business empire. They include Yerbol Orynbayev, who served as deputy prime minister and assistant to the president under Nazarbayev until 2015, was a director of Jusan Technologies and owned a 4.6pc stake.
25. The immense wealth amassed by Nazarbayev's foundations, first reported last month by the Organized Crime and Corruption Reporting Project, has benefitted from Kazakh state funds.
26. Companies such as Jusan Technologies are able to operate in the UK partly because of the assistance of lawyers and accountants who work and advise, perfectly legally, behind the scenes.

27. Boies Schiller said the UK had been chosen as the holding company's base because of its highly respected legal regime.
28. Jusan was registered in March 2020 by the US law firm Cohen & Gresser and its most recent filed accounts were signed off in August 2021 by Rakesh Shaunak, the chairman and managing partner of MHA MacIntyre Hudson, a UK auditor.
29. MacIntyre Hudson was paid \$462,000 by the company for the audit and other work during 2020.
30. Last month, the Financial Reporting Council, accounting watchdog, said it is investigating MacIntyre Hudson for its audits of another company in 2018 and 2019. MacIntyre Hudson has confirmed it is cooperating with the investigation.

Part 2: The openDemocracy article

Kazakhstan's former president linked to \$7.8bn in assets in UK company

Experts urge British government to unmask offshore owners of UK-registered firms after uncovering of vast assets linked to Nursultan Nazarbayev

Thomas Rowley

21 January 2022, 4.07pm

[Photograph of Mr Nazarbayev, with caption: Nazarbayev ruled Soviet Kazakhstan, and then independent Kazakhstan, between 1989 and 2019]

1. Kazakhstan's former president of 30 years has been linked to \$7.8bn of assets via a UK company, it has been revealed.
2. The extent of the wealth under the control of Nursultan Nazarbayev's personal foundation emerged in a joint investigation by the Organized Crime and Corruption Reporting Project (OCCRP), Kazakhstani online publication Vlast, and Kyrgyzstani media organisation Kloop.
3. "This investigation really joined the dots on what was already suspected about the wealth that could be under Nazarbayev's control, but the \$8bn figure is likely just scratching the surface," said Ben Godwin, head of analysis at PRISM Political Risk Management, which advises investors in Kazakhstan and the wider region.
4. "Kazakhstani society still considers the Nazarbayev family to be ever-present behind the scenes, despite the fact he stepped down as president two years ago – and that's what the wave of protests earlier this month was about. They were against Nazarbayev directly."
5. Nazarbayev ruled Soviet Kazakhstan, and then independent Kazakhstan, between 1989 and 2019, when he stepped down as president. This paved the way for current leader Kassym-Jomart Tokayev, who claimed following the violence that shook the country this month that 'financial-industrial groups' under Nazarbayev had benefited disproportionately during the first president's rule.

6. During his 30-year reign, Nazarbayev, his family and connected businessmen are believed to have profited enormously from the country's vast reserves of oil, gas and metals. A recent report by Chatham House suggested that Nazarbayev family members own property worth at least £330m in the UK.
7. These fresh revelations of assets linked to the Nazarbayev Foundation control came as British MPs criticised the UK's role in protecting Kazakhstani elite wealth.
8. An opaque network
9. The trail that links Nazarbayev to the assets is somewhat opaque. It begins with a group of schools and a university, both of which are controlled by Nazarbayev's charitable foundations.
10. The schools and university in turn own two corporate foundations.
11. In 2019, the year Nazarbayev stepped down as president, those corporate foundations set up an investment fund called Pioneer Capital Invest, according to the investigation by OCCRP, Vlast and Kloop.
12. One of the personal foundations controlled by Nazarbayev, the Nazarbayev Foundation, then took a 75% stake in Pioneer Capital Invest. In July 2021, this stake decreased to 62%.

[Photograph of a house and garden with caption: As Kazakhstan burns over inequality, the elite's wealth is safe and sound in London... London is home to some £530m in luxury property owned by the country's ruling class]
13. The Nazarbayev Foundation does not operate a website, publish reports or disclose its sources of funding. A spokesperson for the foundation said Nazarbayev himself could not withdraw its funds and that the foundation did not have an "end beneficiary owner" and could legally "fund only [Nazarbayev] university and schools". According to the foundation's charter, Nazarbayev chairs its Supreme Board of Trustees and has control over the organisation.
14. Pioneer Capital then proceeded, according to OCCRP, to buy "banks, an internet marketplace, mobile operators, warehouses, shopping malls, and even a pasta factory" across Kazakhstan, Kyrgyzstan and Russia – leading to a portfolio of assets worth billions.
15. This includes Kazakhstan's Jusan Bank and Optima Bank in Kyrgyzstan, as well as Russian banks Kvant Mobile and ATB (Asia-Pacific Bank).
16. In 2020, Pioneer Capital's assets were transferred to a UK company, Jusan Technologies Limited, which had been set up in March of that year. In its company accounts made up to 31 December 2020, Jusan reported \$7.8bn in total assets, including \$3.3bn in cash or cash equivalents.
17. A November 2021 confirmation statement for Jusan Technologies reported that Pioneer Capital Invest – in which the Nazarbayev Foundation has a 62% interest – has a controlling stake in the company.

C Who else owns Jusan Technologies?

C1 Minority stakes in Jusan Technologies are owned by Yerbol Orynbayev, a banker in charge of Kazakhstani holding company Jysan Technologies. Another company, on which OCCRP could find little information, QAZ42 Investment took a 3% interest in Jusan Technologies in 2021, for which it paid just \$20m for an interest potentially worth over \$200m.

C2 Until October 2021, Jusan Technologies listed three ‘persons with significant control’: Aslan Sarinzhapov, head of the Nazarbayev Foundation; Yevgeniy Pan, the director of a bank owned by Jusan; and Orynbayev.

C3 The UK Companies House website currently lists no persons with significant control for the business.

18. In its 2020 accounts, Jusan described itself as an “investment holding company [...] with business interests in Kazakhstan, Russia and Kyrgyzstan”. Its subsidiaries, the company said, were “composed of large, growing and market-leading companies operating in [...] banking, e-commerce, telecommunications, logistics & retail and other financial sectors such as brokerage, insurance, and wealth management”.
19. Speaking to openDemocracy, Sarinzhapov, chair of the board at the Nazarbayev Foundation, said the “net assets of Nazarbayev Fund, which is a university endowment fund, are \$1.2bn”.
20. The Nazarbayev Foundation, he said, was “not connected in any way” to any other charitable foundation controlled by Nazarbayev.
21. Speaking to OCCRP, Sarinzhapov said the Nazarbayev Foundation was a “classic endowment fund... by analogy to the best international practice (the endowment funds of Harvard, Stanford, Duke)”.
22. He added that Nazarbayev himself “does not have property rights” to the foundation’s assets and “cannot withdraw money from the organisation under any circumstances”.
23. Godwin told openDemocracy: “Why a fund for the benefit of the population needs an asset like a bank, or shopping mall, or all these numerous assets listed, is unclear.
24. “There seem to be reasonable questions about whether the Nazarbayev family can, in fact, access, use or dispose of these assets given the lack of transparency in the structure.”
25. When asked by openDemocracy why the assets were held via a UK company, Sarinzhapov said that the UK is “a good jurisdiction for holding companies (and British law)” and that neither Nazarbayev “nor any member of his family have any control over Jusan Technology nor can take over control”. He added: “It works only for university and schools. And this is protected by UK law as well.”
26. For transparency campaigners in the UK, the revelations over the wealth tied to the former Kazakhstani president are a reminder of problems associated with Britain’s corporate transparency regime.

27. “Clearly, there are concerns over governance and transparency in this structure – there seems to be little stopping Nazarbayev from selling these assets – but it may not be his personal cash cow,” said Thomas Mayne, a visiting fellow at Chatham House who has researched corruption in Central Asia.
28. “If this is the former president’s private wealth, then the question is: why put it in such a public structure?”
29. Ben Cowdock, investigations lead at Transparency International UK, said that the OCCRP investigation “highlighted the incredible wealth amassed by Kazakhstan’s political elite during their time in power”, which, on this occasion, had been “revealed as a result of Britain’s corporate transparency regime”.
30. “If the British government was to deliver its longstanding promises to strengthen Companies House and unveil offshore owners of property here, then we might have a fuller view of suspect Kazakh funds entering and moving through our economy,” Cowdock added.
31. A spokesperson for Nazarbayev did not respond to requests for comment from OCCRP.
32. ***Update, 4 July 2022:** Since publication we have been contacted by a representative of Jusan Technology Ltd and Nazarbayev Foundation, who has made the following points, which we are happy to include here.
33. Jusan Technology has, in fact, net assets of US\$1.6bn. (The number in the headline of this article represents its gross assets.)
34. Nazarbayev Foundation says that it no longer holds any interest legally or beneficially in Jusan Tech or its assets. Majority ownership of that company has passed to a US entity whose parent company is a registered US non-profit organisation.
35. Jusan Tech says that Nursultan Nazarbayev does not control it, it is not a subsidiary of his foundation and Nazarbayev does not control its assets. Nazarbayev Foundation likewise says that Nazarbayev does not control it and that he has no legal or beneficial interest in its assets.
36. Nazarbayev Foundation asserts that its objectives are a matter of Kazakh law and cannot be changed without parliamentary approval.
37. Both the foundation and the company say that their corporate structure is not opaque and strongly reject any negative inference in that respect. In particular, both bodies reject any inference that Jusan Tech exists to hold or conceal funds acquired by Nazarbayev.
38. Jusan Tech rejects any inference that QAZ42 may have purchased shares in it at an undervalue. It has told openDemocracy that the QAZ42 transaction was valued under guidance from a Big Four international accounting firm.