



Case No's.: HC-2000-000003/
Various (listed in Register of Claims)

Neutral Citation Number: [2021] EWHC 3084 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Rolls Building
7 Rolls Buildings
Fetter Lane, London
EC4A 1NL

Date: 4 November 2021

Before :

Mr. Justice Fancourt

IN THE MATTER OF THE MIRROR NEWSPAPERS HACKING LITIGATION

4th Wave

Between :

Various Claimants	<u>Claimants</u>
- and -	
Mirror Group Newspapers Ltd	<u>Defendant</u>

Richard Spearman QC (instructed by **Thomson Heath and Associates**) for the **Claimants**
David Sherborne (instructed by **Hamlins LLP**) for the **Defendant**

Hearing date: 4th November 2021

Approved Judgment

Mr Justice Fancourt :

1. I am satisfied, reluctantly, having heard the parties this morning, that owing to delays that have taken place in the disclosure process and with progressing amendments to statements of case, it is now not realistic to add additional claims as “Eligible Claims” to the list of 10 that the parties have proposed for the trial due to start on 26 January 2022. The trial is listed for 6-7 weeks.
2. I am satisfied that, given the amount of work that both sides will have to do to prepare those Eligible Claims for trial going forward, it is not realistic, as things stand today, to do the work needed to prepare any other claim for trial in January 2022. I have considered in particular whether the Pearson & Clarke claim, the Amanda Docherty claim, the Nikki Sanderson claim or the Michael Turner claim could be added to the list of 10, but there are reasons for each of those claims why it is not realistic to do so at this stage.
3. I said “reluctantly”, at the start, because I consider that things should not have reached a position where the parties themselves were in agreement by early October 2021 that there could be no more claims made ready for trial in January 2022. There are 85 live claims in this phase of the litigation. I understand that 39 of those were issued either in 2018, 2019 or 2020, and 45 or 46 of them were issued in 2021. I accept that 12 of the claims were delayed by the need for a preliminary determination on whether articles relied upon disclosed any valid or valuable claim; in those cases, the pleadings were not in fact closed until November of this year. But other than in relation to that category of claims, I consider that all the claims should have been prepared to be ready for a trial.
4. The difficulty clearly is with the disclosure exercise: the time that it takes; default on the part of the defendant in the first instance in not providing keywords for searches; delay in some cases by the claimants, though they were under no obligation under the orders to provide keywords, in taking up their right to do so; and a failure by the parties to engage properly, once any keywords had been suggested by either side.
5. Directions from the court and resolution of disputes about keywords should have been addressed at an earlier stage, but nothing was done in good time, with the consequences that I have already referred to. It was not until 28 September 2021 that correspondence was opened about directions for trial and the question of what claims would be eligible for trial was raised. No directions have previously been sought or given by the court as to the exchange of witness statements, the hearing of any further CMC or a date for the pre-trial review ahead of the trial date. Still no directions have been given, but, rather belatedly, on 18 October 2021, the defendant issued an application for an order that only 8 out of 85 claims should be eligible for a trial.
6. Following that and a period of negotiation, on 27 October a consent order was sent to me proposing the ten Eligible Claims. I indicated, in response to that, that I would not

make that order without hearing and understanding from the parties why it was that so few of the 81 live claims in the fourth phase will be ready for trial in January.

7. My request, therefore, was not for a justification of the choice of the ten claims that were chosen; what I wanted to know was why the other 71 claims were not going to be ready for a trial. The answer, as I have indicated, is that there have been delays in the disclosure process, matters have been allowed to drift, orders have not been complied with and the parties have not taken the initiative in a timely or proactive way to ensure that more of the claims could be accelerated and prepared for trial.
8. It is not an option for any of the parties in any of these claims to decide that they will not be ready for the trial date, which had been set about a year ago; but some of the claimants, regrettably, seem to think that that is the case.
9. The problem that this approach gives rise to is really twofold.
10. First, there is no effective case management *for settlement*, because there is no sufficient pressure on the parties to settle rather than go to trial. I am told that only 16 of the claims in this phase have settled, which is a remarkably low number and is symptomatic of the lack of progress with the claims.
11. The second problem is that there will be likely to be a significant waste of court resources and costs for the parties. That is because the predictable effect of directing that only ten Eligible Claims will be considered for trial and staying the other claims until that trial is concluded or settled is that in due course there is very likely to be a settlement of those ten claims, maybe by Christmas, if not some time in January, because the parties will focus on those and not on other claims; and little progress will be made in the meantime in progressing the other 75 claims. The trial date will be lost because no other claim is ready at that stage, and then there will have to be a further six or seven week trial window made available for a trial later in 2022 or even in 2023.
12. Nothing more can be done today but to make essentially the order that the parties have proposed, subject to some minor amendments. But from the end of this trial, or when the trial settles, it will be essential to convene a case management conference at an early stage in order that a much more rigid timetable can be fixed leading to all the claims being ready for a further trial. The position that was reached by October 2021, 3 months before the trial date, must not be allowed to be repeated. Although there is a limit to the number of claims that can be tried in one trial, moving all claims to a state of readiness of trial, and possible selection as Eligible Claims, has the effect of promoting their settlement, such that by the pre-trial review only a few claims may be left unsettled.
13. The parties have negotiated the terms of a stay of the other claims, the purpose of which is clearly to enable them to focus their resources on the 10 Eligible Claims and prepare for trial. There are certain exceptions to the stay, where further steps are to be taken in the short term in the cases listed in Annex A and Annex B to the schedule. I accept that, subject to those matters, there needs to be a short-term stay of the other claims.

14. However, I will add to those schedules that, in the claims of the Duke of Sussex and Ian Wright, amended particulars of claim (which are long outstanding) must be served within a period of four weeks from today, and the defendants must indicate within a further two weeks whether or not they consent to those amendments and, if they object, identifying the parts that they object to.
15. I have considered also whether there should be further steps taken in the Pearson & Clarke and Docherty claims to resolve the disclosure issues there, but on balance it seems to me that that is likely only to require the expenditure of too much time on matters that will not facilitate the progress of the trial in January and, therefore, I will not make any further order in relation to those claims.
16. There are one or two minor details on the wording of the draft consent order which I will now discuss with the parties.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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