Neutral Citation Number: [2023] EWHC 1273 (Ch)

Case No: BL-2022-000412

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (Ch)
IN THE MOBILE TELEPHONE VOICEMAIL INTERCEPTION LITIGATION

Royal Courts of Justice
Rolls Building, Fetter Lane,
London, EC4A 1NL

Date: 26 May 2023

Before :

MR JUSTICE FANCOURT

- -

Between :

HUGH GRANT	**Claimant**
- and –	
NEWS GROUP NEWSPAPERS LIMITED	**Defendant**

- -
- -

Mr Anthony Hudson KC, Mr Ben Silverstone, Mr Harry Lambert and Ms Radha Bhatt (instructed by **Clifford Chance LLP**) for the **Defendant**
Mr David Sherborne and Mr Ben Hamer (instructed by **Gunnercooke**) for the **Claimant**

Hearing dates: 25 – 27 April 2023

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APPROVED JUDGMENT

This judgment was handed down remotely at 10.00 am on 26 May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Fancourt :

NGN's application

1. By application notice dated 7 December 2022, the Defendant, News Group Newspapers Limited ("NGN"), applied to strike out, or alternatively for summary judgment in, the whole of the claim brought by Mr Hugh Grant on 9 March 2022 in the Mobile Telephone Voicemail Interception Litigation ("MTVIL"). Mr Anthony Hudson KC appeared with Mr Ben Silverstone, Mr Harry Lambert and Ms Radha Bhatt on behalf of NGN and Mr David Sherborne and Mr Ben Hamer appeared on behalf of Mr Grant. I heard the application over 3 days, with detailed argument on matters of law and fact.

2. Although the application issued by NGN was to strike out these claims pursuant to rule 3.4 of the Civil Procedure Rules and for summary judgment in the alternative, Mr Hudson readily accepted that in reality this was an application for summary judgment. If that did not succeed, the strike out application would not.

3. The issue raised by the application is whether Mr Grant's claim was statute-barred when issued. It is common ground that the primary limitation period under s.2 Limitation Act 1980 ("the Act") expired long before the claim was issued, but Mr Grant has pleaded reliance on s.32(1)(b) of the Act as suspending the running of time until about 2021. In that year, he explained in his witness statement dated 20 March 2023, he saw for the first time evidence that showed that NGN had targeted him, in particular in 2011, and had carried out acts of unlawful information gathering ("UIG") on many other occasions. It was only then, he says, that he realised that he had a claim against NGN in relation to the conduct of employees of The Sun, one of NGN's newspapers.

4. The reference to The Sun is significant because Mr Grant brought a claim in the MTVIL against NGN in 2012, but only in relation to the publication of articles in (and UIG conducted by employees of) the News of the World. There is no suggestion that the settlement in that claim precludes his bringing the current claim in relation to UIG by employees of The Sun.

5. The starting point is Mr Grant's 2022 claim, which, as indorsed on the claim form, is for:

> "Damages (including aggravated damages) for misuse of private information by journalists or other third parties acting or working for and on behalf of *The Sun* newspaper in relation to the obtaining or use of private or confidential information relating to the Claimant or his private life by means of unlawful information gathering techniques (such as the accessing or interception of his landline or mobile phones and their voicemail or answer messaging facilities, and/or blagging his private information or the instruction and use of private investigators) and the publication of articles in *The Sun* arising out of or containing or being corroborated by the same."

6. The claim is therefore based solely on the tort of misuse of private information.

7. Mr Grant filed "claimant-specific" Particulars of Claim dated 13 July 2022, which were expressed to be supplemental to the Re-Amended Generic Particulars of Claim for Pinetree Claims and the Re-Amended Generic Particulars of Concealment and Destruction. These pleadings give very detailed particulars of a 'generic' claim relied upon by all claimants within the MTVIL, alleging the considerable extent of the UIG of NGN, the extent of internal knowledge and encouragement of what was being done by senior executives and editors, and the lengths to which editors and executives went in an endeavour to conceal the alleged UIG and destroy evidence of it, including lying on oath to the Leveson Inquiry and Parliament. These generic particulars are adopted by individual claimants as parts of their claims.

8. Section 32(1) of the Act provides, so far as material:

> "… where in the case of any action for which a period of limitation is prescribed by this Act, either –
>
> …..
>
> (b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; ….
>
> … the period of limitation shall not begin to run until the plaintiff has discovered the …concealment …or could with reasonable diligence have discovered it."

9. It is not in dispute, for the purposes of this application, that NGN deliberately concealed facts relevant to Mr Grant's rights of action. Indeed, despite its continuing implacable denials of wrongdoing at The Sun, NGN accepts that all the allegations of deliberate concealment pleaded against it are to be assumed to be true for the purposes of this application. These allegations are found in the schedules of concealment, the schedule of NGN's unlawful acts and lies appended to Mr Grant's Particulars of Claim and are pleaded in the Re-amended Generic Particulars of Concealment and Destruction. If true – which will be a matter for the trial due to take place in January 2024 – these allegations would establish very serious, deliberate wrongdoing at NGN, conducted on an institutional basis on a huge scale. Of particular relevance for this application, they would also establish a concerted effort to conceal the wrongdoing by hiding and destroying relevant documentary evidence, repeated public denials, lies to regulators and authorities, and unwarranted threats to those who dared to make allegations or notify intended claims against The Sun.

10. NGN's acceptance that the concealment allegations should be assumed to be true for the purposes of this application means that the only matter in issue is whether Mr Grant has a realistic prospect at trial of proving that he did not know about the concealment and could not with reasonable diligence have discovered it until 9 March 2016 or later (the burden as to which will be on him). I will refer to this critical date as "the Applicable Date". More specifically, since this is NGN's summary judgment application, the burden lies on NGN to satisfy the court at this stage that there is no real prospect of Mr Grant so proving at a trial.

11. What is of paramount importance in analysing the question of concealment and knowledge is a correct analysis of the claim that has been issued. It is facts relevant to the rights of action that are the subject of the claim that must have remained concealed beyond the Applicable Date: see Various v MGN Ltd [2022] EWHC 1222 (Ch) at [63], [90]. I will return to Mr Grant's Claim Form and his Particulars of Claim after summarising the law on the application of s.32.

The law on s.32(1) Limitation Act 1980

12. What s.32(1) means and how it is to be applied has long been the subject of judicial analysis and explanation. In particular, the words "any fact relevant to the plaintiff's right of action" have been explained as being the essential facts that a claimant has to prove to establish a *prima facie* case, as distinct from evidence required to prove the case (per Neill LJ in C v Mirror Group Newspapers [1997] 1 WLR 131 at 138H). This was known as the "statement of claim test". As explained by Buxton LJ in AIC Ltd v ITS Testing Services (UK) Ltd ("*The Kriti Palm*") [2006] EWCA Civ 1601 at [453]:

> "The court therefore has to look for the gist of the cause of action that is asserted, to see if that was available to the claimant without knowledge of the concealed material."

13. More recently, the test has been considered at the highest level, in Test Claimants in the FII Group Litigation v HMRC [2022] AC 1 ("*FII*") and again by the Court of Appeal in Gemalto Holding BV v Infineon Technologies AG [2022] 3 WLR 1141 ("*Gemalto*").

14. *FII* was a claim for restitution and relief from the consequences of a mistake of law. The claimants had paid tax that was not lawfully due and claimed repayment, with interest. It was therefore a case falling under s.32(1)(c) (action for relief from the consequences of a mistake), not s.32(1)(b). The Supreme Court (in a joint judgment of Lords Reed and Hodge) considered that the date of discovery had nothing to do with discovering the truth of the facts alleged in the claim, since limitation periods applied to claims that were disputed as well as to those that were admitted, and to well-founded causes of action and ill-founded causes of action alike. A party can at best only have a reasonable belief that their assertions are correct.

15. Their Lordships considered that the purpose of s.32(1) was to ensure that a claimant was not disadvantaged by reason of being unaware of the circumstances giving rise to their cause of action as a result of fraud, concealment or mistake; and that time therefore ran from the point when a claimant knew, or could with reasonable diligence have known, that they had a worthwhile claim - or (which amounted to the same thing) knew, or could with reasonable diligence have known, that they made a mistake "with sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking advice and collecting evidence."

16. The question in *Gemalto* was whether the test identified by the Supreme Court in *FII* applied in the same way in a case of fraud or deliberate concealment. The Court of Appeal held that it did. The cause of action in *Gemalto* was the statutory tort of anti-competitive conduct infringing prohibitions of the Competition Act 1998. It was a single right of action. The factual issue in the case was when the claimant knew or could with reasonable diligence have known of the existence of a cartel, despite the cartelists' deliberate concealment of their behaviour.

17. Gemalto argued that there was no recognition of a worthwhile claim for the purposes of the *FII* test until a claimant knew with sufficient confidence all the essential facts needed to be able to plead the cause of action, such that a reasonable person would conclude that the essential ingredients of the tort could be pleaded. The Master of the Rolls rejected that approach as being overcomplicated. He noted, importantly, that "the secret nature of a cartel leads to a more liberal approach to pleading in advance of disclosure of the defendants' materials or the results of the regulators' investigations", an observation that applies equally to the difficulties that claimants in the MTVIL have in pleading the details of their allegations. The core of the decision of the Court of Appeal is contained in the following paragraphs of the judgment of the Master of the Rolls, with whom Birss LJ agreed:

> "45. In my judgment, the parties were right to submit that, after *FII*, limitation begins to run in a deliberate concealment case when the claimant recognises that it has a worthwhile claim, and that a worthwhile claim arises when a reasonable person could have a reasonable belief that (in a case of this kind) there had been a cartel. Gemalto's four propositions overcomplicate the position. The *FII* test must be applied with common sense. As the judge held, there is unlikely in most cases, as in this case, to be a real difference between the application of the statement of claim test and the *FII* test. Indeed the statement of claim test is, perhaps, little more than a gloss on the *FII* test…..
>
> 46. First, the *FII* test makes clear that the claimant is not entitled to delay the start of the limitation period until it has any certainty about its claim succeeding. So, whilst in a fraud case, if there were an essential fact about the fraud that the claimant had not discovered, without which there would have been no fraud, it would make sense to say that the claimant had not discovered the fraud. But in concealment, what needs to have been discovered is just that, the concealment. Once the claimant knows objectively that a cartel has been concealed, it does not need to have certainty about its existence or about the details of that cartel. That is why the Supreme Court made clear that the claimant needs only sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking evidence and collecting evidence. The term "worthwhile claim" is not to be construed as a deed. It requires a common sense application. A claim in respect of a concealed event would not be a worthwhile one if it were pure speculation, but it would be if, as in this case, an authoritative regulator had thought it

> sufficiently serious, having investigated all the evidence available, to lay charges or issue a statement of objections.
>
> 47. Secondly, the test adumbrated by the Supreme Court must be intended to operate in all situations in which there has been mistake, fraud or concealment, and to be consistent with the Limitation Act more generally. It would make no sense for the limitation period for a road traffic accident to start running when it happens (at which point the victim may know nothing about the circumstances of the accident that, for example, rendered them unconscious), but for section 32 to allow a claimant a lengthy period of investigation before it is said to have discovered that the facts relating to its claim have been concealed. The person who is run down knows that they have a worthwhile claim, even if they may eventually be shown to have been responsible for the accident by running in front of the vehicle. The claimant cannot postpone the start of the limitation period until it has had the time to investigate the details of the claim and the possible defences and to evaluate its prospects, anymore than the road traffic victim is able to do so. That is what the six-year limitation period is for. The question of whether a claim is worthwhile is not a complex balance of the chance of success as Mr. Turner suggested. The limitation period is not postponed until the claimant can show that it is more likely than not to succeed. Of course, if the putative claim would be struck out as not disclosing a cause of action, it would be right to say that the claimant had not discovered that it had a worthwhile claim... That is why I say that I am far from sure that there is a real difference between the statement of claim test and the *FII* test so far as concealment cases are concerned.
>
> ……
>
> 49. In these circumstances, perhaps the most difficult part of this aspect of the case is really the question of whether, in a concealment case (and perhaps in a fraud case too), the *FII* test requires that the claimant has discovered every essential element of the claim that has been concealed. The pre- *FII* cases made clear that that was necessary. In my view, however, post *FII*, that can no longer be necessary at least in a concealment case.
>
> 50. …. the formulation for the necessary knowledge is "knowing with sufficient confidence to justify embarking on the preliminaries to the issue of a writ". One can embark on the preliminaries to the issue of a writ once one knows that there may have been a cartel without knowing chapter and verse about the details. That is what one either finds out when making investigations or will only find out upon disclosure within the eventual proceedings."

18. In light of *Gemalto*, the test that I must apply is whether before the Applicable Date Mr Grant knew facts, or could with reasonable diligence have known facts, that would have led a reasonable person to conclude that there was a worthwhile claim, in the sense that such person would have sufficient confidence to embark on the preliminaries to issuing a claim. It was not necessary for such a person to have confidence that the claim would succeed or to have the evidence to prove it, or even necessarily be able to plead it at that stage, before further

investigation. It is not necessary for every essential fact that has been concealed to have been discovered. However, if the claim that in due course could be brought would then be struck out, it was not a worthwhile claim.

19. As noted above, *Gemalto* was a case where there was a single cause of action. There was no difficulty in identifying the right of action to which the test should be applied. Where the rights of action are more complicated, the test may be less easy to apply. What in such a case is "the claim" for the purpose of the test that I have summarised?

20. In Gulati v MGN Ltd [2015] EWHC 1482 (Ch), it was held (and subsequently endorsed by the Court of Appeal) that each separate occasion of misuse of private information by an act of UIG is a separate tort. Mann J held (and the Court of Appeal agreed) that any act of UIG and the publication of the articles were separate categories of wrong, and that "the wrongs have too great a degree of separation" for a single award of damages for the aggregate misuse of the claimants' private information. It is nevertheless well-established in the MTVIL and in the Mirror Group parallel litigation ("MNHL") that a claim based on publication of articles and UIG may properly be pleaded on a generalised and even largely inferential basis, where relevant facts are concealed from a claimant. That is an application, in this type of litigation, of the liberal approach to pleading in cases where concealment by a defendant (such as in a cartel) prevents a claimant from knowing all the relevant facts, to which the Master of the Rolls alluded. It is why, in a case concerned with deliberate concealment, the Master of the Rolls concluded that it was no longer necessary for a claimant to have discovered every essential element of the claim that has been concealed.

21. It is Mr Grant's case that his claim, as issued in 2022, encompasses multiple individual rights of action based on individual occasions of UIG, as well as a compendiously pleaded claim that relies on whatever Unlawful Acts there might have been during the relevant period (1995-2011), which Mr Grant is unable to identify. NGN's concealment therefore still operates in relation to these other rights of action; however, that has not stopped Mr Grant from bringing a valid claim in respect of them. Mr Grant contends that he did not know (and could not reasonably have discovered) the facts relevant to the individually-pleaded causes of action before he saw documents in 2021 and 2022 that demonstrated that NGN had instructed private investigators ("PIs") to carry out acts of UIG against him, and accordingly time did not start to run against him until then.

22. The only case in which the application of s.32(1) to multiple causes of action seems to have been addressed in principle is *The Kriti Palm*. That was a claim based on deceit, breach of contract and negligent misrepresentation in relation to a certificate of the quality and properties of a cargo. The judge upheld the claim in deceit and also found that the defendant had deliberately concealed a re-test report ("the Cooper re-test") and so the claims in negligence and breach of contract based on the defendant's certificate were not time-barred. The Court of Appeal reversed the finding of deceit. They criticised the judgment on the basis that the judge had failed to identify the cause of action to which the Cooper re-test was a relevant fact. It was not sufficient to treat the concealment as relating to the claim generally, as there were different causes of action pleaded, in particular different misrepresentations.

23. Rix LJ considered that the pleaded case relying on the Cooper re-test was a device to avoid what was otherwise a time-barred claim for breach of contract, that the additional plea added nothing of substance to the complaints, and that the Cooper re-test was really only evidence to support the other claims. Buxton LJ and Sir Martin Nourse disagreed. Buxton LJ said that it was necessary to look at the actual causes of action based on the results in the Cooper re-test, and that the defendant's arguments, which Rix LJ accepted:

> "… do not sufficiently respect the nature of a cause of action in negligence, or breach of contract, when applied to the facts of this case. A party may fail to perform his duty, whether in contract or in negligence, in a variety of different ways. In the present instance, the certifier may breach his duty by negligently reaching a wrong result; or by misinforming his client about some material fact; or by failing to reveal some matter that is relevant to the client's reliance on the certificate. Although each of those complaints relates to a failure of the certifier to perform his duties, the breaches relate to different aspects or heads of those duties, and generate different causes of action: even though all of them are causes of action in negligence, and all of them complain of the certifier's performance of his duties." [458]

24. Buxton LJ held that it was necessary to consider each of the causes of action that was pleaded and apply s.32 to each. He explained further at [462]:

> "A cause of action in negligent misrepresentation is completed by asserting first the representation; second that it was false; and third the negligent fault on the part of the representor that caused the falsity. Where there are different respects in which the representor was negligent, those different respects generate different causes of action, even though the first and second items listed above are common to all of them. This is such a case."

25. Sir Martin Nourse agreed:

> "... I am in general agreement with the reasoning of Buxton LJ as expressed in paragraphs 451 to 466 of his judgment. In particular, I agree that it is incorrect to look simply at the umbrella complaint of breach of contract and negligence. What must be looked at are the individual complaints, each of which raises a separate cause of action. The complaint that ITS deliberately concealed the Cooper re- tests and their results from AIC raised a new and separate cause of action." [385]

26. In *The Kriti Palm*, it was therefore held that, in a claim for breach of contract, each distinct breach alleged gives rise to a separate cause of action. Accordingly, where the plaintiff did not know and could not reasonably have discovered before the issue of the claim a fact on which one distinct allegation of breach of duty was based, that cause of action was not time-barred, even if other allegations of breach of duty in the same claim were. The judge had been wrong to treat the right of action as a single 'umbrella' claim of breach of duty, which the plaintiff had been in a position to bring in time.

27. *The Kriti Palm* was a decision applying the old 'statement of claim test' under s.32. As *Gemalto* makes clear, that is no longer the test to be applied, following

FII, though in most cases the difference may not matter. There is, however, a clear conceptual difference between, on the one hand, being in a position to issue a claim pleading adequately the essence, or "gist", of a cause of action, including all essential elements, and, on the other hand, knowing that one has a worthwhile claim (though not necessarily every essential element of the claim), such that one is at that time able to embark on the process of taking advice, notifying a claim and collecting evidence. That may still be so even where the court's generous approach to pleading a claim based on secret wrongdoing allows it to be brought without pleading all the essential elements. It is only if the claim, if brought on that basis, stands to be struck out that a worthwhile claim does not exist.

28. It is however plainly right that if a claim form comprises several distinct causes of action, pleaded as such, and a claimant knew more than six years before issue that they had a worthwhile claim in relation to some but not others, the fact that some causes of action are statute-barred does not mean that all others are.

Mr Grant's claim as pleaded

29. Mr Grant's claim as pleaded is not, in my judgment, a claim comprising a large number of individually pleaded causes of action. It is an all-embracing claim for all incidents of several specified types of UIG affecting Mr Grant between 1995 and 2011, whether known or unknown, with examples given of some of the types of UIG. The Particulars of Claim contain much evidence on which Mr Grant will rely, such as invoices said to prove an occasion on which a private investigator was commissioned on behalf of NGN to (and did) carry out an inquiry or obtain information by unlawful means.

30. The Grant Particulars of Claim is the latest version in an iterative approach to pleading MTVIL claims that Mr Sherborne has developed over time, as the known facts relating to NGN's UIG have grown with ever more generic and claimant-specific disclosure. He frankly accepts that the Particulars of Claim are drafted to attempt to avoid the conclusion that I reached in Various v MGN Ltd, namely that the claims under consideration there were pleaded 'compendiously' to include all UIG that had been carried out, whether leading to publication of a newspaper article or not, and not as numerous individual causes of action. As a result, I held that the correct application of the s.32 test required consideration of when a worthwhile compendious claim of that kind was known.

31. It is apparent from a careful reading of the Grant Particulars of Claim that they remain a compendious and comprehensive claim for all incidents of UIG of particular types, within a specified period, save perhaps in the case of burglaries where specific burglaries only are alleged to have been commissioned and there is no reference to others.

32. After introducing the parties to the claim, para 3 of the Particulars of Claim reads:

> "Between at least 1995 and 2011 (the "**Relevant Period**"), the Claimant was of interest to and targeted by *The Sun* using a variety of illegal

> information gathering techniques resulting in invasions of his privacy and causing him serious harm and distress, including through the publication of his unlawfully obtained information."

33. Para 4 reads:

> "*The Sun's* unlawful acts in relation to the Claimant throughout the Relevant Period include the illegal interception of his voicemail messages ("**phone hacking**"), the listening into and recording of his live telephone calls ("**landline tapping**"), the obtaining of his private information by deception ("**blagging**"), the placing of listening and tracking devices on his private property such as his house and his car ("**Bugging**"), targeted burglaries at his properties ("**burglaries**"), the use of private investigators to commit these and other such unlawful information gathering acts ("**private investigators**"), (together, the "**Unlawful Acts**"), and the misuse and/or deliberate exploitation of his illegally obtained information in and through published articles, but for which Unlawful Acts these articles would not have been published (together, the "**Unlawful Articles**")".

34. Thus, the subject-matter of the claim (as defined by the claim form) is "Unlawful Acts" throughout the Relevant Period, including (but not limited to) six different categories of UIG, in some cases leading to the publication of articles. It is worth noting at this stage that the remedies sought by Mr Grant include an order requiring NGN to make disclosure on oath of each and every Unlawful Act committed by the Sun throughout the Relevant Period, so that the damage and harm caused by its Unlawful Acts can be correctly assessed, based on every such occasion.

35. Mr Grant's case is then summarised at para 5 as being that The Sun and its agents unlawfully targeted him and his associates using Unlawful Acts during the Relevant Period, for the purposes of writing articles about him and intimidating him and deterring him from speaking out about the tabloid press in his role as a founder member of Hacked Off.

36. Para 7 pleads that The Sun deliberately subjected Mr Grant to Unlawful Acts in 2011, in connection with the Leveson Inquiry, the birth of his daughter and his preparation of legal proceedings against NGN in relation to the News of the World. It incorporates an attached "Schedule of Unlawful Acts and Lies" covering the period 2007-2016, as facts and matters on which Mr Grant will rely in support of that contention. The Schedule comprises a mixture of descriptions of published articles, invoices and public denials and lies.

37. Para 8 pleads that Mr Grant will rely on that Schedule and on the Re-Amended Particulars of Concealment and Destruction in support of his case on deliberate concealment. Para 9 pleads reliance on para 35A of the Re-Amended Generic Pinetree Particulars of Claim dated 7 December 2016, which alleges UIG at The Sun from about the year 2000 onwards.

38. The all-encompassing nature of the Particulars of Claim is clear from para 10:

> "The claimant further relies on his initial disclosure and NGN's generic disclosure in the MTVIL, as well as any fact or matter pleaded in any other action in the MTVIL which may be relevant to the issues in his claim, as well as any call data, private investigator invoices, emails and other disclosure in relation to his associates or other claimants in the MTVIL settled or current, and any further amendment to the generic pleadings in this litigation that might be made in future."

39. Para 11 pleads that, in particular, nine PIs were responsible for Unlawful Acts targeting him. In relation to some of these, including TDI/ELI, it is pleaded that PIs carried out "investigations preparatory to phone-hacking (such as acquiring phone numbers, itemised bills, subscriber details, and PIN numbers)". I refer to these later as "VMI preparatory activities".

40. The next four sections of the Particulars of Claim address separately different categories of Unlawful Acts and the publications.

41. The first deals with voicemail interception and landline tapping generally, and evidence of a witness provided in 2021 said to establish that, in addition to voicemail interception and landline tapping, bugs were placed in Mr Grant's home and car. Five PI invoices evidencing an instruction relating to Mr Grant are referred to, and it is pleaded that The Sun frequently instructed PIs to obtain mobile and landline telephone numbers, to enable phone-hacking and landline tapping to be carried out.

42. The second section deals with burglaries allegedly commissioned by The Sun, and identifies the facts on which Mr Grant will rely in relation to three burglaries of his and his girlfriend's homes and office, relying on various evidence and including examples of The Sun's alleged commissioning of burglaries of others as evidence of a propensity to do so.

43. The third section deals with the use of PIs by The Sun. It reads:

> "The Claimant will rely on the following facts and matters, as well as those at paragraphs 14 and 17(d) above and the Chronology of Unlawful Acts and Lies, by way of example only, in support of the fact that *The Sun* habitually instructed private investigators to target him and his Associates through Unlawful Acts and throughout the Relevant Period, with the intended purpose of unlawfully obtaining his and their information for misuse and/or deliberate exploitation through Unlawful Articles and/or other unlawful means, as was its modus operandi …"

and there then follow 17 sub-paragraphs, in each of which a PI payment or invoice is identified with details of the PI, the person commissioning them, the case reference for the instruction and the amount of the payment. What was done by each PI is not specified. Further occasions of PI instruction are then identified, including 3 further payment records; and the section ends with the following paragraph:

> "The Claimant will infer that *The Sun*'s private investigator instructions identified above represent only a small fraction of its Unlawful Acts

> committed in relation to him through such agents throughout the Relevant Period, but for which the documents demonstrating or relating to those incidents have been deleted, destroyed or concealed as explained in the Re-Amended Generic Particulars of Concealment and Destruction."

44. The Remedies section of the statement of case pleads that Mr Grant is unable to particularise his damage until he has ascertained the full nature and extent of the Unlawful Acts committed by The Sun, and that he accordingly seeks an order for further disclosure in relation to the Unlawful Acts and the identities of each employee who participated in such acts or misused the information obtained by them.

Analysis of Mr Grant's claim

45. Mr Grant's claim is a claim in respect of UIG, or "Unlawful Acts" within the Relevant Period, as defined, not a claim for unlawful publication. The publication is said to be relevant to the nature and purpose of the UIG and therefore to the harm caused and the quantum of damages.

46. The UIG in respect of which he claims is everything unlawful that employees of The Sun did, on behalf of NGN, within the Relevant Period that was targeted at him. There are different categories of UIG identified. Under some of these, specific individual incidents of UIG are identified, namely 3 burglaries; in others, evidence of UIG is pleaded, such as the 30 or so individual invoices or payment records, which, in the case of the PI invoices, are said to be examples of much wider offending behaviour by NGN.

47. Although I accept that essential facts required to plead valid individual causes of action in relation to unlawful use of PIs are present in paragraphs 14, 16, 18 and 20 of the Particulars of Claim, the claim is nevertheless pleaded on a much broader basis. The claim form alleges misuse of private information generally, by UIG of six specified types, with instances of some of these types of unlawful techniques stated.

48. The use of PIs by The Sun to conduct UIG is one such category of Unlawful Acts pleaded and an examination of it is instructive.

49. Mr Grant would have been unable to plead particulars of individual occasions of instruction of PIs before about 2021, when he was shown generic disclosure relating to him when assisting the Claimants' lead solicitors in MTVIL to prepare a generic witness statement. If, therefore, the facts evidenced by the invoices were essential to the bringing of Mr Grant's claim, that claim cannot be statute-barred, as these facts were concealed from Mr Grant until quite recently. But, notwithstanding *The Kriti Palm*, these facts were non-essential. That is because Mr Grant's claim in respect of use of PIs to conduct unlawful UIG is a general claim in respect of that category of Unlawful Acts, known and unknown, throughout the Relevant Period, of which the pleaded invoices are merely evidence or examples of some occasions on which it is alleged to have happened. They are not essential facts for the pleading of the claim in relation to UIG through instruction of PIs that Mr Grant has brought.

50. The opposite conclusion on this point, for which Mr Sherborne contended, would lead to very odd results. Knowledge that one has been subjected to UIG of this type on particular occasions means, in the case of someone like Mr Grant, that one is likely to have been subjected to it on other occasions. One is therefore in a position to bring, as Mr Grant has, a valid claim for all occasions of UIG by PIs, known or unknown, and obtain disclosure of invoices and payment records evidencing all such occasions. But time for bringing the claim in respect of individual instances of UIG is not delayed until disclosure is given during the claim. Moreover, if other occasions of UIG by a PI were only discovered after judgment on that broad claim, time would not start to run until after judgment had been obtained. As explained in *FII*, that is an impossible conclusion to reach about the way that s.32(1) works where a person knows enough to be able to bring a valid claim. The position might be different if a claim is only brought for known individual instances of UIG and knowledge of those instances did not put a claimant on notice that there were others.

51. The relevant question, for this part of Mr Grant's claim, is whether he knew (or could have discovered) that he had a worthwhile claim to bring for numerous occasions of NGN's use of PIs to conduct UIG directed at him during the Relevant Period. That depends on whether the facts that he did know (or could reasonably have discovered) were enough to give a reasonable person in his position sufficient confidence to embark on the preliminaries to such a claim. Mr Sherborne's argument that there remained (and still remains) substantial concealment of facts relating to individual instructions of PIs looks at the matter from the wrong end of the telescope. The focus, after *FII* and *Gemalto*, is not on what remains concealed but on what is known, or could reasonably be discovered. A claimant is no longer disadvantaged so far as limitation is concerned, in the sense explained by Lords Reed and Hodge in *FII* at [193], once they become aware of the circumstances giving rise to the claim, even if further facts and evidence remain concealed.

52. The facts relating to each individual instruction of a PI to carry out UIG are not essential facts for Mr Grant to embark on the preliminaries to bringing the claim that he did in fact bring in 2022, which was in respect of each and every such instruction, known or unknown. The fact that in (say) 2015 Mr Grant would have been able to plead fewer (or no) examples of PI instruction is irrelevant if he knew enough to believe that he had a worthwhile claim for UIG by instruction of PIs on multiple occasions, which claim would not be struck out.

53. The same relevant question in my judgment applies separately in relation to each of the other categories of UIG on which Mr Grant relies, and which he identifies in para 3 of his Particulars of Claim. To say that if Mr Grant knew sufficient to embark on preliminaries to bringing a claim based on voicemail interception he knew enough to do so in relation to commissioned burglaries is plainly wrong. It would be to make the mistake identified in *The Kriti Palm* and treat UIG as if it were an umbrella claim, to use the metaphor of Sir Martin Nourse. The facts relating to commissioning burglaries and bugging cars and houses, to take only two examples of different types of UIG that are pleaded, are quite different from each other and from voicemail interception, even if the cause of action (misuse of private information) is the same. The same applies

in relation to acts of investigation by PIs that were preliminaries to conducting voicemail interception or landline bugging. That is a different type of misuse of private information and a "separate category of wrong" from the interception or bugging itself, to use the expression of Mann J in Gulati.

The burden and standard of proof

54. I turn then to the burden on NGN in making this application. The court has on numerous occasions observed that issues about what a party to litigation knew or could have found out at a particular time is a question of fact that is, by its nature, generally unsuited to summary determination. In refusing permission to appeal my decision in Various v MGN Ltd, Andrews LJ said that:

> "The question whether a claimant has sufficient information to know that they have a worthwhile claim, in this case a UIG claim, is dependent on a factual investigation that is quintessentially inapposite for summary judgment. So too is the issue of reasonable diligence …."

55. Mr Hudson accepted that general proposition and the often cited guidance of Lewison J in Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch), which has repeatedly been approved by the Court of Appeal. But he said that this was a rare case in which the relevant facts were very clear indeed and undisputed, on the basis of which the court could safely come to the conclusion that Mr Grant, whom he described as being at the epicentre of the phone hacking scandal, did in fact know enough to conclude that he had a worthwhile claim. Mr Hudson drew my attention to the observation of Cockerill J in King v Stiefel [2021] EWHC 1045 (Comm) at [21] to the effect that there is no bar in a summary judgment application on the court *evaluating* the evidence and, where justified, reaching a conclusion adverse to the respondent.

56. Mr Hudson accepted that the onus was on NGN to persuade the court, on the basis of evidence, that there was no real prospect of Mr Grant proving at trial, on the balance of probabilities, that by 9 March 2016 he did not know, and could not reasonably have discovered, sufficient facts to conclude that he had a worthwhile claim, in the sense explained above. Mr Hudson said that he wholly accepted that the court would not embark on a mini-trial of factual disputes, and he explained that he relied principally on evidence of what Mr Grant himself had said and done, not on matters of evidence that were disputed. I accept that there may be a case where contemporaneous evidence of a person's state of knowledge, or facts that were readily available to that person, are really incontrovertible, when properly analysed, which would entitle the court to resolve such a question summarily, without cross-examination; but such cases will by their nature be relatively rare.

57. In making his submissions about the evidence, Mr Hudson did not distinguish between Mr Grant's knowledge of voicemail interception by The Sun and knowledge of any other form of UIG by The Sun on which he relies in his Particulars of Claim. He asserted that the claim was a comprehensive claim alleging UIG generally throughout the Relevant Period, as defined, with examples of UIG pleaded and evidence in support of the allegations of UIG. He said that the specific allegation of commissioning burglaries, in para 16, was

just an example of UIG generally, as the definition of Unlawful Acts in para 3 included burglary. I have given my reasons above for holding that that is an incorrect analysis: the Particulars of Claim plead separate, largely distinct categories of UIG activities, and, separately, the instruction of PIs to carry out those categories of unlawful activities or other accessory activities, which cannot be treated simply as examples under the UIG umbrella.

58. In my judgment, each of the separate categories of UIG alleged must be considered separately.

The facts relating to Mr Grant's state of knowledge up to 2012

59. The principal facts on which Mr Hudson relied to establish Mr Grant's sufficient knowledge of UIG up to and including the end of 2012 were the following.

60. First, on his own admission, Mr Grant was a founder of the Hacked Off pressure group in 2011 and had a keen interest in and studied the subject of phone hacking, following stories in the press, in particular the early investigation of The Guardian into Mr Whittamore's activities. He gave evidence to and otherwise attended and followed the Leveson Inquiry, and heard the evidence given there, including that on behalf of NGN.

61. Second, there is no disputing that Mr Grant was aware at the time of (or could easily have identified) the 64 The Sun articles during the period 1995-2011 of which he complains in this action, and that the content of most or all of those articles was regarded by him as private. There is no dispute that Mr Grant knew that he and those acting on his behalf had not disclosed the private information. Mr Grant explained in his evidence to Sir Brian Leveson that he did not believe the pretence in articles that a "close friend" or "pal" had provided the information, and in his evidence on this application he does not say that he was misled by such language. So an issue of concealment that arises in many phone hacking claims – that the claimant was misled into thinking that the source was a disloyal friend or family member – does not exist in Mr Grant's case.

62. Third, Mr Grant had been informed by the Metropolitan Police in 2006 that Mr Mulcaire appeared to have been intercepting his voicemails, and that Mr Mulcaire was working for all the tabloid papers. Mr Grant therefore actually knew that he had been the victim of phone hacking.

63. Fourth, Mr Grant brought a claim against NGN in 2012, alleging phone hacking as a source of News of the World articles. His pleaded claim adopted the 2012 generic particulars of claim, which included an allegation that a senior NGN executive (Mr Coulson) frequently instructed journalists working for The Sun to carry out voicemail interception and instructed a particular Sun journalist to do so. Here, therefore, was an actual allegation of voicemail interception against The Sun made by Mr Grant in 2012, albeit NGN took the position that the inclusion of reference to The Sun in the generic particulars of claim was inappropriate. The 2012 claim also made allegations of false denials and a cover up by NGN, so Mr Grant was generally aware of NGN's concealment tactics.

64. Mr Sherborne and Mr Thomson acted for Mr Grant in that claim. They had also acted for Mr Jude Law in 2011, who brought a claim alleging phone hacking by The Sun, which was widely reported as such in the press ("For the first time, The Sun newspaper was last night dragged into the phone-hacking scandal after it emerged that the actor Jude Law is suing Rupert Murdoch's best-selling daily title over the alleged interception of his voicemails while Rebekah Brooks was editor": *The Independent,* 16 July 2011).

65. Fifth, Mr Grant was aware of a detailed article in the New York Times published in September 2010 ("Tabloid Hack Attack on Royals and beyond") and then covered by some of the UK press. It made allegations of phone hacking against Mr Hoare and Mr Coulson when at The Sun.

66. Sixth, in April 2011, Mr Grant was told by Mr McMullan, a whistleblower from the News of the World, that Ms Brooks and Mr Coulson were commissioning voicemail interception when at The Sun. Mr Grant published his (secretly recorded) interview as an article ("The bugger, bugged"). Mr McMullan gave the same evidence at the Leveson Inquiry, but Sir Brian did not find his evidence or Mr Hoare's evidence persuasive, and found the case against The Sun unproven.

67. Seventh, in July 2011 Mr Grant's confidential medical details were published in The Sun. Mr Grant complained of that and was paid compensation, but he says he believed that it was a corrupt employee of the hospital who had sold the information to The Sun, and did not know that it was a PI who had blagged the information, as he now does.

68. Eighth, at the time of the launch of Hacked Off in 2011, Mr Grant made repeated statements to the media alleging phone hacking by "the entire tabloid press in this country" on "an industrial scale", and stating that it was not just the News of the World that did it, and that it was "endemic in the British press". In October 2011 in a Channel 4 interview he said that "we can be sure that phone hacking was much more widespread [than the News of the World]".

69. Significantly, in an interview on 6 July 2011, Mr Grant said that "phone hacking is just one aspect of it, there's also blagging people's phone details, bank details out of Vodafone or wherever it might be, or paying off operatives in hospitals to get people's medical records".

70. Ninth, there is evidence given to the Leveson Inquiry. Mr Grant's written evidence dated 3 November 2011 stated that it was a myth that egregious abuses of privacy only happened at the News of the World: "This is like that paper's old defence of 'one rogue reporter', and just as that has been shown to be false so, I am confident, will this."

71. One passage of his evidence is of particular significance: he said that at the time of the Divine Brown story coverage he suffered a burglary at his 4th floor flat, where nothing was stolen. The day after, one of the tabloid papers (he could not remember which) had a story about the interior of the flat. "I have wondered ever since whether this story might perhaps have come from the burglars. Or from the police." He was questioned further about that speculation at the

Inquiry, where it was put to him that it might have been a burglary on the instructions of the Press, and he agreed that it might have been. There is however no evidence of any link to The Sun in relation to that burglary.

72. Mr Thomson, who was Mr Grant's solicitor in 2012, gave evidence to the Inquiry that "I strongly believe that blagging, bribery and unlawful interception of voicemail messages has been widespread for many years."

Analysis

73. As at 2012, Mr Grant knew that he had been hacked by the News of the World and he had at least a strong suspicion (though no proof or hard evidence) that other tabloid newspapers were as involved in phone hacking as that newspaper had been. There was no reason to exclude The Sun from this suspicion – indeed, Mr Grant had established that The Sun had acted wrongly towards him in relation to his medical records on one occasion in 2011 – but equally nothing to inculpate The Sun specifically in relation to him. The issue that I have to consider, in relation to phone hacking (and then separately in relation to other types of UIG) is whether that suspicion of phone hacking generally at any time became a belief of sufficient confidence that it justified a reasonable person in Mr Grant's position embarking on preliminaries to a claim against The Sun.

74. It is certainly arguable that it did. What is relied on vigorously by Mr Sherborne, in contending that Mr Grant did not know of UIG directed at him by The Sun with sufficient confidence, is the continued concealment of the truth by NGN (all of which is assumed to be true for the purpose of this application). That concealment has two aspects of importance here: a suppression of evidence of what was being done ("suppression"), and denials of any unlawful activity at The Sun, which continue to this day ("denials").

75. As for suppression, the consequence was that many facts relevant (in a broad sense) to Mr Grant's claim remained concealed from him. He had, for example, no call data to demonstrate an unfeasibly large number of unanswered calls to his and his associates' mobile telephones, or proximate calls to PIs, and no invoices or payment records from PIs that bear the name of The Sun journalists or staff coinciding with the dates of publication. But that is of no real consequence for the s.32 case, beyond the lack of evidential support. As I have held, the "relevant facts" for the different categories of claim that have been brought are not the specific occasions on which a telephone call was made to Mr Grant's or his associate's mobile phone, or the date or content of a particular instruction to a PI; and the question is what Mr Grant knew or believed (or could by reasonable diligence discover) with sufficient confidence, not what remained concealed from him.

76. As for denials, they were categoric, repeated and vehement. Evidence denying any UIG at The Sun was given to Sir Brian Leveson by senior editors and executives, on oath. It was heard by Mr Grant. Sir Brian gave weight to the denials and was unable to conclude that there was unlawful activity at The Sun. Public denials, in response in particular to the Jude Law claim, effectively challenged anyone to say, without the protection of privilege, that journalists at The Sun had conducted UIG. Mr Grant's evidence is that, in view of his interest

in the developing story and attendance at the Inquiry, he was aware of all NGN's forceful denials, at or shortly after the time that they were made:

> "Given the forcefulness and frequency of those denials, I formed the view that there was no evidence of wrongdoing at The Sun and certainly not in relation to me until I saw the evidence [in 2021] as I explain above."

77. He also says:

> "… such evidence [to the Leveson Inquiry], given under oath to a Judge chairing a statutory inquiry, actively worked to prevent me from forming the view that *The Sun* was culpable of the sort of Unlawful Acts that were endemic at the *News of the World*. I relied upon those denials, and obviously had such denials not been made at all I would have formed a very different view of the culpability of *The Sun* and it would have informed my view of bringing a claim". (emphasis added)

78. Mr Grant also says that his lawyer at the time of the Inquiry and his 2012 claim never suspected The Sun of Unlawful Acts *against him*.

79. As a matter of law, the fact of a denial of liability by a defendant does not mean that a claimant cannot know with sufficient confidence that they can embark on the preliminaries to a claim: see *FII* at [196], [202]. A claimant does not need to know that their claim will (or is likely to) succeed. However, denials can be (and on the assumed facts of this case certainly are) an aspect of concealment, and are therefore relevant in assessing whether, in fact, Mr Grant knew or could reasonably have known that he had a worthwhile claim *with sufficient confidence* to embark on the preliminaries to bringing it. Mr Grant repeatedly states in his witness statement that he had no evidence of wrongdoing at The Sun. That is not the test, but the complete absence of evidence (as a result of suppression) may well have supported the view that Mr Grant says that he formed because of the denials.

80. Further, given Mr Grant's position at Hacked Off and the public statements that he made in 2011 about the need for the lid to be lifted on what was happening at the tabloid newspapers generally, it would be surprising – if he did realise in 2012 that he had a worthwhile claim of voicemail interception against The Sun – that he did not then pursue it. He had every reason to do so, and his lawyers were acting for Mr Law, who had just done so.

81. In view of Mr Grant's evidence, despite his suspicion about the extent of UIG by the tabloid press, I cannot conclude without hearing his evidence tested at trial that he knew by 2012 sufficient about voicemail interception or other UIG directed at him by The Sun (apart from the assumed payment to a corrupt hospital employee). The denials were strong and real doubt about whether The Sun was guilty was reinforced by the conclusions of the Leveson Report. A reasonable person could have given the denials credence at the time, in the way that Mr Grant says that he did. (As it turned out, when it came to pleading its generic defence supported by a statement of truth, NGN did not deny many of the allegations but only "not admitted" them. But there is no evidence to suggest that that was known, or its implications understood, by Mr Grant.)

82. I am doubtful about Mr Grant's assertion that his lawyer in 2012 – who had the previous year brought claims against The Sun on behalf of Mr Law – never suspected The Sun of unlawful acts against him, but that would be a matter for investigation at trial too. Lack of knowledge did not prevent Mr Grant from continuing to publish his theories and beliefs about the tabloid press in general, but it was only in relation to The Sun that such explicit and repeated denials on oath were made.

83. It is significant, however, that on the basis of Mr Grant's own evidence the matter that stood in the way of his having sufficient confidence to take the initial steps towards bringing a claim was the concealment in the form of NGN's strenuous denials: see [75] above. It must follow that, if Mr Grant became aware, or could by using reasonable diligence have become aware, that those denials were likely to be false, he would then know enough with sufficient confidence to embark on the preliminaries to bringing a voicemail interception claim against The Sun. Indeed, discovery that the sworn denials on which he previously relied might be false could be expected to propel him to his solicitor's offices at an early opportunity.

The facts relating to Mr Grant's state of knowledge after 2012

84. After Mr Grant settled his claim in relation to the News of the World in December 2012, the next event of significance on which Mr Hudson relies is a tweet posted by Mr Grant on 25 June 2014, following the conviction of Mr Coulson and others, stating "… more trials of News of The World and Sun journalists to come". That implies that he believed that there was evidence that The Sun journalists were involved in phone hacking.

85. A further tweet on 3 August 2014 recommended Mr Nick Davies' newly published book, "Hack Attack". He was the journalist at The Guardian who broke the phone hacking story and its cover up. Mr Grant said that he read parts of the book, including parts that related to him. Mr Davies writes that the crime of phone-hacking first took root at The Sun, and made specific allegations against Mr Hoare, Mr Coulson (when at The Sun) and Mr Mohan, editor of its *Bizarre* column. The book also covered different forms of UIG, including tracking devices, "bin spinning", and burglaries, where the allegation was that PIs and journalists worked together to break into homes of public figures. Mr Grant's name was mentioned in that context as having suffered an unexplained burglary, though not with reference to The Sun specifically. On the same page is the following paragraph:

> "Crimes which had been nurtured by three Murdoch papers had spread through almost all of the other national titles. What was being concealed after the arrest of Goodman and Mulcaire was not simply one rogue reporter, nor even one rogue newspaper. This was an industry which had gone rogue ….."

86. Mr Grant asserts that the book also reported Mr Mohan's sworn denials, and that the parts of the book that named him were in relation to the activities of the News of the World, not The Sun.

87. On 10 October 2015, Mr Grant tweeted an extract from an interview of Greg Miskiw on Channel 4 the previous day:

> "C4 – 'Are there any other newspapers out there who have got away [with phone hacking] scot-free?' Greg Miskiw of NoTW. 'Yes. Absolutely. 100%'."

88. In December 2015, the claimants in the MTVIL applied for permission to amend their Generic Particulars of Claim, in advance of a CMC and pre-trial review due to be heard between 13 and 15 January 2016. The amendment was to add significantly to the limited allegation against The Sun that was already present (as mentioned in [61] above). Paras 49-67 of Mr Sherborne's skeleton argument for the CMC stated that the basis of the amendment application was written evidence provided by persons intimately involved in unlawful activities at The Sun and News of the World: Messrs Miskiw, McMullen, Hoare and Mulcaire, which supported a claim of phone hacking and other unlawful activities by The Sun specifically. The amendment relating to The Sun was in new para 35A of the particulars:

> "Pending disclosure and/or the provision of further information by the Defendant, the Claimant will contend that journalists working for the Defendant were also engaged in or used information obtained from the same voicemail interception and/or unlawful obtaining of private information activities for the purposes of preparing and publishing stories in The Sun newspaper from at least 2000 onwards".

89. Further sub-paragraphs then set out the facts and matters relied upon in support of that plea, including identified victims and articles said to be based on interception of mobile phone communications, an inculpatory public statement about Vodafone security made by Mr Mohan, the cross-over of journalists and executives between NGN's titles, the purchase of information from PIs, including Mr Whittamore, and the supply of that information to The Sun. These allegations were pleaded despite the fact that there had been no disclosure by NGN relating to The Sun, which maintained its denials.

90. At the same CMC, the court was to hear an application by NGN to strike out (or for summary judgment in) one claim, *Clegg v NGN*, in which Mr Clegg alleged against the News of the World and The Sun voicemail interception resulting in many published articles.

91. The amendment application was not fully heard in January 2016, but was reported in detail in The Independent on 13 January 2016 ("Rebekah Brooks: New claims that phone hacking was rife at The Sun under former editor"). The article reported NGN's denial, as well as lawyers for the claimants maintaining that they had "a strong case based on the evidence of Ms Brooks's knowledge and approval of such activities".

92. On 14 January 2016, Mr Grant tweeted the heading of the article, with the article itself embedded and its heading: "A 'new flank' of hacking claims have been opened against Rupert Murdoch's daily tabloid, lawyers confirmed". This demonstrates that Mr Grant knew at that time of the case that was to be advanced

in relation to phone hacking by The Sun, and that there was evidence that the previous denials were false.

93. In his witness statement in opposition to this application, Mr Grant addresses what he refers to as "NGN's strike out claims" at the 2016 CMC (though there appears only to have been one), and refers to evidence that he has now seen that was given by three senior journalists of The Sun in support of the strike out application, denying knowledge of phone hacking and Unlawful Acts. Mr Grant does not, however, say that he was aware of that evidence or that it influenced his thinking at the time in 2016. Given his strong reliance on NGN's denials in answer to this application, he would obviously have said in terms if, in January 2016, he had been influenced by any such evidence on behalf of The Sun. In any event, assertions of lack of knowledge by individual journalists in relation to a particular claim is not the same as a public denial of all UIG at The Sun.

94. The amendment application in the event was not fully heard or determined until April 2016, after the Applicable Date. The application to amend was granted and the strike out application largely dismissed.

95. In December 2017, Mr Grant made a witness statement in support of the claimants' generic case that "hacking, the use of private investigators, and other illegal information gathering activities were endemic within the News of the World and The Sun between 1998 and 2011". By then, he had clearly formed the view that The Sun was as culpable as the News of the World. Mr Grant does not say in his witness statement that something happened between the Applicable Date and December 2017 to change his mind. As Mr Sherborne pointed out, however, by then the claimants' confidence in their case (going beyond the basics pleaded as para 35A of the Re-amended Generic Particulars of Claim) was probably attributable to the first generic disclosure relating to The Sun that had been received, in the spring and summer of 2017. Although Mr Grant had not been shown the disclosure at that stage, it is, I consider, possible that the drafting of Mr Grant's witness statement was influenced by some knowledge of those matters. That is something that could only be resolved at a trial, if it were necessary to do so. I therefore place no reliance on the December 2017 witness statement in reaching my conclusion.

Arguments and conclusions

96. Mr Hudson submits that it is beyond any possible argument that by January 2016 Mr Grant knew that he had a viable claim against The Sun for UIG and that there was evidence to support such a claim. Mr Grant knew that The Sun had made use of his private information because of the articles published about him. The only question was whether he had sufficient knowledge or belief that that information was obtained by The Sun by the use of voicemail interception or other Unlawful Acts. Mr Hudson said that Mr Grant's evidence about belief in NGN's denials, on which Mr Sherborne strongly relies, was of no evidential weight because it was inconsistent with what he wrote in 2011 and knew by January 2016, and that accordingly I should conclude that Mr Grant's evidence that he did not have sufficient knowledge by the Applicable Date is incredible, whatever the position was in 2012.

97. Mr Sherborne submitted that I could not on this application resolve factual disputes about constructive knowledge or what Mr Grant said about believing NGN's denials. He could not of course dispute the facts that appear in Mr Grant's own contemporaneous publications, or that Mr Grant knew at the time (being a self-confessed student of the phone-hacking story) about the publications of others. He submitted that I should not make the mistake of concluding that there was sufficient to bring an inferential umbrella claim for UIG when the claims that were brought were much more specific. He warned me, by reference to the decision of the Court of Appeal in Allied Fort Insurance Services Ltd v Ahmed [2015] EWCA Civ 841 at [90], that it is only in straightforward, exceptional cases that a judge should reject a disputed statement of fact that would be the subject of evidence at a trial.

98. For reasons that I have given, I will address the *Gemalto* test separately in relation to each of the categories of UIG identified in para 3 of Mr Grant's Particulars of Claim. I address first illegal interception of voicemail messages (or "phone-hacking", as the Particulars of Claim call it).

99. By 2016, Mr Grant had predicted further criminal trials of The Sun journalists and had commended publicly a book that made specific accusations of voicemail interception against three editors of The Sun, and which detailed other methods of UIG. The most telling point is that in January 2016, albeit only 2 months before the Applicable Date, Mr Grant tweeted The Independent's article dated 13 January 2016 explaining that a "new flank" of allegations of voicemail interception against The Sun was being advanced. The article described the claimants' lawyers' confidence in the case. It is beyond dispute that, by exercising reasonable diligence, Mr Grant had access through his barrister Mr Sherborne, and the claimants' then lawyers, to the draft amended particulars of the generic case and the first-hand evidence referred to in The Independent's article. This was explained in Mr Sherborne's skeleton argument as being from those "intimately involved or engaged" in such activities. The skeleton said that NGN's denials were "false and unsustainable".

100. It does seem to me to be impossible to say, at that point, when evidence was available that suggested that the denials were false, that Mr Grant did not know or have the means of knowing that he had a claim against The Sun in relation to phone-hacking with sufficient confidence to begin to embark on the preliminaries to bringing that claim. The interception of voicemail messages was what the allegations against the tabloids had been about consistently since 2006. Mr Grant knew that he had been a victim of it and knew that The Sun had obtained private information about him somehow on multiple occasions. The missing component was a sufficiently confident belief that The Sun had obtained that information by phone-hacking. The only reason why it was arguably missing was the credence that Mr Grant had given previously to NGN's denials.

101. The claimants' application to amend to plead a generic case of phone hacking against The Sun, based on four witness statements containing evidence of phone-hacking at The Sun, self-evidently undermined at that time the credibility of NGN's denials. This was first-hand evidence of phone-hacking by persons employed by The Sun. Mr Grant read the article and posted it on his Twitter

account. He indisputably had easy access to the relevant materials. Whether the application to amend succeeded or not was irrelevant to what Mr Grant and his lawyers then knew.

102. It remains a curiosity that Mr Grant did not bring a claim in 2016. With the benefit of hindsight, it was not a case of his waiting to see whether the amendment was allowed, because after April 2016 he did not embark on the process of bringing a claim. Nor did he do so after his 2017 witness statement. In his 2023 witness statement, Mr Grant explains that it was only in 2021 that he knew that The Sun had violated his privacy, having seen documentary evidence, and that that was what caused him to bring his claim. The answer may therefore be that by 2016 Mr Grant was not interested in bringing a further claim against NGN until he had clear evidence to prove his case; but evidence and proof are irrelevant to the correct legal test.

103. In my judgment, it is clear beyond reasonable doubt that from January 2016 Mr Grant knew (or had ready access to) the relevant facts to have sufficient confidence to embark on the preliminaries to bringing a phone-hacking claim against NGN, as many others did at or shortly after that time. That claim would have been the same 'inclusive' or 'compendious' claim in respect of phone-hacking that has been issued. There is no factual dispute in this regard to resolve at a trial. Mr Grant knew or believed in January 2016 that there was evidence that NGN's denials – which, as he explained, were the one thing that had prevented him from bringing a claim much earlier – were likely to be untrue. Although all the detail of how and when precisely, and by which individuals, the voicemail interception was done remained concealed, Mr Grant's own actions and comments show that he knew enough to embark on the preliminaries to a claim for phone-hacking.

104. As regards the other categories of Unlawful Acts in para 4 of the Particulars of Claim, landline tapping is an allegation that has only relatively recently featured in the MTVIL (and the MNHL), following the witness statements of Mr Gavin Burrows in May and September 2021. Mr Grant's claim is one of the first to raise it as a distinct allegation. Landline tapping, as pleaded, is factually distinct from phone-hacking: it involves bugging or tapping into a fixed line rather than electronic or analogue access to a voicemail repository, and enables someone to listen to a conversation live or record it. It is a distinct legal wrong. There is no evidence to show that Mr Grant knew facts about possible landline tapping of his telephone or suspected it before the Applicable Date, or indeed before 2021. The Independent article that Mr Grant tweeted only mentioned phone-hacking, and knowledge of the likelihood of phone-hacking does not prove knowledge of a likelihood of landline tapping. Mr Grant therefore has a realistically arguable case that he did not know and could not have discovered by reasonable diligence before the Applicable Date that he had a worthwhile claim of landline tapping. That must be determined at a trial.

105. "Blagging" is defined in the Particulars of Claim as the obtaining of private information by deception. Mr Grant knew about the occasion in 2011 when his medical details were obtained from a hospital, but his evidence is that he believed that this was either provided by a hospital employee or obtained from them by a bribe. That is factually distinct from someone – whether a journalist

or a PI – calling the hospital pretending to be the patient or a relative or agent of the patient in order to secure the release of the information by deception. Again, it is a distinct legal wrong from phone-hacking. Further, the medical records incident in 2011 was (and was capable of being seen as) a one-off event connected to a single visit to a hospital.

106. There was no evidence to prove that Mr Grant was aware (or believed) that any of the private information about him had been published as a result of The Sun employees or PIs blagging his private data or obtaining it from other sources by deception. In consequence of the interview on 6 July 2011, he was obviously aware that "blagging people's phone details, bank details out of Vodafone or wherever it might be" was something that was done in some cases. Hack Attack had listed various methods of UIG that were alleged to have been used by tabloid journalists. In my judgment, NGN has failed to establish that Mr Grant knew enough about blagging by PIs or journalists (separate from phone-hacking) as a result of his knowledge of the publications and his sufficient knowledge about phone-hacking. Mr Grant believed, as a result of his own investigation, that Mr Whittamore's activities were unconnected with him. Again, there is therefore an arguable case for trial that Mr Grant could not reasonably have discovered before the Applicable Date that he had a worthwhile claim based on blagging by journalists or PIs.

107. In relation to "bugging", the position as explained above in relation to blagging applies even more strongly. Bugging of houses and cars was not in consideration by anyone until Mr Burrows' 2021 witness statements said that he had been instructed to bug various places and Mr Grant the learnt that a tracking device had been placed in his car. Mr Grant did not know and cannot reasonably have found out before 2021 that he had a worthwhile claim that NGN had bugged his house and car.

108. As regards burglary, Mr Grant knew that his flat had been burgled in 1995 and his office in 2003. He says that he was informed by Mr Tom Watson MP that the burglary of his flat was suspicious, and he told the Leveson Inquiry that he was suspicious that a newspaper might have instructed someone to burgle the flat. But this was no more than suspicion and, importantly, there is no evidence before me to prove a link with The Sun or an article published in The Sun. Hack Attack mentioned targeted burglary and speculated about whether Mr Grant was a victim, but again there was no reason to make any connection with The Sun. The connection only came in 2021, through the evidence of Mr Burrows. There is clearly a realistically arguable case here too that Mr Grant did not know until after the Applicable Date that he had a worthwhile claim that The Sun commissioned burglaries of his property.

109. The final category of UIG in para 4 of the Particulars of Claim is that labelled "private investigators". This is defined as "the use of private investigators to commit these and other such unlawful information gathering acts", where "these" refers back to the other five categories of UIG identified and considered above. This category is therefore pleaded principally as being a means of conducting the other categories of UIG. It is however also pleaded that there may be other activities where PIs were instructed ("...and other such unlawful information gathering acts") that are not within the previous five categories.

This could therefore include activities such as hacking into a data system or computer and paying a contact to divulge confidential information. It might also include activities that were preparatory to interception of voicemails, such as unlawfully obtaining private phone numbers, call data and lists of friends and family, which I have termed "VMI preparatory activities".

110. Retaining a PI to act on behalf of NGN is not in itself an Unlawful Act – NGN pleads that it used PIs for lawful obtaining of information – but an instruction of a PI to do one of the other UIG acts, to hack into a computer, or otherwise to obtain private information unlawfully is an Unlawful Act, as defined in the Particulars of Claim.

111. With certain exceptions, the allegation of use of PIs to do Unlawful Acts is unspecific about the type of unlawful activity involved. The exceptions are: three instances of payment to Christine Hart to blag unspecified information; five Cruise Pictures invoices said to be connected with bugging; and various PI invoices said to be connected with identifying the addresses of Mr Grant and his girlfriend.

112. So far as phone-hacking is concerned, the fact that the voicemail interception itself may have been done by a PI rather than a journalist adds nothing to the essentials of the pleaded phone-hacking claim, which is that it was done by persons acting on behalf of NGN. The identity of the individual who did the hacking and whether they were an employee or a third person acting on instructions are non-essential facts. But instructing a PI to do a distinct, unlawful act (including VMI preparatory activities) would be a separate wrong in a different category of Unlawful Act.

113. In my judgment, NGN has not established to the requisite standard on this application that Mr Grant knew (or could have discovered) before the Applicable Date sufficient about The Sun's unlawful use of PIs to obtain private information about him, or do other unlawful acts (other than phone-hacking). The 2009 Guardian article written by Nick Davies revealed the activities of Mr Whittamore and suggested a possible connection with Mr Grant, but he researched the matter at the time and says that he could not establish any connection with the articles about him in The Sun. Hack Attack did refer to use of PIs, but Mr Grant says that the only occasions on which he was named in that book are in connection with News of the World articles.

114. It was only on seeing invoices disclosed in NGN's generic disclosure in 2021 that Mr Grant believed that PIs had been instructed by The Sun to target him in various ways, particularly in 2011. Although Mr Grant was aware prior to March 2016 of general allegations about use of PIs to obtain information, there is in my judgment a realistic chance that Mr Grant may establish at trial that, although he was aware of general allegations and was suspicious, he could not reasonably have believed with sufficient confidence that *he* may have been targeted *by PIs instructed by The Sun* in some of the relevant ways. Sufficient knowledge or belief that NGN's denials of phone-hacking were false does not necessarily mean that Mr Grant believed at that time that NGN had used different methods of UIG targeted at him. That issue will have to be tried.

115. I have referred above to VMI preparatory activities. In some instances there may have been none, e.g. where a particular journalist lawfully had the mobile telephone number and guessed the PIN, or used the default PIN setting. In other cases, the alleged hacking may well have been preceded by a journalist or PI first obtaining unlawfully a telephone number and other information to identify a likely PIN. In yet other cases, there may have been unlawful VMI preparatory activities that did not lead to phone-hacking. The facts in this regard are unknown at this stage, as no specific acts have been pleaded or put in evidence. Any such instances of unlawful VMI preparatory activities are, however, separate rights of action in respect of which Mr Grant has brought a claim.

116. There will be a question at trial whether all of these separate rights of action are also statute-barred because Mr Grant had sufficient knowledge to start to investigate them before the Applicable Date. It seems to me that any VMI preparatory activities that were accessory to actual phone-hacking will also be statute-barred. That is because Mr Grant could hardly believe in January 2016 that The Sun had hacked his and his associates' voicemails but not believe – if and to the extent that it is alleged – that it had unlawfully obtained his or his associates' phone details in order to do so. In terms of the operation of s.32(1), it would be nonsensical for Mr Grant to be barred from claiming damages for phone-hacking but able to pursue a claim for prior Unlawful Acts that enabled that phone-hacking to take place. Whether any VMI preparatory activities were sufficiently disconnected from phone-hacking to lead to a different conclusion under s.32(1) is a matter that must be tried on the proven facts, when they are established.

117. Accordingly, I conclude that Mr Grant's claim for phone-hacking (whether by journalists, editors, PIs or others) is statute-barred. The question of whether his other pleaded rights of action (landline tapping, bugging, blagging, burglary and instructions to private investigators to do any of those things or other UIG acts apart from phone-hacking) are statute-barred must be decided as part of the trial, where the evidence will be heard in full. My decision at this stage goes no further than concluding that Mr Grant has a realistically arguable case that those rights of action are not statute-barred.

118. It is of course only Mr Grant's claim for damages and other relief in respect of phone-hacking that is barred, and I recognise that evidence relating to actual or attempted phone-hacking may be relevant to other live allegations. I considered whether, for that reason, summary judgment on phone-hacking should be refused, for case management reasons, on the basis that other similar or related activities would be examined at trial. However, having reached a clear conclusion under s.32(1) on phone-hacking, it seems to me to be in everyone's interests to dispose of that part of the claim now. It will provide clarity about what is properly in issue at trial and what allegations can form the subject of an award of damages or other relief after the trial, if proved, which in turn may assist the parties to settle the claim.

119. I will therefore grant NGN summary judgment on its defence of the phone-hacking part of Mr Grant's claim but dismiss the remainder of its application for summary judgment.