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Case No: HC-2000-000003

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

Rolls Building
Fetter Lane
London, EC4A 1NL

Friday 15 December 2023

Before :

MR JUSTICE FANCOURT

- -

Between :

(1) The Duke of Sussex
(2) Nikki Sanderson
(3) Michael Turner
(4) Fiona Wightman — **Claimants**

- and -

MGN Limited — **Defendant**

- -
- -

David Sherborne and Julian Santos (instructed by **Thomson Heath**) as lead solicitor, **Clintons** for the **First Claimant**, **Charles Russell Speechlys** for the **Second and Third Claimants** and **Taylor Hampton** for the **Fourth Claimant**
Andrew Green KC, Richard Munden and Harry Adamson (instructed by **RPC**) for the **Defendant**

Hearing dates: 10-12, 15-19, 22-26 May, 5- 9, 12-15, 19-21, 27-30 June 2023

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APPROVED JUDGMENT

Draft judgment provided to the parties on 1 December 2023

Mr Justice Fancourt :

Contents:

Part I: Introduction

1. This is my judgment on the claims of the four above-named claimants against MGN Limited for damages and other relief in respect of numerous occasions of alleged misuse of private information. No other cause of action was pleaded.

2. The claimants are four of many claimants in the current (fourth) wave of the Mirror Newspapers Hacking Litigation ("the MNHL"). As its name suggests, the managed (but not group) litigation arose from allegations of phone hacking made by previous claimants against journalists, managers and editors of the three national Mirror Group newspapers and involving private investigators or agencies instructed by them. The allegations are now more wide-ranging than, but include, the hacking of the claimants' and their identified associates' mobile telephones.

3. I shall refer to the three national titles throughout as The Mirror, The Sunday Mirror and The People, even though their names have changed during the period

under consideration. I refer to the Defendant as MGN, and only to Trinity Mirror plc ("TM plc"), its parent company from 1999 (now called Reach plc), when referring to that corporation specifically.

4. Only one previously scheduled trial has taken place in the MNHL. That was heard by Mann J in 2015. There were eight trial claimants and the judge gave judgment in favour of all eight on 21 May 2015 (Gulati v MGN Ltd [2015] EWHC 1482 (Ch) ("*Gulati*"), a date which will be of some significance for the fourth wave claimants. Subsequent trials have been scheduled but many individual claims (including claims eventually listed for trial) were settled by MGN by payment of an undisclosed sum and an apology.

5. As a result of a scheduled trial in January 2022 being lost because very few individual claims were ready for trial and each of the few that were ready settling at a late stage, I gave directions that a larger number of claims should be prepared and made ready to be tried in May 2023. The number of potential representative claimants was gradually reduced through case management conferences in October and December 2022 and pre-trial reviews in March and April 2023, and the claims to proceed to trial were finally selected (with substitutes in case of late settlement) at the end of March 2023.

6. The four claimants are not representative in the sense that issues determined in their individual claims will bind other claimants, but only in the sense that they were selected as covering a range of issues that also arise in many other claims. These also include issues pleaded in generic particulars of claim ("the generic issues") that all claimants adopt as part of their individual cases. One of the range of issues, which arises in Ms Sanderson's and Mrs Wightman's cases but not in the Duke of Sussex's or Mr Turner's, is whether the claim is statute-barred.

7. In the remainder of this judgment and its Schedules, I often refer to voicemail interception (which is synonymous with "phone hacking") as "VMI", and to unlawful information gathering as "UIG", for convenience. The term "UIG" includes "VMI", so I sometimes refer to "other UIG" in order to distinguish other types of UIG, such as blagging and unlawful searches, from VMI.

8. Unlike in previous years, the four sample claims (and many others) have not settled. MGN explained in case management conferences preceding this trial that it was now unwilling to settle claims because it wanted certain key issues to be decided by the court, which could have a significant effect on the way that other claims will then be settled. These issues are the following. First, whether damages awarded to claimants for VMI or other UIG by or on behalf of MGN can include loss resulting from the actual publication of articles containing the private information thereby acquired, even when there is no separate claim that can now be pursued based on the wrong of publication; and second, whether some or all of the claims for UIG are statute-barred, and if so at what time they became barred.

9. These particular issues arise in this way because in May 2022, on MGN's applications, I struck out claims by six sample claimants for damages for loss caused by publication of their private information in newspaper articles, on limitation grounds; but I refused to strike out or grant summary judgment to MGN

on claims for damages based on the underlying UIG: see Sanderson v MGN Ltd [2022] EWHC 1222 (Ch) ("*Sanderson v MGN*"). I held that whether the claims based on the alleged UIG were issued too late had to be determined at a trial, as did the question of how (if at all) damages for the underlying UIG could reflect the nature and impact of the actual use that MGN made of the private information in some cases, namely publishing it in its newspapers.

10. In the light of my judgment in *Sanderson v MGN*, all fourth wave claimants now accept that their claims based on wrongful publication of articles containing private information are statute-barred. Their focus is now the underlying VMI or other UIG that led to the articles, and other instances of VMI or other UIG that did not lead to publication of an article.

11. Following admissions made before, at, and after the *Gulati* trial, and in view of the findings of Mann J in his judgment about "extensive and habitual" use of phone hacking and other UIG carried on at MGN's newspapers from about mid-1999 to about August 2006 (which, MGN accepts, binds it at this trial), one might have thought that MGN would not have contested vigorously all the allegations of VMI and UIG made by these claimants. Nothing could be further from the truth. MGN has made only very limited and in some cases non-specific admissions about UIG carried out or commissioned by its employees.

12. MGN called evidence from a number of witnesses who said that they had not seen any phone hacking being carried on, and were unaware of and had not used any UIG at MGN's newspapers. It disputed the extent of phone hacking and UIG, and disputed that the vast majority of articles about which the claimants complain were the product of VMI or any other form of UIG. It disputed in many cases that the information was of a private nature protected by Article 8 of the Convention. It also disputed, save in a few instances, that the activities being carried on by private investigators ("PIs") were either criminal or unlawful (in the sense of creating an actionable civil wrong, not a crime).

13. To be fair to MGN, part of the reason for its contesting these matters was that, by their generic claim, the claimants seek to establish much more than had been proved in *Gulati*. They seek to prove that extensive and habitual VMI had been carried on by MGN during a much longer period, namely also during the years 1991-1999 and 2006-2011. They also seek to prove that from 1999 the MGN board (and following a merger in late 1999, the board of TM plc) and MGN's legal department were aware of the extent of the phone hacking and other illegal and unlawful activities being conducted, turned a blind eye to them, and then actively sought to conceal them. The allegations about board and legal department knowledge are serious, and a significant part of the evidence in the first part of the trial, dealing with the generic claim, was concerned with them.

14. At the conclusion of the evidence on the generic claim, the claimants' legal team provided a list of the factual findings that they were inviting the court to reach. I had requested this during the opening of the claim because there was little clarity in the written opening of the claimants about the precise extent of the findings sought. The claimants decided to wait until the evidence on the generic claim was almost completed before providing it, despite my indication that it would assist the court and the Defendant to have it as soon as possible.

15. Despite the delay, the findings set out in the document provided were ambitiously wide-ranging and, in substance, amounted to a request to find that essentially the whole of the generic claim, as pleaded in the Re-Amended Generic Particulars of Claim ("GenPoC") was proved. In no respect did the claimants say that, in view of the evidence given on the generic claim – which by that stage had nearly been completed – they abandoned their case as regards any year, journalist, editor, executive, lawyer or PI. When I pushed gently in the course of closing submissions, Mr Sherborne did nevertheless concede that there was precious little evidence of VMI or UIG from 1991 to 1994.

16. I also asked for an agreed list of the main issues to be decided but no such agreed document emerged.

17. Despite the claimants' lack of focus on the really important issues and the apparent inability of the parties to agree what they are, it is clear that there are some principally important issues for decision in this trial, apart from the extent to which each individual claimant has proved their case on VMI and UIG on a very detailed level, and then the appropriate quantum of damages for any misuse of private information proved. These main issues were constantly at risk of being obscured by a mass of individual details, disputes and documents relied upon by the claimants in an attempt to maximise the range of possible findings of wrongdoing.

18. The main issues are:

    a. Whether VMI and/or other UIG was being carried on between 1991 and early 1999 to the same extent as Mann J found that they were between May 1999 and August 2006, and, if not, to what if any extent, and for what period or periods.

    b. Whether, despite the fall-off in volume of VMI found by Mann J to have followed the arrest of Glenn Mulcaire and Clive Goodman in August 2006, VMI and other UIG resumed to any significant extent after August 2006 and continued up to and including the end of 2011, by when the Leveson Inquiry was sitting, and, if so, to what extent, and for what period or periods.

    c. Whether various PIs of central importance in the claims are proved to have carried out illegal or unlawful activities on the instruction of MGN. MGN has made only limited admissions about certain PIs.

    d. Whether certain individuals who held senior positions in the legal departments of the newspapers, or on the boards of MGN or TM plc, knew of the use of VMI or other UIG by or on behalf of journalists, editors or editorial managers of MGN. The individuals of central importance are:

        i. Marcus Partington, who was a qualified solicitor and in-house lawyer at The People from 1997 and then at the Mirror from 2002, then became Deputy Group Legal Director of TM plc in April 2007 and Group Legal Director of TM plc from 2014 to 2021.

ii. Paul Vickers, who qualified as a barrister but after other corporate employment became Company Secretary and Group Legal Director of MGN in December 1992 and held the same positions (including being a main board director from 1994) at TM plc from 1999 to 2014.

iii. Sly Bailey, who was Chief Executive Officer of TM plc from February 2003 to June 2012

iv. Vijay Vaghela, the Group Finance Director of Trinity, then TM plc, from May 2003 to February 2019

v. David Grigson, who became a director of TM plc in January 2012 and then its chairman from 29 May 2012 until May 2018.

e. Whether any of those individuals turned a blind eye to illegal or unlawful conduct at the three national newspapers and concealed it from the other members of the board, TM plc's shareholders and the public.

19. The four claimants bring claims that raise these generic issues, as well as the allegations of phone hacking or other UIG directed at them personally. Their individual claims comprise general allegations (such as unlawful surveillance being carried out, and their and their associates' mobile phones being hacked over a long period) as well as complaints about specific occasions of hacking or UIG that led to the publication of the articles about which they complain. There is no longer a claim for damages for the publication itself; rather, publication of each article, including allegedly private information, is being used by the claimants to identify the time at or shortly preceding which their phones must have been hacked, or their private information must have been obtained by other unlawful means, e.g. obtaining their phone records or travel arrangements by 'blagging' the information from third parties.

20. There are 148 published articles on which the Duke of Sussex relies; 37 for Ms Sanderson, 28 for Mr Turner and only 2 for Ms Wightman. In order to make the trial manageable within the 7 weeks allotted for it, a selection of 33 of Prince Harry's articles was agreed by the parties as a representative sample. This includes articles chosen by either side, so for that reason some are likely more strongly to support the Duke's case and others are more likely to support MGN's case that the article contained only material already in the public domain or facts that were not within the scope of Article 8 protection at all. The articles were also selected to cover the full period about which the Duke complains that UIG was being conducted, namely 1996 – 2011. It is expected that determination of this sample, in his case, will enable him and MGN to resolve the remainder of his claim by agreement. As will become apparent, the Duke appeared much more concerned to establish the full, broad picture about MGN's illegal activities than to be compensated for individual instances of UIG.

21. In Ms Sanderson's, Mr Turner's and Ms Wightman's claims, all their articles are the subject of this judgment.

22. As the determination of the claimants' claims involves consideration of each and every PI invoice and payment request on which they rely as evidencing UIG, as well as the provenance of the content of the articles, it is appropriate to consider some of these detailed matters in a schedule to this judgment, in order to keep the main judgment within reasonable bounds and make it readable. I have therefore created a schedule of what are called the UIG Episodes (based on payment records where there is no proximate article) for the Duke's claim and Ms Sanderson's claim, where there are many of these Episodes. In the case of Mr Turner and Ms Wightman I have dealt with the Episodes as part of my treatment of their claims based on the articles, in the main judgment.

23. I have adopted the same approach in relation to assessing the evidence relating to each of the 51 PIs alleged by the claimants to have conducted UIG activities on behalf of MGN. The evidence that I heard relating to some of the more important PIs is addressed in Parts II and III of this judgment but the individual treatment of each and every one of the PIs is set out in the PI Schedule. I summarise my conclusion relating to them briefly at the end of Part III.

24. Following the way that the trial was conducted, there are two essentially separate sets of findings in this judgment: the generic case relied on by all claimants, in relation to which the issues identified in [18] above are the main issues for decision; and the claimant-specific claims, based to a large extent on inferences to be drawn from the published articles and the invoices relied upon. The claimant-specific claims are addressed in Parts V, VI, VII amd VIII of the judgment. The generic part and the claimant-specific parts are however not wholly self-contained. Some of the evidence and findings in the claimant-specific claims feed into the conclusions on the generic case, but more often it is the broader conclusions reached in relation to the generic case that are relied upon by the claimants as the basis of findings that they seek in the claimant-specific claims.

25. That is because the claimants' case is to a significant extent based on inference. Firm evidence to prove incidents of UIG in their individual cases is often lacking. It is either no longer available, or it has been destroyed (whether inadvertently or otherwise) in the years since the matters complained of occurred. The claimants contend that some of the evidence has been deliberately destroyed in order to cover up the wrongdoing, and invite the drawing of adverse inferences as to what that evidence would have shown. In some cases, the first-hand evidence relating to allegations is lacking because a relevant witness has not been called. I will have to consider what inferences, if any, should be drawn from the failure to call particular witnesses.

26. Put very shortly, the claimants' approach is to rely and build upon the findings of Mann J in *Gulati*, namely that phone hacking and other UIG were used in an extensive and habitual way across all three national MGN titles during the period 1999-2006, and that certain individuals and PIs were culpable in that regard. In 2017, MGN admitted that the findings made by Mann J apply in respect of all the newspaper desks at all three newspapers.

27. Since the *Gulati* trial, much more documentary evidence has come to light – including documents that should have been disclosed by MGN for that trial but

were not disclosed – to support the findings previously made. The claimants say that the evidence now goes further, and justifies the same conclusions being reached in relation to earlier and later periods of time. They argue that in view of (1) the *Gulati* findings, (2) the further evidence that does exist, (3) the guilty knowledge of the legal department and the board, (4) the culpable failure of MGN to preserve or produce documentary evidence and (5) its failure to call witnesses who might have been able to confirm or refute the claimants' cases based on suspicious publications or activities, the court should infer that all MGN's published articles were the product of phone-hacking or other UIG, and that PI invoices evidence such wrongful activities.

28. MGN's case is that there is insufficient evidence to extend the period during which phone hacking and UIG were carried on (indeed, that Mann J positively found that it did not, or was much reduced, after the arrests of Goodman and Mulcaire in late 2006); and insufficient evidence to prove that the legal department and members of the board (much less the board as a whole) knew that illegal or unlawful activities were being carried on by journalists and editors, and therefore no proper inferential basis for findings going beyond the findings in *Gulati*. It accordingly contends that the onus of proof lies firmly on each of the claimants to prove the particular allegations that they make and argues that they have failed to discharge that onus.

29. As to the knowledge of the legal department and members of the board, MGN's case is that neither knew that anything illegal (such as phone-hacking, obtaining ex-directory numbers, doing unauthorised credit searches and searches of the full electoral register, and blagging of personal data) was being done until December 2013, when there was proof of some of these matters as a result of the exchanges between MGN's criminal solicitors, K&L Gates, and the Metropolitan Police Service ("MPS"). Mr Partington admits that he knew from 2004 (following Operation Glade) that unlawful (not illegal) activities were being conducted by journalists or staff at MGN and considers that some were justified in the public interest. Mr Vickers, a main board director with responsibility for corporate governance and communications, internal audit, HR, and regulatory and editorial legal matters, explained that he had always known about some unlawful activities and was not interested in things that were only arguably civil wrongs, but would have been interested in anything criminal, had he known about it. Ms Bailey, the CEO of Trinity Mirror plc from 2003 to 2012 does not admit that she knew anything about unlawful or illegal activities.

30. Further, MGN contends that its board and the board of TM plc did not as a whole know anything, because there is no suggestion that the non-executive directors (NEDs") or the chairman were told anything. Its case is that, to the extent that matters relating to extensive and habitual VMI and UIG were concealed from the board and the legal department by others, it was done at a level lower than Mr Vickers and Ms Bailey. However, MGN does not have a positive case about who was doing the concealing at that level.

31. I deal in full with each claimant's individual claim before turning to some jurisdictional issues in Part IX, the limitation defence to Ms Sanderson's and Ms Wightman's claims in Part X and the issue of principle relating to causation of loss that I described in [8] above in Part XI. (The limitation defence to the claims

based on UIG was not advanced in the Duke of Sussex's and Mr Turner's cases because their claims were issued much earlier in time.)

32. Finally, I will address the quantum of the damages to which each claimant may be entitled, together with questions of other relief that is claimed.

Part II: The Generic Claim: extent of phone hacking and other unlawful activity by MGN

Contents

Introduction

33. As I have explained, the fact-finding in this trial does not start with a blank canvas. Before the trial due in *Gulati* in March 2015, MGN admitted liability to Ms Gulati and 9 other claimants, in September 2014 in relation to most of the articles complained about, and made specific admissions relating to VMI and UIG over the following months. It then published a general public apology for phone-hacking in February 2015. The admissions were, however, imprecise as to the extent of UIG, and the trial proceeded in order for the court to make findings about the extent to which phone-hacking and other unlawful activities were carried on, whether the few non-admitted articles were the product of phone-hacking, and then decide the principles for and the amount of compensation payable to each of the trial claimants in respect of both the underlying wrongs and the publication itself. (There were also admissions by MGN in relation to articles published about other claimants at the time, whose cases were not tried in 2015. I will refer to these "admitted articles" later.)

34. Mann J found that MGN carried on phone hacking and other unlawful activities, such as using PIs to obtain phone records and credit card information and blagging medical and other confidential information, on an extensive scale, and that this was generally done across the desks of the Mirror, the Sunday Mirror and The People. The unlawful activities were "extensive and habitual". The word

"habitual" is significant: it means that phone hacking and other unlawful information gathering had become part of the normalised way that journalists were routinely carrying out their work during that period. The identity of the claimants in that trial meant that the activities of all the principal desks of the newspapers were in issue save for the sports desk, as there was no sportsman or sportswoman whose claim was tried.

35. Any potential gaps between findings relating to some but not all of the newspapers and different desks were closed when, on 19 July 2017, MGN formally admitted that the generic findings in *Gulati* applied across all three newspapers including the sports desks of those papers, though it did not admit that any particular journalist or particular method of unlawful information gathering was covered by the findings. The admission was slightly curiously worded, in that Mann J made factual findings about VMI and other UIG and made findings about certain journalists. What I take the admission to mean is that MGN does not admit that the generic findings and all methods of UIG apply to every journalist, which is a perfectly reasonable qualification of its admission; or that each desk used every method of UIG. It does however mean that no desk at any of the three national newspapers can claim to be excluded from the generic findings.

36. It is important in this trial to appreciate just how far-reaching those admissions and generic findings are. I will summarise them below. My impression at various stages of this trial, when listening to some of MGN's witnesses and hearing its Counsel cross-examine the claimants' witnesses, was that MGN was either in a state of denial about the extent of the *Gulati* findings or had forgotten what they were. Several MGN witnesses asserted that they had never seen and did not know of any VMI or UIG being carried on whatsoever; and MGN strongly argued, in opening the individual claims, that there was no evidence whatsoever to support allegations of VMI in any claimant's case.

37. Despite the admissions and findings in *Gulati*, it was MGN's case that only one out of 148 of the Duke of Sussex's articles and one of 38 of Ms Sanderson's articles was the product of any unlawful activity, despite 119 of those articles having been published during the period covered by the *Gulati* findings. Further, none of Mr Turner's 28 articles (which span a much broader period) are admitted to have been the product of unlawful activity.

Unlawful conduct alleged

38. In summary, the claimants allege against MGN that:

> "The use of voicemail interception, blagging and/or the unlawful obtaining of private information, including through private investigators, blaggers and others, by or on behalf of journalists working for *The Daily Mirror*, *The Sunday Mirror* and *The People*, was both habitual and widespread from as early as 1991 onwards until as late as 2011" (Re-Amended Generic Particulars of Claim ("GenPoC"), para 7).

39. As in the *Gulati* trial, the main allegation by these claimants is voicemail interception, whether by journalists or editors at MGN or by PIs commissioned by MGN. It is accepted by MGN that voicemail interception is a criminal offence and that there could not be a public interest defence to any such activity.

40. The allegations of wrongdoing are, however, much broader than merely voicemail interception. The other principal allegations are unlawfully obtaining private or confidential information without consent from third parties by deception (generally referred to as "blagging" or "pretext calling") and unlawfully obtaining information by conducting searches of databases in excess of legal authority, such as unauthorised use of the full electoral register, registers containing ex-directory telephone numbers, telephone subscriber details, vehicle registration records, financial or credit information, and the like. The information allegedly blagged or unlawfully obtained by journalists or PIs sometimes includes confidential medical details, banking and other financial information and telephone subscriber details, including call data and lists of "friends and family" favoured numbers.

41. There are other matters alleged by the claimants that MGN accepts would be criminal offences, including breaches of section 55(1) of the Data Protection Act 1998 (knowing or reckless disclosure of personal data without consent) (and its statutory predecessor, s.5 of the 1984 Data Protection Act), and regs. 94(3) and 115 of The Representation of the People (England and Wales) (Amendment) Regulations 2002 (unauthorised supply, disclosure or use of full copy of full electoral register), as amended. Section 55 also includes offences of selling or offering to sell personal data obtained in contravention of subsection (1), which includes information extracted from personal data.

42. The 2002 Regulations permit the supply and use of the full, unedited version of the electoral register for various purposes, including under reg.114 to credit reference agencies. Reg. 96 restricts use of copies of the full register or any information contained in it. So any PI or journalist who has obtained information derived from the full electoral register other than for a permitted purpose and uses that information commits an offence. Paying for information obtained from a credit reference agency, when unauthorised by the subject or otherwise justified by the Regulations, would therefore be a crime. However, MGN points out that illegality in relation to misuse of the full electoral roll cannot predate 31 July 2002, when the 2002 Regulations came into force. The 2001 Regulations did permit broader use and provision of the full register but were held to be unlawful in R (Robertson) v Wakefield MDC [2002] QB 1052.

43. The 2002 Regulations provide for sale of the full register to certain organisations, including credit reference agencies, for use when performing particular functions only: regs 112(3) and 114(3). It was noted in Experian Ltd v Information Commissioner [2023] UKFTT 0132 that there is nothing to stop a credit reference agency, such as Experian, making use of other sources of information that are open sources and selling them, as part of its business. But that is a different type of business and does not encompass doing full credit reference searches using the full electoral register among other restricted information.

44. In many cases the matters alleged do not give rise to any illegality but may be unlawful, as being a breach of confidence or misuse of a claimant's private information, if the information is confidential or sufficiently private and there is no countervailing case based on freedom of expression or, more narrowly, a public interest defence. In so far as public interest may arise, it is obviously something for MGN to prove in a given case, not for the claimants to disprove.

45. Under the Privacy and Electronic Communications (EC Directive) Regulations 2003, reg 18(6), a request for personal data to be withdrawn from a telephone directory has no effect in relation to editions of the directory published before the request is made. That means that ex-directory telephone numbers may sometimes be legitimately available by reference to previous editions of a directory for which the subscriber did not request data withdrawal.

46. MGN accepts that bugging of homes or cars and tracking of cars are unlawful, unless there is a public interest defence; and that obtaining criminal records or an itemised telephone bill will similarly be unlawful, absent such a defence (which will be rare). Unauthorised access to DVLA data is in my judgment in the same category (MGN made no express concession in relation to it), though it may also give rise to an offence under the Data Protection legislation.

47. For the purposes of the individual claims in these proceedings, it generally makes no difference to the issue of tortious liability for misuse of private information whether the infraction relied upon is a criminal offence, e.g. voicemail interception, or only tortious, e.g. wrongful disclosure of medical details. The seriousness of the infraction is however likely to be relevant to the quantum of damages awarded.

48. Another aspect of this difference is that where matters alleged are liable to give rise to a criminal offence, I need to be satisfied by cogent and clear evidence (though only on a balance of probabilities) before making such a finding, especially if it involves a non-party who has not had the opportunity to provide their account of the matter. That requirement for caution also applies in relation to alleged knowledge of criminal conduct on the part of members of the board and the legal department and – to the extent that it is in dispute – on the part of the editors and editorial managers of the three newspapers.

49. The claimants' case is that it was journalists and editors at each of the three newspapers who had hacked their and their associates' mobile phones, thereby obtaining private information that in many cases led directly to publication of the information. They seek findings that a number of individuals named in the GenPoC either engaged in VMI or other UIG (including blagging), or obtained information unlawfully through PIs or other third parties, or – in the cases of those in executive positions – were aware of and authorised such activities.

50. As regards the activities of PIs that were commissioned by MGN, the Claimants say that these fall into five categories, namely:

    a. Phone hacking, blagging and other unlawful activities conducted by PIs;

b. Tracing persons and obtaining personal information by conducting unlawful searches, with a view to the information being used by journalists or other PIs to obtain more information unlawfully, or to crack PIN codes;

c. Unlawful obtaining of private information by freelance journalists, who previously worked for MGN;

d. Tracing or following the movements of persons by freelance photographers or agencies, either by themselves or by using other PIs;

e. 'Bin spinning' (trawling through waste bins looking for documents containing private information).

51. The different categories comprise different PIs or freelancers who are alleged to operate in different ways (for convenience, I will refer to them all as "PIs"), though in the case of a few PIs there is overlap between categories. The second category includes a variety of different types of PI, who were apparently used by editors or journalists at MGN to provide different types of information. I will consider in detail in Part III below whether the claimants' case is proved in relation to a number of different PIs, some of whom are central to the allegations.

The findings in *Gulati*

52. Although MGN conceded liability before the trial, both in principle that each of the *Gulati* claimants had been the victims of VMI and that (for the most part) the articles about which they complained were the product of that VMI, there were significant issues about the extent of unlawful activity that the Judge had to decide. This was because there were claims for VMI and other UIG that did not lead directly to publication and because the likelihood of VMI in the disputed cases depended in part on the extent to which MGN was carrying it on generally.

53. The claimants in *Gulati* complained about published articles and conduct that did not result in published articles over a period starting in 1999 (in the case of Mr Yentob, who was the earliest to suffer from it) and ending in 2008 (in the case of Mr Roche) and 2010 (in the case of Mr Gascoigne). It is to be noted that MGN had admitted both these end dates by the date of the trial.

54. Admissions were made first by MGN in amended defences, as the Judge required them to particularise their general admission of liability, and then in further documented admissions before the trial. The cumulative effect was that MGN admitted that:

a. it was responsible for unlawful interception of voicemails and blagging of call data, though it could not establish the extent of the unlawful conduct;

b. the articles (save for those few in dispute) were likely to have been the product of the unlawful activity;

c. MGN obtained mobile telephone numbers and account data from its unlawful activities;

d. Mr Dan Evans' admissions in his police interviews and statements were true, including what he said about his *modus operandi*;

e. voicemail was intercepted on a regular basis;

f. apart from what was shown by call data, it was likely that further VMI was carried out using pay as you go mobile phones ("burner phones", which were untraceable);

g. the invoices of PIs disclosed were evidence of wrongdoing in relation to blagging of information.

h. MGN spent £2.25m on the 4 disclosed PIs (ELI/TDI, Avalon, Andy Gadd/Trackers UK and Southern Investigations, including under the latter's aliases, Media Investigations and Law & Commercial) during the period 2000 to 2007.

i. an unquantifiable but substantial number of such inquiries made to PIs was likely to have been in connection with UIG.

55. The principal findings of Mann J in his judgment that are of general significance for me were as follows:

a. there was a widespread culture of phone hacking, extending from journalists up to editors and being conducted at all levels;

b. editorial staff not only knew about the practice of phone hacking but were likely to have conducted it themselves – it existed at the highest level on the journalism side of the business;

c. the use of phone hacking was run of the mill and frequent, as demonstrated by emails that principally related to the Sunday Mirror;

d. Mr Evans' evidence about how he was trained and instructed by editors to carry out phone hacking on a daily basis was true, including that he was given hundreds of telephone numbers and dates of birth for this purpose;

e. when Mr Evans received messages containing a name, phone number and a date of birth, which he did from editors and other journalists, he took that as an instruction to hack that phone. Such emails are indicative of hacking, as no other reason was given for providing a phone number and date of birth;

f. hacking into one voicemail account enabled the hacker to gain information about those who had left messages and thereby access their voicemails (this was called "farming");

g. those who carried out VMI were told and were careful to cover their tracks, and they took measures to avoid traceability, including using "burner phones" that could be disposed of and were untraceable, and keeping lists of regular victims on paper only;

h. in some cases, up to a week was spent putting in place other plausible sources of a story, to disguise the fact that VMI had been used to obtain it ("reverse engineering");

i. sometimes VMI was used to confirm a story obtained by other means, or to add something to a story that had been provided by a freelancer or published elsewhere;

j. stories would be disguised by attributing the information to a "friend" or "pal", and sometimes the detail was changed so that a victim could not work out what the source was;

k. not all the information that was obtained by VMI was usable, but if it was it would be passed up to other journalists (who would not necessarily know where it had come from). Mr Evans passed anything useful to Tina Weaver (editor of the Sunday Mirror), Nick Buckley (Head of Content), Richard Wallace and James Scott (Deputy Editors);

l. PIs were involved to get information for VMI. ELI/TDI were greatly used but other companies were also used. They were used to obtain: telephone numbers and addresses; quarterly phone bills and call data; the identity of the owner of a phone number; medical conditions; credit card details;

m. photographers could then be despatched as a result of the UIG and incriminating or sensational photographs presented as a paparazzo lucky hit;

n. the Orange call data was likely to be the tip of the iceberg in terms of volume of hacking, given that it was only one platform and that a large amount of hacking was done using burner phones;

o. attribution to particular journalists of phone extensions at MGN was likely to be substantially accurate and demonstrates that Mr Scott, Mr Saville, Mr Buckley, Mr Evans and Mr Johnson together carried out 40% of the calls to the Orange platform. Hacking was therefore not confined to a narrow selection of journalists. Ms Weaver, editor of the Sunday Mirror and Mr Thomas, editor of The People, were involved in phone hacking;

p. phone hacking was "rife" at the Daily Mirror by 1999 but not so evident in April 1998. Mr Hipwell's evidence that Mr Morgan, editor of the Daily Mirror, knew about and took the benefit of the practice was "convincing";

q. there was a sharp fall off in hacking activity after the arrests of Mr Goodman and Mr Mulcaire in August 2006. 2003 to 2005 were the peak years.

56. MGN accepts that these findings bind it.

57. One important question arising from *Gulati* is whether Mann J had made a factual finding about when phone hacking at the MGN newspapers started and ceased to be "extensive and habitual". The issue that Mann J had to decide in the light of the admissions was, rather vaguely, the "extent" to which phone hacking and

allied UIG was carried on by MGN. That was an issue in the context of 8 individual claims that were tried.

58. At that time, there were no generic statements of case, though the particulars of claim of each of the 8 claimants did include generic aspects. Nevertheless, there was no clear issue for decision as to when *in general* the UIG of MGN started and ended. What fell to be decided was whether the individual claimants had proved their claims, which ranged over the period 1999 to 2011, both in relation to published articles and UIG that did not lead directly to an article. In Mr Yentob's case there were no articles published about him.

59. It is clear that the Judge did not reach an overall conclusion on when phone hacking or other UIG started and when it ended. He did address and decide, in relation to individual claimants, whose claims (as in this trial) were based firmly on articles about which they complained, whether phone hacking had continued throughout the period covered by the articles, and in the case of Mr Yentob when the evidence established that he was first hacked. In most cases, the articles were within the period 1999 to 2006, though in Mr Gascoigne's case the articles continued until 2010.

60. Mann J accepted the evidence of Mr Hipwell that Mr Yentob was first hacked by him in 1999; in the case of all other claimants, the evidence supported a later start date. Mann J had particular regard to the Orange platform call data, as that was some of the most compelling evidence before him. It showed a marked reduction in calls to the platform following August 2006, the month in which Mr Goodman and Mr Mulcaire were arrested. The MGN landline records from mid-2002 enabled calls to this platform to be identified. Mann J found that it was likely that the hacking of Mr Yentob's phone continued "on a very serious scale until hacking stopped, or was largely cut back, when Mr Mulcaire was arrested in 2006".

61. In relation to the claim of Mr Roche, however, where MGN admitted unlawful investigations until November 2008, Mann J found that it was likely that he was the victim of substantial phone hacking during the whole of the admitted period:

> "It probably tailed off after 2006, but not necessarily completely. It is noteworthy that calls were being made to Mr Dale in very significant numbers in 2006 and even in 2007. While it is likely that the Mulcaire arrest made the papers more wary about hacking after the beginning of 2006, I think it's unlikely that it ceased completely in his case."

General damages for being subjected to hacking were awarded for the whole of the period up to November 2008.

62. The Judge found that Lucy Taggart's messages had been hacked up to 27 April 2007 and, in the case of Mr Gascoigne, MGN admitted voicemail interception for a period ending in September 2010 and damages were awarded to cover the whole of that period. More limited use of the Orange platform was held to have been made until 2008.

63. It is clear therefore that Mann J accepted the admission or evidence of VMI continuing in two particular cases up to 2008 and 2010. That is consistent with his conclusion that VMI was conducted by MGN on an extensive and habitual basis from 1999 to 2006 but not with a conclusion that VMI came to an end in 2006. Mann J did not have before him, as I have, a much larger volume of evidence showing what was happening before 1999 and after 2006. In any event, these four claimants are not bound by Mann J's conclusion that hacking generally was largely cut back in 2006.

64. With the greater breadth of evidence that I have before me, it seems more likely that phone hacking may have paused for breath in 2006, in shock, perhaps, at the news of the arrests, and apprehensive as to possible immediate consequences for others. It may have stopped for a period of a few months at that time, but then resumed, with the difference that even more precautions would have been taken to avoid detection.

65. I will make findings as to whether before mid-1999 and after August 2006 VMI was extensive and habitual, or something less than that, based on all the evidence (which is still incomplete) that was before me at this trial.

Did MGN conduct phone hacking or other unlawful information gathering on an extensive and habitual basis, or to any extent, during the period 1991-May 1999?

66. The Claimants' pleaded case is, simply, that VMI, blagging and other UIG of private information through PIs was extensive and habitual at all three newspapers from 1991 to 1999 just as much as it was between 1999 and 2006. In that regard, the Claimants indicate that they will rely on: (1) the large number of victims or potential victims, as shown principally by the lists of names in Palm Pilots owned by Mr Evans, Mr Buckley, Mr Scott, Mr O'Hanlon, Mr Harwood and Mr Thomas, as well as the number of successful claimants in the MNHL to date; (2) the large number of calls made to the Orange platform between 2000 and 2007; (3) the volume of instructions and/or payments to PIs or other similar agents acting on behalf of MGN to obtain personal information; (4) the large number of journalists and editors involved in VMI; (5) the volume of articles published between 1991 and 1998 as complained of in claims in this litigation; and (6) the findings in *Gulati*.

67. It is unclear how (1), (2) and (4) in that list can assist substantively to prove the case, and the brunt of the evidential case is (3), PI payment records, supported by any published articles between 1991 and 1999 as are in evidence in this trial, and any inferences capable of being drawn from the findings in *Gulati.* The claimants' case is that £9.7 million was spent on the PIs identified in the GenPoC in the period 1996 to 2011.

68. In the Re-Re-Amended Generic Defence ("GenD"), MGN makes admissions about payments to some PIs and advances a positive case in relation to others, as follows:

a. MGN admits that "a limited proportion of the instructions to Steve Whittamore/JJ Services, Christine Hart/Warner Security Services, Rachel Barry, Jonathan Stafford and Newsreel Limited were to unlawfully obtain private information". These are therefore admissions about the invoices or payment records of 4 suppliers (Jonathan Stafford and Newsreel being one and the same), none of which were disclosed before or during the *Gulati* litigation, and admissions that the instructions given by MGN journalists were to act unlawfully.

b. MGN admits that:

i. Christine Hart or Warner Security Services was paid by all three newspapers between 1995 and 2004;

ii. Rachel Barry was paid by all three newspapers between 1996 and 2006;

iii. JJ Services was paid by all three newspapers between 1996 and 2006;

iv. Severnside was paid by all three newspapers between 1995 and 2010;

v. Jonathan Stafford was paid by all three newspapers between 1995 and 2006;

vi. Southern Investigations was paid by the Mirror between 1998 and 1999

vii. Media Investigations was paid by the Mirror and the Sunday Mirror between 1995 and 2000; and

viii. Code 10 (said by the claimants to be an earlier presentation of Avalon) was paid by the Mirror and the Sunday Mirror between 1998 and 1999;

c. MGN denies (rather than not admitting) that Gwen Richardson/Searchline, System Searches (Malcolm and Jackie Scott, who also operated under the name "Commercial and Legal Services"), Severnside Company Searches, Spencer Dove, Unique Pictures and Lenslife were ever instructed unlawfully to obtain private information.

69. No clarity has been brought during the trial to what is meant by "a limited proportion of the instructions" to the identified PIs, save that MGN's case was that it should be inferred that a good number of the instructions to each of the PIs is likely to be have been innocuous and/or lawful requests for publicly available information. MGN pointed out that in the 1990s in particular, lawful information about people was not readily available on the internet in the way that it was by the early years of the 2000s and so physical searches often had to be made. By 2001, all MGN journalists had access to a subscription-based electronic database called "Cameo", which contained published electoral roll and telephone details, and Companies House online. It appears that these facilities were under

consideration by MGN by February 1999 (email John Honeywell to Pat Pilton 9.2.99: see [107] below), but unclear when before May 2001 they were acquired.

70. After Cameo and similar internet-based search facilities such as Tracesmart were available within MGN, there was no obvious reason for journalists to use PIs for lawful searches. Indeed, by emails sent by John Honeywell, the deputy managing editor of TM plc to editors at each of the three national newspapers on 17 May 2001, the editors were exhorted to *ensure* that reporters used the online facilities wherever possible, in order to ease costs. I find that it is likely that these instructions were given to journalists and were, largely, followed. Jane Kerr gave evidence – which is completely understandable – that if she could not find on Cameo an address that she was seeking, she would then use a PI. Anthony Harwood gave evidence that he still used PIs, especially when "on the road", as it was more convenient, and Cameo could be slow and often crashed. He therefore used the Scotts (Commercial & Legal – hereafter "C&L")) instead.

71. I accept this evidence in part only. Smartphones did not exist in the 1990s and even by 2010 could not speedily perform the same functions that they do today. It is understandable that "on the road" Cameo would not serve. If Cameo had crashed then clearly another means lawfully to obtain the information would be needed. However, neither Mr Harwood nor any other journalist would routinely have used C&L in the 2000s to obtain publicly available information, certainly not after pressure was applied to curtail such unnecessary cost. If PIs such as C&L were being routinely used by journalists, as they clearly were in view of the extraordinary number of invoices and payment records, it was for the most part because the information sought was not publicly available, or included material that was not publicly available.

72. I accept that, with most of the PIs, a proportion of requested searches will have related to lawfully available information. That proportion would have been somewhat higher in the 1990s than after that decade. It was nevertheless clear from the undisputed evidence of Mr Whittamore that, even during the period 1995 to 1999, the majority of the instructions he received from MGN were for unlawful searches. Mr Whittamore disputed that only a "limited proportion" was unlawful work. I accept his evidence, which is likely to represent the true position in relation also to other PIs that MGN admits (or I find) were instructed to obtain private information unlawfully. In relation to any given instruction, therefore – even in the 1990s – the likelihood is that it related to unlawful searches.

73. As will be fully explained in Part III of this judgment and the PI Schedule, my conclusion about Christine Hart/Warner, Rachel Barry, Steve Whittamore/JJ Services, Jonathan Stafford, Severnside (only for the period of 1995 to 1999 and where the relevant operative was Taff Jones), Media Investigations, Law & Commercial and Southern Investigations, in relation to which MGN makes admissions about use in the pre-*Gulati* period, is that the significant majority of the instructions given to them by journalists on behalf of MGN (or in some cases all such instructions) are likely to have been to provide information or services that were unlawful. Subject to any evidence contained in or relating to any particular instruction or invoice to the contrary, I therefore conclude that the payments admitted by MGN are likely to have been in connection with UIG.

74. As explained in Part III, I find that the following PIs were instructed by MGN journalists or editors during the period 1995-1999 and that these instructions were predominantly to carry out unlawful information gathering: Southern Investigations (and aliases) (from 1995); Jonathan Stafford (from 1995); Severnside (Taff Jones) (from 1995); Steve Whittamore (from 1995); Rachel Barry (from 1996); Warner (Chrstine Hart) (from 1995); and John Ross (from 1997).

75. The evidence that any phone hacking was being carried out by PIs, as opposed to journalists and editors, was extremely limited. Further, the fact that PIs were being used from 1995 to blag and otherwise obtain information unlawfully does not mean that, from that time, VMI was being carried out, either at all or extensively. UIG did not take place solely to feed VMI.

76. The evidence that I heard was the following.

77. Mr Derek Haslam, who operated as an undercover surveillance officer, was instructed to watch Jonathan Rees (the joint owner and operator of Southern Investigations, with Sid Fillery) with regard to activities with corrupt police officers and an investigation into the unsolved murder of Daniel Morgan. Mr Haslam said that Rees boasted of obtaining information by phone tapping and computer and phone hacking, and admitted to him that he had supplied phone hacked information to MGN. He said that Rees had employed BT engineers to tap landlines. However, it is clear from Mr Haslam's evidence that the majority of Rees's information was obtained by other illegal means.

78. Mr Haslam said that Rees frequently met with journalists and corrupt police officers in pubs, bragged about working for the Mirror and the Sunday Mirror, and that he had been introduced by Rees to Gary Jones of the Mirror and Doug Kempster of the Sunday Mirror. He said that both were clearly good customers of Rees and that he spoke about them often, and in particular boasted about having supplied information about Prince Michael of Kent's bank account, which was unlawfully obtained.

79. In cross examination, Mr Haslam was able to recall in which pubs meetings with Rees and Fillery would take place, and said that Jones and Kempster would come on occasions. On occasions there was a bank manager called Rob there, as well as policemen, and he was known as "Rob the Bank". He said that Jones and Kempster knew that unlawful things were being done by Rees.

80. I accept in broad terms what Mr Haslam said. My impression of him as a witness was that, in advanced years, his memory of detail was not very strong, but he was clear and compelling about the basic story that he told and did have a recollection of some of the pub meetings that took place. In particular, he was able to provide detail about the involvement of Messrs Jones and Kempster and their likely knowledge of what Mr Rees was doing.

81. Mr Graham Johnson was a witness about whom I shall have to say much more later. For present purposes, his evidence was that Mr Gavin Burrows (proprietor of IIG Europe and IIG Associates) was employed by MGN to tap phones and bug people, as well as carry out voicemail interception. There is one invoice from Mr

Burrows dated 21 February 2003, which refers to "Itemisation and voicebox information Gallagher", which is suggestive of VMI, but otherwise there is no supportive evidence. In any event, Mr Burrows is only suggested to have been operational during the *Gulati* period, not before it.

82. Mr Johnson also said that Scott Tillen and Spencer Dove (freelance photographers, proprietors of Unique Pictures and Lenslife respectively), whom he had met in 2001, told him then that they carried out illegal bugging and voicemail interception themselves, and that that was how they found targets to photograph. He says that Mr Buckley told him that Mark Thomas paid them in cash out of his "slush fund". In Mr Johnson's book "Hack", he gives a different account, which was that he suspected that Tillen and Dove were constantly phone hacking, to get photo opportunities, and that they talked to him on that occasion in 2001 about bugging the hotel room of Denise Welch. In his witness statement to the Metropolitan Police Service ("MPS"), Mr Johnson says that he first heard of phone hacking going on around 1999 or 2000, and that it was not part of the Sunday Mirror culture between 1997 and 2001, so far as he was aware. (In cross-examination, he suggested the reason for this was that he was usually out of the office, as he was an investigative journalist.)

83. In my judgment, subject to two exceptions, there is no evidence that PIs personally (or by a person used by them for the purpose) hacked phones on MGN's instructions in the period 1991-1999, or at any time, though it is possible that it happened. Mr Burrows' company's website advertised that service and Mr Johnson said that he provided it to MGN. Mr Haslam said that Mr Rees bragged of having done it and supplied the product to MGN. There is no reason to think that "Fleet Street" journalists had a monopoly on the art of listening in to other people's conversations or messages, and it is likely that tapping of phone lines or bugging occurred on occasions, as well as VMI. But the question is whether, before 1999, VMI or other UIG was used "extensively and habitually" by MGN, and if not to what extent either was used.

84. The Claimants' case in this regard is built upon relevant findings of Mann J about extensive and habitual use by 1999, the evidence of a few witnesses who were called at this trial (or whose written evidence was not challenged by MGN), certain documentary evidence and – above all – inferences that the court was invited to draw from categories of documents, including MGN contribution requests ("CRs") from January 1996 and invoices from suppliers dating from April 1998. Microfiche records of invoices pre-dating April 1998 no longer exist, but there are records of payments made on the previous payment recording system, referred to in the trial as the "SAFS" database. It is only the invoices dating from 1998 that contain more than minimal description of the nature of the work that the PI was instructed to do and who instructed them, though in many cases the nature of the work is disguised.

85. The witness evidence of VMI being carried on before 1999 is limited. Mr Hipwell, who gave evidence to the Leveson Inquiry in *Gulati*, was employed at the Mirror from April 1998 to February 2000, when he was sacked following the City Slickers scandal. He said that he did not believe phone hacking had started by the time he arrived but that it had started in earnest on the showbiz desk by mid-1999, where it was "rife" and "endemic" from that time. He identified 8

journalists, who were only named in a confidential schedule to his Gulati witness statement, because criminal trials were still pending at the time. These were Richard Wallace, then the showbiz editor, Kevin O'Sullivan, then the deputy showbiz editor, Matthew Wright, then a showbiz columnist, Polly Graham and James Scott, who wrote the showbusiness column with Mr Wright, Nicola Methven, the TV editor, and Chris Hughes and Thomas Quinn, other journalists who worked on the showbiz desk during Mr Hipwell's time at the Mirror. Mr Hipwell said that it was inconceivable that any of them would have been unaware that hacking was a part of daily life on that desk. They did not attempt to hide their hacking from each other or their superiors at the newspaper. He also said that it was inconceivable that Mr Morgan, the editor, did not know that he was publishing stories that had come about as a result of phone hacking.

86. Mr Seymour, group political editor of the Daily Mirror at the time, said that he had never seen phone hacking being done, but he was not positioned near the showbiz team, and his focus was Westminster. Mr Harwood, who at the time was working on the news desk, and became deputy news editor at the Mirror in 1998, said that he did not see anyone phone hacking, except possibly on one occasion when he saw a journalist holding two phones to his ears and was unsure what he was doing. Mr Alastair Campbell said that he did not see any phone hacking when he worked at the Mirror and the Sunday Mirror, which he left in 1994. Mr Evans explained that, although he did not see any phone hacking going on before he was inducted into the "dark arts" by Mr Buckley in 2003, even at that time considerable care was taken to avoid detection, both within the newspaper offices and from outside.

87. Since, as has been found, phone hacking was extensive and habitual from at least 1999, Mr Evans' evidence about concealment must be correct, even if the showbiz desk were rather more open and brazen about what they were doing. However, it is admitted that the finding of Mann J applied across all the desks of all three newspapers during the *Gulati* period. Mr Evans said it what was happening was "an open secret" when he left at the end of 2004 – so even then it was not being done completely openly; and it is an obvious inference (and consistent with the terms of MGN's 2017 admission) that it was not being done by all journalists on all desks.

88. Mr Paul Vickers, formerly the group legal director of MGN and then TM plc, accepted in cross-examination that he was aware from as early as 1992 that practices that were "unlawful" were "routine" in the newsroom, but that was not an admission about phone hacking (which is illegal). What I find that Mr Vickers meant was that actions that might be breaches of confidence or (now) misuses of private information were done, which might or might not have been able to be justified on the basis of a public interest defence.

89. Mr Whittamore's evidence similarly accepts that from as early as 1995 he was doing occasional pieces of work for MGN: he wrote to the Sunday Mirror and The People in March 1997, touting for business and indicating the various searches and blags that he offered, some of which were clearly unlawful. He described his work as principally being a blagging service. Most of what he did was unlawful, but this was not necessarily in connection with or for the purpose

of VMI, as opposed to blagging or obtaining private information for other purposes.

90. The documentary evidence relating to Mr Whittamore's work comprises his company's books of records, and over a thousand pages of JJ Services invoices and 40 CRs, as well as some SAFS records, which show that there were only a few commissions from MGN before 1997, after which the work increased very considerably from that year. Mr Whittamore had lists of contacts at MGN, which included those identified in the *Gulati* judgment as being principally involved in phone hacking, as well as Mr Harwood and many others. Mr Whittamore said (and his evidence was accepted by MGN to be honest) that he was in no doubt at all that journalists who used his services on a regular basis knew that the information they sought was obtained by unlawful means, such as blagging, and that he was a practitioner of the "dark arts".

91. Mr Whittamore's business was raided by the Office of the Information Commissioner in March 2003 and he was prosecuted. He was convicted in April 2005 of breaches of s.55 of the Data Protection Act 1998.

92. Ms Melanie Cantor, a publicist, former friend of Mr Morgan (the editor of the Mirror from 1996 to 2004) and the agent of Ulrika Jonsson and others, gave evidence that when stories broke about Ms Jonsson's life from 1996 it was Mr Morgan who was able to contact her remarkably quickly and was already aware of private information that only she and Ms Jonsson knew about. She was shown invoices in 2020 relating to her and some of her clients and discovered that she had herself been a victim of voicemail interception. In her claim against MGN, she obtained disclosure of incriminating call data (400 calls, many of which were made by Ms Weaver, Mr Scott, Mr Buckley and Mr Harpin, among others) and PI invoices naming her and her associates. One Southern Investigations invoice showed that they had obtained her phone bill. Her name and contact details were in Mr Scott's and Mr Buckley's Palm Pilots. Ms Cantor's evidence was not challenged by MGN.

93. One story about Ms Jonsson that the Daily Mirror published was about her relationship with Sven-Goran Eriksson. This was first revealed by the paper's 3am column. Mr Benjamin Wegg-Prosser, a publisher for the Guardian before he became Prime Minister Blair's Director of Strategic Communications, gave evidence that he went out for a meal with Mr Morgan during the Labour Party Conference in September 2002 and asked him how he had got the story about the Jonsson/Eriksson affair:

> "Mr Morgan responded to my question by initially asking me which network provider I used for my mobile phone. I told him which network I was on and Mr Morgan told me the default PIN for that network. He then explained that the default PIN numbers were well known and rarely changed, which is how mobile phone messages could be accessed remotely using the default PIN number. He said to me, "*That was how we got the story on Sven and Ulrika*", with a smile, or words to that effect."

Mr Wegg-Prosser's evidence was not challenged by MGN. The story was published in 2002, however, and so is not itself evidence of VMI before 1999.

94. In December 1998, the Daily Mirror published an article accusing Peter Mandelson, then a government minister, of misleading his mortgagee, Britannia Building Society, about the state of his finances. This article was part of a series of stings carried out by Gary Jones, Clinton Manning and Oonagh Blackman, journalists at the Mirror, directed at people with important public roles. They used Mr Rees at Southern Investigations to procure their confidential financial and other information. An article was published in October 1998 revealing the mortgage details of the Governor and members of the credit committee of the Bank of England. The article about Peter Mandelson was published on Christmas Eve 1998. In January 1999, an article was published alleging that Prince Michael of Kent was in serious financial difficulties. In the same month, Mr Jones obtained through Southern Investigations similar confidential information about Mr Alastair Campbell and his wife, Fiona Miller, though nothing that justified adverse publicity was found in their case.

95. I address the detail of some of these events in Part IV of this judgment and reach conclusions about them. For present purposes, it is sufficient to record that these were occasions on which highly confidential financial information was obtained unlawfully, probably principally by blagging banks and lenders for information. There were various documents in the trial bundles relating to these searches, the product of them, and nearly 100 invoices between May 1998 and March 1999 submitted by Mr Rees, mostly to Mr Jones and some to Mr Mark Thomas. The documents indicate that Mr Rees sub-contracted some or all of his credit searches and blagging. These events marry with the evidence of Mr Haslam about what Mr Rees was doing and the contacts that he had that he boasted enabled him to obtain financial information about anyone, and Prince Michael specifically. Although this is not evidence of VMI as such, it is evidence that unlawful activities that were found in *Gulati* to have been carried on hand-in-glove with VMI, were well established at the Daily Mirror by the end of 1998.

96. Mr Johnson gave evidence about an occasion in 1998 when he was writing a story about Ms Anne Diamond and her husband. He was asked by the Sunday Mirror's in-house lawyer, Paul Mottram, who was "legalling" the story, how he knew the content. He said that he told Mr Mottram that he had "pulled" the phone bills of the two people concerned, which showed that they had been in contact, and showed him the phone bills, which had been blagged by Jonathan Stafford, and a handwritten list of telephone numbers that had been faxed to the news desk. This account, first given by Mr Johnson in a witness statement in 2017, is supported by an invoice of Mr Stafford, which was only disclosed by MGN in 2019 and which Mr Johnson did not have available until then. I accept the truthfulness of his account. The events took place in October 1998.

97. A year previously, Rachel Barry was convicted of 12 offences under the Data Protection Act 1984 and of supplying protected information to newspapers, including The People. She appears in Mr Buckley's Palm Pilot as "Rachel Blag", thereby identifying the nature of the specialist services she offered. She was commissioned from 1996 until 2006, notwithstanding her conviction in 1997, by various journalists at each of the three newspapers, including Eugene Duffy, John

Honeywell, Mark Thomas, Richard Wallace, Gary Jones, Tanith Carey (the wife of Mr Harwood), Tina Weaver to a considerable extent in early years, Gerard Couzens and Mark Thomas.

98. Documentary evidence from the pre-1999 period is limited. There are two invoices from Ms Hart to the Sunday Mirror news desk for the weeks ending 21 and 29 June 1998 relating to the blagging of information about Fiona Wightman's medical condition. These invoices are admitted by MGN to be connected with UIG.

99. There are schedules to invoices from Mr Stafford to the Sunday Mirror in May 1998, one of which records 40 different instructions in April 1998 from 6 Sunday Mirror journalists (principally Matthew Bell) to obtain ex-directory phone numbers, telephone bills and lists of numbers and addresses; another records 9 instructions in April 1998 from Mr Dennis Rice, Mr Nick Pisa, Mr O'Hanlon and Ms Kathy Moran for similar services; and a schedule to an invoice from Mr Stafford dated 8 July 1998 showing 31 instructions from 7 Sunday Mirror journalists for subscriber details, ex-directory numbers, telephone bills and even meter readings. These are clearly searches connected with VMI or attempted VMI. One of these instructions is to obtain an ex-directory telephone number for Paul Whitehouse, then the husband of Fiona Wightman, at the same time as Ms Hart was trying to blag medical information about her. Another invoice schedule records 31 instructions in October 2018 of a similar kind.

100. SAFS records for J Stafford show that from February 1996 to the end of 1998 there were well over 100 different invoices (each of which had numerous individual instructions) submitted by him and paid by MGN. These include brief descriptions such as "Tele Searches" "Traces" "Tele-itemised Charges" "Tele Inqs" and many invoices labelled "Investigation" with the name of the subject of the investigation given. Many are described only as "Professional Services" and some "Special investigations". The majority of these instructions are attributed as costs to the Sunday Mirror (cost centre 41BA) and most of the rest to the Mirror (cost centre 41AA).

101. Given the conclusion that I have already indicated about the nature of Jonathan Stafford's work, it can be concluded that, from 1995, Mr Stafford was conducting UIG on behalf of MGN and, since much of this relates to telephone accounts and numbers, some of it was likely to have been connected with VMI carried on by some MGN journalists.

102. SAFS payment records show that Severnside Company Services, in the person of its employee or agent, Taff Jones, was used by all three newspapers to a significant extent from 1995 onwards. Many of the invoices relate to perfectly innocuous looking company searches. But from the outset there are references on payment records and invoices from 1998 to a "Special Investigation", or just "Specials". Ms Gwen Richardson, who made a witness statement but who was not called by MGN to give evidence orally, stated that the term "Special", which she also used, was merely an indication that she had had to spend more time on a particular search, or had to do it out of hours, and therefore it was charged at a higher, special rate.

103. I have no difficulty in rejecting that explanation, which is untrue, even though some of the illicit searches that she conducted (see Part III of the judgment) may have attracted a higher charge. Mr Hawkes, a PI called by MGN to give evidence, said in cross-examination that the word "special" was what newspapers wanted put on invoices. In an email to Mr Buckley and Mr Saville dated 28 October 2005 titled "Abi and Becks", Gerard Couzens said:

> "MIGHT BE WORTH DOING A 'SPECIAL INVESTIGATION' INTO ABI OR JONATHAN IN MONTH OR TWO'S TIME TO SEE IF THEY'RE STILL IN TOUCH."

That is clearly a suggestion that their mobile phone call data or voicemail messages be examined to see whether they have a continuing relationship. And Mr Hanks confirmed that newspapers wanted unlawful work described as "special" investigations.

104. The term "Special" was used as a means of disguising the illicit nature of the instruction, and was used by a number of PIs, including Mr Taff Jones, Mr Hawkes, Ms Richardson, Mr Frank Thorne, and others. In many instances, the amounts charged belie the suggestion that these were especially expensive inquiries to pursue. Other PIs routinely used terms such as "Confidential Inquiries" or "urgent enquiries". Mr Honeywell referred to these illicit searches as being "of a specialist nature". In his invoices, Mr Taff Jones sometimes used the tag "Special Investigation Plus", which may have been a sub-category of "Specials", but it is not clear what the "Plus" signified.

105. In his book, The Insider, Mr Morgan records the story of Benjamin Pell contacting him on 13 January 1998 offering bank statements and other documents belonging to Elton John stolen from bins outside the office of his manager. MGN bought the unlawfully acquired material and published a story obtained from it. Mr Morgan makes very clear that "Benji the Binman" was well-known in Fleet Street at that time and that he was well aware of the "seriously unethical" way in which the documents were acquired. The documents are of course stolen by Mr Pell, so they are illegally acquired, not just unethically. Unsurprisingly, Mr Pell offered another batch of stolen documents on 26 January 1998 and MGN bought those too.

106. The extent to which VMI and UIG was being carried on is likely to be greater than the documentary evidence shows. This is because there is only limited documentary evidence from before 1998. The documents that there are nevertheless show the type, range and volume of work being carried out by certain PIs before 1999, variously from 1995, 1996 or 1997. The claimants suggested that the absence of earlier documents was both surprising and indicative of a systematic attempt to destroy evidence. I find that unsurprising, given the length of time and significant changes in systems that occurred between 1998 and 2011, when MGN was directed by the Leveson Inquiry to ensure that it retained all documents that it had. I am not persuaded that MGN deliberately destroyed documents from the 1991 to 1998 period. But the understandable absence of documents nevertheless probably hides the extent to which serious UIG was going on in 1995, 1996 and 1997.

107. One email that survives from early 1999 is of particular significance. It was sent by Mr Honeywell to Pat Pilton, a managing editor of The People, on 9 February 1999:

> "**Searches**
> This may or may not be useful.
> The attached invoices for the Sunday People amount to more than £4,500-worth of "searches".
> The vast majority are checks on electoral rolls for the names of occupants of known addresses, and (illicit) checks to obtain ex-directory telephone numbers, and to reverse-check known phone numbers in order obtain the name and address of the subscriber. There are also a couple of (illicit) vehicle registration checks.
> Only one item relates to the sort of search which can be carried out with Companies House records – a director search costing £40.
> Not much scope there for savings with an on-line search facility I'm afraid".

This email was obviously written in the context of possible subscription to online search facilities. It was written by one senior editorial manager to a senior managing editor. It reveals that they knew very well that journalists were using PIs to carry out unlawful searches of a kind that could not be replicated by a facility such as Cameo. In particular, reverse-checking of phone numbers is indicative of searches for the purpose of VMI, as the unidentified numbers are only likely to have been acquired by that means, or from blagged phone records.

108. The email shows that UIG was well-established and its methods were well-understood at MGN by early 1999, and to the knowledge of senior editorial management. In emails to editors two years later, urging the use of Cameo and Companies House online, Mr Honeywell admitted that he realised that some of the "searches" (quotation marks used by Mr Honeywell) that were causing each newspaper significantly to exceed its budget, were "of a specialist nature". It is clear therefore that Mr Honeywell understood that instructions that were being characterised as searches were not lawful searches but were UIG. I will return in Part IV to the significance of this knowledge at senior editorial management level.

109. The conclusion that I reach, based on all the evidence that I have reviewed above and the impression given by witnesses from whom I heard and those whose witness statements I read, is that some VMI was being conducted from 1996, but probably only by a relatively few journalists at each newspaper in that year. I consider that it was used to a greater extent at the Sunday Mirror in the years 1996 and 1997 and to a lesser (but some) extent at The People and the Mirror in those years. I find that the use of UIG other than VMI was widespread in all three newspapers from 1996, and that VMI was widespread and habitual at all three from 1998. The fact that certain journalists were not aware of it until later does not meant that it was not happening. Before those years, limited UIG and VMI was carried on in each of the three newspapers, but to nothing like an extent that could be described as "widespread and habitual".

Did MGN conduct phone hacking and other unlawful information on an extensive and habitual basis, or to any extent, during the period August 2006-2011?

110. As with the period 1991-1999, the claimants simply plead that VMI and UIG in different forms, conducted by journalists and/or by PIs and other third parties, was widespread and habitual at each of the three newspapers from 1 January 2007 to 31 December 2011, just as much as it was held to be from 1999 to 2006.

111. In the GenD, there are few relevant admissions about the period after 2006. In para 15.2.3, MGN denies that any desk at any newspaper made extensive or habitual use of PIs save that the Sunday Mirror news desk "made 'extensive' use of one third party, BDI UK Consultancy Ltd, which it is not admitted were instructed to unlawfully obtain private information, until 2010." There is therefore no positive case advanced by MGN as to what BDI was instructed by the Sunday Mirror news desk to do, but otherwise the specific allegations are denied in relation to the period after 2006 (and, by inference, after August 2006). MGN admits that all three newspapers continued to instruct Severnside until 2010, but it denies that any such instruction was to conduct unlawful activities. There are limited admissions that certain identified PIs, e.g. Rob Palmer and Newsreel Ltd, were instructed by MGN journalists beyond 2006, and in a few cases up to 2011, but denials that these were for unlawful activities.

112. The findings in *Gulati* do lend some support to the allegations in relation to the later period: see [55] above. Ms Taggart's and Mr Roach's claims disclose VMI up to and including 2008 and Mr Gascoigne's claim up to and including 2010. I have already explained that Mann J's identification of the period 1999-2006 during which VMI was extensive and habitual did not include a decision that in general it was not extensive or habitual outside that period. The conclusion that VMI significantly tailed off in 2006 was based only on the Orange platform data. There has been very substantial further disclosure of documents since the *Gulati* trial, including many documents that should have been but were not disclosed by MGN for that trial. These present a fuller picture of the 2006-2011 period, though still only a partial picture of what was happening in those years.

113. In this trial, 23 articles (out of 100 in total) in issue were published after 2006. The bylines on many of those articles are journalists who are still employed by MGN, such as Dean Rousewell (now news editor of the Mirror), Stephen White, Nicola Methven and Philip Cardy. Others are still active in the press or media industry. Further, senior editors who were employed by MGN or a group company and worked on one of the three titles during the period 2007-2011 are still employed by Reach plc (MGN's parent company) today, namely Lloyd Embley and Gary Jones. MGN denies (and does not merely not admit) that phone hacking and UIG was extensive and habitual after 2006 and denies that any of the 23 articles was the product of VMI or UIG.

114. One might therefore have expected to hear evidence called by MGN explaining how, after the arrests of Mulcaire and Goodman, VMI and associated UIG died away and was no longer used (or used extensively) by MGN journalists, and that

instructions given to certain PIs after 2006, especially BDI, were all for lawful work. But no such evidence was called. Given that MGN has explicitly denied VMI and UIG, and not merely "not admitted" it and put the claimants to proof, it cannot entirely hide behind the fact that the allegations of VMI are a matter for the claimants to prove. Nicola Methven, the TV editor of the Daily Mirror and byline on one Michael Turner article, made a witness statement and was scheduled to give evidence on 19 June 2023, but without explanation she was not called. One other journalist, Dennis Rice – who left MGN's employment in 1999 – made a witness statement but then refused to attend court or give evidence remotely on grounds of ill health. Ms Gwen Richardson of Searchline, who was still operating between 2005 and 2011, was not called to give evidence. The only witness called by MGN who could speak to the period 2007-2011 was Anthony Harwood. Until 2008, he was news editor and then became head of news at the Mirror, from which position he was made redundant in 2010.

115. After the Mirror, Mr Harwood took up a position at the Daily Mail and then became a freelancer in 2015. He therefore has considerable experience of tabloid journalism and presented in the witness box as a calm, thoughtful and urbane man. Mr Harwood had been closely involved in the preparation for the trial. From 2021, he provided "journalistic support to MGN's legal department in respect of this managed litigation". He admitted in cross-examination (but did not state in his witness statement) that he had been paid on behalf of MGN a substantial salary for the period of 18 months leading up to the start of the trial, to assist MGN's solicitors, RPC, to prepare MGN's defence of these claims. He was therefore by no means an independent witness.

116. Mr Harwood's evidence was surprising. In short, he had seen and heard nothing. During the period 1998-2005, throughout which VMI and UIG was extensive and habitual on all desks in the Daily Mirror, Mr Harwood was first deputy news editor and then (after two years as US editor based in New York City) head of news. He said that he saw and heard not a single occasion on which voicemail interception was used, or a story published that was the product of UIG. And that was so even though, as a news editor, he was responsible for authorising contributor payments for news stories (he said he was generally too busy to check most of them).

117. At para 11 of his witness statement he says:

> "I have never engaged in voicemail interception at MGN or elsewhere. It makes me angry to think that I am being accused of engaging in phone hacking or other unlawful activity."

118. Given the findings in *Gulati*, and the fact that, as Mr Green KC emphasised at the start of his closing submissions, in the light of the "excoriating" judgment of Mann J MGN had by June 2023 paid out about £105 million in compensation and costs to about 600 claimants in the MNHL, it is surprising that Mr Harwood should take offence, rather than express regret for what was done for years in the department (among others) in which he held senior editorial positions; unless of course the focus of his evidence is not what was happening at MGN but only whether he personally had hacked voicemails.

119. There was no direct allegation of phone hacking against Mr Harwood in the GenPoC or in the Duke of Sussex's particulars of claim. The only reference to Mr Harwood in the GenPoC is at para 8.1(d), where the large number of individuals whose names appear in Palm Pilots belonging to Mr Harwood, and a number of admitted or proven phone hackers, is relied upon as evidence of the large number of victims of phone hacking. In the Duke of Sussex's claim, Mr Harwood is a joint byline with Graham Brough on one of the articles in issue, which is alleged to be the product of VMI. To be fair to Mr Harwood, the GenPoC can be said to be an indirect allegation of involvement in phone hacking, though an allegation of criminal conduct should never have been pleaded in that indirect way by Counsel. I do therefore accept that Mr Harwood was entitled to give evidence in his defence, as well as explain how he and Mr Brough wrote the article about the Duke of Sussex.

120. However, from MGN's perspective rather than his own, Mr Harwood is the only journalist or editorial witness working at MGN at the relevant time that MGN has called to give evidence at trial in answer to the generic case against it. The only other journalist from its UK offices called by MGN in the whole of the trial was Jane Kerr, whose attendance in the end had to be secured by the issue of a witness summons. Ms Kerr was called to give evidence in response to the Duke of Sussex's claim. She was the royal correspondent for the Mirror from 1997 to 2005 and then worked on the Mirror news desk from 2007 to 2009 and as a features editor for the Sunday Mirror from 2009 to 2010. She was therefore well-placed to give evidence as to whether there was voicemail interception or other UIG being carried on between 2006 and 2011 at either the Mirror or the Sunday Mirror but her witness statement did not address those matters, save in so far as they impinged on the work that she personally had done.

121. The allegations in the GenPoC about extensive and habitual use of voicemail interception and UIG before 1999 and after 2006 and MGN's specific denials in that regard are only addressed in a very limited way by Mr Harwood, based on his own lack of knowledge of any such matters. Mr Harwood gave evidence about how he did his job, about the reason why there were so many names and telephone numbers of famous people in his Palm Pilot, and then states:

> "In my experience, phone hacking was not habitual or rife on the Mirror news desk - I was not aware of anyone in my department who hacked phones. We just didn't do that."

Later, he says about information obtained (lawfully) from genealogists, that he understood that it was alleged that:

> "…the information they provided was then used directly or indirectly by MGN journalists to crack PIN numbers, access phone messages or blag private information. As far as I am aware, this did not happen."

Unless these comments are read as only an expression of Mr Harwood's own personal awareness and knowledge (which is not how they are expressed), the assertions are flatly contrary to the combined effect of the judgment in *Gulati* and MGN's 2017 admission.

122. Mr Harwood then commented on some names of PIs who were on a list given to him by RPC and which he says he recognises. Some indeed were PIs who appear to have been instructed by Mr Harwood because there are payment records that bear his name as the commissioning journalist. However, Mr Harwood said that he did not remember using them, or giving instructions to any of the picture agencies or freelance photographers on the list. In his witness statement, Mr Harwood then provided a paragraph or two, rarely more, on each of the other names on the list of PIs who were entered on his Palm Pilot (and with whom it may therefore be inferred that he had or thought he might have some business contact), and some others who were not. Some of these PIs in his Palm Pilot, such as Gerard Couzens, Jonathan Stafford, the Scotts (C&L), Severnside, Andy Kyle and Mike Behr, are central to some of the allegations that the claimants make. In relation to each name, Mr Harwood said that he had "no reason to think that they were doing anything unlawful", or similar words, and that neither did he instruct them to undertake any unlawful activities (or, in Mr Hanks's and Mr Stafford's cases, instruct them at all).

123. One of the names on which Mr Harwood did not comment was TDI/ELI, which had been found by Mann J to be a PI performing UIG for MGN newspapers. MGN spent over £2 million on TDI/ELI alone. In a 5-year aggregate period during which Mr Harwood was deputy news editor and then news editor, either side of his stint in New York City, it was put to him that there were about 250 invoices from TDI/ELI for commissions from news desk reporters or the news desk. (Although Mr Harwood was willing for his authorisation data in this regard to be provided, MGN did not produce it.) Mr Harwood's answer was that reporters could themselves commission searches and that UIG was not being done on the Mirror news desk. But invoices that were submitted by reporters would have had to be approved by Mr Harwood at those times. In my judgment, Mr Harwood was simply avoiding dealing with the question of news desk use of TDI/ELI, which had been found to be providing mainly UIG services. I find that they probably were used to a significant extent, and that Mr Harwood would have approved many of their invoices, as well as the invoices of other PIs.

124. In relation to Mr Stafford, Mr Harwood remembered him attending MGN's offices. He said that on one occasion he was brought up to the news desk and Mr Harwood thought he was there to help with a story, but does not remember knowing anything about what he did. I did not consider that Mr Harwood was being wholly truthful about this. The payment records relating to Mr Stafford and his company demonstrate that from 1995 until 2011 he submitted monthly invoices to each of the three national newspapers for sums usually in the low thousands of pounds. The only surviving schedules to the invoices he sent (before they were not saved, as instructed by Ms Flood) indicate between about 15 and 30 separate commissions in each monthly schedule (for each newspaper). In other words, Mr Stafford was being used on a daily basis by MGN journalists and it is clear that he was one of a few PIs who must have worked closely and regularly with editors and journalists. He was so much part of the information gathering team that he came into MGN's offices. There are several references in emails particularly at the Sunday Mirror to getting "Staffy" onto a matter where the journalist or editor had not been able to obtain something.

125. As part of his editorial responsibilities, Mr Harwood signed off payments for work that Mr Stafford had done. Mr Harwood accepted that it was part of MGN's policy that payments to outsiders should comply with its strict procurement policies, which included no unlawful activities. He asserted in cross-examination that he did not remember Newsreel at all. Despite there being 43 phone calls to or from Mr Stafford recorded on Mr Harwood's extension between 2005 and 2010, he did not recall ever speaking to Mr Harwood, and said that having consulted his diaries he believes he was away from work when 35 of those calls were made, and at other times he shared his desk with the night news editor.

126. In relation to C&L, Mr Harwood said that he used them to obtain addresses or telephone numbers from a digital version of the publicly available register, so that a reporter could call or doorstep the subject of the search.

127. It became clear when Mr Harwood was cross-examined that his evidence in his witness statement was incomplete and not a fair presentation of what he knew. It was also clear that he was not willing to admit or accept the findings in *Gulati* or MGN's 2017 admission and did not accept that phone hacking went on across all newspaper desks. His position was therefore denial because, as he claimed, he did not see any of it and so did not believe it was happening. When Mr Hanna, the deputy editor of the Mirror from 2004 to 2010, told Mr Harwood and others in 2006, as directed by the CEO Sly Bailey, that he did not want any use of PIs to do unlawful searches, Mr Harwood assumed that it did not apply to the news desk, as the desk did not use PIs to give it a journalistic edge – even though he accepted there was huge pressure on journalists to get exclusives. He felt that the striking story lines that the Daily Mirror published were obtained from the door steps.

128. In my judgment, Mr Harwood, through working for MGN's legal team for 18 months, has been infected with a spirit of fighting off all the allegations. He is in denial about what has already been found and admitted, as it appeared that MGN was too, in the way that it presented its case. I accept Mr Harwood's evidence to the extent that he did not personally hack a phone or specifically instruct that to be done, but his position that there was no UIG or VMI going on in the news room at the Daily Mirror is untenable, given the findings and admissions that have been made, and in view of his acceptance that it was his role to know what was going on on the newsroom floor. He was prepared to accept that on occasions he would commission a search for an ex-directory telephone number and that he used the Teviots (lawfully) and C&L and Severnside for searches of open registers.

129. I find that he knew about the UIG that was happening but chose not to involve himself in it. To some extent this is because, as a committed and able journalist, he would not himself have considered descending to that level. However, no one with their eyes open could have failed to see that unlawful methods of information gathering, including voicemail interception and blagging, were being used, enabling the MGN titles including the Mirror to have an edge in publishing breaking stories, and to keep up with other newspapers, in particular the News of the World, that were using such techniques. Mr Harwood said, not very convincingly, that he did not know what phone hacking looked like, and therefore did not see it – but it was not necessary to see it being done for a person in his position to realise that it was being done, or at least that the millions of pounds being spent on PIs that he and others were authorising were not just searches in

publicly available registers and the occasional ex-directory phone number. As he accepted, a means of checking a story in 30-45 minutes would be very useful to a journalist; but he denied any knowledge of use of PIs such as TDI/ELI to obtain information in that way.

130. When shown a number of invoices of Mr Stafford from 2000 (including one addressed to Mr Eugene Duffy, who Mr Harwood said was a good friend on the news desk, which also included an ex-directory search commissioned by Jane Kerr) and from JJ Services (Mr Whittamore) in 1999, Mr Harwood accepted, realistically, that the services described in them were plainly unlawful, and that reporters were using Mr Whittamore to obtain private information. He was then shown invoices from Mr Whittamore which included commissions from his own wife, Ms Carey, for mobile phone conversions, ex-directory numbers and blags. He appeared visibly shocked but accepted that a proportion of this work was unlawful.

131. In short, Mr Harwood turned a blind eye to a lot of unlawful activity that was happening on the news desk.

132. As I will demonstrate when addressing the Duke of Sussex's claim, in case of the one article that bears Mr Harwood's name as a joint byline, Mr Harwood must have been aware that blagging or some other form of UIG was being used by his colleagues in order to confirm the identity of Chelsy Davy.

133. What MGN has done in terms of addressing the claimants' generic case is to call two journalists as witnesses who are able to say – I find truthfully, in both cases – that they *personally* did not hack phones or instruct phones to be hacked. It has not sought to advance by oral evidence its positive case of denying that there was VMI or UIG during the period 2007-2011 except by Mr Harwood's and Ms Kerr's evidence that they saw or did nothing wrong.

134. MGN's contention that phone hacking stopped is based on the premise that, after the arrest of Goodman and Mulcaire in August 2006, it was recognised to be far too dangerous to carry on using the tools that had been so beneficially and extensively used up to that time. However, no witness gave evidence of any such decision having been reached, either on an institutional or a personal basis. The only relevant evidence was that given by Ms Bailey (and confirmed by Mr Vickers) who said that she told the editors following the publication by the Information Commissioner's Office of the *What Price Privacy?* and *What Price Privacy Now?* reports in 2006 that there was to be no illegal activity, and the editors assured her (then) that there would not be. There was no evidence of any follow up by the editors. Ms Bailey said she would have expected Mr Duffy to tell her if her instruction was being disregarded, but she did not enquire any further.

135. Mr Vickers said that after the arrest of Mr Mulcaire he did not believe that phone hacking was happening at MGN because of the "one rogue reporter" lie of the News of the World. I think that was a lie. Mr Vickers had been in a senior position in Fleet Street for 14 years by this time, and the idea that someone in his position, an insider, was taken in by a lie of that kind told by another newspaper, is fanciful. Mr Vickers asked Mr Partington (then still head of the Mirror's legal department)

to check up on any use of Mulcaire specifically by MGN and got a negative response. That, he felt, was sufficient. He and Ms Bailey told the editors in 2006 to comply with the criminal law, and his understanding was that "things were tied down very tightly" after those meetings. He did not explain why he had that impression, save that he said that Gary Jones told him once in a taxi that the message had filtered down; and that he (Vickers) had a disagreement with Tina Weaver about whether Jonathan Stafford was a private investigator. However, it is clear that that was a mistaken recollection so far as 2006/2007 was concerned and would have happened in 2011, when MGN prohibited use of PIs other than a few specifically authorised ones.

136. The arrests of Goodman and Mulcaire would have sent shock waves through the world of tabloid journalism, given the extent to which VMI had been used in the preceding 8 or more years. It is understandable that such activity would have dipped or even stopped while those who were involved in practising it waited to see what would happen (or, at least, ensure that traceable means of conducting it, such as MGN's landlines and personal mobile phones, would no longer be used). On 29 November 2006, Goodman and Mulcaire pleaded guilty to offences under s.1 of the Regulation of Investigatory Powers Act 2000. They were sentenced to short terms of imprisonment on 26 January 2007. The facts on the basis of which they were sentenced were limited and involved 12 victims: three Royal Princes, three politicians, three people involved with professional football, a supermodel, a publicist and, ironically, a newspaper editor.

137. The guilty pleas were shortly followed by the publication by the Information Commissioner of *What Price Privacy Now?* (13 December 2006), which identified that 120 MGN journalists had been users of the services of Steve Whittamore, providing private information about data subjects unlawfully. The initial report dated 10 May 2006, "*What Price Privacy?*", had identified an "*illegal* trade in private information", based in part on the Operation Motorman investigation into the business of Mr Whittamore of JJ Services. That report had identified (and demonstrated with a graphic) how various persons, including private detectives, tracing agents and blaggers, were able illegally to extract confidential information from the Police, phone companies, call centres and the DVLA and supply them to the Press. Mr Whittamore had been convicted of offences under the Data Protection Act 1998. The May 2006 Report clearly alleged illegal breaches of the Data Protection Act and other legislation intended to protect private data.

138. *What Price Privacy Now?* identified the individual newspapers who had been involved with Mr Whittamore and to what extent, uncluding the number of individual journalists and the number of commissions. This report therefore showed that illegal information gathering was potentially going on on a large scale at all MGN's national titles.

139. This would not have come as a surprise to any of the journalists who were making use of PIs like Whittamore, but the immediate consequence of the Commissioner's report was a modest degree of executive involvement at MGN. The editors of the three nationals were called to a meeting with Ms Bailey, the CEO, Mr Vickers, the group legal director and company secretary, Mr Vaghela, the finance director, Mr Partington, the deputy group legal director and senior

lawyer at the Mirror, and Mr Duffy, and were told that it was not acceptable for criminal acts to be carried out at TM plc's newspapers. Ms Bailey's evidence (to the Leveson Inquiry as well as in this trial) was that it happened after both the first ICO report and the second. I am somewhat doubtful about that but it was not specifically challenged and I shall assume that it did happen twice. What that does show is that Ms Bailey was alert to such matters, or had been alerted to them, as one would have expected. She considered it necessary to admonish the editors about illegal conduct. According to the evidence of all 3 executive directors, these meetings (which were not minuted and had no agenda) would have been a rare intrusion of the directors of the company onto the editorial floor. I accept that evidence and consider that Ms Bailey and Mr Vickers did not get involved in editorial matters, and relied on Mr Partington (and other lawyers at other papers) and executive managers such as Mr Duffy to tell them what was happening.

140. The message (which Ms Bailey said was the same message repeated) at the January 2007 meeting presented the editors and those working closely with them with a dilemma: either cease the unlawful practices, take several steps backwards in the effectiveness of their harvesting of newsworthy stories, and risk being outdone by rivals and lose prestige and market share; or continue more cautiously.

141. I am in no doubt, in the light of all the evidence, that the editors and those working beneath them, to the knowledge of editorial management, took the second option. Despite what the executive members of the board had told them, they decided to continue, though perhaps more circumspectly than in the halcyon days of 2003-2006, and with a greater emphasis on covering up what was going on. It is notable that no document (including an email) has been disclosed by MGN showing that any editor or editorial manager or junior editor on any of the newspapers communicated to its journalists the instructions of the board. Nor (and I will address this in detail in Part IV of this Judgment) did any member of the board follow up to find out the extent to which journalists had conducted VMI or used PIs to conduct illegal or unlawful activities, and to investigate whether the instruction given at the January 2007 meeting was being complied with.

142. As Mann J found, phone hacking had become "habitual". The abandonment of VMI in 2006 would have greatly changed the way that tabloid newspapers obtained many of their stories. The old-fashioned way in which journalists pursued lines of enquiry and stood up stories, which Mr Harwood described as if it had never changed, had been supplanted to a substantial extent by a quicker and easier (and in some ways more reliable) method, making use of new information technology. From the findings in *Gulati*, it is clear that VMI did not end in 2006. Given that it continued, to some extent at least, the question is whether the three claimants in *Gulati* were special cases, whose voicemails exceptionally were intercepted after 2006, or a limited category of victim where the practice continued, or whether in reality VMI resumed after a break, and if so to what extent.

143. Turning to the evidence on which the claimants rely, this was mainly documentary, though one witness was able to give evidence of the demand from British newspapers for UIG in America in the relevant period.

144. Mr Daniel Portley-Hanks ("Mr Hanks"), an American private investigator of 40 years' experience, said that prior to 2012 UK tabloid newspapers were his main customers and they commissioned him either directly or via US-based freelancers or "stringers". When instructed indirectly, he would sometimes invoice the end user rather than the agency, though in other cases the agent would pay him. His main UK clients were the Mirror and the Sunday Mirror. He said that he believed strongly that journalists at those papers knew that the methods that he used were not legal (in America). It was illegal because he had privileged access to full databases, as a licensed private investigator, but not for the purpose of selling information thereby obtained to newspapers or others. Those using his reports could see that they contained privileged material such as full address, date of birth, phone number, voter registration and social security numbers.

145. Mr Hanks said that over the years the British newspapers had asked him to "wash" his product to give more of an appearance of legitimacy. That started in about 2000 and then increased significantly in 2011/12, though the illegal content of the product never changed. In light of the phone hacking scandal, he was asked (but could not recall that it was MGN who asked) to change the name of his business and his email address, to something innocuous. He said that the tabloids seemed to be panicking about the use of PIs but only wanted the appearance changed, not what was being supplied.

146. Mr Hanks said that Big Apple News (prop: Annette Witheridge) was a New York agency that hired him to provide unlawfully obtained information for their media clients. He denied that Ms Witheridge had ever asked for reassurance about the lawfulness of the content of his searches.

147. MGN did not seriously challenge Mr Hanks' evidence and accepted that he was an honest witness, despite his 20 or more convictions in America (none for offences of dishonesty, as Mr Hanks stressed). It is clear from Mr Hanks's evidence that demand for the services he provided continued up to and even after 2011.

148. From the individual claims based on articles that I have had to consider in this trial, it is clear, for the reasons that I give in Part V of the judgment below, that three articles postdating August 2006 of which the Duke of Sussex complains are without any real doubt the product of voicemail interception. I deal with all the articles complained of in Part V but for present purposes the three articles published by The People on 16 September 2007 ("Davy Stated"), 19 April 2009 (Harry's Date with Gladiators Star") and 26 April 2009 ("Chelsy's New Fella") demonstrate clearly that phone hacking was still used at MGN at those times. There is also a large volume of payment records to PIs during the period 2006-2011 relating to the Duke's associates (as well as many relating to him personally), just as there is in the period 1999 to 2005, which are self-evidently part of a system for trying to obtain information about him from his associates, and to an extent from him, including VMI. The fact that many such payment records do not give rise to claims for misuse of the Duke's private information does not mean that they do not evidence an effective and extensive system of UIG with the aim of extracting information and then publishing stories based on it.

149. The generic documentary evidence shows that Jonathan Stafford (Newsreel) continued to be used by MGN until September 2011, principally by large numbers of editors and journalists at the Mirror and the Sunday Mirror. There are numerous Mirror CRs for Newsreel (some of which were authorised by Mr Harwood, including one titled "CB Sienna Miller Inqs" and another "Heather Mills Excl") between the end of 2006 and 2009, and many Sunday Mirror CRs (some of which were authorised by Mr Scott, Mr Saville and Mr Buckley) up to October 2011. Of these Newsreel Sunday Mirror CRs, there are over 40 CRs for 2011 alone and 78 CRs for 2010, and similar numbers for 2009 and 2008. Because they are CRs rather than invoices (the change being made after the convictions of Goodman and Mulcaire), there is no description of the services provided.

150. Mr Stafford originally sent invoices on a monthly basis, in his own name, with a schedule showing the commissioning journalist, the subject of the enquiry and the nature of each instruction. A few of these survive from 1998 to 2000 and demonstrate that the instructions related mainly to UIG, including "pretext" (i.e. blagging). On 26 August 2001, Louise Flood, a manager at the Daily Mirror, requested that the accounts team only scanned onto the payments system and retained the first page of an invoice of JJ Services and removed the second page. I consider that this was a deliberate decision not to save highly incriminatory documents, which was applied also to others' invoices, including Mr Stafford's. Like Mr Stafford's invoices, JJ Services provided the details of the instructions on the second page. From around 2001, there are very few schedules retained for Mr Stafford's invoices. One surviving schedule dated 20 December 2002 contains a large number of entries and 21 that are designated as "pretext", including in connection with the holiday whereabouts of Mr Beckham, Ms Hurley, and airline travel for Charlotte Church.

151. In 2006, the system used appears to have changed so that Newsreel rather than Mr Stafford personally use CRs (as if they were contributors to articles) rather than submitting invoices for services. The change of name and system are, I find, part of attempts that were made in 2006 to make it harder for unlawful information gathering to be identified. For these various reasons, there is little descriptive data as to the work that Mr Stafford and Newsreel were doing for MGN from about 2001 until 2011.

152. However, the gaps are filled to some extent by the content of emails that have been disclosed by MGN:

    a. In an email dated 27 May 2003 from Steve White (Daily Mirror) to Andy Lines (cc Connor Hanna), Mr White stated "*Jonathan Stafford has quoted us £500 to pull Bellamy's bank account*";

    b. In an email dated 14 September 2004, Steve Myall (The People) asked Matthew Bell (Ferrari Press, and formerly Sunday Mirror): "*can you give me some guidance on using Jonathan Stafford? …With Edmondson going he will obviously take his secret blaggers with him so it would be useful if I could start getting my own*";

    c. Emails passing between Mr Saville, Mr Scott and Mr Buckley (Sunday Mirror) in 2007 and 2008 show that "Staffy" was helping them with a

number of enquiries. By an email dated 12 February 2009, Mr Scott informed Stephen Martin that "*Staffy found a Nico Parker and a Ripley Parker on the flight. They're Thandie's kids so I presume it's a family holiday … lets leave it*."

d. On 28 September 2010, under the heading "Cheryl Cole house", Nick Owens (Sunday Mirror) told Mr Hamilton and Mr Saville: "*This is the house that Cheryl likes. At present we don't know if she has made an offer or arranged a viewing. But I think Staffy is best to take things from here rather than Dave Paul ringing*."

e. Two days later, Mr Wright told Mr Saville in relation to Michael Jordan "*Staffy's been on it for a couple of hours. Now trying to blag Vodka Revs to see if they might know*."

f. On 24 November 2010, Mr Owens (Sunday Mirror) told Mr Saville and Mr Buckley that Suzy Bennett's website was no longer running "*so that's one excuse for Staffy ringing*".

153. These glimpses of the work that Mr Stafford was performing for all three newspapers show how integral a part of the information gathering he was, as also proved by the huge volume of instructions he received from the mid-1990s to 2011. It is also clear that Mr Stafford was used to blag confidential information. Both Mr Johnson and Mr Evans gave some evidence about the use of Mr Stafford in this respect. The work that Mr Stafford did was also – but not always – to provide data that would then be used by the phone hackers.

154. BDI is alleged by the claimants to be the successor to TDI/ELI and run by the same people, Suzie Mallis and Lloyd Hart, which MGN disputes. James Scott's Apple database records the same telephone number for TDI and BDI. BDI was created in October 2006, shortly after the publicity given to Mulcaire and Goodman's arrests. Records of telephone calls from MGN landlines show that the final call to the landline number for ELI was made on 5 October 2006, and the first of about 1300 calls to a new number, 07003 418456, was made on 10 October 2006 from an extension that is said to be that of Mr Saville. That extension also made one of the last calls to the old TDI number. Over 1,300 calls to BDI were made from MGN landlines between October 2006 and August 2011.

155. By an email dated 5 October 2006, Mr Buckley told Mr Scott, Mr Saville, Mr Hamilton and Mr Martin "There is a new tracing agency we can use, run by someone called Susie, as of next week: 0700 3418456".

156. MGN admits many payments to BDI between 2006 and 2011, as alleged, but denies that they were payments for bugging or phone call interception and otherwise does not admit that the payments were in connection with UIG. It denies that BDI was the successor of ELI or that BDI had anything to do with Mallis or Hart. MGN could have called evidence in support of its positive case to explain who BDI were, what BDI was being instructed to do over that period, and why it contends that BDI was not the successor of ELI or connected with Mallis or Hart, but it has not done so.

157. In my judgment, the claimants have done just enough to prove that BDI was probably the successor to ELI. The email is obviously one written to recipients who know what it is about and understand its significance, and the reference to "someone called Susie" would have been understood as an ironic reference to an old friend, Suzie Mallis. If the new agency with a new phone number were indeed unconnected, the recipients of the email would obviously have expected more explanation from Mr Buckley as to why they should use it and what its credentials were. The end of connected calls to ELI on the same day and the very substantial use of BDI's new number from the outset support the claimants' case. It seems to me inherently likely that this change in identity was part of measures being taken by the chief phone hackers at the Sunday Mirror and one of their best suppliers to create a greater level of concealment of their activities. The invoices say only "Professional Services Carried Out" and contain a project name and the name of the commissioning journalist. This is evidence that the serious hackers at MGN were intending to carry on, Goodman and Mulcaire notwithstanding.

158. The significance of that (and the reason for MGN's non admission) is obvious. TDI/ELI were found by Mann J to be one of the main PIs working for MGN in connection with its extensive voicemail interception activities between 1999 and 2006. BDI provided extensive services – almost 800 invoices - from 2006 right up to August 2011. The invoices were all addressed to Mr Buckley at the Sunday Mirror News Desk. It is therefore inherently likely that BDI continued to do the same work that TDI/ELI did for MGN up to August 2006. MGN has no positive case (other than in relation to bugging and interception of telephone calls) that these invoices were not connected with UIG. I find that they predominantly were, and were a continuation of the TDI/ELI service.

159. Another PI whose identity as presented in payment records changed in 2006 was Rob Palmer, previously trading as Avalon and the subject of adverse findings in *Gulati*. The claimants maintain that Mr Palmer was a blagger of telephone, medical and financial records, among other things. From January 2007, no further invoices came to MGN from Avalon; instead, Mr Palmer personally was paid through the CR system.

160. MGN admits that an unquantifiable but substantial number of Avalon inquiries in the period 2000-2007 represent UIG but does not admit that Rob Palmer himself carried out UIG, and denies that anything he did included bugging or live call interception or recording. Disclosed emails between journalists and avalonenquiry@btinternet.com (the email address consistently used) between 2009 and 2011 prove that this was the address used by Rob Palmer. Many emails are signed off "Rob".

161. 98 invoices from Avalon refer only to "enquiries" in respect of specific individuals. As regards Mr Palmer personally, there are 497 CRs showing instructions from each of the three newspapers. Being CRs, they contain no detail about the nature of the instruction. Disclosed phone data for several landline and telephone numbers reveal a formidable number of calls from Lee Harpin in particular, with whom much of the email traffic is too.

162. MGN points to a few of the emails and argues that they are consistent with lawful passing of information from sources to a journalist. However, these are not

journalists' sources but Mr Palmer's sources ("my usual Cheryl source"), so they are far from conclusive as to the lawfulness of the information obtained. Other emails present a rather different picture of Mr Palmer's activities. One, from Gary Jones to Richard Wallace dated 15 May 2009 states:

> "Guy to speak to is Rob Palmer on 07900 992143.
> Very discreet and highly effective … knows the game as it were …"

An email from Palmer to Lee Harpin at The People dated 20 January 2010 states:

> "Hi Lee,
> Spoke to the guy under pretext he says his name is John Hill but I'm not so sure as he hesitated in giving a surname and he sounds as though he has a slight foreign undertone, he gave his address as [….]
> …"

163. On 28 May 2010, Mr Harpin forwarded to the avalonenquiry email address without any comment the following email that had been sent to Mr Harpin by an undisclosed source, under the heading "helen newlove":

> "is on
> 07791 670147 or 01744 626716"

164. On 13 July 2010, Mr Harpin sent Mr Palmer an email under the heading "Re: Becks" stating "wot about the adoption line? Prefer that", to which Mr Palmer replied "I'll chase him up now".

165. On 7 October 2010, Mr Palmer sent Lee Harpin a break down of a £21,000 bill for "an election thank you dinner hosted by Tory treasurer Michael Spencer for party leadership at Simpsons restaurant in Birmingham", which Harpin then forwarded to Gary Jones and Lloyd Embley, commenting "Cameron et al all there. Spencer brought along 24 bottles of his own Petrus for which they were charged 720 corkage".

166. On 15 March 2011, Katie Hind at the People sent an email to the avalonenquiry address without a heading, which simply said:

> "Movida – 0207 734 5776
> Funky Buddha – 0207 4952596
> Chinawhite – 0207 291 1480."

The reply two days later from Rob Palmer was:

> "Hi Katie
> Just to up date you.
> Movida have an outstanding debt £4292.60, China White say he hasn't had an account with them, Funky Buddha want a request in writing via email, I have to ring Whisky Mist back this evening when the floor manager should be available …."

This was therefore an instruction by Ms Hind to Mr Palmer to phone these clubs and try to blag information about the money spent by a certain celebrity. It (and

the email dated 28 May 2010 referred to above) are of a piece with Mr Evans' evidence that when he received an email with simply a name, phone number and date of birth it was to be understood as an instruction to try to hack voicemails. 7 and 8 years later, the same system seems to have been in operation, with PIs instructed to obtain personal data unlawfully.

167. Although there was no evidence about it specifically, the claimants' legal team have calculated, by adding up the value of all the disclosed SAFs, invoices and CRs, the amount expended by MGN on PIs over the extended period in issue – some £9.7 million in total (the figure is not agreed and MGN contend that it is just under £9 million). The precise figure does not matter: the order of magnitude is clear. The breakdown, year by year, calculated by the claimants shows that 2003-2005 were the peak years, at over £1 million for each year, and then the following total figures for expenditure and number of invoices/CRs:

2006	£924,615.38	2,510
2007	£604,571.93	1,797
2008	£636,475.42	957
2009	£543,690.01	1,143
2010	£427,084.56	731
2011	£263,868.00	476

168. These figures support a conclusion that there was only a brief pause in PI unlawful activity in 2006, following the arrests of Mulcaire and Goodman, and that the level of activity reduced, year by year, but by no means came to an end, before the start of the Leveson Inquiry in 2011. Direct evidence of phone hacking and associated UIG is harder to identify, in part because, even more so than in Mr Evans's time at the Sunday Mirror, I am satisfied that those practising the 'dark arts' at all three newspapers took more care after August 2006 to avoid detection. This is highly likely to have meant increased use of burner phones and much less use of traceable phones, including MGN landlines.

169. As part of this increased control, the volume of use of PIs reduced, but only gradually. But, as before August 2006, and as found and explained in the *Gulati* judgment, PIs were used as an integral part of the process of VMI and other means of obtaining information unlawfully. They obtained the data that enabled editors and journalists to be able to identify PINs and access messages. It doubtless got more difficult over time, as some people became aware of their need for security and mobile phone networks increased the security available to subscribers, but I have little doubt that it still went on.

170. The notion that it did not go on at all after August 2006 is impossible to support, as it has already been found that it went on to some extent in respect of three of the *Gulati* claimants, and I have indicated a finding that it clearly happened in respect of the Duke of Sussex. Further, it is evident from the invoices on which the Duke relies (see UIG Episodes Schedule) that a very large number of searches were still being conducted by MGN, particularly at the Sunday Mirror, during the years 2009 to 2011, with a view to finding useful information about the Duke's then close companions, such as Florence Brudenell-Bruce, Natalie Pinkham and Caroline Flack. Although basic searches made by C&L do not involve unlawful gathering of the Duke's private information, they do demonstrate that MGN were

still taking active steps to find ways of extracting such information from his associates. C&L's searches were the first stage in a process that led to attempted VMI.

171. There is nothing to support an inference that the four claimants I have identified were the only special cases in which VMI continued. VMI was an exceptionally useful (but not the only) tool and it had produced sensational scoops for MGN's newspapers and (ironically) made the strong reputations of editors. Those found in *Gulati* to have been principally involved in conducting VMI – Ms Weaver, Mr Buckley, Mr Wallace, Mr Thomas, Mr Saville, Mr Scott, and Mr Stretch to a more limited extent – all remained at MGN until 2011 or afterwards, in senior positions, as did others who, it is evident from emails and other evidence in this trial, were also involved in UIG, including in particular Mr Harpin, Mr Jones and Mr Bell (before he left to set up Ferrari Press as a freelancer).

172. Further, in the *Gulati* trial and other managed claims pending at the same time, admissions were made that a large number of articles were the product of VMI. 118 articles out of 129 relied on by those claimants were admitted or found to have been the product of VMI, which would not have been published but for the product of the VMI. All but 4 of these were before 2006. There are 64 different bylines for these admitted articles. A large number of admitted articles were written by Suzanne Kerins (21), Eva Simpson (10), Jessica Callan (10), Caroline Hedley (6) and Polly Graham (5), all journalists on the Daily Mirror's "3am" (showbiz) column, and they remained at the newspaper well after August 2006. None of these journalists or other members of the showbiz desk has given evidence that there was a sea change and VMI was abandoned as a journalistic tool after 2006. Neither is it likely that it would have been, absent strong editorial enforcement – of which there is no evidence whatsoever. MGN was in daily competition with The Sun and the News of the World in particular; it is improbable that editors and journalists would have given up the tool that had enabled them to compete with those better-funded newspapers for the headline stories that its readers desired.

173. If, as MGN contends, there was no further VMI and associated UIG after August 2006, it is difficult to understand why it failed to disclose something like the truth to Parliament in 2007 and to comply with the requirement of the Leveson Inquiry for it to disclose payment records to PIs and similar third party suppliers from January 2005. MGN could then have made a forceful case that, whatever might have happened prior to August 2006, steps had already been taken by the TM plc board following the arrests and the publication of *What Price Privacy Now?* to root out any improper use of PIs.

174. In fact, in March 2007, Eugene Duffy, a senior editorial manager at TM plc, gave evidence to the Media, Communications and Sport select committee of the House of Commons, having been prepared for that task by Mr Marcus Partington, who was about to become TM plc's deputy group legal director. Mr Duffy told the Committee something that was not true and that MGN must have known was not true, namely that MGN was in no position to identify the individuals who were making use of unlawful services of PIs. I will deal with that in more detail in Part IV of the judgment. But what this demonstrates for current purposes is that there was concealment of the illegal and unlawful activities that were going on. If the

chastening effect of the guilty pleas of Mulcaire and Goodman had resulted in the abandonment of VMI and UIG, there would have been no reason for Mr Duffy not to be frank and open about practices that related to what the Commissioner had already discovered, or indeed for Mr Vickers to cause the extent of the unlawful activities to date to be fully investigated. Instead, the lie was told that there were no unlawful practices other than in relation to the use of Mr Whittamore that MGN could identify.

175. In 2011, MGN disclosed only seven PIs to the Inquiry (JJ Services (Whittamore), whose work had already been investigated by the IPO, Southern Investigations (Law & Commercial), Hogan International, ELI/TDI, GlobalNetNews (Grayson), BDI, and Jonathan Stafford (Newsreel), with the records anonymised and much of the detail shown on the records redacted.

176. Mr Vickers, the group legal director, said that Mr Partington and various other members of the finance department had put together the schedules of PI invoices, but could not remember who redacted them, or why. He accepted that he would have been asked to identify the records. Mr Partington was not able to say what advice he gave about those schedules.

177. What is clear is that MGN did not want Sir Brian Leveson to have a full picture of the extent to which PIs were being used by its newspapers. All relevant PIs used from January 2005 onwards could have been identified and disclosed in the way that only 7 were. 4 of the 7 disclosed did not make supplies to MGN at all, or to any significant extent, after the end of 2006, so a very misleading picture was given of the extent to which PIs were being used after January 2005, which is what the Inquiry notice related to.

178. With several important PIs, including Jonathan Stafford, Rob Palmer, BDI, Searchline and C&L, invoicing continued up to December 2011. Tillen and Dove continued to be used until October 2012 by The People and the Mirror. It is not however possible to identify in respect of every instruction whether it was for lawful or unlawful activities. The claimants have advanced their case on the basis that all the activity carried out by all PIs was unlawful, with only a few exceptions, such as the Teviots, but that is too ambitious. It is clear enough – and a matter of common sense – that not every instruction to PIs who also provided basic search information would have involved unlawful means, or been for the purpose of then using the information for further unlawful searches. Some of it would have reflected journalistic laziness – a matter that editorial managers were aware of: they sent out emails instructing journalists to make use of other free (or cheaper) sources for the publicly available information that they wanted.

179. However, I have found that a significant proportion of all use of the PIs identified as operating after the Gulati period (as to which, see Part III below) were likely to have been acting at least in part in connection with UIG, and many of these are likely to have involved unlawful searches or garnering of information such as call data for the purpose of VMI. Some of the most important and most extensively-used PIs continued to do large volumes of work up to and including 2011.

180. Although use of VMI clearly remained extensive after 2006 and it probably continued across all the desks at the newspapers, it is obviously right to conclude

that the use gradually reduced compared with what was probably the busiest period, 2003-2005. There was no evidence that any particular desk or desks had given it up, however. I find that VMI was used more cautiously after 2006, and steps were taken to increase the concealment and reduce the risk of being caught. Particular care was probably taken, at least in the immediate aftermath of the events of 2006, in the case of high risk celebrities, such as the Duke of Sussex. VMI was probably not as "habitual" after 2006 as it was in the years 1999-2006, and was probably done thereafter by fewer journalists. The editors, who were told by Ms Bailey to eschew all illegal activity, did no such thing: they ensured that it was able to continue, as and when needed, and did their best to hide it from the main board executives. However, they would not have been able to hide it from editorial management and the in house lawyers. My conclusion is that VMI remained an important tool of the kind of journalism that was being practised at all three newspapers up to and to a limited extent even during the Leveson Inquiry, and it was fed by extensive UIG. It was still used to a significant extent, but not quite as habitually as before August 2006.

181. In summary, the evidence that supports my conclusion that VMI and UIG continued extensively but on a reducing basis from 2007 until 2011, is the following:

a. First, the findings of VMI in *Gulati* that certain claimants' phones were hacked up to and including 2010;

b. Second, the clear cases of several of the Duke of Sussex articles in 2007 and 2009;

c. Third, the vast quantity of PI UIG that continued from autumn 2006 right up to the end of 2011, including those PIs such as Jonathan Stafford, Rob Palmer, BDI, Searchline and C&L, who were most used and closely connected to the way in which journalists used UIG to provide the information that they needed to hack phones. I deal with this further in Part III of the judgment;

d. Fourth, further documentary evidence in emails that show that these PIs were aware of what they were doing: see e.g. the emails in [162] to [166] above.

e. Fifth, the lack of any oral evidence from MGN to the effect that a decision was made to end what had been done previously, or that what Ms Bailey said to the editors was carried into effect. The lack of such evidence contrasts markedly with the continuation in employment, and indeed promotion to senior editorial responsibility, of those who were closely involved in phone hacking during the *Gulati* period.

f. Sixth, concealment of the UIG operations by changing the names and descriptions of some of the important PIs and the use of CRs, and having one point of authorisation of CRs, rather than invoices that contained more details of the nature of the work done – see in particular the evidence of Mr Hanks;

g. Seventh, MGN's concealment of the truth from the House of Commons and the Leveson Inquiry. If a concerted effort to stop VMI was being made, it is difficult to see why MGN would have misled them about what had happened previously;

h. Eighth, the continued concealment of the truth even after the Leveson Inquiry, during the Gulati proceedings and in disclosure in these proceedings.

182. MGN emerged largely unscathed from the Leveson Inquiry. The decision was obviously taken at a high level that MGN's interests were best served by keeping a lid on as much as possible of what had happened. I shall return to that in Part IV. It was only when that objective became impossible, on account of Police investigations and persistent disclosure applications in the MNHL, that the admissions began to emerge. Even today, MGN is not being open about the extent to which VMI and UIG went on at its newspapers.

Part III: The Private Investigators

Contents

Introduction

183. It is part of the claimants' generic case that very large numbers of instructions were given to many PIs to obtain private information unlawfully and provide it to MGN journalists. Moreover, it is alleged that MGN had "standing arrangements" for a number of years with certain PIs to carry out searches that were unlawful, to identify personal details such as phone numbers, dates of birth and family members, with a view to cracking PIN codes on mobile phones or otherwise discovering or accessing private information. In addition it is part of the claimants' case that MGN had standing arrangements with a number of freelance journalists (many ex-MGN) or freelance photographers to obtain private information with which to target individuals of interest to its newspapers.

184. There is no doubt that the use made of many PIs and freelancers was very extensive, over many years. There are said to be more than 31,000 payment

records from 1995 to 2011, with the peak years being 2003-2005, when there were respectively 3403, 4368 and 5014 invoices or contribution requests paid by MGN, at a total cost for those three years of almost £4,500,000. Over the years, a number of PIs were given hundreds and some were given many thousands of separate instructions. C&L received nearly 33,000 individual instructions (which were billed in small groups).

185. As the claimants have emphasised throughout, those numbers are based on the instructions that have been disclosed by MGN. MGN has only given disclosure throughout this litigation when the claimants have been able to identify and plead the name of someone against whom there is a credible case that they were acting unlawfully in this way. I refer to MGN's obstructive approach to disclosure below. It is therefore quite possible that there are other PIs, whose actions have not yet been discovered, or other trading names.

186. Despite what has been disclosed to date and the evidence of systemic and habitual use of PIs, I reject the allegation that there were "standing arrangements" in place between MGN as a corporate entity and any individual PI or freelancer – or even between a particular newspaper and a PI or freelancer – if by that is meant a contractual retainer or a non-contractual but formal and permanent relationship. There was no documentary or other evidence to support a finding that any PI had a standing arrangement in that sense. However, there is evidence that some PIs, such as Jonathan Stafford, ELI/TDI/BDI, Mr Palmer and the Scotts at C&L, were regularly and routinely, indeed almost constantly, it appears, used by many journalists at all three newspapers. Mr Stafford used to come into the MGN offices. The editors and journalists may well have felt that PIs such as these were permanently available to instruct, and the PIs may have felt that they had a constant flow of work, but that does not create a "standing arrangement" – just a mutually beneficial and continuous relationship.

187. In closing, Mr Sherborne effectively conceded that there was no "standing arrangement" in the strict sense: he said that what was meant was that there was "regular use of [a PI] by one or more journalists … to do the kind of work set out in the [GPoC]". I would characterise that as "regular use", not a "standing arrangement". In some instances, though, Mr Sherborne's paraphrase does not do justice to the degree of use: Mr Stafford, TDI/ELI/BDI, Mr Palmer and the Scotts were used to an extraordinary degree, day by day and month by month – so much so that it is surprising that they also had time to work for other newspaper publishers – which they did.

188. The evidence as a whole presents a clear picture of individual editors and journalists, at each of the newspapers separately, having their own preferred regular contacts for PI work, and some approved names at individual desks in newspapers to consider for overseas investigatory work. Those that I have already identified were the most commonly used, though there were also others used very extensively, and some were specialist blaggers rather than PIs who conducted searches.

189. Many overseas contacts, such as Mr Couzens, Ms Witheridge, Mr Thorne and Mr Pisa, were previously journalists at MGN who had gone freelance abroad, e.g. in the US, Spain, Italy and Australia. The most frequently used PIs were used by a

number of different journalists and editors. Some journalists used a large number of different PIs, presumably for different work (or in different countries or areas of the UK). On occasions, according to Mr Harwood and Ms Kerr, individual journalists who were not regular users would seek approval of their chosen PI from an editor or manager, when needed, or seek guidance from others when uncertain whom to use for a particular purpose.

190. The findings that the claimants otherwise sought in closing submissions are that the use made of a large number of identified PIs in relation to each of three periods, 1991-1999, 1999-2006, and 2006-2011, are examples of UIG by VMI, blagging and other unlawful obtaining of information by PIs. For each period, the claimants have a long list of alleged PIs, in respect of which they seek findings. The finding sought is, however, general and vague.

191. The pleaded case of the claimants is more detailed and somewhat different.

    a. In support of the plea that the use of VMI, blagging and other UIG was habitual and widespread, the claimants pleaded as particulars of scale and extent (i) the very large number of victims, (ii) the number of calls made to the Orange platform, (iii) the volume of instructions and payments to PIs or other similar agents, (iv) the large number of journalists and editorial staff involved in such activities, and (v) the volume of articles complained about.

    b. In support of the case on the volume of instructions and payments, the claimants rely on (i) the existence and content of the invoices and CRs, (ii) the large number of different companies and individuals used for the activities alleged, (iii) the cost of the supplies, (iv) the fact that senior managers recognised that much of the spend was on "illicit" services, (v) the large number of targets in notebooks and diaries of PIs and journalists, and other matters.

    c. At this point, the GenPoC loses coherence, but various allegations are made that identified PIs were commissioned to carry out particular kinds of UIG or do things that were unlawful, such as using credit reference agencies without the data subject's consent, and using the unedited version of the electoral roll.

    d. The claimants then pleads standing arrangements with PIs who provided particular types of services.

192. The case advanced by the claimants is therefore, essentially, that:

> (1) the facts alleged relating to the use of PIs prove that the use of UIG by MGN was widespread and habitual;
>
> (2) various acts that PIs did were unlawful; and
>
> (3) MGN had standing arrangements with (or, now, made regular use of) these PIs to do the unlawful acts.

Nowhere is it pleaded in terms that any of the editorial staff, journalists or PIs were committing a crime, though as regards VMI it is common ground that, whoever carried it out, it is a criminal offence.

193. It is therefore necessary for me to make findings, so far as the evidence permits me to do so, about:

    a. the nature and extent of the use that MGN made of the identified PIs;

    b. the period or periods during which that use was made; and

    c. whether the activities of the PIs and/or MGN through them were unlawful.

    Having made those findings, I will then express a conclusion as to whether MGN made regular/extensive use of these PIs, or some of them, to do unlawful acts.

194. In making my findings, I bear in mind that none of the PIs is a party to this claim or (with only a few exceptions) has given evidence about the nature of their work. Only Ms Annette Witheridge, Mr Tom Worden and Mr Paul Hawkes were chosen by MGN to provide a witness statement and were then willing to come to court and expose themselves to cross-examination. With only three exceptions (Mr Morgan, Mr Honeywell and Mr Duffy), MGN chose not to waive privilege to explain in its closing submissions why other potential witnesses who did not make witness statements were not called.

195. My approach is only to make findings of unlawful conduct against these PIs (and indeed editors and journalists) in relation to a case that is adequately pleaded and where it is necessary to do so in order to resolve a pleaded issue between the claimants and MGN. I will reach a conclusion adverse to the PI about the lawfulness of their activities only if there is clear evidence to support it. Non-parties (except the other claimants in this fourth wave of the MNHL who adopt the same generic case) are of course not bound by my findings. Nevertheless, where a finding is appropriate, the standard of proof is the balance of probabilities, however serious the allegations: Birmingham City Council v Jones [2023] UKSC 27; [2023] 3 WLR 343. I have already noted that, with few exceptions, there is no evidence at all that any of the named PIs themselves hacked telephones, intercepted live phone calls or bugged rooms or cars.

196. MGN does not contest in principle that I should make findings where appropriate to do so, but its case is that findings should only be made in relation to pleaded allegations against each PI (and indeed against MGN journalists). I agree with that approach. It cannot be right to make findings against non-parties in relation to serious allegations of misconduct where there is no pleaded issue between the claimants and MGN in relation to them. Further, I will not make a finding of criminal conduct in relation to a PI where there is no particularised plea of criminal conduct by that person. In relation to each PI that I address, I will therefore start with the pleaded allegations.

Disclosure

197. The claimants' generic case in relation to PIs has evolved since 2014 with tranches of disclosure given by MGN. As I have explained, this has only happened piecemeal because the claimants needed to have a name and some evidence of a particular PI having provided services to MGN before disclosure could be obtained (though, even then, MGN generally contested the applications): an exercise that Mr Sherborne repeatedly likened to a game of "battleships". Disclosure in the MNHL followed the following path:

    a. Despite providing to the Leveson Inquiry on a confidential, anonymised and redacted basis the payment details relating to 7 PIs, MGN admitted the use of only 4 PIs (with some aliases) in December 2014, in the lead up to the *Gulati* trial. Only 3 of the 7 PIs provided to the Inquiry were admitted by MGN in *Gulati*: ELI/TDI, Southern Investigations and Avalon, together with a fourth, Trackers UK, which had not been provided to the Inquiry. Neither Mr Partington nor Mr Vickers was able to explain in evidence how it happened that disclosure of the details of at least the other PIs that were provided to the Inquiry was not given to *Gulati* claimants, though they both accepted that these, at a minimum, should have been disclosed. I will return to this unhappy subject in Part IV of this judgment.

    b. Disclosure was then ordered in December 2018 of the use made of 14 PIs that the claimants had by then been able to identify and some aliases of them (MGN fought the disclosure application). The Court also ordered disclosure of the payment records that had been provided to the Inquiry.

    c. In June 2019, the Court further ordered disclosure of unredacted Inquiry PI records as well as the payment records of the 14 PIs and aliases, and three further PIs that had by then been identified by the claimants (MGN fought that disclosure application too).

    d. In January 2020, the Court ordered disclosure of the payment records relating to the 4 PIs that had been identified in *Gulati* (MGN fought that application too).

    e. In July and October 2020, the Court ordered disclosure relating to further PIs and alleged blaggers and some aliases (MGN fought the applications).

    f. The Court ordered disclosure in 2022 relating to further PIs and alleged blaggers following the re-amendment of the GenPoC to include a case relating to them.

198. Taking the failure to make full disclosure to the Leveson Inquiry, the failure to give proper disclosure in *Gulati* and the attempts to prevent further disclosure in the third and fourth waves of the MNHL together, it is obvious with the benefit of hindsight that MGN has been trying to prevent claimants from obtaining a full picture of the nature and extent of use of PIs by MGN's editors and journalists.

199. This conduct sits extremely uncomfortably with the assurances given by senior executives at TM plc from time to time, such as Mr Vickers and Mr Grigson, that

they were concerned to ensure that all wrongdoing was openly acknowledged and that claimants were compensated for it. As just one example, Mr Vickers, as TM plc group legal director and a board director of MGN, made a witness statement on 22 October 2014, in opposition to a disclosure application in *Gulati*, and said:

> "It has also been suggested both by counsel and in the evidence served in this application that MGN has sought to avoid giving proper disclosure, or even to hide or destroy evidence. Nothing could be further from the truth. Any careful reading of the disclosure statements served in these claims, as supplemented by this witness statement, makes clear that MGN has made *every reasonable effort* to ensure that we have complied with our disclosure obligations in these actions. Trinity Mirror is *determined to make suitable amends* to any person who has been affected by the wrongdoing alleged in these claims, and fully respects the necessity for *a fair and open process based on all relevant material*." (*emphasis added*)

Mr Vickers then explained that the disclosure already given was the culmination of an extensive process involving him, Marcus Partington, leading counsel, RPC, retained e-disclosure experts and solicitors advising MGN in connection with a police investigation, and that he was personally satisfied that the data assembled for disclosure were "as comprehensive as they reasonably could be" and that the documents disclosed to the *Gulati* trial claimants were "the best evidence that the claimants could hope to obtain".

200. It is now clear that that was quite untrue and that there has been a serious and culpable failure to give disclosure. MGN had not even disclosed in *Gulati* the redacted material that it confidentially provided to the Leveson Inquiry.

201. As Ms Gulati's unchallenged witness statement in this trial demonstrates, incriminating documents that are highly relevant to her claim were not disclosed, including in her case three BDI invoices in late 2006 and 2007 referring to "PROJECT SHOBNA" and "PROJECT FORD" (Kate Ford being one of Ms Gulati's associates), and Mr Scott's Palm Pilot, first located by MGN in May 2014 but not disclosed until June 2020, in which Ms Gulati's and Ms Ford's name and mobile telephone number were contained. There were also a Unique Pictures CR relating to Ms Gulati and two JJ Services invoices and one Starbase invoice relating to Ms Ford that were not disclosed.

202. The claimants prepared, as an exhibit to the 49th witness statement of James Heath, a table listing all the documents relating specifically to the individual *Gulati* claimants and their associates that have subsequently been disclosed by MGN but which were not disclosed prior to the *Gulati* trial. There are:

    a. two invoices and five CRs relating to Sadie Frost;

    b. four invoices relating to her associate, Jude Law;

    c. one invoice each relating to two other Frost associates;

    d. five invoices relating to Paul Gascoigne;

e. one CR relating to each of Mr Yentob and Ms Taggart;

f. one invoice and 7 CRs relating to an associate of Ms Taggart;

g. one invoice and one CR relating to Mr Ashworth;

h. five invoices and three CRs relating to an associate of Mr Ashworth;

i. two invoices relating to Ms Alcorn

j. six invoices and seven CRs relating to Mr Roche;

k. six invoices relating to two associates of Mr Roche;

as well as entries for most of the claimants and several associates in Mr Scott's Palm Pilot. These invoices and CRs are from PIs who were central to MGN's operations, such as JJ Services, Rachel Barry, Christine Hart, Newsreel, BDI and Starbase. No disclosure at the time was given in relation to these PIs.

203. The facts, which were not disputed by MGN, evidence a shocking failure by a large organisation with in-house lawyers and a leading external firm of lawyers to comply with their disclosure responsibilities. Mr Vickers and Mr Partington were both constrained to admit that MGN had failed to give proper disclosure in *Gulati* but could not explain how or what errors had been made that caused the failure.

204. Mr Vickers said that as far as he was aware at the time, they were:

> "looking for everything and we were looking for all the details of all the private investigators that had been used. If some came out later on, I don't know where they came from, I don't know who they are, and I certainly don't know why they were not disclosed at this time."

He claimed that until told by Mr Sherborne in cross-examination, he did not know that some of the PI material given to the Leveson Inquiry was not disclosed in the *Gulati* proceedings.

205. Mr Partington similarly claimed to be unaware at the time of the *Gulati* proceedings that PI material disclosed to the Inquiry had not been disclosed to the *Gulati* claimants, even though he accepted that he was involved with external solicitors in preparing the material that was supplied to the Inquiry and that he was the internal lawyer in charge of the litigation I find it incredible that disclosure of 4 out of the 7 sets of PI records that had been supplied to the Inquiry was overlooked, because 3 of the 7 were disclosed, and BDI (which was not disclosed) was the successor company to ELI/TDI, which was disclosed.

206. There was no difficulty at any time for Mr Partington, Mr Vickers or external lawyers instructed by them in searching MGN's databases to identify invoices and CRs commissioned by journalists and editors. Had they only gone back to the allegations made by Mr David Brown in his 2007 witness statement (which I deal with in more detail in Part IV below), which by late 2013 they knew were likely to have been true, and searched for invoices bearing the names of the celebrities

that Mr Brown named as being victims of phone hacking, they would have found invoices from the following PIs in addition to the 4 that they disclosed in 2014: C&L, Unique Pictures, Starbase, Lenslife, Warner, Rob Palmer, as well as specific invoices to back up Mr Brown's allegations of phone hacking.

207. If, as MGN contended in this trial, it was using PIs outside the *Gulati* period only for proper and lawful journalistic purposes, it is not obvious why it has spent so much time and money to prevent the full picture being brought before the court. The inference to be drawn from this conduct is obvious, namely that a lot of the PI payments related to UIG and, further, that MGN concealed the extent of use of PIs, not just from Parliament and the Leveson Inquiry but then from the Court too.

Evidence to support claimants' case

208. The inference about use of PIs in connection with UIG is supported by the documentary evidence of large numbers of PI invoices and CRs and a few emails that were eventually disclosed. When some of the references and annotations are explained, as they were in oral evidence, it is apparent that these are predominantly not innocuous payments for searches of public registers, though some of the individual payments may well be for information that either was or could have been obtained lawfully.

209. The oral evidence that supported the claimants' case came principally from Mr Whittamore's confessions about JJ Services' activities; Mr Haslam's evidence about Jonathan Rees, Sid Fillery and their companies, Southern Investigations, Law & Commercial and Media Investigations; Mr Hanks' evidence about what he was asked by MGN or other PIs to do; Mr Evans' original evidence in *Gulati* about ELI/TDI (which was accepted by Mann J to be true) and his evidence at this trial about Mr Hinchcliffe and MSH; Mr Hawkes's intended exculpatory evidence; and much of the evidence of Mr Graham Johnson. I have already referred to some of this evidence in Part II, above. There were also some answers given by Ms Witheridge and Mr Worden, and points on which they were unable to provide an innocent explanation, on which the claimants rely as further supporting evidence of UIG.

210. Evidence about PIs was called by MGN from Ms Witheridge, Mr Antony Bassett (witness statement supported by a hearsay notice and not in the end challenged by the claimants), Mr Worden, Mr Hawkes and Mr Harwood. I have already considered Mr Harwood's evidence in detail in Part II.

211. Ms Witheridge gave evidence about her work in the US for Big Apple News, a news agency based in New York that she established. She was effectively the Sunday Mirror's regular US correspondent: she said that she would speak to the news desk 5 days a week. She gave evidence about how she worked, which was "good old-fashioned journalism", involving knocking on doors, speaking to people and interviewing them, and looking in public phone directories. As the internet developed, she used that to search for information. She sold Big Apple News in 2005 and then worked as a freelancer from 2007 to 2019.

212. Ms Witheridge said that she used private investigators to conduct searches to find addresses and telephone numbers when she could not find them, up to three times a week. One such was Mr Dan Hanks. She claimed (wrongly, as it emerged) that she only ever received basic searches and had never seen a higher level search that provides additional (confidential) information. She claimed (again, I find, falsely) that Mr Hanks assured her that everything he did was legal and said what information he was allowed to pass to her as a freelance journalist. Finally, she said that she had never engaged in VMI or used the services of a PI to obtain private information unlawfully, and never obtained information by blagging.

213. Ms Witheridge was asked in cross-examination in particular about her dealings with Dan Hanks and his PI agency, which she used to obtain information about subjects of interest to Sunday Mirror reporters. Mr Hanks had explained that, as a PI in the US, he was able to get privileged access to restricted subject data (higher level searches), and that he passed all this on, unfiltered, to Ms Witheridge or to anyone else who commissioned him. Ms Witheridge suggested that Mr Hanks at some stage ceased to filter the results that he sent her, and Mr Hanks agreed that he was too lazy to do so. Nevertheless, Big Apple News, or the Sunday Mirror, paid a price that reflected a full, unfiltered search, and Ms Witheridge did indeed receiver higher level searches. Ms Witheridge said that she did not ask for data that could not lawfully be sold by a PI in the US and had no use for social security numbers and other restricted data. But she nevertheless received it and passed it on to the journalist who had engaged Big Apple News.

214. She expressed surprise about the amount of information in a data search from Canada that she had passed on to her client. I was not convinced by her expression of surprise. She was clearly a very experienced operator and knew exactly what she was requesting and getting. She was asked about two particular cases in which she had been involved, in which she had used the word "blag" in emails, and referred to spoof phone calls relating to Prince Michael of Kent. She was at a loss to explain these, but suggested that she did not use the word "blag" to mean blag in the sense in which it is used in this litigation. I'm afraid that I was not persuaded: she knew exactly what blagging or (to use the American equivalent expression) spoof calling was.

215. I of course can make no finding about the legality of what Big Apple News or Ms Witheridge were doing in the US, in the absence of reliable evidence of state or federal law in the US; but what Ms Witheridge was doing – procuring and selling restricted confidential information for profit – would be a data protection offence in the UK. I do not accept her protestations that she had not blagged private information or obtained restricted higher level searches. I am satisfied that those at the Sunday Mirror using Ms Witheridge to obtain information would have known what they were paying for.

216. Mr Bassett made a witness statement and then a hearsay notice was served on grounds of his ill-health. The claimants initially applied for him to be required to attend for cross-examination but then withdrew their application. Mr Bassett's evidence was that he was on the part-time staff for The People from 1980 to 2002 and then a freelance until 2015. He described how he did old-fashioned searches at registries from the 1980s until 2008, when everything was put online. MGN

used him quite regularly for that work. He never did anything unlawful and knew nothing about VMI.

217. The claimants accept that what Mr Bassett himself did was lawful, but the product of his work, e.g. mothers' maiden names and dates of birth, were then used to crack PIN codes or other security passwords. Interestingly, Mr Bassett (who had 283 pages of his invoices in the trial bundles) was commissioned by, among others, Mr Stretch, Mr Couzens, Mr Saville, Mr Coutts, Mr Edmondson and Mr Weatherup, all closely involved in phone hacking, which lends support to the claimants' case in that regard. The claimants provided six examples where an invoice of Mr Bassett for Mr Stretch, Ms Boniface and Mr Saville was followed within a day or two by a further commission of ELI in the same subject name by the same journalist. I consider that case about MGN's *modus operandi* to be sufficiently proved, as it was too in the use that was made of Census Searches' and C&L's work products, but still the UIG was that of ELI and the journalists, not Mr Bassett or the Teviots.

218. Mr Worden worked for The Sun between about 2000 and 2004, as a staff reporter on the news desk, and then moved to Madrid in August 2003 specifically to follow the career of David Beckham at C.F. Real Madrid. He stayed in Madrid becoming the paper's de facto Spain correspondent, and met Gerard Couzens while covering the David Beckham story, but then he went to South America. He went into partnership with Mr Couzens on his return to Madrid in 2005.

219. In his witness statement, Mr Worden said that the partnership ("TAG", although this name was only used later) provided stories to all the national newspapers, dealing with all sorts of journalists, travelling throughout Spain and building up contacts. Some of these contacts knew a number of celebrities. Stories TAG found were either filed on spec to all papers, or sold as an exclusive to one paper, or they were done on commission. TAG used contacts and did open-source research, Mr Worden said. He said that he had never engaged the services of PIs or third parties to engage in unlawful information gathering activities, and that TAG never did so either, and that he did not believe that Mr Couzens carried out UIG or commissioned any either.

220. Mr Worden was shown a number of invoices bearing his name from his time working at The Sun. He claimed not to recall his use of Starbase and said that any work that he asked Gwen Richardson to do was above board. He did not recall that he had asked Ms Richardson to do a "special" or an "Ex D" search, and said that he did not see Searchline's invoices. His claim in his statement that he did not use PIs in connection with any unlawful activity is clearly wrong. It is evident from the documents produced that he did use PIs in the UK, including C&L (by its trading name, System Searches), and that on occasions PIs were used to do searches that appear to be unlawful. I was not persuaded by his claim that if Ms Richardson or anyone else had told him that what she was going to do was unlawful, he would have said "don't do it".

221. Mr Worden clearly developed connections with the Sunday Mirror, no doubt as a result of the partnership with Mr Couzens. He worked for Mr Buckley but claimed never to have known that he was involved in unlawful activity. He spoke to James Saville a lot and had no idea that he was doing unlawful things. He

claimed to have no idea that Mr Couzens had been interviewed under caution in Operation Glade and that he had carried out unlawful activities. He said that Mr Couzens did not tell him what he did before he came to Spain. If that were true, Mr Worden must have been perplexed by the amount of contact between Mr Buckley and Mr Saville and TAG.

222. After joining Mr Couzens, Mr Worden became a co-director and co-owner of TAG (presumably "TAG" for Tom and Gerard). Despite that, Mr Worden claimed to have little understanding of what Mr Couzens was doing – he was based in Madrid and then Barcelona, and Mr Couzens in Malaga. He claimed that the two of them never discussed the use of PIs. He was unaware that TAG was using Newsreel and Mr Stafford, JJ Services and Christine Hart.

223. When shown some of the things that Mr Couzens was involved in on behalf of the company, Mr Worden expressed surprise, even in cases in which he had been copied into relevant emails. He was copied into an email to Mr Buckley dated 28 September 2010 that obviously contemplated blagging Mr Nulty's address in Spain from a car rental firm. Mr Worden said that perhaps Mr Couzens copied him in so that he was aware of what Mr Couzens was doing, in case he was out of the country. This explanation sat uneasily with Mr Worden's suggestion that he and Mr Couzens really did different work and generally did not discuss with each other what they were doing. There are, besides, cases where it is clear that the two of them were working together, including a proposed blagging of a hotel in an attempt to track down Francisco Marco in Barcelona, and pursuing Mr Nulty in Andalucia. He was "unaware" of why Mr Couzens was passing on Ingrid Tarrant's mobile telephone number to James Saville in November 2005.

224. Mr Worden chose his words very carefully when being questioned about his statement and often emphasised that his answers were given "to the best of my recollection". Unlike his witness statement, which was expressed in strong, clear assertions, in his oral evidence he had considerable difficulty remembering matters that he was asked about, and answers that he gave were carefully considered. I had a distinct sense of things being kept under wraps by Mr Worden. He became very defensive and quibbled with why he was being asked questions about Mr Couzens's activities, when Couzens had been his business partner of 8 years at TAG and his own witness statement had given Couzens a clean bill of health.

225. I express conclusions about TAG Media's work in the PI Schedule to this judgment. It is sufficient to say in relation to Mr Worden that I do not accept his evidence about the wholly innocent nature of the engagement that he had with phone hackers such as Buckley and Saville (though I make clear I make no finding of anything illegal having been done by Mr Worden himself), or his explanation that he had no idea what Mr Couzens was up to, or what he was earning. It was particularly unpersuasive as regards those matters on which Mr Worden was copied into emails or otherwise obviously working with Mr Couzens on a particular engagement.

226. Mr Hawkes, who modestly described himself as an "internationally award-nominated private investigator and forensic psycho-physiologist", came to give evidence, as he said, to correct the outrageous allegations that had been made in

relation to unlawful work done by him and his company for MGN. MGN had in fact admitted that some of the work that Mr Hawkes's company, Research Associates, did was unlawful, and Mr Hawkes wanted to explain why that was incorrect.

227. He claimed to be deeply offended at the suggestion that he acted in the same way as investigators who were paid to act unlawfully, though he admitted that what he used to do before the Data Protection Act came into force would be illegal now. He said that he adapted his methods following its coming into force, and said that he went out of his way to ensure that all his methods were lawful.

228. He was renowned in his industry, he said, for being able to work cleverly rather than illegally – there was a certain clientele, he explained, who would only instruct PIs that they were sure would act within the law. He pointed in this regard to Mr Graham Brough at the Mirror, one of his customers, as being "a born-again Christian" who would never have been willing to instruct a PI who did not act entirely lawfully, and said that Brough was nervous about instructing him for this reason and asked if everything was above board. Although he could not recall the details of any instruction he received from the Mirror or the Sunday Mirror, he said in his witness statement:

> "I also cannot recall a single instance where anyone working for these newspapers asked me to do anything that was unlawful. What I do remember experiencing, via Graham Brough, was the opposite, and I sensed there being a culture of concern for keeping within the boundaries of law."

It seems that Mr Hawkes was unaware of Mann J's findings in *Gulati* and of the volume of evidence in this case of illegal and unlawful activity being carried on on an extensive scale.

229. Mr Hawkes tried to explain that for data that is generally accessed unlawfully, there were lawful means of obtaining it in many cases – which took more time and therefore was charged at a higher cost to the customer. He said that part of the problem he encountered was that newspapers were unwilling to pay the higher cost. That particular statement is inherently credible, as was his admission that the word "special" in his invoices, relating to engagements, was put in at the request of the newspapers. The other problems for Mr Hawkes's leisurely but lawful service was the speed with which newspapers required information, and the fact that, as he accepted, the lawful methods often did not work – he said that there was only a 20% chance of matching a car registration with one previously sold on ebay or Autotrader. Mr Hawkes impliedly admitted that speed was an issue for journalists, as he said that "for newspapers, what I often do is verbal, so that it is quick". This did not, however, explain how the methods that Mr Hawkes explained he used could be done verbally and quickly.

230. These were some of the methods that he described:

    a. Finding an up-to-date address for a subject by posting a "benign" letter to the previously known address by recorded delivery, and after a while telling the Post Office that it has not been delivered, and ask for proof of delivery,

which would then be sent by post. In his witness statement, Mr Hawkes said that the Post Office would send a picture of the roundsman's card, on which the re-delivery address was redacted, but other addresses nearby could be seen. In cross-examination, he said it was a piece of paper that the Post Office sent to prove delivery, maybe a photocopy. The process would involve sending the benign letter and waiting, then asking for proof of delivery to be sent back, which might or might not show neighbouring addresses, and then checking nearby addresses to find the one that was wanted. Mr Hawkes admitted that this would take days. In fact, it appeared that the method Research Associates used was to phone a "contact" at the Post Office and ask for (or blag) the forwarding address. In 1999, Mr Brough obtained from Research Associates a forwarding address for Mr Kilroy-Silk from "PO contact" and his NI number from a "DSS contact and DCI check", as recorded on a rare invoice of Research Associates that has the work description on its reverse saved. Mr Hawkes denied that DSS was the Department for Social Security, but then said that one of his operatives would have talked to a contact who had formerly worked for the DSS as an investigator, as there are lots of them working as surveillance operatives – he knew them and would sometimes "run things by them". Even that explanation would involve unlawful divulging of confidential information by the contact, but Mr Hawkes eventually accepted that DCI was Departmental Central Index, so it is obvious that this was information obtained from within the DSS.

b. Finding the name of the owner of a vehicle on the street (as was apparently done in the case of an article about Chris Evans and Natalie Brewster), by obtaining specific details about the car (make, colour, registration), then obtaining Land Registry plans for the area where it was parked, then using an information provider called GPG to get telephone numbers locally, then making phone calls to as many people in the local area as it took before they admitted that the car was theirs (and gave their name) or said who it belonged to locally. That would clearly only work if the owner of the car lived where it was parked, not if they were a visitor (as Ms Brewster was to Mr Evans' apartment). If there were no location provided to Mr Hawkes then it would be necessary to go back to try to find the previous owner of the vehicle and find out who they sold it to. Mr Hawkes accepted that these processes take time and work and that he would have charged between £250 and £500 for the work.

231. Mr Hawkes's accounts of these methods were laboured and at times confused, such that it did not appear that they were routinely used methods. Further, the methods were so obviously slow and unreliable that no tabloid journalist wanting to stand up a story would be likely to have been willing to pay more for that kind of slow service.

232. When unable to answer difficult questions, Mr Hawkes asserted his greater knowledge of open source databases and suggested that questions that he was asked were wrong, and he became quite aggressive about it. He had no convincing explanation for the invoice for £150 for Hugh Grant computer hack

(or the payment of £500 on the same date to Gavin Whitfield, who had introduced Mr Hawkes to Dan Evans – Mr Hawkes claimed not to know him at all well) and which Mr Johnson had given evidence about. I consider this was probably material that had been obtained by someone else, possibly someone working for him, and then passed on by Mr Hawkes at a small profit.

233. In the final section of his witness statement, Mr Hawkes included a lengthy description of the nature of open-source intelligence. He said that this was in the nature of a "brain dump" of what he knows about that subject. Unfortunately for Mr Hawkes, it then transpired that he had simply copied and pasted the content of the Pangea Group LLC website and had not been honest about its provenance. I find that he had done this, and described himself as a forensic psycho-physiologist, in order to aggrandise the nature of the work that he did, in an attempt to distance his work and methods from those of other PIs who act unlawfully.

234. His attempt did not succeed because I feel unable to place any reliance on his evidence (save as indicated above), which I consider was riddled with untruths. He did at least admit that it was no surprise that he blagged information out of people, because he was a private investigator. I prefer the evidence of Mr Johnson and Mr Evans on the Hugh Grant story where it conflicts with what Mr Hawkes said. I deal with their evidence below.

235. MGN also intended to call Ms Gwen Kent (formerly Gwen Richardson) of Searchline Ltd, and Mr Dennis Rice, a journalist with the Sunday Mirror from 1996-1997 and again from 1998-1999, then a freelance journalist and television producer. Neither was willing to come to court to give evidence, on claimed grounds of ill-health.

236. I had made clear at the pre-trial review that I considered that all the evidence in this highly contentious case should be given from the witness box, not remotely, unless there was a very good reason why a witness could not attend. I refused an application for Sly Bailey to give her evidence remotely from Spain. Both Ms Kent and Mr Rice contended that they were too old and too ill to attend court. In view of what Ms Kent said about her heart condition, I indicated that I was minded to allow her evidence to be given remotely, in view of her age (82), living in Dorset and her state of health, subject to receiving a statement from a doctor explaining why her condition meant that she could or should not attend trial to give her evidence. A satisfactory statement was never produced: the doctor's letter that emerged did not match Ms Kent's description of her condition and was clearly just written at her request, without a proper (or any) face to face consultation and assessment taking place.

237. In Mr Rice's case, he lived in East London, did not rely on age-related infirmity, but said that he suffered from high blood pressure and "ha[d] .. no faith in our civil justice system at all" in view of previous experience in which he was a party in a libel arbitration. His witness statement announced that he would not be appearing to give evidence. He was originally willing to give evidence remotely but then decided that he would not do that either, and no satisfactory medical opinion was produced. Neither witness was therefore called by MGN. Although I have read their witness statements, which are largely exculpatory, I do not in the

circumstances feel able to give much if any weight to what they say, save that I accept the factual content of paras 14-18 of Mr Rice's statement (not the exculpatory assertions) as a description of the old style of investigative working in the mid-1990s – Mr Rice was only at the Sunday Mirror between 1996-1997 and 1998-1999. Mr Whittamore said that he considered those paragraphs to be a fair description of that type of work.

238. The important witness I need to address at this stage is Graham Johnson, on whose evidence the claimants strongly rely. He is now an author and investigative journalist, and producer of and consultant to television documentaries on organised crime. He was employed by the News of the World as a junior reporter in the features department from 1995 to 1997 and then at the Sunday Mirror, becoming its investigations editor from 1999 to 2005. He wrote a book, *Hack,* detailing his experience of tabloid journalism and has written many articles on the subject of illegal news gathering techniques, for bylineinvestigates.com among other online publications.

239. Mr Johnson accepts that, to a very limited extent, he conducted some phone hacking in 2001, on the instruction of Mark Thomas and to the knowledge of his editor, Ms Weaver. When the editors of the Daily Mirror were arrested in 2013, Mr Johnson came forward and admitted "a few days of voicemail interception", even though he was not under suspicion. He was convicted on admissions in 2014 and received a community service sentence.

240. Mr Johnson said that although when at the News of the World he acted as a dishonest blagger trying to deceive people and wrote articles that he knew were untrue, he decided to become honest in 2007. Significantly, he has for some time been assisting the claimants' legal team unpaid to assemble evidence, alongside Dr Evan Harris, who has been working as a paralegal throughout this litigation, which he strongly supports. Mr Johnson said that not only is he unpaid in his role but he has spent substantial sums of his own money, and in one case guaranteed a potential costs liability of a deponent, to seek to obtain documentary evidence or affidavits sworn by those involved in wrongdoing. He said that he has received threats from some of those implicated in his investigations and threats about his intention to give evidence at this trial.

241. It was as a result of Mr Johnson's evidence at an earlier stage of these proceedings (from about 2017) that the claimants were able to make applications for disclosure in relation to identified PIs. Mr Johnson had made 7 interlocutory witness statements before his first trial witness statement in March 2023, which itself was followed by two further witness statements. As the claimants have demonstrated in Annexe 12 to their closing submissions, the information that Mr Johnson gave in his Police witness statements and his interlocutory witness statements relating to the unlawful use of PIs and other third party suppliers by identified editors and journalists has consistently been proved correct when documents were subsequently obtained on disclosure. The claimants give examples of this as regards the use and activities of Tillen and Dove, Mr Hanks, Ken Cummins (Capitol), Jonathan Stafford, Greg Miskiw, Mr Mulcaire and Mercury Press, Mr Hawkes and Research Associates, Paul Samrai, Kenrick Associates, George Rickman and Sid Creasey, Coleman Rayner, and Big Apple News.

242. Notwithstanding this, Mr Johnson came under sustained attack in cross-examination about his background as a confessed liar and deceiver, the accuracy of the account that he gave about particular events, including his own involvement in phone hacking, and the truth of his evidence that he had obtained from various potential witnesses signed statements or affidavits, or had made detailed notes of what they said. Mr Johnson then later produced the signed statements and notes to which he had referred, and the allegation of lying about this was properly withdrawn. However, the suggestion that he had lied about what he was told by Paul Smith on the Sunday Mirror sports desk remained.

243. Mr Johnson's motive for acting unpaid over some years to assist the claimants became clear as his cross-examination progressed. His interest is not in the vindication of the current claimants but in being able to obtain credible evidence about and then publish the story of an organised crime network centred on MGN, and make money out of it. He said that he was trying to categorise MGN as an "organised crime group", and it appeared to me that - as the Leveson Inquiry and the investigations of the MPS did not make findings about or secure convictions proving the existence of a criminal network - Mr Johnson sees this trial as an opportunity for him to do so, in the form of a court judgment. It is for that reason that he has been assisting the claimants to secure the generic evidence that he considers will prove the case.

244. These matters give rise to obvious and quite serious concerns about the reliability of some at least of Mr Johnson's evidence. He is far from an independent witness. There seem to me to be obvious risks that Mr Johnson:

    a. will himself give, or procure from others, evidence that is calculated to serve his own objective and so stray from the truth – if that is not a risk of invention, then it is at least a risk of exaggeration;

    b. may give evidence that does not amount to the whole truth and be selective – this was proved to be so in that he omitted any reference to Christine Hart in his witness statement because, as he said, she had been threatening him, and because he wanted to sign her up for evidence that he could publish;

    c. may not be able sufficiently to differentiate the evidence that he is personally able to give from the case that he wishes to see advanced.

    I keep these firmly in mind in assessing the reliability of the evidence that he gave. I also bear in mind that he has almost always been proved right about the allegations that he made in his earlier witness statements.

245. My overall impression of Mr Johnson was that he was very straightforward and matter-of-fact in the way that he answered questions; and that he answered all the questions that were put to him and did not dissemble or attempt to avoid them. He readily admitted his crimes and misdemeanours of the past, but regarded that as being so far behind him that it was almost an irrelevance, save in so far as it gave him an understanding of what other journalists and PIs were doing.

246. However, some of the explanations that he gave for what he had done were not wholly convincing, for example why he did not make his confession between his

conversion to the truth, which he asserted was in 2007, and the arrests of four others at MGN in 2013. I was not convinced either by his explanation of why he did not admit at least in outline his own illegal conduct in his book *Hack.* I was not persuaded by what he said about the very limited extent of his own involvement in the attempt with Tillen and Dove to capture evidence about Denise Welch, and how it was that he could be sure that all the phone calls to the Orange platform from his extension were made by Mr Evans and not him. I was not, in short, persuaded that his involvement was as limited as he claimed.

247. In other respects, his witness statement (and notes of conversations that he had with potential witnesses) do tend to overstate some of the matters that they deal with, as if being written as a "red top" column. I consider that this over-enthusiasm, rather than any attempt to deceive, when added to the likely reticence of Mr Paul Smith to incriminate himself and others in his witness statement, is the reason why Mr Johnson's draft second witness statement in the MNHL and Mr Smith's signed witness statement differ in their accounts of the matters relating to the sports desk that they had discussed.

248. There were important matters that were omitted from Mr Johnson's witness statement – however, as a result of a detailed cross-examination, his evidence was probably complete by its end. He did, generally, have impressive apparent recall of the detail of events, many of which were first described in earlier witness statements before the documents that substantiated them were available, though it is likely that sight of the documents since then has influenced his account of events in his evidence in court.

249. As regards Mr Hawkes, Mr Johnson's account of how the Hugh Grant hacked emails had come to MGN was given in his book *Hack*, which he set out in his witness statement. He says that Mr Hawkes approached MGN with the story, and said that he worked for a group of hackers and he was their frontman. He said that Mr Hawkes provided the hacked emails to Mr Buckley, who gave the story to Ms Kerins to help to disguise its origin, and that the acting editor, Richard Wallace, was told that the story had come from hacked emails. He said that the payment made to Research Associates was not the whole of the consideration for the information provided, and that the rest probably went to a middleman.

250. Overall, I consider Mr Johnson to be broadly reliable in what he says about PIs, save in relation to the points that I have mentioned above. I have however considered carefully in each case where it is important the reliability of evidence that he gives that is not supported by another witness or by documentary evidence. This includes evidence that he gives on the basis of unidentified journalistic sources.

251. Mr Evans's evidence is principally important to the issues in Part IV of this judgment and I deal with it there. He was found to be a witness of truth by Mann J in 2015, but since then (despite denying it in his evidence) he has become a campaigner aligned with the Hacked Off movement and with this managed litigation. He struck me as being somewhat complacent and sometimes evasive. He has been closely involved in the claimants' preparation for the generic trial, so he is not independent either. I do not accept his assertion that he was not heavily invested in this case and was ambivalent about it. While the specific

evidence he gave about particular PIs was not challenged, and I accept it, I am cautious about accepting all his evidence, in view of the extent to which he is aligned with the claimants. Some of his evidence appeared to me to be overstated and agenda-driven.

252. As for Mr Hinchcliffe and his company MSH Security Ltd, Mr Evans said that he carried out UIG and that he worked with him occasionally, including on helping to blag a well-known TV personality. He said that Ms Weaver told him that Mr Hinchcliffe was the "go to" blagger for Mr Thomas, and that he should stop using him because he might leak tips, stories or information to Mr Thomas. I accept this evidence of what Ms Weaver told him.

253. Mr Evans explained in a second trial witness statement how he first met Mr Hawkes in the Notting Hill area of London, in about 2005 (by which time he was at the News of the World). He explained how he quickly became comfortable talking to Mr Hawkes "on the same level" about voicemail interception he was doing for his newspaper, as Mr Hawkes was clearly "in the game", by which I understood him to mean using the "dark arts" rather than VMI specifically. Mr Evans said that he went to see Mr Hawkes again in about 2015, after he had confessed his VMI activities, with a view to seeing if Mr Hawkes would support Mr Grant's claim against MGN. He said that Mr Hawkes claimed to have no recollection of a case where he was paid in connection with hacking of Mr Grant's emails and did not recognise Gavin Whitfield, who was paid £500 by MGN in connection with that article, though he did vaguely remember a case involving Eimear Montgomery. Mr Whitfield confirmed the payment to Mr Hawkes and said that he knew Mr Hawkes well.

254. Mr Evans said that when he confronted Mr Hawkes with the facts, Mr Hawkes became aggressive. Mr Hawkes gave a different account, suggesting that when Mr Hawkes said he was unable to help Mr Evans, Mr Evans said that if he did not help they would destroy him and Research Associates through costly litigation. The "they" was not identified, nor was any reason why Mr Evans or anyone associated with him would want to destroy Mr Hawkes. No doubt Mr Evans was keen to secure Mr Hawkes's cooperation, but Mr Evans' account of the meeting is inherently more plausible that Mr Hawkes's and his evidence generally was more reliable.

255. In relation to other important parts of Mr Evans' evidence, I deal with those in Part IV of this judgment, to which they relate.

256. I turn now to the individual PIs that the claimants allege were involved in UIG. At the final case management conference in late 2022, I was told that MGN had suggested to the claimants' lawyers (sensibly, it seemed to me) that only the PIs who were actually involved (or alleged to be involved) in the cases of the four trial claimants should be the subject of findings, and that that suggestion was rejected by the claimants. That being so, the claimants must bear the burden of proving to a sufficient standard the matters alleged against each and every one of the PIs, who are non-parties and who mostly did not give evidence. To the extent that the burden is not discharged at this trial, there will be a finding exonerating the PI in question.

257. In some cases, PIs against whom serious allegations are pleaded in the GenPoC were barely mentioned during the trial; some were not addressed in closing submissions at all, and many others only by a page or two of written allegations and references to documentary evidence set out in a schedule to the claimants' closing submissions. The attempt by the claimants to cover cases against more than 50 PIs in a single trial, whether or not they were involved in the individual claimants' cases, was far too ambitious. But it was the claimants' choice and they must abide by the consequences.

258. Although a substantial number of the 51 PIs did feature to some extent in the evidence, a good number did not, and I am left with schedules of allegations, with references to documents in a vast electronic repository of documents, and a helpful response to the case against each PI in MGN's closing written submissions. Except in relation to the PIs who feature most in the individual claimants' cases, there was no consideration given to them in evidence or in oral submissions. I have therefore, in effect, been given a significant number of written cases to determine on paper. That is not an appropriate way to try such serious allegations. But I will make such findings as I properly can. In some cases, this will be a short and summary process; and in a number of such cases my conclusion is that the claimants have simply not discharged the burden that lies on them to prove their serious allegations.

259. What became very clear, as the claimants' case was presented, was that not all PIs are alike in terms of what they did. Some PIs, such as Jonathan Stafford, ELI/TDI, Avalon and Christine Hart, were specialists in blagging confidential information from third parties, such as banks, telephone companies and hospitals. Others, such as C&L and Searchline, carried out searches for often mundane details, such as dates of birth, relatives and up to date addresses, but did so using databases that were not open and without the consent of the subject. Others specialised in finding out details from telephone companies, such as a subscriber's name, where the number was known, or the number of a known individual, or call data that would reveal others' telephone numbers. Whether this was done by blagging or by using a corrupt contact is often unclear. Other PIs did Companies House and Land Registry searches, which were likely to have been legal searches of public registers. Lord and Lady Teviot and Mr Tony Bassett seem to be in a category of their own as being acknowledged lawful genealogists, but whose researches were then used by the journalist or another PI to obtain further information unlawfully and attempt to crack PINs.

260. Mr Sherborne explained in opening, and it becomes clear from studying the payment records that are relied upon in the individual claimants' cases, that the PIs were often used sequentially, so that C&L or Searchline or another PI in the claimants' **search agent** category (see **PI Schedule** for an explanation) did the initial search and then, often on the same day, a further PI in the claimants' **hacker, blagger and/or information supplier** category, such as ELI/TDI, Jonathan Stafford or Rob Palmer (Avalon), was commissioned to carry out "extensive and urgent enquiries", using the data that had been produced by the first search. This was not the invariable practice, as sometimes the DOB search done by C&L would provide the journalist with the one piece of information

needed to crack a PIN, and sometimes the UIG involved was a blag facilitated by subject data that had previously been obtained and no VMI was involved.

261. As I have indicated, where VMI was carried out it was – with very few exceptions – carried out by the editors or journalists, not by the PIs themselves, and so the all-important telephone number, once obtained, was then used by MGN to listen to voicemails. But not all the UIG was VMI: a good deal was obtaining confidential information, such as banking details or medical records, that would then be used to write or stand up a storyline, or flight, holiday or hotel information that would then be used to enable a compromising or invasive photograph to be taken and published. Sometimes this information was obtained by blagging of third parties, using deception to induce the third party to divulge the information, such as call records for a mobile phone account or flight details; sometimes it was obtained by doing illicit credit reference searches, which certain PIs specialised in doing. The critical thing for MGN was to obtain information that was either newsworthy in its own right, such as the location of a celebrity and who they were with, or which provided the opportunity to conduct its widespread and habitual phone hacking activities, which would then provide the newsworthy information.

262. The picture, in other words, is not one-dimensional, in terms of what PIs were being used to do, and in many instances it is quite complex.

263. Ultimately, in closing submissions, the complexity of the pleaded case reduced to four different categories of PI:

    i. Those who conducted unlawful searches and provided data;

    ii. Those who hacked or blagged or used other unlawful methods to obtain a story or photograph;

    iii. Freelancers, "stringers" and agencies, including photographic agencies, who worked as journalists or photographers but using UIG to obtain a story or location (possibly photographic agencies need to be considered separately from journalists); and

    iv. Bin spinners, of whom there are only two alleged in this trial: Langley Management (Benji Pell) and Simon Lloyd.

    Even so, these categories are not mutually exclusive: some PIs are in category i and category ii.

264. I deal with each of the PIs against which the claimants seek findings in the PI Schedule to this judgment. After an introduction, the PI Schedule deals (in alphabetical order) with those PIs against whom there are specific generic allegations pleaded or who are involved in the claims of one or more of the four claimants, and then in a third part with the PIs against whom there are only generic allegations in the GenPoC.

Summary of conclusions

265. I summarise briefly here my conclusions in relation to the PIs, dealing first with those who were most significant to the UIG that was being conducted at MGN. I am satisfied that journalists using these PIs would know very well the nature of the unlawful work that they offered and would expect the work to be done in that way.

266. The dates that I give in brackets after the name(s) of each PI are the years in which I find that they were conducting at least some UIG.

267. TDI/ELI/BDI (1999-2011) (Lloyd Hart and Suzie Mallis). TDI/ELI and BDI conducted UIG, including blagging, on a very substantial scale and regularly for all three newspapers, such that the substantial majority of all instructions of those companies is likely to have been for unlawful work. It was not proved that Code 10 was the predecessor of TDI.

268. JJ Services (1995-2005). The majority of the work done by Mr Whittamore's company for all three MGN titles during this period was unlawful. He worked for MGN to a significant extent. For the last year (2005-06), after his conviction, it is likely that the majority or all of work that he did was lawful.

269. Avalon/Rob Palmer/Abbey Investigations (2000-2011) Mr Palmer was one of the key blaggers and information providers at the centre of a lot of the unlawful operations and was regularly used. The substantial majority of all Avalon and Rob Palmer instructions were for or in connection with UIG, but Abbey Investigations was not controlled by Mr Palmer and there is insufficient evidence that it conducted UIG.

270. C&L/System Searches (1995-2011) (Malcolm and Jackie Scott). These were search agents, often a first port of call when some personal data was needed. They were used on a vast scale by many journalists at all three newspapers. A substantial amount of C&L's/System Searches' work – well in excess of half of all the searches done for MGN – were unlawful because the searches done were illegitimate use of data that was only available for restricted purposes, and not for sale to journalists.

271. Southern Investigations/Law & Commercial/Media Investigations (1995-2006) It is very likely that each instruction of Southern Investigations (and its admitted aliases) was for UIG, save where the invoice describes something obviously innocuous, like a Companies House search. Southern had connections with the criminals and corrupt Police Officers. It is likely that the activities of Southern, whether acting itself or though its subcontractors, such as Mr Gunning, were unlawful to the knowledge of those at MGN who were commissioning them, including in particular Mr Jones and Mr Thomas. MGN made admissions about Law & Commercial and Media Investigations in *Gulati* which explains the end date of 2006.

272. Newsreel (Jonathan Stafford) (1995-2011) Mr Stafford was one of the key blaggers and information providers at the centre of a lot of the unlawful operations and was very frequently used by many journalists. The very substantial

majority of Mr Stafford and Newsreel's work for MGN was UIG. That conclusion applies for the whole of the period during which he was active, which appears to extend from about 1995 to September 2011.

273. Rachel Barry (1996-2006) At about the time of and from the date of Ms Barry's conviction in late 1997, the majority of the work that she did for MGN is likely to have been, or been in connection with, UIG, in particular blagging of sensitive information.

274. Tillen and Dove/Unique Pictures/Lenslife (1996-2011). These two men and their photographic agencies were involved in UIG and on at least one known occasion with arrangements to bug a target's hotel room. Mr Tillen was very close to Mr Mark Thomas and therefore operated in proximity to VMI conducted by Mr Thomas and his colleagues. However, there is no proof that Tillen and Dove themselves conducted VMI. A significant proportion of Tillen and Dove's work was unlawful but not the majority of it.

275. Searchline (Gwen Kent) (1997-2010) Very substantial use was made by MGN journalists of Searchline throughout this period and some of this use was UIG: there are 1,553 separate invoices disclosed. Most of these are not indicative of UIG and it is not possible on the evidence to conclude that the majority of such invoices were for UIG, particularly in the earlier years. "Specials" were, however, instructions for unlawful searches that were concealed by the use of this description.

276. Warner News/Warner Detective Agency (Christine Hart) (1996-2004) It is likely that a significant majority of the instructions given to Warner by MGN were in connection with UIG, often blagging of highly sensitive information.

277. Severnside (Taff Jones) (1995-1999) The majority of the searches identified by the claimants during the period 1995 to 1999 are unlawful searches, but it cannot be assumed that Severnside invoices or CRs as a whole were probably unlawful. Apart from the time when Mr Taff Jones was employed there and acting on instructions, there is no evidence that Severnside itself was acting unlawfully.

278. All of the above PIs were used very substantially by MGN journalists in connection with their extensive, or extensive and habitual, UIG and VMI. They were an integral part of the system that existed at all three newspapers to collect private information unlawfully and then publish it.

279. In addition to them, there are the following further PIs who also did a significant amount of UIG work but were somewhat less significant to MGN in terms of the volume of work that was done in that capacity (some were extremely important as picture agencies). I am satisfied that in many cases, when they were used, the journalist using them will have known that the work commissioned was unlawful in nature.

280. Big Pictures (Darryn Lyons) (1997-2011). This was a very large photographic agency. On certain occasions, Big Pictures probably obtained information unlawfully, however there is no evidence as to the extent of such activity or MGN's knowledge of it, and no assumption can be made, without further

evidence to support it, that a particular invoice from Big Pictures was necessarily in respect of photographs obtained by UIG.

281. Starbase/Celebrity Searcher (Secret Steve (Hampton)) (1999-2006). Some of the work done by Starbase was probably lawful, but a significant proportion of it was unlawful. There is insufficient evidence, however, to conclude that the majority of all instructions were for unlawful work.

282. Mercury Press (Greg Miskiw) (2005-2006) During this short period, when he was operating freelance, Mr Miskiw was offering unlawfully obtained material, for the most part, and those handling him, in particular Mr Jones and Mr Bucktin, would have known that.

283. Gerard Couzens Media/TAG News Media (Tom Worden and Gerard Couzens) (2003-2011). A substantial part (but probably significantly less than half) of the work that the company (acting by Mr Couzens and Mr Worden) did would have been UIG had it been done in England and Wales. There is no evidence that either of them personally hacked phones or did anything that was illegal in Spain.

284. London Media Press (Rick Hewitt and Andy Buckwell) (2003-2011) It is probable that a substantial proportion of LMP's work during the period in question was UIG, and that those commissioning LMP from MGN would have known that it was. It is not possible to conclude that a majority of their work was UIG during this period.

285. Martin Coutts (2001-2003, 2006-2011) As with LMP, the right conclusion is that a significant part of Mr Coutts' freelance work was probably UIG, but not a majority of that work. Mr Coutts was employed by the Sunday Mirror in 2004 and 2005.

286. Mark Hinchcliffe (MSH Security Ltd) (2001-2006). He was active during these years and was conducting a significant quantity of UIG for the Sunday Mirror and The People, but there is no sufficient evidence that a majority of his work was unlawful.

287. IIG Europe /Assured Legal Investigations (Gavin Burrows/Angie Woodford) (2000-2004) the majority of the work that IIG and Assured Legal did for MGN was probably unlawful and included some phone call interception and VMI. No case has been proved in relation to Angie Woodford.

288. John Ross (1996-2009) Mr Ross probably was providing a substantial amount of unlawfully obtained information to MGN journalists and it is likely that many or all among those commissioning him would have known about his particular specialities in providing information. There is no sufficiently strong case for a conclusion that the majority of all work done over a 14 year period was UIG, though the majority of the work done between 1996 and 2003 was probably unlawful.

289. Lee Harpin (2003-2005) The majority of his payments from MGN from 2003-2005 are likely to have been in respect of UIG.

290. Research Associates (Paul Hawkes) (1999-2009). It is likely that the majority of the work done by Research Associates during the period 1999-2009 was unlawful.

291. Dan Hanks (aka Daniel J.Portley-Hanks) (Backstreet Investigations/British American News/Investigators Support Services) (1991-2011) Mr Hanks admitted that all the work that he was doing for MGN and agencies acting for MGN was unlawful under US law.

292. Benji Pell(Langley Management Services) (1998-2002). Mr Pell was the leading bin spinner between 1998 and 2002. Whoever at MGN was instructing Mr Pell (and many journalists and editors did), or was receiving and then using material that he provided, knew how the information was obtained and that it was theft by Mr Pell that provided the data.

293. I have also made findings in the PI Schedule that some other PIs on the list of 51 did some work for MGN that appears to involve UIG, but not to such an extent that I can conclude that that there was a large volume of work that was unlawful. These are: Trackers UK (Andy Gadd); Code 10 (UK); Globalnet News (Steve Grayson); Gavin Whitfield; and Fraser Woodward.

294. There is then a residual category of cases where I have found that there was no sufficient evidence that a named PI was conducting UIG at all, or in more than an isolated case. These PIs were the following: AJK Research (Andy Kyle); Legal Resource and Intelligence Research (John Boyall); Cruise Pictures; JS3/Tyler Williams; TM Media; Austin O'Brien Communications; Simon Lloyd; Hogan International; Jen Paul, Paul Hardaker; Paul Samrai; Dennis Rice; Andy Tyndall, Census Searches.

295. There is then a category where the conclusion I reached was that although some of the activities being done (or in a few cases, all of them) would have been unlawful in England and Wales, there was no evidence that what the PI was doing abroad was unlawful. The PIs in this category are: Mr Behr, Capitol Inc (Mr Cummins), Big Apple News, Coleman Rayner, Frank Thorne, Splash News, Nigel Bowden, Nick Pisa, Ian Sparks and Franco Rey.

296. It might be thought that the numbers in the last two paragraphs are surprisingly high, given the strength of the conclusions that I reached about extensive phone hacking and UIG activities over an extended period. In many of the cases in these paragraphs, however, the conclusion I reached was that the claimants had simply failed to prove their case, because no sufficient evidence or analysis was brought to bear upon them. However, they are stuck with the finding that I have made.

297. I will not repeat here the individual conclusions reached in the PI Schedule.

Part IV: Board and Legal Department Knowledge

Contents

The Allegations

298. There was a hard fought series of issues at trial about whether the board of TM plc or individual board members, in particular the CEO Sly Bailey (2003-2012) and the company secretary, head of group legal services and director, Paul Vickers (1999-2014, and before that a director of MGN from 1994-1999), and the in-house lawyers acting for MGN and TM plc (in particular, Marcus Partington, who moved to the Mirror in 2002 and became the deputy group legal director in 2007) knew about and condoned widespread and habitual use of VMI and other UIG activities and then concealed them from victims, shareholders and the public.

299. In terms of the claimants' damages claims, these issues are only directly relevant to the claimants' claim for aggravated damages, but self-evidently they are matters of considerable public importance and are generic issues. I nevertheless remind myself that I should only decide those matters that are necessary to enable me to determine the pleaded issues. Despite what Mr Johnson appeared to think, this is not a judicial inquiry.

300. The claimants' pleaded generic case is that:

> "… Senior Executives within MGN and its parent company, Trinity Mirror Group PLC (now 'Reach PLC'), namely members of the Trinity Mirror Board and the MGN Legal Department knew or were aware of the use of [voicemail interception, blagging and the unlawful obtaining of private information through the instruction of private investigators, blaggers and others] from at least as early as 1999 (and certainly by 2007) ...
>
> Despite this knowledge or awareness, Senior Executives not only failed to take steps to stop these unlawful activities but they even sought to conceal them and deliberately lied to and misled both the public and the Leveson Inquiry by falsely denying their existence…."
>
> [paras 4, 5 GenPoC]

The only Senior Executives and lawyers who are named as having knowledge and awareness of the UIG are Ms Bailey, Mr Vickers, Mr Vaghela and Mr Partington.

301. MGN denies these allegations in full. Further, it denies that the knowledge of Mr Partington would be of any relevance to the claimants' claim for damages, since, as an employed lawyer, he had no independent duty or power to stop any UIG and could not make any public disclosure about matters that were confidential. However, as a lawyer, Mr Partington (and indeed the other employed lawyers) would have been expected to advise their client of the fact that unlawful and illegal activities were taking place, when they were aware of them, and to advise the head of group legal, the CEO or the board what they should do. The claimants did not advance any case that the commission of crimes entitled Mr Partington to override MGN's privilege in their communications.

302. MGN admits that the existence of UIG was only revealed to third parties by the Board after 2011:

> "… due to these activities being *deliberately concealed from the Board and the Legal Department by the individuals who were involved in perpetrating them and/or who knew that these activities were being carried out*, and moreover concealed in that way in spite of express steps taken by the Board and the Legal Department:
>
> i. to make clear that unlawful conduct (of any sort) would not be tolerated by [TM plc] and MGN and
>
> ii. to ascertain whether since October 2000 editors and others or to their knowledge anybody on their staff or instructed by their staff had (among other things) intercepted any mobile or fixed line telephone messages."
>
> [GenD, para 10.6, emphasis added]

The two sub-paragraphs are references to what Sly Bailey said to the editors in 2006/2007 and a questionnaire sent to senior editorial managers and editors by the board in 2011.

303. MGN then pleads that concealment from its board continued after August 2011 and relies on two matters:

a. the initial denial by a lawyer on behalf of Mr Dan Evans on 7 February 2011 that he had hacked the phone of a complainant, Mr Marsden, whose solicitor had complained of phone hacking to MGN in October 2010;

b. the fact that Mr Vickers wrote a letter to 43 senior editorial executives on 2 August 2011 asking whether since October 2000 they had conducted or knew of three specified types of UIG, including interception of any mobile or fixed line messages, and the fact that every recipient of the letter returned it countersigned and raising no issues. [GenD para 10.6.4]

The second of these is the same as the questionnaire previously referred to.

304. MGN does not expressly plead the names of the individuals who deliberately concealed the UIG from the Board and the Legal Department, nor was a request for further information made in that regard by the claimants. The reader is left to infer from the case that is pleaded that it must necessarily be the three editors, Mr Wallace, Ms Weaver and Mr Thomas, to whom Ms Bailey spoke in 2006 and 2007 following the Information Commissioner's reports, who did not disclose that they knew that VMI and UIG was being conducted, and those of the 43 senior editorial executives (unidentified) who countersigned Mr Vickers' 2011 questionnaire who knew that VMI or other UIG was being conducted by journalists or editors.

305. As regards Mr Vickers' knowledge of phone hacking at MGN newspapers, MGN pleads that:

> "Mr Vickers did not consider that he had been made aware of any evidence that this had taken place within [TM plc] or MGN until he saw the evidence which Mr Evans had provided to the police and which the police started to provide to [TM plc] subject to confidentiality undertakings from 19 December 2013. At that stage,

> and in light of the amount of detail that Mr Evans had provided to the police and the fact that Mr Evans had incriminated himself by providing it, Mr Vickers thought that the basis of what Mr Evans was saying was likely to be true."

306. Legal privilege is pleaded in relation to the state of Mr Partington's knowledge. Ms Bailey left TM plc in June 2012. Nothing is pleaded about when Mr Vaghela, the Finance Director and the only other executive board member after 2004, first became aware of phone hacking having been carried on at MGN, but he denied in evidence that the markets had been misled at any time because "we told the market when we had clear evidence" in 2013 or 2014. His reference to "clear evidence" echoed the line being taken by Ms Bailey and Mr Vickers, that at no time was there evidence of wrongdoing available to the board.

307. It is remarkable that MGN, in seeking to exonerate TM plc's board of knowledge and concealment of extensive and habitual VMI at its national newspapers, itself complains that the truth was concealed from the board but does not state who concealed it. It is remarkable because of the seriousness of the allegations against the board and because MGN must now know, if there was such concealment, who was responsible for it.

308. In this regard, Ms Bailey, in her witness statement said that "a number of people on the editorial side concealed their unlawful activities from me", and in cross-examination she said : "despite our robust governance systems, a number of people on the editorial side of the national titles concealed their unlawful activities from me and from other colleagues". When asked who these people were, she said that she only discovered recently that there was VMI and UIG but that she does not know who concealed it from her. Her witness statement reflected what she was told by RPC, she said (though it did not say that her knowledge was limited to what RPC had told her), and Mr Mathieson of RPC told her that the identity of the persons in question was "a matter of client privilege" and did not tell her.

309. Following the evidence given at trial, there is still no clarity about who is said by MGN to have concealed from the board until December 2013 the extensive and habitual VMI and UIG conducted over a 14-year period, which resulted in Ms Bailey, Mr Vickers and Mr Vaghela all assuring Sir Brian Leveson that there was no evidence of phone hacking at the MGN national titles, and that they were all taking a "forward looking" approach to ensure that it did not happen. The only reasonable conclusion about MGN's case is that, although it does not want to accuse the editors or the senior editorial managers, it was they who misled Mr Vickers and Ms Bailey (since they reported directly to Ms Bailey and Mr Vickers) and therefore the board into believing that there was no criminal activity at MGN, despite *What Price Privacy Now?*.

310. The claimants' case, on the other hand, is that Ms Bailey and Mr Vickers *did* know and that the TM plc board as a whole must have known what was happening. This was because of, first, the number of "board-adjacent" individuals – identified in closing submissions as Mr Morgan, Mr Wallis, Ms Weaver, Mr Wallace (the editors), Mr Duffy and Mr Honeywell (senior editorial managers) and Mr Partington (principal group in-house lawyer and deputy legal director) –

who were close to board members, and who would have told them; and second, because Mr Partington and other members of the legal teams at each newspaper would have known perfectly well, as a result of "legalling" articles for publication or dealing with complaints about articles published, that the sources in many cases were intercepted voicemails, and would have reported that to Mr Vickers.

311. In support of their case, the claimants rely on various documents and oral evidence, which support a case that these board-adjacent individuals knew about illegal activity, and on 14 specific incidents, storylines or complaints from 1999 onwards, which they say demonstrate that the board-adjacent individuals or lawyers (or indeed Mr Vickers and Ms Bailey themselves) must have known, and did know, about phone hacking or other UIG. These 14 incidents are the following:

    a. The details published in January 1999 about alleged debts of Prince Michael of Kent and the way in which the complaint by him was handled;

    b. The arrest in 1999 of Doug Kempster, a senior Sunday Mirror journalist, and Mr Partington's communications with the MPS in that regard;

    c. The complaint about publication of a story about Amanda Holden and Les Dennis in 2001;

    d. The legal battle in 2001 and 2002 between The People and Garry Flitcroft relating to a story about his love life;

    e. The content of the story published by the Sunday Mirror about Rio Ferdinand's missed drugs test in 2003;

    f. Operation Glade and its impact on the board and legal department of MGN in 2003;

    g. The complaint about publication of a story about David Beckham in 2005;

    h. MGN's response to the ICO's publications *What Price Privacy*? and *What Price Privacy Now?* in 2006, following Operation Motorman;

    i. The arrest and conviction of Mr Mulcaire and Mr Goodman in 2006;

    j. Mr Duffy's evidence to a Parliamentary Select Committee in 2007;

    k. David Brown's employment claim against MGN in 2007 and its settlement;

    l. Mr Sean Hoare's comments about Mr Partington in 2010;

    m. MGN's response to Operation Weeting in 2011;

    n. Mr Montgomery's 2011 dossier.

312. During case management conferences, in which disclosure applications were pursued right up to a few months before the start of the trial, the claimants seemed to me to be trying to establish a close connection between Piers Morgan and Sir Victor Blank, the chair of TM plc from 1999 until May 2006, and then with Ms Bailey from 2003 until Mr Morgan was sacked in May 2004, as the means by which knowledge of phone hacking was imparted to the Board. In the event, there was little evidence about such a relationship of Mr Morgan with either, other than the following: occasional lunches hosted by Sir Victor that Mr Morgan as editor would attend; the existence of a formal reporting line between Mr Morgan and Ms Bailey; and two appearances by Mr Morgan at board meetings in 2002 to address strategic issues.

313. Although the editors reported to the CEO, there was no evidence that there was a close relationship between them and Ms Bailey involving disclosure of what they or their journalists were doing; on the contrary, the only evidence was that there was a clear divide between executives and editors – what Mr Vickers referred to as "church and state". Both he and Ms Bailey explained how their presence on the editorial floors was unwelcome, and that they did not go there or interfere except when necessary to do so. Mr Vaghela similarly did not go there.

314. I will turn to the 14 Incidents shortly, on which the claimants focused in their closing submissions. Several of the Incidents felt like trials within trials, so microscopically was the evidence examined. When I address them, I will summarise the essential facts and my conclusion about what each proves, having regard to the question with which this Part is concerned, which is limited to board and legal department knowledge at various times. I have, however, read and considered all the evidence relating to the Incidents, even if I do not refer to it all.

315. Before turning to them, I need to consider the other evidence that I heard about the way that the journalists, editors, managers and board operated and what to make of the absence of other oral evidence if it was available but was not brought to the court.

The evidence

316. I heard a substantial volume of evidence about how the journalists and editors worked, and something about how they were managed by senior editorial management staff. I did not hear much evidence about how the newspaper editors interacted with the board. Indeed, I did not hear evidence from an editor of any of the three newspapers during the period in issue, such as Mr Morgan or Mr Wallace at the Mirror, Mr Wallis, Mr Thomas or Mr Embley at The People, or Ms Weaver at the Sunday Mirror, or indeed from any deputy editor during that period, such as Mr Gary Jones, Mr Conor Hanna or Mr James Scott.

317. The claimants say that adverse inferences should be drawn against MGN for not calling some or all of these witnesses, but I am unclear exactly what adverse inference should be drawn that would strengthen the claimants' case that the board and the legal department knew about VMI. The four people alleged to have had knowledge on the board and in the legal department were all called as witnesses, and denied knowledge of any UIG (in the case of Ms Bailey and Mr Vaghela) and of any illegal conduct, such as phone hacking (in the case of Mr

Vickers and Mr Partington), with the implication that it was concealed from them until December 2013. To add weight to the case of board knowledge, the inference to be drawn would have to be that, if called, the editors would have admitted that they knew about illegal behaviour but disputed Mr Vickers' and Ms Bailey's account that this was concealed from them. Mr Honeywell and Mr Duffy both passed away before witness statements were prepared for the trial so could not give evidence.

318. There was in fact no specific case put to Mr Vickers, Ms Bailey or Mr Vaghela in cross-examination, or pursued in closing submissions, that Mr Wallace, Ms Weaver or Mr Thomas, or their predecessors, were the close connection with the board and the means by which knowledge of VMI was imparted to its members. There was no evidence beyond the existence of a formal reporting line to Ms Bailey, but what was reported and what was not reported was not explored in evidence. I am not willing to draw an adverse inference from the fact that these three editors were not called to give evidence when the case that they would have told Ms Bailey and Mr Vickers about VMI was not put to the directors. It seemed that the claimants' focus instead was on Mr Morgan, close connections with senior editorial managers such as Eugene Duffy, Mr Honeywell and Mr Hollinshead, and even more so, upon the detailed knowledge that Mr Partington (and his colleagues) would have had from their jobs on the newsroom floor and that they would have shared with their immediate boss, Mr Vickers, and through him with Ms Bailey.

319. In the case of Mr Morgan, the evidence relied on is limited, as I have explained. It appears from what MGN volunteered about not calling Mr Morgan that he was not invited to give evidence on MGN's behalf to avoid a "side show" distracting from the key issues at trial, though MGN's pleaded case does state that MGN had obtained evidence from Mr Morgan about the allegations. Mr Morgan has stated publicly on several occasions that although he knew about phone hacking, he has never hacked a phone or instructed anyone to hack a phone or made use of phone hacking. It is therefore possible that he might have said that he told board members about it: he did talk about it in front of the then chairman at lunch.

320. In the event, in view of the oral evidence that was given, the documentary evidence and the conclusions that I have reached about the 14 Incidents, it is unnecessary to rely on any adverse inference from the absence of Mr Morgan from the witness box in reaching conclusions about board and legal department knowledge of VMI. I turn first to the oral evidence.

321. Dan Evans said that lawyers always had a presence in the news department and that they were integral to the editorial process. He said that he tended not to discuss phone hacking sources with Mr Mottram (who was the lawyer at the Sunday Mirror) because he felt that Mr Mottram did not want to know or discuss them. However, he had a clear recollection of Mr Mottram "routinely walking slowly around the newsroom scouring pages of subbed and laid-out pages".

322. Mr Evans said that on one occasion, early in his tutelage into the dark arts of phone hacking (so in early to mid-2003), he was in the Sunday Mirror office one Saturday morning, sitting near Mr Buckley, when Mr Partington walked by and said to Mr Buckley "Hello Nick - have I got any messages this morning?" Mr

Evans said that Mr Partington said it while staring directly at him, smiling, and there was laughter. Mr Evans said that he felt surprised then that Mr Partington knew about his phone hacking role.

323. Mr Evans was challenged about the truthfulness of his story, by reference to previous accounts of it given in an MPS interview in July 2012 and a police witness statement dated September 2013, which were somewhat different. In the former he said that Mr Partington said "have I got any messages this morning, or something like that" and he could see it was said with a knowing look and a smile, and he knew it was meant as a joke about listening in to voicemails. In the interview, he said that Mr Partington was exchanging pleasantries in a mischievously humorous way and Mr Buckley responded with a knowing look and smile, and he took it to be an in joke.

324. Although I consider the references in his trial witness statement to Mr Partington looking at him and to laughter are embellishments to the story that Mr Evans has added, I accept the essential truth of the account.

325. I do not accept Mr Partington's attempt to explain away the exchange as being either a facetious response to an article published in October 2002 or as being a genuine inquiry about whether anyone had left a message for him that morning at work. The two alternative explanations are forced, and inconsistent with each other, and indeed Mr Partington said in cross-examination that he was "doing my best to come up with an explanation which is my position". It is telling that the story of the joke did the rounds in Fleet Street. Mr Basham said that in making inquiries about MGN, he learned of the "Partington quip", although he was mistakenly told that it was said to Mr Scott, not Mr Buckley. He included the story in his note (getting Mr Partington's first name and Mr Buckley's identity wrong) and gave the account to Mr Grigson in 2012. The Partington quip shows that Mr Partington knew about phone hacking by Mr Buckley at the Sunday Mirror (which was not his newspaper) by no later than about mid-2003.

326. Graham Johnson said:

> "I have a clear recollection of a specific occasion when Paul Mottram... was legalling one of my stories. I recall the story related to the television presenter Anne Diamond and her husband Mike Hollingsworth. I was asked by Mr Mottram to confirm how I knew two people involved in the story had been communicating and how I knew about the relationship. In response to his questions, I explained to him that I had pulled the phone bills of the two individuals which clearly showed telephone calls between them. I also showed Mr Mottram the phone bills which I believe had been blagged by Jonathan Stafford and the handwritten list of numbers faxed to the news desk."

When challenged, Mr Johnson confirmed that his suggestion here was that Mr Mottram knew that unlawful methods were being used, and said that Mr Mottram expressed concern that he should not see the phone bills. I felt that this evidence about Mr Mottram's expressed concern was an embellishment by Mr Johnson and do not accept it, but otherwise I do accept his and Mr Evans' evidence about the

routine involvement of lawyers. Mr Evans said that he did not discuss what he was doing with Mr Mottram, but there was often a lawyer who appeared at his shoulder.

327. Mr Partington did his best to distance the in-house lawyer's role from the source for the stories, emphasising that he was only there to advise, not decide. When pressed about his statement that it was not true that the legal department had to be sure of the provenance and reliability of stories, he said that it was a question for the editor whether they were happy with the source, and that he could give legal advice based on what the editor thought about the source. Sometimes the identity of a confidential source was kept from the legal team, in case a court order was made against MGN for disclosure. However, he agreed that a cash payment to a source had to be countersigned by a senior editorial lawyer and that, when paying a source, it could be a factor what the nature of the source was. When dealing with a complaint, he wouldn't necessarily have to know what the source was, e.g. if the complaint was about a factual matter.

328. In my judgment, Mr Partington went too far in trying to minimise the degree of knowledge and involvement of the in-house lawyer. I prefer the other evidence that I heard, including from Mr Vickers, that with certain stories the lawyer would need to know, and would know, the nature of the source. (Mr Vickers said that on rare occasions he gave pre-publication advice himself, where the expected impact of the story meant that the executive directors were involved.) The editors would also clearly need to know the nature and reliability of the source before deciding to publish (as Mr Vickers accepted), with the benefit of in-house legal advice. So, e.g. in the Prince Michael story considered below, Mr Vickers said that he would have thought that the sources were known to the editor and discussed with a member of the editorial legal team. He would have expected Mr Cruddace to have known the source for that story.

329. An article was published by The Guardian on 14 October 2002 entitled "*Celebrity 'phone hacking' on the increase*", which said, quoting Mr Hipwell among others, that voicemail espionage had become an epidemic and was common practice in Fleet Street. Mr Partington confirmed that he was aware of this article.

330. Mr Omid Scobie, a journalist with a particular interest in writing about the lives of the Duke and Duchess of Sussex, gave evidence that, when a student of journalism, he spent a week on the showbiz desk of The People and a week with the Mirror's "3am" team. At The People, he said that he was given a list of mobile telephone numbers and a detailed verbal description of how to listen to voicemails, as if it were a standard newsgathering technique. He said that on one day at the Mirror, Mr Morgan came over to discuss an article being written about Kylie Minogue and James Gooding and asked how confident the team were in the story. He was told that the information had come from voicemails. There is an article about Minogue and Gooding dated 11 May 2002 bylined to James Scott, who was one of the showbiz journalists and a known phone hacker. There is an invoice from TDI to Mr Scott dated 7 May 2002 for "extensive inquiries carried out on your behalf" (for £170) and the mobile telephone numbers of both subjects were in Mr Scott's Palm Pilot. These documents bear out Mr Scobie's recollection.

331. Mr Scobie was pressed hard about the likely veracity of these accounts, about some evidence that he gave in the Duchess of Sussex's litigation, and about his motive in giving evidence on behalf of the claimants. He said that he remembered the incidents very well because it was at such a formative stage of his education in journalism and he was shocked by what he learnt. I found Mr Scobie to be a straightforward and reliable witness and I accept what he said about Mr Morgan's involvement in the Minogue/Gooding story. No evidence was called by MGN to contradict it.

332. Melanie Cantor, who worked as an agent and publicist at the time, gave evidence about Mr Morgan. Her evidence was not challenged by MGN. She said that she had a close and trusting professional relationship with Mr Morgan and was aware that he had obtained confidential information about her client, Ulrika Jonsson. She said that Mr Morgan always seemed to be the first person to know about events that had recently happened, on a repeated basis. She later discovered that there were PI invoices naming her and her associates and over 400 calls to her mobile phone from Ms Weaver, Mr Scott, Mr Buckley and others who have been convicted or found to have been involved in phone hacking. Her name was in Mr Scott's and Mr Buckley's Palm Pilots. The inference is an obvious one: Ms Cantor's phone and the phones of her associates were hacked and the obviously confidential and sensitive information obtained was passed to Mr Morgan, who must have known how it had been obtained and made use of it.

333. Benjamin Wegg-Prosser provided two witness statements. He was a publisher for The Guardian between 2000 and 2005 and then Director of Strategic Communications at 10 Downing Street.

334. He attended the Labour Party Conference in Blackpool in September 2002 and remembers going out for a Chinese meal with Mr Morgan present. He asked Mr Morgan how The Mirror had obtained the story about Mr Eriksson and Ms Jonsson. He said Mr Morgan responded by asking which network provider he used for his mobile phone and then what the default PIN code was for that network. He said that default numbers were rarely changed and that was how phone messages could be accessed remotely. Mr Wegg-Prosser said that Mr Morgan then said: "That was how we got the story on Sven and Ulrika", or words to that effect, with a smile. The evidence was not challenged by MGN and speaks for itself.

335. In a similar vein, the Leveson Inquiry heard evidence on oath from Mr Jeremy Paxman about a lunch that he attended with Mr Morgan and Ms Jonsson present, in September 2002. It was hosted by Sir Victor Blank, then chairman of TM plc. He said that at the lunch Mr Morgan admitted that it was easy to access people's voicemail messages and teased Ms Jonsson about her messages that he had heard.

336. Mr Wegg-Prosser also disputed the account that Mr Morgan gave in his book, *The Insider*, which suggested that he was the source that confirmed the story about Mr Mandelson's borrowings. He was not challenged about that either.

337. Mr Campbell's evidence and that of his wife, Fiona Millar (which was not challenged by MGN), is wholly credible and establishes that Southern Investigations were instructed by Gary Jones to obtain confidential information

about Mr Campbell's finances, specifically his mortgage with his building society, Cheltenham & Gloucester. This was at the same time as the sting on Mr Mandelson's financial arrangements. I find that the manuscript note containing detail of Mr Campbell's accounts was passed to Mr Jones by Southern Investigations. It is obvious that anyone instructing Southern Investigations to obtain information about various accounts at different banks or building societies would know that the information would not be obtained lawfully, which it was not. It was obtained by blagging the information from someone who worked there, and quite likely by obtaining first other details of the victim by unlawful searches, so that some semblance of plausibility could be created. This activity was similar to the stings on the Bank of England credit committee and Mr Mandelson, which was published by Mr Morgan, and he would have known about the Campbell attempted sting too.

338. David Seymour, who was group political editor of the Daily Mirror from 1993 to 2007, gave evidence about his dealings with Mr Morgan. He said that he witnessed him at close quarters and had a close working relationship with him. He came to learn about some of the dubious methods being used to get stories in the Mirror. He said that he regarded Mr Morgan as "unreliable and boastful [and] apt to tell untruths when it suited him".

339. Mr Seymour said that on one occasion in 1996 Mr Morgan showed him a video of a pack of paparazzi pursuing Princess Diana in the street and causing her distress by harassment, which belied a recently published article that suggested that the Princess was distressed upon leaving the building of a therapist. He recalls Mr Morgan saying: "If this gets out, we are finished".

340. On another occasion, Mr Seymour said that he was walking through the newsroom, probably in March 2001, and Mr Morgan was standing in the middle holding a tape machine, with reporters around him. He said "listen to this" and played a recording of Paul McCartney, who was singing a Beatles song to Heather Mills in a voicemail left for her. Mr Seymour said that he later learnt that that the recording had been made or acquired by Neil Wallis, who had lent it to Mr Morgan.

341. Mr Seymour had a colleague who was also at the lunch with Sir Victor Blank in 2002. He said he was well known to him and a reliable source, a City journalist. He reported to Mr Seymour that Mr Morgan had taunted the CEO of BT plc, who was also present, telling him that he would need to tell his customers to change their PINs from factory settings, and that everyone else at the table, including Sir Victor, heard what he was saying. He said the colleague expressed a mixture of shock and the wry amusement that people had about the way that Mr Morgan behaved.

342. Mr Seymour was challenged about this evidence, with the suggestion that it would have been the last thing that Mr Morgan would have done if he was involved in phone hacking, to let on to a phone company in front of the chairman of TM plc and other journalists. Mr Seymour gave a telling reply to that:

> "With respect, I think you can only say that if you don't know the personality of Piers Morgan...

> Sorry, this is - perhaps I'm being a bit enigmatic, but Piers Morgan was an extremely boastful person and he would have really enjoyed saying to the chairman, chief executive of BT: aren't we clever".

Mr Seymour agreed that Mr Morgan was no fool but said that he behaved foolishly at times, and that he felt this showed that Mr Morgan knew that his journalists were involved in phone hacking.

343. Mr Seymour struck me as a man of intelligence and integrity. I accept his evidence without hesitation.

344. In April 2007, Mr Morgan made an admission of knowledge of phone hacking in a GQ interview with Naomi Campbell. He said that loads of newspapers were doing it, but felt that it would not continue – a reference and reaction to the arrest and sentencing of Mr Goodman and Mr Mulcaire. In that prediction he was wrong, as I have already explained.

345. Mann J found "convincing" the evidence that Mr Hipwell gave about Mr Morgan's knowledge of hacking at the *Gulati* trial.

346. So far as knowledge of and involvement in phone hacking is concerned, Ms Weaver was directly implicated by Mr Evans' evidence to the police and in the Gulati trial that "the people who certainly had specific knowledge and were involved in tasking, funding and driving my activities were Weaver, Thomas, Buckley, Scott, Weatherup and to a lesser extent Stretch". Mann J found in Gulati that Ms Weaver specifically instructed Mr Evans to hack and to cover his tracks and that emails containing telephone numbers were sent to her so that she could conduct hacking activity herself. There is no need for further findings in relation to Ms Weaver. Mann J concluded that the evidence about her involvement demonstrated that knowledge of and participation in phone hacking existed at the highest level on the journalistic side of the business.

347. Mark Thomas had been Tina Weaver's deputy editor at the Sunday Mirror from 2001 to 2003 before he moved to become editor of The People in 2003, in succession to Neil Wallis. He is implicated by evidence from Mr Johnson and by documents that show his association with Mr Rees, Mr Tillen and Ms Barry, and emails such as those sent by Polly Graham to him in 2002 and 2003, including one on 21 March 2002 relating to Lucy Benjamin and Steve McFadden – "might be something interesting on their phones", and further emails asking Mr Thomas for mobile phone numbers, which he supplied by return.

348. Mr Thomas moved into The People's editor's chair, following Mr Wallis, having left behind the phone hacking that was rife at the Sunday Mirror. As Tina Weaver noted with regret when instructing Mr Evans how to be become a phone hacker, Mr Thomas had taken with him his huge database of names and mobile phone numbers. It would seem inherently improbable that there was a change of culture under his leadership at The People and the evidence shows that there was not.

349. The assistant news editor and then assistant editor under Mr Thomas was convicted phone hacker, Ian Edmondson. Lee Harpin, the "Dauphin of hacking", was senior news editor and then deputy news editor and head of news over the

period 2005-2012; James Saville, found by Mann J to have been a phone hacker, was news editor of The People from 2004 to 2012. In *Gulati*, the involvement of staff of The People in phone hacking was not denied, and an email in that regard from Mr Edmondson to Mr Thomas dated 2 July 2003 was noted by Mann J. Mr Thomas was a recipient or sender of emails relating to phone hacking in the Alcorn, Ashworth, Taggart and Roche cases tried in *Gulati.* Moreover, there is a vast quantity of payment records commissioned by journalists at The People. It is inherently likely that Mr Thomas knew what was happening at his newspaper.

350. There can be no doubt, therefore, that the editors of the newspapers knew about the VMI and UIG and were in a position to tell Ms Bailey or the board about it, but they obviously did not do so.

351. Eugene Duffy became a Daily Mirror journalist in 1986 and was news editor by 1995, head of news and an associate editor by 2000, and then became group managing editor in 2004. In that role, he reported to Mr Hollinshead and was responsible for cost management for the editorial function. He would therefore have been aware of the budgets and expenditure for the editorial departments of each newspaper. Ms Bailey told the Leveson Inquiry that Mr Duffy was responsible for ensuring that human resources policies and procedures were followed.

352. Although not a member of the Executive Committee ("ExCom"), Mr Duffy was involved in the meetings with the editors following *What Price Privacy?* and *What Price Privacy Now?* He was closely involved in MGN's response to the convictions of Goodman and Mulcaire in 2007, giving evidence to Parliament, and again following the phone hacking scandal in 2011 in helping to prepare MGN's case to the Leveson Inquiry. Mr Vickers regarded him as being "in the journalist camp, but also in management and able to straddle the two". Although Mr Vickers did not say so, that clearly made him a useful conduit for information about what was happening on the news room floors. It is evident that Mr Duffy was trusted by the executive directors.

353. When a journalist, Mr Duffy had used PIs himself, including Jonathan Stafford in 2000 to find subscriber details for a landline number, and he was the person at the Mirror to whom Mr Stafford sent his invoices in 2000. There are 43 LRI invoices addressed to Mr Duffy and he authorised 34 Southern Investigations, 13 Law & Commercial invoices, 20 Rachel Barry invoices and CRs and 9 Unique Pictures CRs. Mr Vickers said Mr Duffy's own use of PIs was not surprising, as he was news editor and use of PIs was not illegal. However, as I have found, most of the invoices of Mr Stafford, Southern Investigations and Rachel Barry related to illegal or serious unlawful activities, such as blagging, as anyone commissioning them would have known. Mr Duffy would clearly have known the nature of the PI work that was being commissioned by journalists.

354. The documentary evidence relating to Mr Duffy is strangely limited, considering his central role at MGN. An email he received from Mr Honeywell dated 22 September 2005 shows that he had been chasing for figures on what was being paid for individual searches (including illegal credit reference checks) and the annual payments to major search agencies, such as ELI and C&L. Mr Honeywell promised to send the information the following day. It is therefore likely that Mr

Duffy was aware in September 2005 (in so far as he was not already aware) of the nature of the searches that journalists undertook and the rates that were paid, the identity of the major search agencies and the aggregate cost (and so the extent of use).

355. He would therefore have been aware of those matters at the time (December 2006) when he was involved with the board in considering its response to *What Price Privacy Now?* and the convictions of Goodman and Mulcaire. What is unclear is whether he told the board about what he knew. I consider it unlikely he reported it to the board as such, but quite likely that he shared some of what he knew with Mr Vickers and Ms Bailey. Mr Duffy was given a good deal of responsibility on behalf of TM plc and I do not consider that he would have been without the confidence of Mr Vickers and Ms Bailey. Mr Duffy then played a substantial part in denying on behalf of MGN what he knew to be the truth, namely that VMI was being conducted by MGN on an extensive and habitual basis.

356. I have already referred to the evidence that Mr Duffy gave to Parliament in March 2007. He was asked there about the 95 People and Mirror journalists who had been found to have instructed Mr Whittamore on hundreds of occasions. Mr Duffy said that since Mr Richard Thomas, the Commissioner, had not provided TM plc with the names of the journalists and invoices, he could not examine individual journalists and transactions, and that TM plc had taken a "forward looking approach".

357. Mr Partington accepted that what Mr Duffy told the Committee was untrue and said that no one at MGN had subsequently corrected it. Mr Vickers agreed that it was incorrect and that MGN could have investigated. Regrettably, MGN misled Parliament. It is not credible that Mr Duffy did not understand his or the board's ability to examine payment records for JJ Services to find out what Mr Whittamore had been instructed to do, by whom and for what purpose. Indeed, he already knew the sorts of thing that that JJ Services would have been doing for journalists.

358. Shortly after Mr Duffy's appearance before Parliament, the Press Complaints Commission wrote to the editors of the Mirror, the Sunday Mirror and The People about compliance with the PCC Code and the law. Mr Duffy replied on behalf of all of them, as Group Managing Editor of MGN, on 5 April 2007. He said that he had taken steps to disseminate PCC guidance to all journalists, and that:

> "It is worth reminding the Commission that each of our national newspapers has a dedicated in-house lawyer who is available to be consulted by editors and journalists on subjects such as the Data Protection Act and the Code of Practice. *The lawyers regularly attend conference on each newspaper so that they are aware of the stories which are being looked at, and they're also regularly consulted about investigations and inquiries*, including how they are to be conducted, before those investigations inquiries are commenced."
>
> (*emphasis added*)

The letter sought to reassure the Complaints Commissioner that illegal practices would be prevented, through the efforts of Mr Partington and the three editors, as

well as himself. The three editors were said to be aware that the activities of Mr Goodman were illegal and had no place in newspapers. That might strictly have been true, but the three editors still allowed them to flourish. Mr Vickers and Mr Vaghela both said that Mr Duffy would have been briefed by the legal team on the terms of this response.

359. The letter of Mr Duffy establishes what could not sensibly be disputed, namely that in-house lawyers were regularly involved in considering whether articles should be published and in dealing with complaints about publication. In the course of doing that work, lawyers would need to know the sources of stories, in order to be able to advise on legality and risks of publication. Mr Vickers accepted that with high-profile front page stories, such as the Rio Ferdinand story, the legal departments would have been involved. Ms Bailey said that she would expect that in-house lawyers would be told the nature of journalists' sources, if they asked. Mr Evans said that the lawyers would often want to know what the evidence was for a particular story. Mr Hipwell, whose evidence was not challenged in this respect in the *Gulati* trial, said that it was:

> "inconceivable that the senior legal managers on the [Mirror] were not asking the showbusiness journalists where they were getting their stories from. An extremely significant editorial concern on all newspapers is whether a contentious story that the paper is considering running would get the paper sued for libel, or force it to publish an embarrassing retraction or apology. For that reason, the Daily Mirror's in-house legal team was also heavily involved in assessing the veracity of journalists' stories given the evidence gleaned from sources. In my experience a journalist is willing to answer the following question when it is put to them by a lawyer working on the newspaper: where did you get this story and what is the evidence that it is true".

360. Mr Duffy remained involved at the highest level in MGN until after the Leveson Inquiry. He was part of the team that prepared TM plc's response to the questions from the Inquiry. Whether he shared all that he knew with Ms Bailey and Mr Vickers is unclear. Ms Bailey and Mr Vickers were not asked about the general standard or content of reporting by Mr Duffy, except in relation to the investigation of what David Brown had done before he was sacked. It was not suggested to them that Mr Duffy had reported all the abuses that were going on at the newspapers. It is obvious that Mr Duffy did not formally report them to be board. In my judgment, it is unlikely that Mr Duffy reported in detail to Ms Bailey or Mr Vickers all that he knew about VMI and UIG but likely that he shared some of what was happening with Mr Vickers, as it is clear that Mr Vickers, Mr Partington and he were "operating on the same wavelength".

361. Mr Vickers tried to portray John Honeywell as a drunk and as having an insignificant and unimportant role. Mr Vaghela accepted that Mr Honeywell reported to him, though operational overspend on budgets would not have reached board level (Mr Parker confirmed that, and I accept that evidence). The truth about Mr Honeywell was given by David Seymour, who said that he was the deputy production editor or deputy night editor and then became the deputy editorial manager at TM plc. "He was Mr Reliable", Mr Seymour said, and he

explained a number of important tasks that Mr Honeywell performed in those roles.

362. Mr Honeywell knew exactly what was going on in terms of the nature and extent of illicit searches being commissioned from PIs. From 1998 to 2003, he authorised 145 payments to PIs such as Jonathan Stafford, Avalon, Warner, JJ Services, Starbase and TDI/ELI.

363. In an email to Pat Pilton, a managing editor, dated 9 February 1999, Mr Honeywell acknowledged that a number of invoices that were attached were for illicit searches for ex-directory numbers, to reverse phone numbers to obtain subscriber details, and for vehicle registration details. In further emails dated 17 May 2001, Mr Honeywell complained that the news desk and features desk at the Sunday Mirror had greatly exceeded their budgets on searches and investigations, with large sums being paid to TDI, Warner, Gwen Richardson and C&L, among others. The email says: "I realise that some of these 'searches' are of a specialist nature". On 1 May 2002, Mr Honeywell noted that he was receiving a "frightening" volume of invoices for authorisation from the Sunday Mirror, mostly TDI and Stafford. On 20 September 2005, Mr Honeywell emailed James Saville asking what he would expect to pay for "Credit checks, CCJs, Reverse phone look-ups, Ex-directory phone numbers, Electoral roll checks, BMDs, And any other legitimate searches that you can think of. Don't worry about the dodgy stuff."

364. It is therefore clear that unlawful activity and – by inference – the purpose of the activity, namely to assist in phone hacking, was known about at highest level of editorial management. There is no evidence that this knowledge was formally reported to the board, however, and I find that it was not. If it had been, Mr Vaghela would have known about it and the board would have addressed it. However, again, I think it likely that Mr Honeywell did tell Mr Vickers some of what was happening.

365. It is evident that TM plc was not operating properly in accordance with its corporate constitution. Matters that should have been formally reported to the board were only passed, as thought appropriate, through a filter to those who really needed to know. Mr Vaghela said that Mr Duffy had not brought to him the evidence of spending on unlawful or "illicit" searches, a breach of the company's procurement policy, of which he and Mr Honeywell were aware, as he should have done. I accept that evidence.

366. As I have said, no adverse inference is necessary to resolve the question of whether the editors knew about phone hacking and related UIG. It is clear that they did, and it would have been astonishing if they did not, given the scale on which it was being carried on in the 2000s and the remarkable story lines that it produced. It is also clear that the senior editorial management were fully aware of the fact that PIs were being used at great expense to conduct illegal searches and of the extent of such use.

367. There was, however, no evidence that the editors or the managers told Ms Bailey or Mr Vickers exactly what was happening. It is clear that the editors and senior managers were not being open with board members about the extent to which

VMI and UIG were going on at their newspapers. If they had been, the editors would have said something when Ms Bailey summoned them in 2006 and 2007 and warned about illegal practices; and Mr Hollinshead, Mr Duffy and Mr Honeywell would have reported the extent of the breaches of the company's procurement policy to ExCom, or formally to Mr Vaghela. The only way in which information about these matters reached members of the board was through Mr Vickers, and these matters were not put before the board as a whole by him.

The 14 Incidents

368. I turn now to consider the 14 Incidents on which the claimants specifically rely to establish board and legal department knowledge of VMI and UIG. These Incidents are principally important for whether and when the legal department had knowledge of UIG and VMI, and if so whether their knowledge was shared with Mr Vickers and Ms Bailey.

(a) Prince Michael of Kent

369. On 26 January 1999, the Mirror published a front-page story entitled "PRINCE'S BANK CRISIS" (bylines: Oonagh Blackman and Gary Jones). This disclosed information about the Prince's financial position with his bankers, Coutts & Co ("Coutts"), alleging that his business's account (Cantium Services Ltd) was frozen after he ran up an unauthorised overdraft of £220,000 and a debt of more than £2.5 million, as a result of failed business dealings. It was published without any prior notice to the Prince of the allegations.

370. On the following day, the Mirror published a follow-up (bylines: Blackman and Jones) saying that Prince Michael had been given 5 years to sort out his financial problems, and that he had to repay £222,000. They reported that the Prince had issued a statement denying that his business bank accounts were frozen or overdrawn. The article contended that his accounts were suspended on January 7, 1999 after going £222,000 into the red.

371. There then followed correspondence between Biddle & Co, acting for the Prince, Mr Morgan, as editor, and the Press Complaints Commission ("PCC"). Biddle wrote to Mr Morgan on 26 February 1999 contending that it was untrue that the Prince's accounts had been frozen, that there was any overdraft "and still less that there was or is a debt of £2.5 million". It alleged that any information obtained by The Mirror was a breach of confidence and may also be a breach of the criminal law. The letter enclosed a letter from the Deputy Chairman of Coutts confirming various matters asserted by Coutts as at the time of and immediately before publication.

372. Mr Morgan replied on 2 March 1999 denying inaccuracy and stating that an allegation of breach of the criminal law was "a poor and thinly disguised threat that I will not dignify with comment". He said that the total debt information came from "an impeccable source who has an intimate knowledge of your clients' financial state", and pointed out that the Coutts letter did not deal with the position as at 7 January 1999 or deny that there was any debt. He said that the Prince's accounts and borrowing had been restructured. He refused an apology but offered a right of reply, which The Mirror would publish.

373. Biddle replied on 9 March 1999 disputing Mr Morgan's interpretation and demanding an apology. Mr Morgan did not reply. Accordingly on 29 March 1999, Biddle wrote to the PCC complaining about the publications. They said, among other things:

> "Our client's bank manager received on 6th January 1999 a hoax telephone call from a person purporting to be our client's accountant and attempting to confirm our client's bank account number, which the same person had apparently succeeded in discovering by making another hoax call, this time purporting to be a customer of Cantium Services Limited, to our clients accountant in Brussels. In a telephone conversation with Piers Morgan, our client's public relations adviser was informed that Piers Morgan was in possession of a "statement" which supported the story of an overdraft of £222,000. We have been unable to discover whether and how these two incidents are related but we consider that the evidence suggests that they are."

The letter therefore asserts that on 6 January 1999, the Prince's account manager received a hoax telephone call.

374. The evidence now available shows that Mr Jones commissioned Mr Rees of Southern Investigations to obtain the confidential information, which was done by using someone called Mr Gunning. Call data disclosed by the MPS from their investigation into Mr Rees shows frequent telephone calls leading up to the publications, from Southern Investigations to Mr Jones and to Mr Gunning. It is possible to identify (as the claimants did in Annexe 1 to their closing submissions) a sequence of many calls over about 3 weeks passing between Southern Investigations, Mr Gunning, the MGN newsdesk and Mr Jones's mobile and office landline numbers, showing the course that the obtaining of Prince Michael's confidential information took.

375. Southern Investigations invoiced the Mirror (F.A.O. Gary Jones) on 25 January 1999 in two separate invoices for sums of £175 and £290 "To making enquiries of confidential contacts and reporting our findings in detail" in respect of "Cantium Services Ltd" and "Mr and Mrs Cantium" respectively. On the same day, Mr Rees wrote to Mr Jones providing information about Cantium's accountant and the three bank accounts at Coutts and stating: "Balance (as of 07.01.99) £222,000 over drawn UNAUTHORISED Account is suspended … file with legal department for recovery. Subjects personal account is with senior financial advisor whom will thoroughly investigate/audit Kents finances, advise on financial recovery plan over set period possibly five years."

376. This information is clearly the source of the article and Mr Morgan's written denials. MGN advances a positive case that the information was obtained from a confidential contact at Coutts. But no invoice or CR from a different source has been disclosed by MGN. It relies on the fact that the invoices refer to "confidential contacts" and the fact that information contained in Mr Rees's letter shows that the source apparently had inside knowledge. MGN's case is hopelessly unrealistic and ignores the context. Southern Investigations was conducting criminal activities and Mr Jones was a regular customer of Mr Rees. Naturally, the

invoices carried an apparently innocuous description of what was being done: that was part of the cover up of unlawful activities.

377. The sting on Prince Michael was one of a series of similar operations conducted through Mr Rees against the Governor and members of the credit committee of the Bank of England, Mr Mandelson and Mr Campbell, using the same technique. I find that the confidential financial information (whether correct or erroneous) was blagged from banks and others by operatives on behalf of Mr Rees, in Prince Michael's case by Mr Gunning. Mr Jones would have been under no illusion at all about the unlawful methods being used. If despite all appearances, there is an innocent explanation for all the call data involving Mr Gunning and the use of Southern Investigations, MGN could have called Mr Jones to explain: he still works for Reach plc. Mr Jones did not make a witness statement.

378. Southern Investigations continued to do further work for Mr Jones while the complaint was progressing: there are further invoices to Mr Jones for company computerised credit searches and confidential inquiries dated 1 March 1999, 20 April 1999 and 22 April 1999. Further documents disclosed by the MPS from their investigation into Mr Rees and Mr Kempster (see below) show several Experian and Equifax searches in relation to Cantium Services and other invoices, leading to an investigating officer's conclusion:

> "The relevant offence in this section is covered by S55(4) Data Protection Act 1998 – Selling Personal Data (see offences schedule). The relevant evidence shows that REES obtained personal data – the account numbers of Cantium – and then sold that information to Gary JONES."

379. Mr Morgan was notified of the Prince's complaint on 31 March 1999. That evidently caused MGN to conduct further investigations. The MPS recorded a conversation of Mr Rees on 16 April 1999 saying that he had been asked by Mr Jones to meet the Mirror's legal team to verify information he had given them concerning Prince Michael's bank account and how it was obtained. Mr Rees refused the meeting. On 16 April, Mr Rees made six calls to Mr Jones's landline. This corroborates that the "impeccable source" referred to by Mr Morgan was not a direct source of Mr Jones or Ms Blackman.

380. MGN's response to the complaint then comes in the form of a letter from Mr Morgan, formally maintaining his position on the question of the accuracy of the articles and asserting "two sources intimately connected with Coutts" whose reliability is not in issue. He suggests that the Prince might make limited disclosure of evidence to support Biddle's position, without himself or Martin Cruddace (the Mirror's in-house lawyer at that time) seeing it. Mr Morgan stated that the allegation of soliciting information by misrepresentation was completely unfounded and that the primary source had been known to the journalist for 10 years, which rendered hoax calls "unnecessary and of little consequence to us". He suggested that such unsubstantiated allegations were an attempt to prejudice the PCC against the Mirror. He also offered to discuss through the PCC the terms of a publication that would settle the matter.

381. Two days later, Mr Rees was instructed by Mr Jones to conduct further enquiries on Cantium Services and the Prince, and on 26 April 1999 Mr Cruddace had a conversation with the PCC to seek to explore a means of settling the matter. On 19 May 1999, Biddle sent Mr Cruddace a letter from the Deputy Chairman of Coutts confirming that there had never been an account frozen or an unauthorised overdraft and that agreed indebtedness had been eliminated in December 1998. In the light of that, Mr Cruddace confirmed to Biddle that the Mirror would publish an apology. Wording and terms were agreed on 11 June 1999. These included that an apology would be published on p.7 of the next day's newspaper or an earlier page, starting above the fold, and that £12,500 for costs would be paid by 18 June. In the event, to the anger of Prince Michael, MGN published the apology on p.9, below the fold.

382. The payment was authorised by Mr Vickers. He said that the story was not discussed with him but that the editorial legal department (i.e. Mr Cruddace) would have known the type of source before publication, and that the editor would have wanted to know what the source was: "I would have thought that the sources were known to the editor and would have been discussed with members of the editorial legal team". It is therefore clear that Mr Jones, Mr Cruddace and Mr Morgan would very likely have known (and Mr Jones certainly knew) that the source for this confidential information – whether right or wrong – was Mr Rees of Southern Investigations or someone engaged by him, and that there was no direct legitimate source. The suggestion that there were "two sources intimately connected with Coutts" was invented, unless what was meant was Mr Rees and whomever he commissioned to extract the information, in which case it was inaccurate and misleading.

383. Mr Partington said in cross-examination that Mr Vickers and Mr Cruddace were dealing with the complaint. Mr Vickers claimed that he would not have been interested in investigating why an apology was required, if Mr Cruddace said that the story was wrong. As Mr Vickers accepted, the Mirror had to settle the complaint because it could not reveal the use of Jonathan Rees – even before he was arrested by the MPS. There was no legitimate confidential source who got the information wrong. I find that Mr Vickers would have been told that at the time by Mr Cruddace or Mr Morgan, even if at such length of time he cannot recall it. It was too big a story for the reasons for withdrawal not to be explaind to Mr Vickers. Even though the settlement sum was relatively small and Mr Vickers had a busy year with the merger of Trinity plc and Mirror Group plc, something would have been said to him about the reason for paying out on such a headline-grabbing story.

384. This episode therefore demonstrates that the editor, a member of the legal department and Mr Vickers, a board member, knew in 1999 that journalists in the Daily Mirror were conducting UIG, using very dubious PIs - something different in character from information provided in breach of confidence by an unexpected source or established contact, where there might be a public interest defence. It is not clear that any criminal offence was committed in obtaining information about the Prince's finances, though it might have been, as the investigating officer concluded; but on any view VMI does not appear to have been involved on this occasion.

(b) Arrest of Doug Kempster

385. The arrest of Mr Rees followed shortly after the Prince Michael matter was resolved. At the same time, Mr Kempster, a senior Sunday Mirror journalist, was arrested in connection with investigations into corrupt police officers and the unlawful distribution of confidential police documents. Two officers from the MPC's anti-corruption unit attended MGN's offices on 24 September 1999 to discuss the investigation. It was Mr Partington whom they met. He was, at the time, The People's in-house lawyer, but he explained that they might have seen him simply because he was a lawyer who was there and available.

386. Mr Partington's subsequent letter demonstrates that the two officers gave the background to the investigation and wanted to speak to Gary Jones in connection with Mr Rees's and Mr Fillery's companies, Southern Investigations, Planman and Law & Commercial. A telephone conversation with Mr Partington followed and then he wrote to D.I. Burke on 28 September 1999.

387. The letter was on MGN notepaper (headed "Mirror Group" and "FROM THE LEGAL DEPARTMENT"). Mr Partington was therefore not writing only on behalf of the Sunday Mirror newspaper. Under the heading "Doug Kempster/Jonathan Rees", Mr Partington said:

> "I refer to your visit to our offices on Friday together with Sergeant Paul Urban. During our meeting you gave me some background on the reasons for the arrest of Doug Kempster and Jonathan Rees. You also informed me that you were seeking from us the Police Gazettes which you believe had been scanned onto our system, as a result of Doug Kempster having bought them, together with details of Doug Kempster's payments to Jonathan Rees.
>
> You also mentioned two other matters. Firstly, that you would like to interview Gary Jones although you mentioned that there was no suggestion that he had committed a criminal offence and, secondly, that Doug Kempster had passed on to Jonathan Rees passwords so that Jonathan Rees could carry out electoral roll and company searches at The Sunday Times' expense
>
> I have carried out investigations into these matters and as far as I am aware the Sunday Mirror, which is the paper that Doug Kempster works for, does not have any Police Gazettes scanned into its fast photo system.
>
> As regards Jonathan Rees and Law & Commercial the Sunday Mirror has no record of having paid anything to either Jonathan Rees or Law & Commercial. Yesterday you mentioned the names Southern Investigations Limited and Planman Limited to me and I have also checked about those companies and there is no record of the Sunday Mirror having paid anything to either of those companies.
>
> ….

> As regards Gary Jones, I should be grateful if you would please set out in writing exactly what you wish to discuss with him and also confirm that there is no question of him being charged with any criminal offence either now or in the future in connection with what you want to discuss with."

388. Mr Partington therefore answered the Police enquiries but on a very narrow basis. He confirmed that the Sunday Mirror did not have the Police Gazette on its systems and that the Sunday Mirror had not paid anything to Law & Commercial, Southern Investigations Ltd or Planman Ltd. DI Burke would have read the letter and been led to believe that there was no record of a connection between Mr Kempster and the Sunday Mirror on the one hand and Jonathan Rees and his companies on the other. In his witness statement, Mr Partington said that having been shown the letter, he had no recollection of the meeting or writing the letter. But in cross-examination he said that *until* he was shown the letter he had no recollection.

389. Mr Partington was challenged about his investigation and the terms of his response. What Mr Partington could say was restricted by MGN's privilege. It appeared that he did have a recollection about the circumstances of the meeting and that he reported the meeting afterwards to somebody above him, but not Mr Vickers. He said he did not carry out a proper investigation, only a quick enquiry. He felt that as the requests had been made at a meeting rather than in a letter they were informal. But nevertheless he said that he investigated payments made to Mr Rees, though he could not remember now what he looked at then. The Police could have come back to ask more questions, he said.

390. There were in fact over 100 payments between 1996 and 1999 to Media Investigations (an alias of Southern Investigations, in whose name the Sunday Mirror was billed by Mr Rees) made by MGN on behalf of Sunday Mirror editors and journalists. Further, although the Sunday Mirror did not pay Southern Investigations, MGN (which organised the payments for all three newspapers) did, mainly on behalf of the Daily Mirror, in particular Gary Jones, with whom the Police wished to speak. Mr Partington justified his response on the basis that it was literally true, and said that his letter was "a carefully worded letter".

391. In my judgment, the letter was carefully worded to avoid giving the Police the information that they were interested in. Even cursory investigation would have shown Mr Partington that MGN was making many payments to Mr Rees's companies, even if the Sunday Mirror itself was not making payments to Mr Rees personally or to Law & Commercial (as MGN made them on behalf of its newspapers). It is likely, in my view, that Mr Partington's report to his client would have drawn attention to the large number of payments made to a PI that had been arrested by the Police on criminal charges, including some made by Mr Kempster, particularly as the MPS were showing interest in speaking to another journalist who clearly used Southern a good deal. It would have been negligent of Mr Partington not to do so.

392. That report in my judgment was probably made to Mr Vickers, who accepted that he had a close working relationship with Mr Partington and a "no surprises" rule

in terms of reporting. Mr Partington accepted in cross-examination that if he had been aware of unlawful activity before 2004 (which is when he admitted that he was aware of it) he would have told Mr Vickers about it. Mr Stephen Parker, a board member until 2004, said that he would have expected that the information would have been shared with the chief executive and possibly also the chairman, but it may not have been formally referred to the board as a whole. Mr Vickers claimed to have no memory of the arrest of Kempster or the request to speak to Jones and, unconvincingly, that he had never seen Mr Partington's letter to the MPS before.

393. The notion that Mr Partington first could not remember the meeting with the Police or writing the letter at all, and then specifically remembered that he did not report it to Mr Vickers but to someone else that he cannot identify, and recalls now that he was not aware at the time in 1999 of all Mr Rees's aliases, is wholly unpersuasive and I reject that evidence.

394. Mr Vickers said that he had no memory of the matter or of being involved, but accepted that Mr Partington would have looked into it properly before replying. He said that he was not shocked by Mr Partington's "accurate" reply – he might have taken the same approach – but felt that it was wrong if it was relying on the fact that it was MGN that paid Mr Rees rather than the Sunday Mirror. He also said that Mr Partington should certainly have said to editors that Mr Rees should not be used in future. But Mr Partington apparently did not, and therefore all MGN journalists were able to continue to use the various companies that Mr Rees had set up to carry out unlawful investigations – even if Mr Rees himself was soon in prison. Mr Jones and Mr Thomas continued to use Law & Commercial until March 2002.

395. What this episode does demonstrate is that, even as far back as 1999, Mr Partington was aware that MGN journalists were carrying on information gathering activities that were likely to be unlawful; and that there was a real possibility – subject to what came out of the Police investigation into Mr Rees and his companies – there was criminality involved. This, in my judgment, is supported by the defensive approach that he took to the willingness of MGN to make Mr Jones available to answer questions (though it was entirely fair to want to know whether he was to be questioned as a suspect). There was however no indication at that time in this matter that VMI was being used. It also shows that Mr Vickers knew (though he did not dispute it in general) of unlawful (not criminal) activity by MGN journalists. It does not however establish that anyone else on the board knew about it. I am not persuaded that Mr Vickers did tell Sir Victor Blank or the then chief executive of these matters, though he should have done.

Amanda Holden

396. On 24 March 2001, the Daily Mirror published an article about Amanda Holden and her husband, Leslie Heseltine (stage name, Les Dennis), "Amanda's fury over her friend's fondness for Les" (byline: James Scott). The friend in question was Emily Symons, a soap star. The article claimed that Ms Symons had got "too

close" to Mr Heseltine and said, quoting an unidentified "friend", that Ms Holden was "paranoid about Emily". Much of the content was then re-published in the Daily Mirror's 3am column on 2 April 2001.

397. Ms Holden's and Mr Heseltine's solicitors wrote to Mr Morgan, as editor, and Mr Partington, on 3 April 2001. Mr Partington was sent a copy because he had been dealing with the same solicitors in relation to an unconnected matter at The People shortly before. Mr Cruddace was still the Daily Mirror's in-house solicitor, who dealt with the matter. The letter complained that the information was inaccurate and that there had been no attempt made to check the accuracy before publication. An apology and retraction was sought.

398. The letter was not replied to, despite a chaser a week later, and the lawyers had to send a further letter on 20 April 2001, warning of a formal complaint. This letter also referred to an interview with Ms Symons published on 11 April in SunWoman, in which Ms Symons contradicted the Mirror's allegations.

399. On 30 April 2001, the Daily Mirror published a retraction and apology. A modest payment towards legal expenses was agreed by Mr Cruddace and made in June 2001.

400. Ms Holden and Mr Heseltine each brought a phone hacking claim in 2015. Each relied on the original article as being the product of UIG. In the Defences in both claims, MGN admitted that the article was the product of VMI or blagging (without saying which). The statement of truth on each was signed by Mr Partington, but, curiously, he was not willing to accept in cross-examination that the article was the product of UIG until he was shown the pleaded Defences. He was not personally involved in the matter in 2001; nevertheless, his instinct to deny what could not sensibly be denied was revealing. Like MGN in its attitude to the allegations in this trial as a whole, there was an unwillingness to accept the implications of the findings or admissions that had previously been made.

401. Even now, MGN denies that the story was the product of (or verified by) phone hacking, but without explaining how Mr Scott, who was found in *Gulati* to be a leading phone hacker, got the story otherwise. Mr Scott has not given evidence. MGN contends that the information was wrong and that the retraction was made as a result of the SunWorld interview showing the information to be false. But no evidence to that effect was given: it is simply an inference that I am being invited to draw from the denials by Ms Symons and solicitors acting for Ms Holden and Mr Heseltine.

402. I am unable to draw the inference. The evidence that is much more compelling is (i) the six invoices from TDI for work commissioned by Mr Scott between 26 February 2001 and 27 March 2001, all described as being for "enquiries made on your behalf" or a similar description, and all with a subject of "Symons", "Holden" or "Haseltine" [sic] – invoices to a journalist found to have been a leading phone hacker from a PI found to have carried out work in connection with phone hacking and admitted by MGN to have been so involved during the *Gulati* period; (ii) the presence of Mr Heseltine's name in the Palm Pilots of James Scott and Dan Evans (albeit the Evans records relate to a slightly later period); (iii) a substantial volume of unexplained call data (from the time that call data records

exist, 2002) from MGN landlines to the mobile phone numbers of Mr Heseltine and his associates, including Ms Holden, showing that both were targeted by MGN journalists; and (iv) the unchallenged evidence of Mr Heseltine in his witness statement about the previous publication of private information about him by MGN in 2000, which was unexplained.

403. There is also the evidence of Mr Basham, who made a detailed note in June 2012 of what he was told about the prevalence of phone hacking at MGN by an unidentified source. This included that the later story of Ms Holden having an affair with Neil Morrissey was obtained by phone hacking. As I shall explain later, I accept the evidence of Mr Basham, and this piece of evidence establishes that Ms Holden was a Daily Mirror phone hacking target.

404. I do not find convincing the argument that MGN withdrew and settled (remarkably) quickly because of Ms Symons' comments in SunWoman that the allegations by the Mirror were wrong. Ms Holden and Mr Heseltine had already said that, through their solicitors – and the Mirror had had the confidence in the story to publish it without bothering to put the allegations to any of those involved. It is hardly surprising if those who are caught in compromising or embarrassing circumstances deny the accuracy of the allegations, where there is no clear proof of what is alleged. A newspaper would expect such a response, which the public hear and see on a daily basis.

405. The reason for the swift retraction, in my judgment, was the result of the 3 weeks of investigation that probably took place before there was a reply to the complaint, namely discovery that the source of the information (or corroboration of it) was one that could not be made public or admitted to the complainants or the PCC. Mr Vickers accepted that Mr Cruddace would have wanted to know from Mr Scott how the story was put together and would have looked at the invoices. Mr Vickers said that Mr Cruddace would have had authority to settle his case without referring to him but that he would have raised with Mr Vickers anything illegal that he discovered. Mr Vickers was not asked in terms, in cross-examination, whether he was told by Mr Cruddace that there was evidence of VMI by Mr Scott. I therefore am unable to find that Mr Vickers was told that at this time. He may well have been told nothing about this incident.

406. This episode therefore proves that Mr Cruddace, a member of the legal department, would have been aware that Mr Scott was using TDI to conduct UIG to assist him with voicemail interception. It is not clear, however, whether that knowledge went beyond Mr Cruddace.

The People and Garry Flitcroft

407. Mr Partington was very closely involved in this matter, which was a kiss and tell story about a married footballer's love affairs. Mr Vickers accepted that he talked about it a lot to Mr Partington. The claimants contend that it proves that Mr Partington, still then the in-house lawyer for The People, knew that MGN had (or he himself had seen) an unlawfully obtained copy of Mr Flitcroft's mobile phone call data. They also contend that the settlement of the phone hacking claim brought by Mr Flitcroft many years later shows that MGN knew at that time that

the story was obtained or stood up by UIG and so could not be defended at trial without admitting unlawful conduct.

408. The People was preparing to publish a story about Mr Flitcroft's adultery but he obtained a "super injunction" on 27 April 2001 to prevent publication and his identification. Mr Flitcroft's lawyer, Mark Lewis, asserts and gave evidence that it became obvious that Mr Partington knew that Mr Flitcroft's call data would undermine his case, by showing that he had misled the court by presenting an inaccurate account. Mr Partington accepts that, prior to the return date, he pressed for Mr Flitcroft's call data, but he says that he did so because the story told by one of the two women involved included an allegation that Mr Flitcroft had continued to call her frequently. That was put into writing by her and became evidence on the return date. (The injunction was continued but eventually set aside by the Court of Appeal and the story published by The People with some relish, but that is not directly relevant to the issues that I have to decide.)

409. The story of the affairs was provided to a People reporter on 18 and 19 April 2001 by the two women themselves, independently. The reporter referred the matter to her news editor, James Weatherup, later convicted of phone hacking at the News of the World. Both women were interviewed, and there was an attempt to record a phone call of one of them with Mr Flitcroft, to obtain confirmation of her story, which failed. There was then some contact between one or both of the women and Mr Flitcroft which tipped him off, resulting in an ex parte injunction application.

410. The pleaded allegation is that the legal department of The People was in possession of Mr Flitcroft's telephone call records at the time when it contested the continuation of the injunction. It is alleged that these were obtained by Starbase for Mr Weatherup, on the strength of an invoice relating to Flitcroft addressed to Mr Weatherup. MGN's case is that Mr Partington was keen to obtain the mobile phone data from Mr Flitcroft because of the assertion by one of the two women that Mr Flitcroft had continued to be in regular contact with her, a matter not acknowledged in Mr Flitcroft's evidence in support of his application.

411. The Starbase invoice is dated 13 August 2001 and headed "Consultancy RE: FILTCROFT G" [sic] for £150. The tax point for the services provided is stated to be 16 July 2001, and the invoice bears the reference "JW/20-4/DCS". There are ten other unconnected Starbase invoices dated 13 August 2001 with similar style refences to work said to have been in April 2001. The claimants contend that this shows that the work was done for James Weatherup on 20 April 2001 and was "Detailed Call Schedule" or "Data Call Schedule". The style of reference, using the day and the month separated by a hyphen, is used on many other invoices, e.g. "IE/28-3/DCSMOB" on an invoice with a tax point of 28 March 2000 and "IE/28-8/DX" on an invoice with a tax point of 2 September 2001. These show that the initial following the date reference are an abbreviation for the type of service commissioned.

412. Mr Lewis said that on the evening of 26 April 2001, after the ex parte injunction was granted and before the return date the next day, Mr Partington spoke to him and asked for production of Mr Flitcroft's telephone records, a request that was loudly repeated outside court the following day. By then Mr Partington and one

of the women had made witness statements in opposition. The woman in question had said that Flitcroft continued to text and call her. Mr Partington continued to demand the telephone records in correspondence with Mr Lewis following the hearing on several occasions, and eventually Mr Partington sent Mr Lewis the telephone records of the two women.

413. Mr Partington made a further witness statement in the proceedings on 18 May 2001, raising points about stays in hotels during the two affairs. There are two Warner invoices that have been disclosed with reference to Mr Flitcroft, including one dated 1 May 2001 charging £195 for "Edmondson. Gary Flitcroft enqs", and another dated 6 April 2002.

414. Mr Partington said in evidence that he knew nothing about the invoices at any time until they were disclosed in this litigation (July 2019), and did not know about Mr Flitcroft's call data. He said that he was very angry about the allegation that he knew the content of Mr Flitcroft's phone records already and was pursuing disclosure of them for that reason.

415. I am not persuaded that Mr Partington had, or knew about, Flitcroft call data at the time suggested by Mr Lewis. I did not feel that Mr Lewis was convincing in the way that he gave his evidence about this, nor are the inferences that he seeks to draw compelling. Indeed, the inference that he himself was the target of UIG by MGN is pure supposition. It is evident from the witness statements that were prepared in connection with the return date of the injunction application that Mr Partington worked at high speed on preparing a response to Mr Flitcroft's evidence, and in order to do so obtained the comments from one of the women on Mr Flitcroft's evidence. Her account was very different from Mr Flitcroft's. This would have suggested to Mr Partington that Mr Flitcroft's account was untrue and that his (or her) telephone records would prove it. Indeed, even without that prompt, an able solicitor, as Mr Partington clearly is, might well have thought that the account given by Mr Flitcroft of the history of his relationships with the two women might well be undermined by his mobile phone records. I consider that this possibility, and the account given by the woman, are more likely to have been the reason why Mr Partington was pressing for disclosure by Mr Flitcroft in April and May 2001. If the woman's account was proved correct, the injunction would very likely be discharged.

416. The Starbase invoice is from a PI that I have found to have conducted a significant amount of UIG. Even accepting, as I do, that the reference on the invoice relates to the date on which the instruction was given by Mr Weatherup – the same day that the storyline was provided to him – the tax point suggests that the work that MGN was being charged for was not done until months later (unless the tax point is erroneous). This invoice is therefore not a wholly safe basis for a conclusion that Mr Weatherup had the call data by the return date, or that Mr Partington knew about that or had seen it. Indeed, it later emerged from Mr Lewis's firm that Mr Flitcroft himself had difficulty obtaining the relevant data from Orange (not that that necessarily means that others could not do so).

417. The presence of the Warner invoice too does, however, suggest that Mr Weatherup was using PIs unlawfully to obtain information about Mr Flitcroft. In a later witness statement made in 2013 in support of an application to strike out

Mr Flitcroft's phone hacking claim, Mr Partington said that in order to deal with the legal action (sc. Mr Flitcroft's 2001 privacy claim), he asked Mr Weatherup to get the reporter, Alison Cock, to provide him with information about the story. A memo by Ms Cock was disclosed but this says nothing about what Weatherup had obtained via Starbase or Warner.

418. MGN's attempt to strike out Mr Flitcroft's phone hacking claim failed, though the Judge commented that his claim appeared to be weak. Notwithstanding this, MGN later paid Mr Flitcroft £20,000 and his reasonable costs to settle the claim. MGN argues that this was a case of tidying up unnecessary litigation and that others claims were settled at the same time. However, Mr Vickers acknowledged that Mr Partington would not have wanted to settle this case, given his antipathy to Mr Flitcroft and his lawyers. There must therefore have been a good reason why the claim was settled at that stage, despite the Judge's indication that the claim might well fail. And Mr Partington would not, I consider, have suggested or supported settlement without considering all relevant material.

419. I consider it probable that, despite his denials, Mr Partington was aware of the UIG through Starbase and Warner in 2014, at the time that the claim was settled, and he would at that stage have seen the information obtained by each, whatever it was. The claim was settled shortly before MGN was required to make disclosure. Starbase and Warner were not among the PIs whose invoices were disclosed by MGN during the *Gulati* proceedings. MGN decided to settle the Flitcroft claim and others because they knew that to defend these claims would require disclosure of proof of more extensive UIG, which would open up two more PIs.

420. Mr Vickers would have been aware of the settlement because it was at a level that he would have had to authorise, as he accepted. Although he said that he could not remember, I consider it highly likely that Mr Vickers was told exactly why the case was being settled at that level.

421. This incident therefore establishes that MGN used UIG in relation to Mr Flitcroft in 2001 and that MGN, to the knowledge of the senior in-house lawyer conducting the litigation and a senior board member, settled the case in 2014 to avoid the need to disclose incriminating evidence about possible VMI or other UIG having been conducted in 2001 and 2002.

Rio Ferdinand

422. On 19 October 2003, the Sunday Mirror published two articles about the Manchester United and England footballer, Rio Ferdinand, that suggested that he had used his mobile phone to contact various people, including his doctor, between the time of a missed random drugs test and the time that he had claimed to have realised his error. The lead article was under the joint bylines of James Saville and James Weatherup, both proven phone hackers; the second article was under the byline of Sara Nuwar. Both made explicit reference to the times and content of calls, text messages and voicemails.

423. It is not denied by MGN that these articles were the product of UIG though they formally "not admitted" it in the GenD and it remained "not admitted" in closing submissions. MGN therefore does not have a positive case that there was no UIG involved. The front page article was admitted to be the fruit of VMI by MGN in Ms Alcorn's claim at the *Gulati* trial (she was one of those telephoned by Mr Ferdinand in the immediate aftermath of the missed test), so once again this is a case of MGN ignoring a concession previously made. The UIG is clearly evidenced by large numbers of invoices from PIs established to have been conducting UIG for MGN, the combination of which and the identity of the byline for the principal article leads to a strong conclusion that VMI and UIG were probably involved. The content of the article is also strongly indicative of VMI or other UIG, or both.

424. MGN's reliance on the language used, the sources claimed in the article and the content of publications by other newspapers to cast doubt on unlawful activity by MGN's journalists and PIs is in my view wholly unrealistic in this case. Mr Parker, who was unaware of the matter at the time, nevertheless accepted that it was obvious that unlawfully obtained material was how the article was put together, and Mr Vickers agreed that MGN must have had access to Mr Ferdinand's phone records; but he said that he would not have been interested in that, as it did not demonstrate illegal conduct, as opposed to a civil wrong.

425. The central issue is whether the legal department and the board were aware that that UIG and/or VMI was involved in this incident.

426. Among MGN's disclosure are draft versions of the story (shared with Mr Stretch and Mr Buckley at the Sunday Mirror), showing greater or lesser reference to the detail of calls, texts and voicemails. The claimants' case is that it is obvious that for such a sensational headline story the legal department would have been intimately involved prior to publication, and it would have understood the sources. Mr Partington admitted that high profile stories like this were routinely "lawyered". The publication version contained lesser, but still clear, references to the above matters.

427. On 23 October 2003, The Guardian reported that Mr Ferdinand's lawyers suspected that the Sunday Mirror and the News of the World had obtained his mobile phone records prior to publication. It said that the PCC had been contacted and that a complaint to the Police had not been ruled out. The Sunday Mirror declined to comment.

428. Ms Bailey said that she did not remember the story, even though her portfolio management role included ensuring that Sunday Mirror and The People lead stories were sufficiently differentiated. She accepted that in this role she would discuss the leading exclusive each week with the editors. She did not remember the Guardian article either. I find this surprising. Mr Vickers said he was not aware of the story before publication and knew nothing about its source, but accepted that MGN must have had access to Mr Ferdinand's phone records and that the legal department would have been involved in the publication. Mr Parker said that he did not recall any discussion of the fallout from the article at board level but that he would not be surprised if Mr Vickers and Ms Bailey had discussed it.

429. Mr Partington was not the Sunday Mirror lawyer at the time; Mr Mottram was. Mr Partington said that he was not involved in the publication of the article, which is understandable, but that he was probably aware of the story at the time, though unaware of the press reports that a complaint had been made to the PCC. Mr Partington did however receive the pre-action letter from Mr Ferdinand's lawyers in 2011 explaining why they contended that he had been the victim of VMI and UIG. Mr Partington accepted that the letter contained sufficient information to enable the legal department to investigate by considering invoices relating to the article and those named in it.

430. Given that the article would have been "lawyered" and that it went through several drafts, with specific detail of phone calls and texts being omitted, it is an inevitable conclusion that Mr Mottram must have been aware of the source.

431. Mr Vickers accepted that when the claim came in in 2011, Mr Partington would have talked to him about it, and that he would have wanted Mr Partington to check whether MGN had used Mr Mulcaire and Mr Stafford, who were named in the letter of complaint, and be told what the outcome of the investigation was.

432. In the light of this evidence, I consider that in 2011 Mr Partington would have looked into the nature of the complaint, by reference to the 2003 article, and would have discovered and told Mr Vickers then that there was evidence of UIG to source or stand up the story. I consider it probable that Mr Partington would have concluded and told Mr Vickers that there was evidence of illegal VMI.

433. This matter therefore demonstrates that the legal department of the Sunday Mirror would have known in 2003 that UIG, including VMI, had been used to source or stand up the story line in the article. With such a sensational story line, which ran and developed for several days, and in view of the Guardian coverage of alleged unlawful and possibly illegal conduct, I consider that it is unlikely that Mr Vickers was not told about it at the time by Mr Mottram. The legal department and Mr Vickers would have been aware of it again in 2011. The claim brought by Mr Ferdinand was ultimately settled as part of a set of broader issues between him and MGN.

Operation Glade and Operation Motorman

434. Operation Glade was an MPS investigation into disclosure by MPS employees to PIs of criminal record histories and registered keeper details of private cars. The PIs investigated were Steven Whittamore and John Boyall. Various newspaper journalists were interviewed under caution in relation to these matters, including Euan Stretch and Gerard Couzens, former Sunday Mirror journalists (Mr Stretch returned to MGN in 2004, Mr Couzens went to Spain), and Michael Greenwood, a Mirror journalist. Two policemen were charged and pleaded guilty to conspiracy to commit misconduct in public office; Mr Whittamore and Mr Boyall pleaded guilty to offences under s.55 of the DPA 1998, and none of the journalists was charged in the end.

435. MGN admits that Mr Partington was informed of the arrest of three men and knew that these included Mr Whittamore and Mr Boyall, and further that three current or former MGN journalists had been interviewed. MGN admits that Mr Partington told Mr Vickers orally and in writing about these matters. This demonstrates that Mr Partington reported appropriately to his immediate boss, Mr Vickers, matters of which he became aware regarding possible illegal conduct involving MGN's journalists. (MGN claimed privilege for the detail of the communications based on the potential prosecution of the journalists.) Mr Partington accepted that it was incumbent on him to advise the editor if he saw something illegal and that he did advise Mr Vickers at the time of Operation Glade. The communications with Mr Partington would therefore obviously have involved the MPS's suspicion that journalists had paid the PIs for the information illegally obtained, i.e. that there was illegal, not just unlawful, conduct involving MGN journalists or former journalists. This was not, however, a VMI case.

436. In cross-examination, Mr Partington accepted that it was in 2004, as a result of Operation Glade, that he realised that journalists at MGN were acting unlawfully. He did not say what it was that revealed that to him. He said that he conducted "a degree of investigation" into the matter, but privilege was claimed for the detail of what he learnt as MGN's lawyer.

437. A check of MGN's payment records for JJ Services would have revealed thousands of payments up to 2003 (the exact number was not the subject of evidence but the SAFs, invoices and CRs are in evidence) for a variety of dubious services, commissioned by several prominent journalists in addition to the three who had been interviewed, many of which services were likely to have appeared to be unlawful or illegal. Checks against Mr Stretch, Mr Couzens and Mr Greenwood would have revealed the use of other PIs too. Mr Partington must have discovered – and I find that he did discover – some at least of this information, and this would have been shared with Mr Vickers. Despite that, MGN journalists continued to use Mr Whittamore until 2006 (he was convicted in April 2005).

438. MGN denies that these matters were reported to the board and asserts that Mr Vickers did not inform the board of what he had been told by Mr Partington. When pressed in a request for further information, MGN responded that Mr Vickers cannot recall whether he informed any director or the risk and audit committee.

439. Mr Vickers said in evidence that he remembered the interviews of the journalists, which was out of the ordinary, but that to the best of his recollection he did not think that he needed to inform the board about it. He said that he would have informed the board about any charges brought against them, but there were none, and he took a degree of comfort from that. However, at the time of the interviews and for some considerable time afterwards, Mr Vickers could not have known whether any of the journalists would be charged. Neither Ms Bailey nor Mr Vaghela nor Mr Parker remembered Operation Glade or any board discussion about the matter.

440. Mr Vickers clearly should have reported this matter of potential criminality at MGN newspapers to the board as a whole. Had he done so, I consider that Mr

Parker (prior to his departure in 2004) and Mr Vaghela would have adverted to it and would remember it. The claimants say that it is to be inferred that the board, or at least Ms Bailey, were told. That raises a very important question of the extent to which Mr Vickers shared with his CEO or the board information that he was given by Mr Partington, or what he knew already about unlawful or illegal practices at the newspapers. I accept that the evidence of Mr Parker and Mr Vaghela about what was reported to the board was honest and that they had no recollection of any formal report relating to Operation Glade. That means that Mr Vickers did not share it with the board. It is interesting that he did not do what he obviously should have done. There are two possible reasons: he did not want to bring the weight of the board down on the journalists' and editors' practices; or he wanted to be in control of those matters himself, rather than hand it over to the board; or both. Whether he probably shared any of this with Ms Bailey is something that I will deal with later in this Part of the judgment, after reviewing his and her evidence about the events of 2003 to 2011.

441. Operation Motorman was a continuation of the Operation Glade investigation conducted by the Office of the Information Commissioner, Richard Thomas. It resulted in the publication of *What Price Privacy?* in March 2006 and a follow-up, *What Price Privacy Now?* in December 2006. The latter was an analysis of the extent to which various newspapers had been using Mr Whittamore's illegal or unlawful services. Both Mr Partington and Mr Vickers said that they were not informed of Mr Thomas's reports other than by their publication. I accept their evidence on this point: there is really no contrary evidence, but what matters is not how they found out about the ICO reports but what they did about them.

442. Before turning to the ICO reports, there were other developments in 2005 that are relevant to the case of legal department and board knowledge of extensive and habitual phone hacking and other UIG.

Abbie Gibson and the Beckhams

443. Abbie Gibson was David and Victoria Beckham's nanny and she left their service in 2005. In April 2005, she signed a deal with the News of the World to tell her story. This fact was publicised in advance. Despite attempts by the Beckhams to prevent it, the story was published on 24 April 2005.

444. On 10 July 2005, The People published an article "Becks Phone Fury" alleging that Mr Beckham had left a series of abusive voicemail messages on Ms Gibson's mobile phone. The article referred to the content of the messages and quoted one, referred to their timing, and included comments of "sources close to Abbie" and "a friend", saying that she had been left "shocked and confused" and comments about what Mrs Beckham believed and was going to do. The article said that Ms Gibson confirmed having received the voicemails but was unable to discuss them for legal reasons.

445. MGN denies that the entire story, and does not admit that any part of the story, was obtained by MGN journalists through voicemail interception.

446. The Beckhams' lawyers made a legal complaint to Mark Thomas, the editor of The People on 12 July 2005. They also issued libel proceedings against Ms

Gibson in relation to the News of the World article. Ms Gibson brought a constructive dismissal claim against them.

447. In the letter of complaint, lawyers asserted that no such phone calls were made and that Ms Gibson's lawyers had said that she "is happy to make it clear that she has not received abusive messages". The letter called for a full retraction and apology, among other things.

448. Documents disclosed by MGN show that Lee Harpin (news desk) commissioned ELI on 15 April 2005 in relation to "A Gibson" and that his extension (3206) then called Ms Gibson's mobile phone 29 times between 19 and 23 April 2005 – after the publicity of the News of the World deal but before its article was published. I agree with the claimants that the obvious inference here is that Mr Harpin was hacking Ms Gibson's mobile phone in order to obtain a story before the News of the World published.

449. There were then 20 further calls to Ms Gibson from a different extension at The People between 30 June 2005 and 9 July 2005, the day before publication of its article. There is a transcript of a conversation between Mr Harpin and Ms Gibson dated 2 July 2005, in which Ms Gibson tells him that she cannot speak about the matter for legal reasons, and Mr Harpin reassures he that he does not need her to confirm the story because The People already had a source. Ms Gibson's lawyers warned The People on 9 July 2005 that it should not publish, but it went ahead regardless.

450. Between 12 July 2005 and 30 July 2005, there were then 38 more calls from the same extension to Ms Gibson's phone, mostly of short or very short duration. At the end of July, MGN and the Beckhams reached a settlement, including damages of £12,500 and costs, and an agreed statement in open court in which MGN confirmed that Mr Beckham had not made any telephone calls to Ms Gibson of the kind described in The People.

451. In his witness statement in unfair dismissal proceedings, Mr David Brown said that The People regularly used information from "screwed" (i.e. hacked) mobile phones, and an example of this was the Abbie Gibson story. He said that it took MGN less than a month to settle because it knew that it could not produce the evidence of tapped mobile phones in any litigation. As I explain further below, I accept the accuracy of Mr Brown's evidence about the source of the article. His account of phone hacking is corroborated by the disclosed documents, the nature of the story and Mr Thomas's confidence in publishing it in the face of warnings from Ms Gibson's lawyers.

452. It is also corroborated by what happened when Ms Gibson sued MGN in 2012 for having hacked her phone, solely in relation to The People's article. MGN applied to strike it out on the basis (optimistically) that it had no reasonable prospect of success. It relied on the Harpin transcript as demonstrating a source for its story that Mr Harpin knew to be true. Ms Gibson's evidence was that she did not listen to any voicemail messages so she cannot say that they existed. Mann J noted that there was no denial of the allegations and indicated to MGN (Mr Partington was in court) that unless someone was willing to make a witness statement confirming that the source was a human source, or at least not a phone hacking source, the

application would be likely to be dismissed. Mr Partington did not make a witness statement and the application was dismissed. Before disclosure was due, MGN agreed to pay Ms Gibson damages and costs and agreed a statement in open court.

453. In 2005, the lawyer at The People handling the complaint was Rachel Welsh. Ms Welsh asked Mr Vickers to approve the settlement with the Beckhams. Mr Vickers said that he would not have questioned the basis of the settlement or asked about the source, if Ms Welsh recommended settlement, and that he had no recollection of what happened in 2013 when the application to strike out Ms Gibson's claim was made and her claim was then settled. His position was that if statements in open court said that there were no abusive calls made by Mr Beckham there could have been no phone hacking. Mr Partington had nothing to add by way of explanation, given the privileged nature of any advice he gave MGN. Ms Bailey said that she did not remember the article or the settlement.

454. The true position was therefore that Ms Gibson had not received (i.e. picked up) the voicemail messages but Mr Harpin or the byline of the article, Mr Carlin, had. It is impossible to conclude that Mr Carlin simply invented the whole story and Mr Harpin's conversation with Ms Gibson proves otherwise. Whether the voicemail messages were accurately described in the article or exaggerated is unknown.

455. Faced with threats of libel proceedings from the Beckhams and a statement from Ms Gibson's lawyers that she had not *received* abusive messages (which was true), MGN's only defence to the threatened libel proceedings would have been to rely on the material that had been hacked, whatever it contained. MGN seeks to argue that its acceptance that the allegations were untrue is supported by the evidence of the Beckhams and Ms Gibson. However, there was no such evidence, other than Ms Gibson's statement that she did not listen to any voicemails. It is not implausible that the Beckhams would deny abusive calls to Ms Gibson, if they considered them not to be as described by The People, or that MGN and Ms Gibson would settle the claims brought against them – in Ms Gibson's case confirming the absence of something that she did not know about in any event.

456. In my judgment, this episode is strong evidence of voicemail interception, of which Mr Thomas and Ms Welsh would necessarily have been aware in deciding to settle with the Beckhams. I was not persuaded by Mr Vickers' assertion that he would have been uninterested in the basis for the payment when being asked to authorise a settlement. There is little point in requiring authority on behalf of the board to settle claims above a certain level if settlement was just rubber-stamped. I did not have the impression that Mr Vickers would have been uninterested in such matters, though Ms Bailey probably was. I therefore consider that Mr Vickers would probably have understood in 2005, when authorising the payment, that the story had been obtained by VMI and that MGN could not defend the Beckhams' claims on that basis. There is no evidence that he informed the board that VMI was being used by MGN journalists and I conclude that he did not.

Arrest and convictions of Mulcaire and Goodman

457. Only a few months before publication of *What Price Privacy Now?*, Mr Goodman of the News of the World and Mr Mulcaire were arrested. At the same time, on 11 August 2006, a Guardian article "Hipwell: voicemail hacking rife at tabloids" reported that Mr Hipwell, a former MGN journalist, had alleged that phone hacking was "widespread" at tabloid newspapers and gave examples of articles in the Mirror that had come from hacking into a celebrity's voicemail, including the Eriksson/Jonsson affair. It commented that the Mirror had been approached about the allegations but had declined to comment. Mr Vickers said that he might well have been involved in the decision to make no comment, or possibly Mr Fullagar himself decided that.

458. It was admitted by MGN in its pleaded case that the board and the legal department of MGN became aware of the arrests and the Hipwell allegations at the time, and that these were discussed by members of the board but not at a full meeting of the board. In light of this, it is inherently likely that the decision to make "no comment" was made by Mr Vickers and not Mr Fullagar, who was not a board member. MGN also admitted that Mr Partington was informed, and told Ms Bailey and Mr Vickers that a Committee on Culture, Media and Sport was proceeding to hold a public hearing into issues connected with the Goodman case and "What Price Privacy Now?". Mr Vickers said that he raised the ICO reports with the board.

459. The combination of the ICO's first report in April 2006, the arrests in August 2006, Mr Hipwell's allegations, the convictions in November 2006, the ICO's second report in December 2006 and the notification of the Select Committee's intentions mean that, at the end of 2006 and early 2007, there were very serious issues about newspapers and journalism in the public domain. The executive officers, board and legal department of TM plc (and MGN, to the extent different) are admitted to have been aware of these, and they could not properly have ignored them. MGN's closing submissions said that, although there was no express reference in the reports to phone hacking, the board and legal department took the findings seriously.

460. MGN contends that knowledge of these matters was a wholly insufficient basis on which to conclude that the board or legal department became aware of widespread and habitual use of UIG including phone hacking. If they did not become aware, it was because a decision was taken not to investigate beyond checking that Mr Mulcaire had not done any work for MGN.

What Price Privacy Now?

461. The first report of the Information Commissioner, *What Price Privacy?*, was not focused solely on activities of newspapers or journalists but included them within its reach. Its focus was the misuse (and abuse) of private data and the reach and effectiveness of the Data Protection Act in preventing it. The report said that 305 journalists had been identified during Operation Motorman as customers (of Mr

Whittamore from 1999 to 2003) driving the *illegal* trade in confidential personal information.

462. I have already introduced the report in Part II above at [137], [138]. So far as relevant to the Press, its main conclusions were that:

    a. there was an established illegal (not just unlawful) trade in private information;

    b. it was being conducted by private detectives, tracing agents and blaggers;

    c. private data was being extracted from the Police, phone companies and call centres and the DVLA …

    d. … and was being supplied to the Press, who were driving the business.

463. The Second Report *What Price Privacy Now?* followed in December 2006. It was more specific in addressing the extent of the involvement of journalists in individual newspapers. A league table was published, in which the Daily Mail came top (or bottom) with 952 positively identified transactions with 58 separate journalists. In second place was The People with 802 transactions by 50 journalists, and third was the Mirror with 681 transactions by 45 journalists. The Sunday Mirror came sixth, with 143 transactions by 25 journalists. In aggregate, therefore, MGN was by far the largest customer, with 1,626 transactions by 120 separate journalists. It needs to be re-emphasised that the Commissioner was identifying this work as potentially criminal conduct, by the PIs or the journalists, though it is fair to note that the Commissioner says that some cases might be subject to public interest or similar issues.

464. There is no suggestion that the legal department and board of MGN were not immediately aware of these serious findings. The number of separate journalists and the very large number of transactions over 5 years are startling. Mr Partington accepted, in cross-examination, that the reports gave them "firm evidence" of widespread UIG going on at MGN and said that he accepted that all that had to be done was to look at the invoices from the accounting system to see what it was. He said that he was not part of the decision to adopt a "forward-looking" approach and that he did not discuss the conclusions of the report with Ms Bailey.

465. Obvious questions, which anyone on the board must surely have asked themselves, are: what types of work was Mr Whittamore doing for MGN journalists; and was it just Mr Whittamore that these 120 MGN journalists were using?

466. Mr Vickers, who was the group legal director, accepted that he was responsible to the board for regulatory and compliance matters. When asked about Mr Basham's evidence that he was very influential on the board, he said that "in relation to these matters, the investigation into phone hacking, the Leveson Inquiry, press regulation, yes, I was the board member who was responsible for them". This was confirmed by Mr Vaghela, the other executive director (responsible for finance) who said that with the support of the external legal team Mr Vickers took overall responsibility for editorial and the legal process. He also

had supervisory control of claims and responsibility for settlement of claims – until 2004/05 in any amount, and after then claims above a certain limit. Mr Vickers accepted that he and Mr Partington had a close working relationship and that there was a "no surprises" rule for reporting by Mr Partington.

467. Mr Vickers' position was that he did not know of voicemail interception until December 2013, when the MPS provided the key that unlocked the door, as he put it. He said that the picture of organised unlawful activities emerged over time. By this, I understood him to mean that he could not be sure that there was criminal conduct until December 2013 and that it was a picture of organised criminal activities that emerged over time, as he had previously accepted that he had known of unlawful activities since 1992 and was not interested in them.

468. The Commissioner laid his report before Parliament, with the consequence that the Select Committee arranged its March 2007 hearing into these matters.

469. The reaction of Ms Bailey and Mr Vickers to the first report is interesting because it acknowledged a risk of breaches of the criminal law by editors and journalists at MGN's newspapers. That means that the implications of the report and the effect of the Data Protection Act were not overlooked. Mr Vickers and Ms Bailey must have been aware, from the time of this first report, of the risk of seriously compromising conduct within TM plc.

470. Ms Bailey and Mr Vickers gave evidence to Sir Brian Leveson about what they did in response to the two reports of the Commissioner.

471. Ms Bailey said, in her witness statement to the Leveson Inquiry, that TM plc does not tolerate any unlawful conduct and that its:

> "…corporate governance system identifies risks arising from editorial matters, including the risk of catastrophic editorial errors, which would include publishing stories based on information obtained unlawfully."

On this basis, the Information Commissioner's reports clearly identified a risk of "catastrophic editorial errors", to use Ms Bailey's term, as they indicated the kind of UIG that the Commissioner was satisfied was being carried out, on the basis of his analysis of Mr Whittamore's work, and that 120 MGN journalists were using Mr Whittamore.

472. She continued:

> "I have firmly reiterated Trinity Mirror's policies in respect of conduct. For example, after the Information Commissioner published his report examining the unlawful trade in confidential personal information in 2006 (*What Price Privacy?*), together with Mr Vickers I called a meeting of the Editors of the Daily Mirror, the Sunday Mirror and The People, the Group Managing Editor and the then Head of Editorial Legal, now the Deputy Secretary and Group Legal Director, to reiterate that Trinity Mirror 's policy was that it and its staff did not break the criminal law. As I come back to below, to the

> best of my knowledge and belief, this policy was at the time and is in fact adhered to in practice, but I nevertheless wanted to take the opportunity to re-emphasise it. I made it clear that I was not declaring an amnesty had there been any breaches in the past and that I wanted it understood that there would be no tolerance: if any Editor, or one of his or her journalists, broke the law then the Editor would be held responsible and would be dismissed. The tone of this meeting was very serious and all of those present confirmed to me that they understood."

473. Mr Vickers said in his evidence to the Leveson Inquiry that Trinity Mirror does not tolerate bribery or corrupt practices or any unlawful behaviour. He said that he had no role in instructing PIs or external providers of information but that he was aware that MGN journalists had used PIs over the years. After referring to the Information Commissioner's reports, he explained that TM plc "adopted a forward-looking approach", and that TM plc had disclosed documents relating to the payment of PIs. Payments to external sources of information were, he said, governed by strict policies and procedures.

474. Both Ms Bailey and Mr Vickers told the Leveson Inquiry that they had not conducted any investigation, or asked any further questions, on the basis that there was no evidence of any wrongdoing at MGN ("there was no evidence and we saw no reason to investigate") and that their approach was to be "forward-looking" only. Ms Bailey disagreed that on reflection it might have been a good idea to satisfy herself, by some investigation, whether there had been phone hacking carried on by MGN journalists, on the basis that it was not a healthy way to conduct an organisation where there is no evidence of wrongdoing. She also suggested that MGN did not have the data to investigate whether any journalists had been acting illegally in the past.

475. In evidence to me, Ms Bailey claimed to have no recollection of the initial interviewing of journalists in Operation Glade, or any discussion at board level, or of talking to Mr Vickers about them; however, she was keen to emphasise that no further action was taken against the three journalists. She said that if no further action was taken by the Police, MGN would have had no reason to investigate. She could not remember any discussion of Mr Hipwell's allegations – in her evidence to the Leveson Inquiry she had said that she might have been aware of them at the time but was not sure. In court, she said that she could not see why she should investigate something that a "known criminal" who was fired by MGN said. (This was a reference to Mr Hipwell's dismissal from the Daily Mirror for his involvement in the City Slickers share tipping scandal. Mr Hipwell gave evidence in the Gulati trial and was only challenged as to his allegations of Mr Morgan's knowledge, and his evidence was found to be persuasive by Mann J.)

476. Ms Bailey essentially repeated the evidence that she had previously given about the meeting with the editors following *What Price Privacy?* She could not recall whether there was an agenda or minutes were taken. No such agenda or minutes were disclosed, so the likelihood is that there was no agenda or minutes and that the meeting was informal. Following *What Price Privacy Now?*, she said she convened a further meeting with Mr Vickers, Mr Duffy Mr Partington and the three editors of the nationals – at that time Richard Wallace, Mark Thomas and

Tina Weaver – and sought assurances from them that they had not been involved in illegal activity. Again, no agenda or minutes have been disclosed, so there probably were none. No one explained why such a serious warning (if that is what it was) was not minuted, or confirmed in writing

477. A search was done, at Mr Vickers' instigation and conducted by Mr Partington, to see whether MGN had at any time used Mr Mulcaire's services – what Ms Bailey described as "a very extensive search of all our databases to check whether or not we had ever done any business with Glenn Mulcaire". It is hard to square this evidence with her assertion to the Leveson Inquiry that MGN did not have the data to investigate whether any journalists had been acting illegally. The answer that came back from Mr Partington was that Mr Mulcaire had not been used. But if the search had extended to the firm for which Mr Mulcaire had worked between 1998 and 2001, Legal Resource and Intelligence Research (LRI), MGN would have discovered that he worked for John Boyall, who was convicted following Operation Glade alongside Mr Whittamore, and that LRI had been commissioned at least 61 times by journalists at the Mirror, including Eugene Duffy, Anthony Harwood and Michael Greenwood.

478. The only reasonable conclusion to reach is that the search was either half-hearted, or deliberately limited in its scope, or both. At all events, it gave Mr Vickers and Ms Bailey the opportunity to assert that MGN had never used Mr Mulcaire and so, by implication, MGN had not done the kind of things that the News of the World had done.

479. As to the possibility of an investigation into potential criminality at MGN following *What Price Privacy Now?*, Ms Bailey said that the Commissioner did not provide them with details of their investigations, and: "I'm not sure what – what we would have investigated or how we would have done that or whether we would have had the resources to do that." She claimed that she could not remember if she ever asked Eugene Duffy about the payments referred to in *What Price Privacy Now?* I find that she did not. She said again that it would have been difficult to hold an investigation "but that wasn't the reason we didn't hold an investigation; it was really about taking a forward-looking approach".

480. Mr Vickers said that he was aware almost from the day that he joined MGN (1992) that unlawful activity (in the sense of actions that could give rise to claims for breach of confidence or, later, misuse of private information) was carried on by journalists, though whether it was unlawful depended on the nature of the information and how it was obtained. He disputed that he knew about criminal activity until December 2013, though he said in his witness statement that before 2012 he was aware of isolated claims that MGN journalists had been responsible for voicemail interception, though he did not consider that those claims amounted to evidence that it had happened. In cross-examination about his, he said that what he meant to say was no *credible* evidence. He did, however, accept that matters relating to phone hacking were informally discussed at meetings of ExCom.

481. Mr Vickers confirmed Ms Bailey's account of the meeting with the editors after *What Price Privacy Now?* – he said they were told that "…if you're operating under the misapprehension that we want you to do this stuff, you're wrong, we don't …" He said that all that was said to the editors in 2006/2007 was that there

should be no illegality. Mr Vickers said that the editors got the message, but this was only based on something that was said to him in a taxi by Gary Jones. Mr Vickers said there were no emails or messages that came back – he could only recall what Mr Jones said to him.

482. Mr Vickers admitted that he did not at the time check or cause to be checked the expenditure on PIs, or satisfy himself that the group procurement policy was being adhered to. He was unable to say why he did not. There was no wider investigation following Goodman and Mulcaire because of the "one rogue reporter" line that was being spun, he said, and no investigation following the Hipwell allegations because "I really didn't trust him. I didn't like him: perhaps I was unprofessional about letting that cloud my judgment". He said that the allegations were not discussed at board level.

483. I find that an investigation did not take place because Mr Vickers and Ms Bailey did not want there to be an investigation. There was the clearest possible evidence – in the Commissioner's reports, in the data that MGN held and could interrogate, in the allegations of Mr Hipwell, and arising from the arrests of Mulcaire and Goodman – that there might well be criminal conduct being carried on by MGN journalists on a very significant scale, using PIs (or even, if it was the case, just one PI, Mr Whittamore). The idea of being "forward-looking" was no more than an excuse for not looking at what had happened in the past. So too was the argument that it would be "unhealthy" to conduct an investigation. Mr Vickers knew that an investigation was likely to reveal things that were deeply uncomfortable for MGN. The contention that there was "no evidence" of wrongdoing, or that MGN did not have the ability to investigate – which is what Parliament and the Leveson Inquiry were subsequently told – was simply untrue. There was evidence, though not clear proof at that stage, of criminal conduct. The purpose of an investigation is to find whether there is proof; but no investigation took place.

484. An honest appraisal of this was given by Mr Vaghela, whose evidence on this and other matters I accept. He said that these matters were not brought squarely before the board, though he was aware that Ms Bailey and Mr Vickers had had "conversations" with the editors following the Commissioner's reports, and such matters were "the remit of Sly [Bailey] and Paul [Vickers]". Mr Vaghela accepted that there was information available that justified an investigation and that, with hindsight, an investigation could have been carried out at that point, and that the suggestion that it could not have been was wrong.

485. On any objective assessment, it was self-evidently appropriate at that time for MGN to conduct at least an investigation into the 1,626 transactions of 120 MGN journalists with JJ Services, which the Commissioner had identified as potentially criminal conduct. However, the board left it to Ms Bailey and Mr Vickers to decide what was right, and they did nothing except admonish the three editors about future conduct, in two informal, undocumented meetings.

486. In my judgment, Mr Vickers and Ms Bailey, to whom the board had delegated responsibility for such matters, turned a blind eye to the obvious likelihood that some at least, but probably many, of the 120 MGN journalists who had given Mr Whittamore 1,626 instructions in 5 years, were involved in the illegal trade in

confidential information, including phone hacking and blagging. In other words, the possibility that VMI and UIG were being done on a widespread and habitual basis at the three newspapers.

The David Brown allegations

487. The evidence of illegal conduct became even clearer following a claim brought by David Brown, a Mirror journalist, alleging unfair dismissal of him by MGN. Mr Brown was dismissed summarily on 6 April 2006 for having provided stories sourced by the Mirror to a journalist at The People. On 30 March 2006, Mr Duffy emailed Mr Thomas, the editor, informing him that Ms Bailey had been told and that her view was that it was "intolerable" and "we must show we will not stand for it". It is therefore likely that Ms Bailey knew that Mr Brown was to be dismissed, and why.

488. The claim for compensation was issued by Mr Brown on 4 July 2006 – his particulars of claim did not mention phone hacking or use of PIs.

489. The claim was being handled by MGN's HR department, who instructed a firm of external solicitors (DLA Piper) to act for MGN. The Employment Tribunal proceedings were moving slowly until 16 May 2007, when Mr Brown served evidence in support of his claim. In the meantime, Goodman and Mulcaire had been arrested, convicted and sentenced, giving rise to much publicity about phone hacking.

490. In his witness statement, Mr Brown explained, in substance, that it was unfair that he had been dismissed for a misdemeanour when many other employees of MGN were guilty of felonious behaviour, which went unpunished; and that the truth was that MGN was taking advantage of what he had done to get rid of a well-paid employee as part of its cost cutting measures. In support of that contention, he gave evidence that phone hacking and use of PIs for unlawful purposes was widespread at MGN's newspapers. He provided specific examples of stories that had been obtained by phone hacking, including Mr Eriksson and Ms Jonsson and Abbie Gibson and David and Victoria Beckham. He also identified other celebrities who had been targeted, to his knowledge, including Jessie Wallace, Frank Bruno, Tina O'Brien (a close friend of Ms Sanderson) and Jade Goody, and even named some of the PIs. He alleged that the conduct was illegal.

491. Mr Partington said that the witness statement was received by him on 16 May 2007. It must have been sent to him by DLA Piper or by the HR department. He was therefore brought in to address the matters raised in it. Mr Partington agreed that his involvement in such a mundane claim was unusual. Mr Partington then spoke to DLA Piper about the allegations. He said that he made Mr Vickers aware of the matter and Mr Vickers agreed that that was so. They communicated orally and in writing about it.

492. In the course of speaking to DLA Piper, Mr Partington made markings and annotations on his copy of Mr Brown's witness statement. (The document with the annotations was originally privileged but privilege was lost in relation to the markings made and one note that appears on the first page.) Mr Partington accepted that the note was his and was made during his telephone conversation

with external lawyers. It reads: "**no choice but to settle – as over barrel**". This became known in interim applications and at trial as the "Partington Note".

493. I previously decided that privilege had not been lost in relation to other redacted notes made by Mr Partington, and Mr Sherborne was not able to ask Mr Partington questions about those.

494. The passages of the witness statement that Mr Partington had highlighted on his copy included:

> "journalists on tabloids get their stories by a variety of means, some of which involve sharp practice."
>
> "Reporters on all of the Trinity Mirror titles used illegal information supplied to them by private eyes to get personal data on celebrities…
>
> "… a firm called ELI traded as TDI…"
>
> "The People regularly used information from screwed mobile phones, where private clients' mobile phone numbers were hacked into for personal information"
>
> "lessons advice indicates that a major media PLC was not only allowing its staff to carry out illegal activity by at best turning a blind eye to it, but also taking part in an organised cover up of that activity."

These extracts show that Mr Partington's apparent concern was with allegations of illegal practices involving PIs, in particular phone hacking, and TM plc's knowledge of it.

495. Terms of settlement were swiftly negotiated by TM plc: it agreed to pay Mr Brown £20,000 in return for extensive undertakings from Mr Brown to keep the settlement, the witness statement and the basis of his claim confidential.

496. Mr Vickers argued that a settlement was made as a routine method of settling employment claims quickly, to avoid costs. I have no hesitation in rejecting that contention, for the following reasons.

a. First, the claim had already been proceeding for over 10 months when TM plc settled it, with costs (including external lawyers) having been incurred for at least 9 months. Routine settlement of a mundane, low value claim would not have been so long delayed.

b. Second, the claim was settled remarkably quickly – terms were agreed in principle within 6 days of Mr Partington receiving the witness statement.

c. Third, the amount for which the claim was settled was significant and likely to be more than Mr Brown could hope to obtain from the Tribunal for an unfair dismissal claim, though of course MGN would incur irrecoverable costs of fighting the claim.

d. Fourth, no explanation was (or could) be provided for the Partington Note other than the obvious one, namely that Mr Partington understood that MGN could not allow the allegations in the witness statement to gain publicity, as they would if MGN contested Mr Brown's claim, and so Mr Brown had MGN "over a barrel". They could not allow the allegations to gain publicity because that would inevitably require MGN to conduct a thorough investigation, and the investigation would be likely to show that there was truth in the key allegations of phone hacking, as Mr Vickers and Mr Partington both knew.

497. Mr Vickers said in evidence that he satisfied himself that there was no truth in the allegations made by Mr Brown. He felt that this was just a "cuttings job" based on publicity after the arrests of Goodman and Mulcaire. In his witness statement, Mr Vickers said that with the help of others, he did check out the allegations "so far as we could". When challenged about the investigations that he conducted that enabled him to reach that conclusion, Mr Vickers accepted that he did not investigate as such – not even looking at invoices for the named PIs, or asking the bylined journalists about the source – but he checked "the easy ones, and the easy ones came back with negatives and we didn't look any further".

498. The "easy ones" were (1) the allegation by Mr Brown that Liz Harrison, the head of HR, had warned editorial executives at the three national newspapers following the Hipwell article to deny any suggestion from other publications that the Mirror "screwed" mobile phones, and (2) the allegations about hacking of Ms Gibson's mobile phone. Mr Vickers said that he asked Ms Harrison and she denied it. He said that the allegation about Mr Beckham could not be true because the Beckhams' claims had been settled by Ms Gibson and MGN on the basis that it was untrue that there had been abusive phone calls, therefore there could have been no phone hacking that produced the story.

499. This is manifestly neither a check of the allegations so far as Mr Vickers could check them, nor the kind of investigation that one would have expected him to commission if he had been serious about carrying into effect Ms Bailey's admonishment to the editors to avoid illegal activities. As to Ms Harrison, it seems inherently unlikely that a head of HR, rather than the head of communications or Mr Vickers or the CEO, would have instructed editorial executives to deny allegations of phone hacking unless she had instructions to do so – but if she did, without authority, and was then asked about it by the Group Legal Director, Mr Vickers could hardly have been surprised by a denial.

500. As for the Beckham story, it is a *non sequitur* that because claims were settled on an agreed basis there were no voicemails and no hacking of Ms Gibson's phone: agreement that there were no abusive calls does not mean that there were no calls or no voicemail interception. This was, in my judgment, no more than an *ex post facto* justification for not having investigated. Mr Vickers, given his position, could easily have investigated a number of the allegations by interviewing the journalists, asking the in-house lawyers involved in the stories, and inspecting invoices. Mr Sherborne suggested to Mr Vickers that there had been an investigation, to some extent, and as a result Mr Partington and he did know that what Brown was alleging was true. Mr Vickers denied it.

501. Ms Bailey, despite her earlier involvement in Mr Brown's dismissal, said she had no recollection of the settlement of his claim or the reason for it, nor any recollection of an issue of whether Mr Brown was to be released from his confidentiality obligation when he was due to give evidence to the Leveson Inquiry. She did accept that she would have expected to have been told about the Brown allegations if there was truth to them.

502. The truth in my judgment is that Mr Partington and Mr Vickers both knew before 2007 that there was VMI as well as unlawful use of PIs, and that they suspected that there was likely to be truth in Mr Brown's allegations. Mr Partington may well have done some investigations, of a limited kind, though Mr Vickers did not himself investigate. I do not accept his evidence that he interrogated Ms Harrison and the editors at the time. Mr Partington then would have shared his knowledge of the likely truth of the allegations with Mr Vickers. Following advice from DLA Piper, Mr Partington concluded that MGN had to settle quickly with Brown in order to keep the allegations quiet, and Mr Vickers agreed to the settlement for that reason. Whether Ms Bailey was told the truth about the reason for the settlement is unclear: I will deal with her position later in this Part.

Sean Hoare's comments about Mr Partington

503. In an email to a claimant lawyer, Charlotte Harris, dated 28 July 2010, Mr Hoare, a former People and News of the World reporter and admitted phone hacker, said that he had had a long chat with Mr Partington the previous week. The email comments that:

> "He clearly knows the coup. He is a smart, informed man. I needed to talk to Marcus because I trust him and he knows my past – indeed he calls me London's best criminal. … On all accounts his advice was excellent, indeed refreshing."

The email to Ms Harris is in relation to Mr Hoare providing a statement to help with information. Mr Partington accepted that it was about a witness statement relating to voicemail interception claims against News Group Newspapers Ltd.

504. Mr Partington and Mr Hoare worked together at The People until Mr Hoare left in 2001. In September 2010 Mr Hoare alleged that phone hacking was a common practice at the News of the World and was encouraged by its former editor, Andy Coulson.

505. In a later email to a journalist, James Hanning, Mr Hoare said:

> "As I said during lunch my aim is true and I don't have a problem with you talking to anyone. Marcus (Partington) knows I was sitting with Harpin when he bragged to a Mirror reporter regarding Sven and Piers known the source too."

506. Mr Partington explained that Mr Hoare called him occasionally, for advice, and on one occasion he said that it was in relation to the importation of tobacco that

he called, ostensibly on behalf of a "friend" (though Mr Partington suspected that it was Hoare who was doing the importing). Mr Partington said that he joked on that occasion, "you're just a criminal aren't you, Sean", and that was why Hoare referred to being called London's best criminal, nothing to do with Hoare's phone hacking activities. Mr Partington said that he had no recollection about the content of the second email, and denied that they showed that Mr Partington knew about Mr Hoare's phone hacking activities.

507. I was wholly unconvinced by Mr Partington's evidence about this matter. In context, the reference to Mr Hoare's past is obviously to his past as a phone hacker. Further, Mr Hoare was (it is accepted) asking Mr Partington's advice about providing a witness statement about phone hacking. The idea that, in that context, a discussion about illegal tobacco importation would be why Mr Partington called Hoare London's best criminal does not make sense. In my judgment, this matter demonstrates that Mr Partington knew about what Mr Hoare did at the People and the News of the World, though it does not itself prove that Mr Partington knew it before Mr Hoare left the People in 2001.

MGN's response to Operation Weeting

508. Operation Weeting was the MPS's investigation into allegations of VMI at the News of the World. It started in January 2011.

509. The coverage that gave rise to Operation Weeting caused Mr Vickers to call a meeting with Mr Hollinshead, the managing director of TM plc's national newspapers division, and Mr Fullagar, director of corporate communications. This gave rise to a press statement by Mr Fullagar, reported by the BBC in connection with allegations against TM plc made by Mr Marsden MP. The statement said that "Our journalists work within the criminal law and the Press Complaints Commission code of conduct". This statement therefore impliedly asserted, contrary to facts known to Mr Partington and Mr Vickers at the time, that no MGN journalist had committed a breach of the Data Protection Act or any other criminal offence.

510. On 7 March 2011, the BBC wrote to Mr Partington and Gary Jones giving notice of the content of a forthcoming *Panorama* programme that was going to expose knowledge within the MGN group of illegal conduct involving Southern Investigations and senior journalists commissioning improper access to bank accounts of members of the Royal Family and others. The email asked for details of MGN's response and MGN were subsequently asked to confirm that they had used or bought articles from Jonathan Rees. MGN's response was a less than fully frank admission that "many years ago some of our journalists used Southern Investigations. They were last used in 1999". The response did not say anything about other aliases of Jonathan Rees that continued to be used after 1999, such as Law & Commercial. The wording of the response was specifically approved by Mr Vickers and Mr Fullager and was copied to Mr Partington. It was carefully crafted to be true, but it was misleading.

511. MGN's denial of any wrongdoing was quoted in an article published by the New York Times in July 2011, which reported that five former journalists at The People said that they regularly witnessed hacking in its newsroom in the late

1990s to early 2000. One was reported as commenting "I don't think anyone quite realised the criminality of it." The day afterwards, 22 July 2011, The Australian reported that James Hipwell was willing to testify to the Leveson Inquiry to similar effect. Both articles were emailed to Ms Bailey, Mr Vickers, Mr Hollinshead and the three editors and copied to Mr Fullager. Ms Bailey was therefore aware of these allegations of criminality when MGN made its statement of working within the criminal law and when she gave evidence to the Inquiry.

512. Mr Vickers concluded that no investigation was necessary. He said that the chairman at the time, Sir Ian Gibson, "was of the view that there was nothing worse than an unnecessary investigation", and that he and Sir Ian did not think there was anything to investigate, as they had not seen what they considered to be *prima facie* evidence of wrongdoing. I find that that decision was reached with the agreement of Ms Bailey but without a board decision to support it. The decision was a remarkable conclusion to reach, given the cumulative effect of the evidence provided in 2006 and 2007 and the serious allegations that were then being made in the Press, as referred to in part above, and in view of the MPS investigation that had just been launched. What it amounted to was turning a blind eye to what had happened previously, and hoping that nothing that amounted to "*prima facie* evidence" would emerge.

513. Instead, Mr Vickers and the CEO, Ms Bailey, decided to set up an internal procedural review, under the Director of Risk and Audit, Charmian Stevens. As Mr Vickers said, this was not an investigation into phone hacking but "an investigation of editorial processes aimed at making sure that we avoided anything improper happening in the future". In other words, as later reported to the Leveson Inquiry by Ms Bailey, Mr Vickers and Mr Vaghela, MGN was only "forward-looking". Ms Bailey also said that after the Millie Dowler story, MGN did an internal review of controls, but its purpose was not to investigate phone hacking.

514. At a board meeting on 26 July 2011, one of the NEDs, Mr Gary Hoffman, suggested that, in view of the scandal that had broken, things might look bad for the board if they had not asked editors and senior staff the question of whether they knew about criminal conduct at the newspapers. Accordingly, a letter was prepared by Mr Vickers and sent to 43 senior staff asking whether they or anyone on their staff or instructed by them had:

> "1) intercepted any mobile or fixed line telephone message; or,
> 2) made any payment to a serving police officer; or,
> 3) illegally accessed the police national computer system or the criminal records bureau
>
> Please sign the attached letter to confirm that you have done none of the above."

515. Ms Bailey accepted that the categories were rather narrow (e.g. they did not cover instructing PIs to obtain information unlawfully), but Mr Vickers thought otherwise, and said that it was only intended to capture criminality. He was unconcerned by merely unlawful conduct by journalists and editors. There was then the following exchange with Mr Sherborne:

"Q. Did you think, by sending this out, that someone was just going to voluntarily own up and say, "yes, actually I have done these things"?
A. Not particularly….
Q. But does it surprise you, in retrospect, that the most well known hackers, for example, like James Scott, Lee Harpin, Nick Buckley, Tina Weaver and so on, that they all denied any of this?
A. No, with hindsight, it doesn't. At the time, as I say, it was a question we felt we had to ask.
…..

Q. ... they lied to your face, Mr Vickers
A. Yes, exactly. Well, not actually to my face, but about in writing, where they did lie to my face. But yes, they lied.
Q. Well, why would their say so be a sufficient assurance to you? If by definition they had been carrying these out-
A. At the time-
Q. - they were plainly lying.
A. At the time I didn't know that they had been carrying it out. And certainly, when you're dealing with the editors of national newspapers, they are – they are serious people. Certainly the editor of the Daily Mirror is the head of a major international institution, and you don't get to that role without a lot of hard work, talent and skill, and you become a player. And these people are serious people and you ask them a question, you expect to get a proper answer from them.
Q. But you didn't.
A. I didn't, no. They lied to me.
Q. Are you surprised by that?
A. I'm very upset about it."

516. Mr Vickers did not expect to obtain any admissions, but what he did expect to receive was 43 responses which would satisfy any auditor of the board's conduct that questions had been asked and assurances obtained. Further, the expected answers provided a renewed justification for not holding an investigation, which is what he and Ms Bailey wanted. This was not a serious attempt to investigate anything, just a "papering" of discharging the board's responsibilities. Given the criminality identified, any positive response would have been tantamount to a resignation letter. I do not accept Mr Vickers' protestation that he was very upset by the fact that many of those responding will have lied to him. He knew that some of the recipients were involved in VMI and he obtained the denials that he needed. MGN then focused on its evidence to the Leveson Inquiry that there was no evidence of phone hacking at MGN.

517. On 24 August 2011, a Mr Staines of the Sunlight Centre for Open Politics sent Mr Vickers a letter drawing attention to the facts of the David Brown matter (already known to Mr Vickers) and calling on him to explain why no investigation was carried out into the allegations, and pointing out that it would be very

embarrassing for senior executives if what he alleged proved to be true. No investigation took place.

518. Later, under pressure from further adverse publicity following the Millie Dowler revelations and the establishment of the Leveson Inquiry, TM plc decided to ban the use of PIs – not, as Mr Vickers emphasised, because there had been any wrongdoing, but because MGN was under pressure to be seen to do so.

The Leveson Inquiry

519. At the Leveson Inquiry, MGN submitted only a small part of the documents relating to its use of PIs, which were anonymised and redacted, and told Sir Brian that it had a "forward-looking" approach to compliance. Ms Bailey, who accepted that she was briefed by Mr Vickers before giving evidence, said that unless journalists were charged (under Operation Glade), or the Information Commissioner provided information about journalists, there was nothing that could be investigated. "There was no evidence and we saw no reason to investigate." It was therefore right not to investigate. Pressed about whether now, with the benefit of hindsight, it was right not to investigate, Ms Bailey said that that she was not sure what they would have done, or how, or whether she had the resources to do it. There is still therefore, on her part, a denial of the ability effectively to have investigated anything.

520. Mr Vaghela took a more honest and realistic position, saying that at the time of the Parliamentary Select Committee in 2007 if MGN had wanted to investigate invoices, it could have done, and there was nothing to stop them from doing so. He could not explain why Mr Duffy had told Parliament that it could not be done, but suggested, rather generously, that Mr Duffy might have been focusing on what he personally was able to do. But that was certainly not what Mr Duffy was saying.

521. Ms Bailey repeatedly emphasised in her evidence in this trial that there was no evidence, only unsubstantiated allegations, but that is clearly not correct. What she meant was that there was no clear proof that would force the board to act. Mr Vickers used the same excuse for not investigating – he said that there was no "credible evidence of illegality". Even when the board became very suspicious in 2012/13, he said,:

> "I wasn't convinced that it had been happening – we had, if you like, *the proof that it happened* – until we got from the Metropolitan Police a matrix which linked mobile phone numbers to individual names that had allegedly been hacked by Dan Evans, and we were able then to put those names against the numbers that our own internal investigation had disclosed and then link them to stories."
>
> (*emphasis added*)

That was not until December 2013.

522. Mr Vickers said in his Leveson witness statement that he was aware that journalists used PIs and aware of the *What Price Privacy Now?* report, but that in line with the Commissioner's own approach TM plc was taking a "forward-

looking" approach. He said that TM plc had disclosed documents relating to the payment of PIs, but did not say that these were only a partial selection of invoices. He said that MGN makes payments to external sources of information but that this is governed by strict policies and procedures, any breach of which is a serious disciplinary matter. He continued:

> "To the best of my knowledge, there is a high degree of compliance in practice with Trinity Mirror's systems and the controls are effective. From time to time, there are exceptions, but as explained, Trinity Mirror takes a firm stance against misconduct. To the best of my knowledge, since the meetings [in 2006 and 2007] Trinity Mirror's policy of compliance with the PCC code and the law has been followed in relation to the use of private investigators or other external sources of information for stories. I do not know to what extent in practise the policy was followed prior to that time..."

Mr Vickers did not explain the extent of his knowledge since 2006/07 and was not asked about it further in this trial.

523. Mr Vaghela, who also gave evidence to the Leveson Inquiry, said that he became aware of the David Brown matter only during the Inquiry, and that if he had been aware at the time he would have wanted the allegations to be investigated. He said that the advice from MGN's legal team at the Inquiry was: "let's see how Leveson comes out and then we will move forward". Mr Vaghela, with his limited knowledge of unlawful conduct within MGN, probably understood that as meaning to wait and see what the Inquiry recommended for the future. But for those who were aware of what had happened in the past, what it amounted to was: let's wait and see if we get away with it.

The Montgomery Dossier

524. David Montgomery is a former editor of the Mirror and a significant shareholder in TM plc. In about September 2011, he compiled a dossier which, according to Mark Lewis, he handed to him at the start of the first claims in the MGN hacking litigation. I accept Mr Lewis's evidence that this is what happened.

525. The dossier includes a copy of the David Brown witness statement, some background notes with a heading "prepared September 6, 2011" and a draft letter to the chairman and NEDs of TM plc.

526. The notes record that Ms Bailey and Mr Vickers were aware of the settlement with Mr Brown, and sets out a paraphrase (accurate in substance) of the Partington Note. They also record that the witness statement was "removed from internal human resources department files and archived off-site at another lawyer's office" and state that no action was taken by TM plc "despite clear indications of criminal behaviour". The notes conclude with a series of questions that Mr Montgomery considered should be asked of the board about their knowledge of the various allegations that Mr Brown had made and of their involvement.

527. The draft letter asks why the serious allegations were not investigated at an early stage and whether there was an orchestrated cover-up of the allegations. It refers to Sir Brian Leveson's request for Mr Brown to be released from his undertaking to be free to give evidence to the Inquiry and asks:

> "If Leveson is taking David Brown's allegations seriously – on the strength of a document that Trinity Mirror has had for four years – how can the company continue to dismiss them as the ramblings of a disgruntled ex-employee"?

528. The draft letter then sets out substantially the same questions that are in the note, including, as question 1:

> "Was the board informed of the phone hacking allegations in 2007 and the settlement with David Brown that prevented public disclosure of these allegations at the employment tribunal? At the time which members of the board saw the copy of the Brown statement inscribed as follows by the deputy legal director Marcus Partington: 'He's got us over a barrel – settle'? Which directors had direct responsibility for the editorial department of The People and approved the settlement with Brown?

The board of course did not see the witness statement or the Partington Note.

529. Mr Montgomery did not, for whatever reason, send his proposed letter to the chairman or board members, but he did share the content of his notes and his concerns with others in the autumn of 2011.

Mr Grigson, Mr Basham and the 2015 AGM

530. At about the same time, Mr Basham, a former financial investigative journalist who was running a company research business called Equity Development, became particularly interested in TM plc. He had had a long association with the Mirror Group, including advising Robert Maxwell on his acquisition of it. Mr Basham had, and has, high level connections in the City, the Labour party and in publishing.

531. His interest in late 2011 was in discovering undervalued companies, for investment purposes. Contacts in the City told Mr Basham that the shares of TM plc were undervalued because of a concern about a pension fund black hole. Mr Basham researched that and persuaded himself that the concern was unfounded. He wrote to the then chairman, Sir Ian Gibson, and attended the 2012 AGM to ask questions.

532. At the AGM on 10 May 2012, Mr Basham met Paul Vickers and David Grigson, and learnt that Mr Grigson was due to take over as chairman later that year.

533. Having bought a substantial holding in TM plc, Mr Basham continued to be interested in its fortunes and he made further enquiries of journalist friends. He

spoke to James Hipwell and others and learnt about the problem that TM plc faced with phone hacking allegations. Mr Basham said that he then spoke to a senior financial reporter (who had been identified by a friend, Alan Frame), who had been employed by MGN, and who gave him detailed information that was credible and turned out to be accurate. He learnt that James Scott was the king of hacking and Lee Harpin was described as the "phone hacking Dauphin". He also spoke to a large number of people in "the Fleet Street gossip mill" and what he learnt there tallied with what his source had told him.

534. In the course of his further investigations, Mr Basham said that he was told that Mr Vickers was the villain of the piece, who, with Ms Bailey, had orchestrated a cover up of TM plc's phone hacking. He said he also heard of Mr Partington's quip to Mr Scott "James, I've left my mobile at home, can you tell me if there are any message on it", and understood that TM plc lawyers knew that phone hacking was taking place. He said that that story had gone round Fleet Street.

535. He formed the view that MGN had been the originator and epicentre of phone hacking and that News Group newspapers, in particular the News of the World, had taken it up in order to compete with MGN's story lines.

536. Mr Basham prepared a note, called "Trinity Mirror vulnerability to Leveson et al" setting out in detail what he had discovered and summarising his conclusions and what he thought the incoming chairman, Mr Grigson, should do about it. He believed that the problem could be contained but only if Mr Grigson "did a proper clean sweep of the Augean stables in the next 13 to 14 months".

537. Mr Basham said that he took what he had discovered to a lunch with Mr Grigson in July 2012. (Mr Grigson had taken over as chairman on 29 May 2012). Mr Basham said that they got on well and that he learnt from Mr Grigson that he felt weak on the board because Ms Bailey had abruptly left and had not been replaced. Mr Basham said he told him everything that was in the note, including Mr Partington's quip. He said that Mr Grigson told him that Mr Vickers was unusually powerful on the board ("he used exactly those words") and that Mr Partington was helping to run the company. Mr Basham said that he warned Mr Grigson that urgent and serious action was needed to protect the company, and recommended David Price QC to investigate independently and publicly report the results.

538. Mr Basham said that following the lunch he was in almost daily contact with Mr Grigson and that he recalled sending him a copy of his note but could not be sure about that, as he did not have all his emails from that time. He was challenged in cross-examination about his claim to have sent a copy of the note, and he readily accepted that he might not have done, but did not accept that he was exaggerating the amount of contact that he initially had with Mr Grigson after the lunch. He also accepted that there might well be inaccuracies of detail or names in his note, as he had prepared the note from many conversations that he had had. In particular, he said that he might well wrongly have written Mr Scott in relation to the Partington quip, and that it could have been Mr Buckley (which is who Mr Evans said the quip was made to).

539. Mr Grigson conceded that it was striking that Mr Basham had found out so much that was accurate, but disputed almost entirely Mr Basham's account of their contact. He said that he went to lunch with him but was "instantly distrustful" that Mr Basham was after a paid position at TM plc. He could not remember exactly what Mr Basham said at the lunch but accepted that the gist was that he needed to clear the decks properly. He said that Mr Basham confirmed his view that the "mood music" about phone hacking was threatening but did not present any evidence of phone hacking or tell him where the information came from. He disputed that Mr Basham was in almost daily contact after the lunch and that he had sent him a copy of his note.

540. Mr Grigson was a very defensive witness, who was keen not to answer questions about what he was told or about what he called "hypothetical" questions. He seemed to me to be in denial about what had happened under his watch, and was frequently inconsistent in the evidence that he gave. He denied saying things that, when the documents or recordings were examined, it was clear that he had said, such as his telling Mr Johnson that he had inherited a company with a head in the sand mentality, and that Mr Partington was aware of phone hacking or other UIG activities.

541. His main line of defence to the allegation that he had not done what he obviously should have done and start an investigation was that there were denials by staff (which he felt constituted the real evidence about phone hacking – what Mr Hipwell and Mr Johnson were saying about phone hacking was just gossip), and there were very competent management and executives in place, and no evidence of wrongdoing. He said that he satisfied himself that there were enough competent people in their roles, who said that phone hacking had not happened, and he took this at face value and concentrated on the strategic challenges. There was no need to go digging.

542. He relied on the new CEO, Mr Fox, when he was appointed, and did not hesitate to continue Mr Partington's employment when Mr Vickers was made redundant in 2014. He said that he satisfied himself that Mr Fox and others thought that Mr Partington should stay in the role, and has still not seen anything to show that the legal team knew about UIG. When Mr Vickers was made redundant, Mr Grigson took his denials of knowledge of UIG at face value. He felt that he was not responsible for investigating what Mr Partington knew.

543. As for the functions of the company, Mr Grigson accepted that when he joined TM plc the flow of information was not good and there were "less than perfect" communications with the NEDs. He accepted that Mr Vickers and Ms Bailey had been taking the key roles on phone hacking and that the NEDs would not have been involved.

544. I have no difficulty in preferring the evidence of Mr Basham to that of Mr Grigson about what passed between them. Mr Basham was fair and firm in his evidence – not mincing his words but accepting where he might have been wrong. He had an excellent grasp on the detail and history of events. I do not find that Mr Basham sent Mr Grigson subsequently his note, because Mr Grigson denied it and Mr Basham said that might be correct, but I do find that most of the content of the note was imparted by Mr Basham over lunch. Mr Grigson may not have been

paying full attention because, as he said, he was (wrongly) mistrustful of Mr Basham, but Mr Grigson was given the full picture of MGN's involvement in phone hacking.

545. Mr Grigson is in my judgment in denial about that and about other aspects of his time as chairman. I consider that Mr Grigson was in a weak position and was naïve about what was required at MGN, and in taking assurances at face value, despite what Mr Basham had alerted him to. Mr Grigson had previously been chief financial officer at Emap (which published local newspapers) in the 1990s and then employed by Reuters plc before taking over at TM plc. I have the impression that he was not able to get to grips with the dysfunctional company that he inherited.

546. Mr Johnson attended the TM plc AGM on 7 May 2015 which, as it turned out, was shortly before judgment was handed down in *Gulati*. By this time, Mr Johnson had been convicted of phone hacking, on his own admissions, and had served a community sentence. Mr Johnson asked challenging questions about how the phone hacking allegations had been dealt with, including why the David Brown allegations had been covered up and how Mr Grigson's explanation that MGN had done "everything short of ripping up the floorboards" to investigate what had happened was untrue.

547. Following the formal part of the meeting, the executives, shareholders and journalists mingled at a reception, and Mr Johnson approached Mr Grigson (in the presence of Mr Fox, the CEO) to continue their discussion. Mr Johnson asked whether Mr Partington had been asked about phone hacking and if he had been involved in the cover up, and challenged the assertion that MGN had done all that it could. Mr Johnson recorded the exchange between them.

548. Mr Johnson must have been at least a minor irritant to Mr Grigson on that occasion, but to his credit Mr Grigson remained courteous and he engaged openly throughout the discussion with Mr Johnson. Mr Grigson assumed that the conversation was off the record and he was willing to speak frankly.

549. The claimants' case is that, in that informal session, Mr Johnson put to Mr Grigson that Mr Partington was involved in the cover up of David Brown's allegations and that Mr Grigson agreed with what Mr Johnson said. Mr Grigson said in his witness statement that he was just politely listening, while saying "yes …yes", but not by way of agreement; and that he was anxious to get away from Mr Johnson to talk to some significant shareholders.

550. The whole of the relevant part of the recording was played in court. It was clear to me that there was no indication in Mr Grigson's tone or involvement in the conversation that he was, as he suggested, trying to get away to talk to others. It was Mr Grigson who approached Mr Johnson (again, to his credit) to congratulate him on having raised the awkward matters that he had in the formal session, not Mr Johnson who "button-holed" Mr Grigson. It was also clear that Mr Grigson was fully engaged in the conversation, and continuing it, not apparently keen to draw it to an early conclusion.

551. Mr Grigson was asked specifically by Mr Johnson what Mr Partington said when asked what he knew about David Brown, and he replied that Mr Partington said that he "was aware that things had been going on" but not the details, and that TM plc decided when Mr Vickers left that Mr Partington was a "net help to us". Mr Grigson agreed that by that he meant that a calculation had been done by the board, balancing the advantages and disadvantages of keeping Mr Partington on, and that the disadvantage was that Mr Partington had known about hacking since at least the Brown employment claim.

552. Mr Grigson said in cross-examination that he could not now understand what basis he had for saying that to Mr Johnson in 2015. But he did say it, and indeed later said that the David Brown issue had come up quite frequently at the time of Mr Vickers' departure and when the decision was made to retain Mr Partington (and indeed promote him to become group legal director at that time). He said that he relied on Mr Fox to form a view as to whether Mr Partington remained a net benefit to TM plc. Mr Grigson agreed that he could not remember looking into the role that Mr Partington had in relation to David Brown's claim.

553. In my judgment, this evidence demonstrates that the issue of knowledge of phone hacking by the group legal director and deputy group legal director had arisen at the time of Mr Vickers' departure and Mr Partington's promotion in November 2014, after the time when MGN had made admissions of phone hacking in the *Gulati* litigation and was considering whether the evidence was such that it should make public admissions (which it then did in February 2015). Mr Grigson and Mr Fox therefore knew at that time that Mr Partington had known about phone hacking in 2007 but felt that he would be of net benefit to TM plc in office as group legal director. That calculation must have been done with specific regard to the MNHL, which was then in full flow, with 50 more claims issued by the end of 2014. Mr Partington was clearly retained by TM plc to use his knowledge to manage the litigation in-house.

Assessment of the Executive Directors of TM plc

554. I heard the oral evidence of Ms Bailey, who was the CEO of TM plc from February 2003 to June 2012, over a whole day of the trial. I therefore had a good opportunity to assess her character and reliability, as I did with Mr Vickers, Mr Vaghela and Mr Partington.

555. My overriding impression was that Ms Bailey was a reluctant witness and evasive. In part, her reluctance is understandable in that she left TM plc in 2012 and was living in Spain at the time of the trial, but I am not satisfied that she did her best to assist me from the witness box. She sheltered far too frequently behind a claimed inability to remember events, some of which were really important matters during her tenure as CEO; some, indeed, presented existential threats to the business of TM plc. They were not eminently forgettable events. Ms Bailey did not say that she had any difficulty with her memory or health that affected her ability to remember. I do not accept that her recollection was as limited and as poor as she gave the impression that it was.

556. She was evidently not particularly interested in the regulatory and editorial legal aspects of TM plc's business, but much more in the overall strategic direction and management challenge of running a large company with diverse parts. She was unconcerned with anything that pre-dated her arrival – on one occasion, she declined to answer a relevant question about an invoice on the basis that it pre-dated her arrival – and she had not taken the trouble, until shortly prior to the hearing, to find out what happened to MGN after her departure. She claimed not to have read or known about *Gulati*, despite its findings of widespread and habitual illegality during her time as CEO.

557. She emphasised repeatedly that she had many responsibilities – she was running a very large organisation, she said – and she would not have been involved in every decision. Asked whether she would not have approved a decision to make no comment on allegations of phone hacking at MGN, both in 2007 and 2011, she said:

> "Not necessarily. I would not have been involved in everything. The story at that time, you know, I think it was, there was a lot of stories appearing about lots of things in the media. I myself was written about, you know, on an ongoing basis, personally suffered from press intrusion as well. And so I would not necessarily have been involved in you know, in every story. But I think that, you know, when you're running a very large organisation, you do not spend your time commenting on every story that appears about your company. You just simply can't run a company in that way."

558. While accepting in principle that Ms Bailey could not have been involved in addressing every story that appeared in the media, I do not accept that she was not involved in these decisions to make no comment about allegations of phone hacking. These were incredibly serious matters at the time and raised a real concern about TM plc's business. As Ms Bailey accepted, unlawful conduct of MGN's journalists could have serious reputational consequences for TM plc. In my judgment, Mr Vickers would have decided, in discussion with Mr Fullagar and other senior executive managers, to make no comment, but he would not have proceeded to make a public statement without the approval of the CEO, Ms Bailey, and possibly the chairman too. Ms Bailey approved the strategy of making no comment. It was another example of her being aware of the very serious allegations that were being made about MGN but acquiescing in Mr Vickers' strategy of avoiding dealing with them.

559. Ms Bailey maintained throughout her evidence that there was no evidence of UIG or VMI at MGN, just stories in newspapers that were not necessarily correct. Accordingly, no questions or investigations were needed, beyond the admonishment of the editors to "stay legal", in 2006 and 2007, and reminding them of their responsibilities in 2011. Her approach was that there were robust systems in place (and every journalist had the MGN code of business conduct and the PCC Code, she said) and they relied on the framework. Until anyone told her otherwise, there was nothing wrong. She emphasised that she would have expected Mr Duffy to tell her if there was any wrongdoing, and expected Mr Vickers or the head of audit to tell her if there was illegal or unethical conduct.

560. Some of the answers that Ms Bailey gave to questions were literally incredible. She said that she did not feel that she should have been investigating what a known criminal was saying – Mr Whittamore was given a conditional discharge for offences under the Data Protection Act and was clearly central to the Information Commissioner's conclusions. She said that she would never have ignored evidence of wrongdoing, so she could only assume that it was concealed. In relation to David Brown, she said that she knew nothing about the matter and *would not have expected to be told about it*. I find that that was untrue: she was told about the David Brown problem.

561. Her approach, in short, was that until someone had reliable proof of wrongdoing, she didn't want to be troubled by any allegations or concerns. She turned a blind eye to the implications of the serious allegations that she knew were being made of illegal phone hacking activity going on at all three MGN newspapers.

562. So far as editorial and regulatory issues were concerned, Ms Bailey clearly relied to a very great extent on Mr Vickers' experience, stewardship and judgement. I do not consider that she exercised the independence and overall control of these areas of the business that a CEO should exercise. As a result, she was vulnerable to only knowing what others, in particular Mr Vickers, chose to tell her.

563. I consider that it is unlikely that Mr Vickers told her in any detail about the implications of Operation Glade: she had only newly arrived as CEO at that time. I am sure she was told the basic fact of an investigation but she probably did not appreciate the potential significance. However, it is plain that by 2006 she knew as well as Mr Vickers the evidence of likely illegal activities at all three national titles that required thorough investigation. She knew about the two ICO reports, about the allegations made by Mr Hipwell against MGN in the Guardian in August 2006, and about the convictions of Mulcaire and Goodman. She was involved in the decision to make no comment at that time. I find that she would also have known about the David Brown settlement and why he was being paid off, though she was probably not told that the allegations he made were believed to be true. Mr Vickers knew more than she did because Mr Partington (and to some extent Mr Duffy) loyally kept him informed.

564. Mr Vickers could not have controlled matters alone, however. He needed the support of the CEO. But, on the regulatory and editorial legal side of the business, it was Mr Vickers who kept Ms Bailey informed. Ms Bailey was content not be closely involved in editorial legal and regulatory matters and to leave it to Mr Vickers, and in return Mr Vickers told her what he needed her to know, not more. She deferred to his judgement about what to do.

565. Although the three national editors had a direct reporting line to Ms Bailey, there was no free and open flow of information to her, but even allowing for that, Ms Bailey knew enough to realise that there were serious concerns about illegal practices that needed to be investigated, but (on Mr Vickers' advice, I find) she thought it better to keep a lid on the matter. That meant that, when it came to addressing the Leveson Inquiry, MGN advanced a case that was untrue, namely that there was no evidence of anything untoward happening at MGN, emphasising instead that it was "forward-looking" about abuses, and waited to see what came out of it. I find that Mr Duffy, Mr Vickers, Ms Bailey and Mr Partington all hoped

that, with luck, there would be nothing to emerge that required them to investigate what had happened in the past. As Mr Vaghela said, they were advised by MGN's legal department: "let's see how Leveson comes out and then we will move forward".

566. Mr Vaghela was a long-serving finance director whose tenure covers the whole period with which I am concerned. I found him to be an honest and straightforward witness. He did not have all the information that he should have had from 1999-2011 because executive management, principally Mr Duffy and Mr Honeywell, did not report to him what they knew about the level of expenditure on PIs, the nature of the work that they were doing and the evident breaches of MGN's procurement policies. He was not involved in discussions between Mr Vickers and Ms Bailey about editorial and legal matters, despite being an executive board member and a member of ExCom. He, like other board members, did not hear about other matters such as Operation Glade and the David Brown allegations because they were not reported to the board.

567. Mr Vaghela readily accepted that, with hindsight, not enough was done to investigate illegal conduct. He was very clear that if certain information had been shared with him he would have wanted to investigate. These matters included the arrest of Mr Kempster and the evidence of criminal wrongdoing at that time, Operation Glade, the allegations of David Brown and the Partington Note. He accepted a degree of fault in not insisting on an investigation following *What Price Privacy Now?* but he said that Mr Vickers and Ms Bailey took charge of it. I felt that that was a very revealing comment.

568. Mr Vickers was in one sense an impressive witness, in that he displayed gravitas, intelligence and calmness in answering questions, many of which were of a provocative nature. He also displayed a tendency to try to take charge of a conversation, in the way that he set about answering Mr Sherborne's questions. It was easy to see how he rose quickly to the board of MGN and then TM plc and that he must have been a very effective operator within a company of that kind. On the other hand, some of the answers that Mr Vickers gave in cross-examination were implausible and he (rather easily) managed to evade the real point behind some of the questions that were put to him and did not answer directly and frankly. In that sense he was not an impressive witness.

569. Mr Vickers was described by Mr Basham's source as being the "villain of the piece", in the sense that he controlled what was going on in response to the phone hacking allegations, and this chimed with what (I find) Mr Grigson told Mr Basham at lunch, which was that he was in a weak position as a new chairman, in the absence of a chief executive, and Mr Vickers was in an unusually strong position on the board. I consider that Mr Basham's source and Mr Grigson were right in their assessments.

570. Mr Vickers came into the witness box with his line of defence prepared, viz that he was not concerned with mere unlawfulness, which happens routinely at newspapers, where there is often a public interest justification for it, but only with allegations of illegality. He was not interested in investigating alleged unlawful conduct, such as breach of confidence or misuse of private information, and was not interested to know what journalists were doing in that regard. There was

nothing *prima facie* unlawful about use of PIs in any event, he said. That, however, did not absolve him from investigating and reporting what he did know about illegal conduct. He attempted to persuade me that there was no credible evidence of illegal activity that required action to be taken until December 2013.

571. The assertion that no (credible) evidence could be found of illegal conduct until the MPS had concluded the first stage of their investigation in late 2013 was no more than a pretence designed to exonerate him and the board of TM plc. *What Price Privacy Now?* read together with *What Price Privacy?* set out a clear case of likely *illegal* practices that could have involved many of the 120 journalists at MGN that the second report explicitly referred to. Mr Vickers said that his inaction was because he did not believe that PIs were suppliers, within the company's procurement rules, and so there could be no breach of the procurement policy. (However, in evidence to the Leveson Inquiry, Mr Vickers had agreed with Mr Vaghela's analysis that the procurement policy applied to PIs.) This attempt to explain his inaction was wholly unconvincing. Regardless of internal compliance, the Commissioner's reports highlighted criminal activity. Despite recognising that *What Price Privacy Now?* had to be reported to the board, Mr Vickers did not recommend investigation, only a repeat of the warning that Ms Bailey had given the editors following *What Price Privacy?* I find that he did not want an investigation because he knew that it would open a can of worms.

572. I also found wholly unconvincing Mr Vickers' explanation of why the use of expressions such as "a pal" and "a friend" in articles was unsuspicious. He said that this attribution was often used in order to avoid the subject of the article being identified as the source. That may be so in relation to different kinds of article, such as whistleblowing stories, but it is hardly likely to be the case where the subject of the article has been the victim of a sting, intrusive surveillance or compromising story or photograph. I felt that Mr Vickers was being evasive and less than frank in giving this explanation. Although the expressions may not have been invented for the purpose, they were being used in many articles to conceal phone hacking.

573. Mr Vickers was equally unconvincing on the subject of the David Brown settlement. He suggested, having been exposed in cross-examination on the failure to investigate the Brown allegations, that he authorised a settlement of Mr Brown's claim on the basis that it would be cheaper to settle than to fight the case and win. I have already given my reasons for rejecting that explanation. It was simply untrue. Mr Vickers said that he must have been involved in deciding whether to release Mr Brown from his confidentiality obligations in relation to giving evidence to the Leveson Inquiry but could not recall that process.

574. I regret therefore that I am unable to accept the truth of Mr Vickers' denials of awareness of illegality and his explanation for not investigating VMI at a much earlier time than actually occurred. My suspicion is that Mr Vickers knew what was happening all along – he struck me as the sort of person who would know most of what was happening in his company – but there is no evidence to support that conclusion. I find that he knew that VMI was going on from at least 2003 (as a result of information from Mr Partington about Operation Glade and the Rio Ferdinand story), but possibly much earlier, on the basis that Mr Partington must have reported to him what he had discovered in 1999, and what he knew from his

"legalling" work at The People and the Mirror. He would have told Mr Vickers on a "no surprises" basis what he needed to be aware of. Mr Vickers would certainly have been aware of other types of serious UIG, such as blagging and corrupt informants, from about 1999.

575. The case that members of the board knew about phone hacking as early as 1999, as pleaded by the claimants, is tenuous. There was no evidence that established that, though it is possible, as I have said, that Mr Vickers knew that early. I am satisfied that no one else on the board would have known then.

Continuing denial and concealment

576. In February 2013, MGN applied to strike out in whole or in part the initial four phone hacking claims that had been issued against it. A month later, TM plc made a public statement following the arrests of Ms Weaver, Mr Buckley, Mr Thomas and Mr Scott in March 2013. It said that the company took the allegations seriously and had appointed external lawyers to investigate all the allegations. A month or so later, on 11 June 2013, Mr Vickers gave evidence to the Culture, Media and Sport Committee of the House of Commons that "we have done huge investigations and, to date, we have not found any proof that phone hacking took place". Nevertheless, MGN pursued its applications to strike out the claims.

577. On 13 September 2013, Dan Evans pleaded guilty to charges based on VMI at the Sunday Mirror. TM plc responded by saying that it took the allegations seriously and did not tolerate any wrongdoing in its business, but that it was "too soon to see how this matter will progress". Nevertheless, the applications to strike out were pursued to a hearing on 24 and 25 October 2013, and were dismissed.

578. On 16 May 2014, at TM plc's AGM, the chairman, Mr Grigson, said that the company had done everything that it could short of "ripping up the floorboards", and that there was nothing further that it could do except cooperate with the MPS investigation and ask external lawyers to investigate the allegations. This was therefore a year after TM plc had appointed the external lawyers; almost a year after Mr Vickers had said that huge investigations had been done, and 9 months after Mr Evans pleaded guilty to phone hacking at the Sunday Mirror, but no admissions were forthcoming.

579. On 24 September 2014, MGN admitted phone hacking for the first time in letters sent to 8 of the *Gulati* claimants. It then pleaded admissions to phone hacking in October 2014 and sought to have summary judgment on liability entered against itself, while contending that it did not know and could not establish the extent of the illegality. I find that this was an attempt to avoid having to give disclosure that would show that phone hacking was (as Mann J later found) widespread and habitual at all three newspapers. The tactic was a brazen attempt to conceal the extent of wrongdoing, but it did not work on this occasion.

580. MGN then published an apology to all hacking victims on 13 February 2015 in The Mirror and on 15 February 2015 in The People and The Sunday Mirror. The statement read:

"***Phone hacking: We're sorry***

> *Trinity Mirror, owner of the Daily Mirror, Sunday Mirror and Sunday People, today apologises publicly to all its victims of phone hacking.*
> *Some years ago voicemails left on certain people's phones were unlawfully accessed. And in many cases the information obtained was used in stories in our national newspapers.*
> *Such behaviour represented an unwarranted and unacceptable intrusion into people's private lives.*
> *It was unlawful and should never have happened, and fell far below the standards our readers expect and deserve.*
> *We are taking this opportunity to give every victim a sincere and unreserved apology for what happened.*
> *We recognise that our actions will have caused them distress for which we are truly sorry.*
> *Our newspapers have a long and proud history of holding those in power to account. As such, it is only right we are held to account ourselves.*
> *Such behaviour has long since been banished from Trinity Mirror's business and we are committed to ensuring it will not happen again".*

581. The apology was therefore limited to unlawful accessing of voicemails "on certain people's phones".

Conclusions on board and legal department knowledge of phone hacking

582. By the end of Ms Bailey's time as CEO, the board of TM plc was dysfunctional. Substantial parts of the company's business were being handled informally and were not being reported to the board. The NEDs were not properly involved in decision-making, as Mr Grigson admitted. The three executive directors took separate charge of different areas of TM plc's business but did not operate as a unit or as a single board. As a result, Mr Vaghela was to a large extent cut out of matters that were discussed informally between Mr Vickers and Ms Bailey, and the NEDs did not know about them, except when they considered matters in the public domain, such as the Information Commissioner's reports, allegations made in the Press, and Operation Weeting, which was reported openly.

583. There is compelling evidence that the editors of each newspaper knew very well that VMI was being used extensively and habitually and that they were happy to take the benefits of it, and of connected and related UIG being conducted by journalists and PIs. There is also clear evidence that the legal departments of the newspapers knew that these methods were being used; that Mr Vickers, through Mr Partington and/or others in the legal department, knew that VMI was being conducted, as early as 2003, if not before; and that he ignored and Ms Bailey turned a blind eye to the extent to which illegal practices were going on at MGN. They did not make the inquiries or commission the investigations that a careful and conscientious director of TM plc would have made. This failure was on

successive occasions: Operation Glade (2003), *What Price Privacy Now?* (2006); David Brown's witness statement (2007); and the start of the phone hacking scandal in early 2011.

584. A pretence was maintained by Mr Vickers and Ms Bailey that there was "no credible evidence" of VMI at MGN newspapers. Both of them knew that there was evidence. What Ms Bailey and Mr Vickers really meant by this expression was that there was no irrefutable proof, as opposed to detailed allegations and evidence; but the reason why there was no proof was that the board desisted from investigating, as it clearly should have done. Even when a new chairman, Mr Grigson, took office in May 2012, the truth continued to be concealed, even though he was warned by a credible source that VMI was rife at MGN.

585. It was only when it could be concealed no longer – when the MPS provided clear proof in December 2013 that it had happened on a large scale – that MGN would have accepted, internally, that they would not be able to continue to deny that evidence existed and would have to make admissions. Before that stage, MGN had tried to strike out the phone hacking claims that had been issued against it. Admissions were delayed until September 2014. Even more concerningly, despite evidence to the court and public statements that it would seek to right all wrongs by being open about what it had done, MGN then tried to avoid disclosure, and, when that failed, concealed the extent of the UIG and VMI that had been carried on by not disclosing material documents that it knew that it had.

586. I am satisfied, in short, that Mr Vickers and Ms Bailey knew about – or, which amounts to the same thing, turned a blind eye to – the extensive and habitual VMI and UIG being carried on. It is obvious that Ms Bailey did not know everything that was going on, and she knew less than Mr Vickers and Mr Partington did, but she knew enough to realise that there was unlawful activity being conducted at all three newspapers. That was from early 2007 at the latest, in her case, and from 2003 at the latest in Mr Vickers' case. As a result, the editors and journalists were enabled to carry on with their unlawful and illegal activities until the end of 2011, albeit it was done less, and more cautiously, after 2006.

587. I do not accept that Mr Vaghela personally knew about illegal phone hacking activity, nor did any of the NEDs on the board, and there is no evidence that Sir Victor Blank or Sir Ian Gibson, the former non-executive chairmen, knew. Allegations and issues that Ms Bailey and Mr Vickers knew about were not discussed formally at the board. There is not a single board agenda or set of board minutes, or an agenda for or minutes of ExCom, that has been produced that addresses UIG or VMI. Only in 2011, following Operation Weeting, was the board sufficiently involved for one of the NEDs to suggest that it should write to all senior editors and editorial managers asking them to confirm that they had not been involved in VMI or two other specific criminal acts. Mr Vickers' questionnaire was the result. But this "papering" of the issue was wholly inadequate as an investigation. For any of the recipients to reply acknowledging illegal behaviour would have made their position immediately untenable, and so Mr Vickers received 44 denials.

588. The internal management of TM plc and MGN beneath it was also dysfunctional. Policies, protocols and procedures were in existence and Ms Bailey repeatedly

told Sir Brian Leveson and me that she relied upon them, but they were not followed. Ms Bailey did not say (nor did any other MGN witness) that checks were made to see that they were being followed. Mr Honeywell, Mr Hollingsworth and Mr Duffy turned a blind eye to the huge expenditure on unlawful PI activity and breaches of company protocols, and did not report them to the board. The CRs and invoices were not scrutinised by those such as Mr Harwood who were responsible for authorising payment. The fact that money was being spent on illicit "special" searches was concealed, though Mr Duffy and other executive managers were aware of it. To that extent, Ms Bailey's complaint that things were being concealed from her was justified.

589. In dealing with the 14 Incidents above, I have made findings that Mr Partington would have been aware of UIG from 1999 and was aware of phone hacking activities from no later than the end of 2003, but probably earlier as a result of his "legalling" work. The claimants have therefore proved their case that the legal department of MGN knew about phone hacking. There was no formal report to the board. I have found that, on the "no surprises" understanding between them, Mr Partington told Mr Vickers what he knew. Mr Vickers was the group head of legal and a main board director, so it cannot be said that the legal department concealed VMI and UIG from their employer.

590. Mr Sherborne put his case in relation to the board's knowledge as being that the board as a whole knew about VMI and decided to conceal it. That is not the case: Mr Vaghela, Mr Parker (who left TM plc in 2004), Sir Victor and Sir Ian as chairmen and the NEDs did not know until well after the last of the articles or invoices complained about in this trial.

591. On any view of the law of attribution to a limited company of acts or knowledge of members of the board, MGN is taken to have known what Ms Bailey and Mr Vickers knew. Ms Bailey was the CEO and Mr Vickers was the group legal director with overall responsibility for editorial legal matters, on behalf of the board. The conventional approach to attribution is that if a fact is known by a person to whom responsibility for that matter is properly delegated by the company, the company knows that fact: see Meridian Global v Securities Commission [1995] BCC 942. If, instead, the correct test is as Lord Briggs of Westbourne suggested in Julien v Evolving TecKnologies and Enterprise Development Co Ltd [2018] UKPC 2 at [54], namely that it depends on whether the person owes the company a duty to report knowledge of the fact to the board, then that is clearly satisfied too.

592. The conclusion is therefore that Mr Vickers' actual knowledge and Ms Bailey's actual or blind eye knowledge was the knowledge of MGN, but not every member of the board in fact knew about VMI before 2013 and so the board as a whole did not know, and did not decide to condone or conceal VMI or other UIG. Mr Vickers and Ms Bailey kept what they knew about VMI and UIG from the board, the shareholders and the public.

Part V: The Claim of the Duke of Sussex

Contents

Summary of the Duke's claim and his evidence

593. The Duke's claim is in respect of VMI and UIG underlying 148 articles in total spanning a period from 1996 to 2011. 87 of these articles are during the *Gulati* period (May 1999 to August 2006). There is additionally a claim in respect of 61 separately identified episodes of UIG by use of PIs, which do not directly relate to published articles ("UIG Episodes"), and these extend over a period from December 1995 to December 2011. Most of the UIG Episodes, as presented by the Duke's lawyers, comprise several PI invoices or contribution requests ("CRs").

594. 33 of the articles were selected for trial and this judgment therefore addresses those articles only, and the UIG Episodes.

595. In the Duke's case, MGN makes only one admission: that an invoice from Avalon dated 25 February 2004 with the description "*enquiries regarding Harry and Chinawhites*" stated to be on instructions from Ian Edmondson at The People ("the Chinawhites invoice") was an occasion on which UIG took place. Otherwise, there are "non-admissions" about UIG in relation to some of the articles complained of (which are articles 22, 25, 27, 29 and 30 in the short list of 33 trial articles), plus one other article (no.129 from the full list, which was not tried), and otherwise denials in relation to all other published articles and invoices. MGN also specifically denies that there was any VMI directed at the Duke or his 29 named associates.

596. The Duke's pleaded case is largely based on inferences to be drawn from the generic case against MGN and the nature of the content of the articles. He alleges UIG and accessing of voicemail messages as well as listening in to telephone calls and bugging activities from 1996 onwards (in which year the Duke turned 12 years old).

597. It is a fact that there are no telephone records of calls to either of the Duke's identified mobile phone numbers that have been disclosed. There is very limited call data to two of the Duke's associates, Mark Dyer and Chelsea Davy. Six of the seven calls to Ms Davy's landline and mobile numbers in South Africa were made on a single day, 24 January 2009, immediately before the publication of articles announcing the break up of the Duke's relationship with Ms Davy.

598. The Duke relies in particular in his pleaded case on:

a. two invoices (Avalon and ELI) relating to Mr Dyer at about the same time as the Chinawhites invoice, for "urgent enquiries" commissioned by David Jeffs at The Sunday People and for "background enquiries" commissioned by Ian Edmondson;

b. a payment record on SAFS (an earlier version of MGN's accounting software) for a payment of £1,175 to Fraser Woodward Ltd in relation to the Duke dated 4 April 1996 and a similar payment of £470 by the Mirror in relation to "Diana and Harry" on 2 February 1998;

c. an invoice from Hogan International dated 18 October 2004 with an annotation "Cheat Prince Harry Inqs" in the context of articles published by the Mirror on 15 and 23 October 2004 relating to an art examination taken by the Duke at school;

d. a CR dated 15 May 2005 for payment to John Ross by The People of £150 in respect of a "Harry Sandhurst asst" – the same date on which The People published "Harry Carry!" (article 22) – and a further CR for £150 to John Ross on 26 June 2005 in respect of "Sandhurst asst" – the same day on which The People published an article about the Duke's use of nicotine patches;

e. a CR dated 12 August 2005 for payment to Simon Lloyd by the Mirror of £300 in respect of "Prince Harry cleaning excl (Yates)" – the same day on which the paper published an article about the Duke being given lavatory cleaning fatigues at Sandhurst;

f. two invoices from Globalnet News addressed to the Mirror and dated 8 and 14 February 2007 for £300 and £750 respectively, concerning "Prince Harry Investigation", which preceded two articles on 17 February 2007 and one on 23 February 2007 relating to the Duke's active military service in Iraq;

g. an invoice dated 9 November 2007 from BDI addressed to Mr Buckley at the Sunday Mirror for £200 for "Project Harry", which preceded an article on 11 November 2007 called "Hooray Harry's Dumped" (article 25);

h. a CR dated 25 January 2009 for a payment of £500 by The People to Rob Palmer in respect of "Harry booze bungles" – the day on which The People published "Chelsy's Harry'd enough";

i. A CR dated 28 September 2008 for a payment of £500 to Rob Palmer by The People in respect of "Harry Afghan tour blocked", which was the same time as it published "Soldier Harry's Tali-ban" (article 29).

It is not clear why these payment records in particular were pleaded.

599. In total, there are said to be 114 CRs relating to the Duke himself, covering the period July 1997 to December 2011, and a further 152 relating to his associates, including 13 relating to Chelsy Davy, 6 for Mark Dyer, 10 for Guy Pelly, 9 for Tiggy Legge-Bourke (the Duke's nanny), 11 for Natalie Pinkham (a close friend) and 14 for Caroline Flack (with whom the Duke was briefly very close). There are other payment records relating to the staff and customers of the Rattlebone Inn in Gloucestershire at about the time of a series of articles concerning allegations of drug taking by the Duke and his friends at the pub.

600. The Duke specifically relies on the fact that his name and mobile phone number were found in the palm pilot of Nick Buckley of the Sunday Mirror, a chief phone hacker at that newspaper, without his consent, as were the phone numbers of his associates Paddy Harverson, Michael Fawcett, Zara Phillips and Guy Pelly. Mr Pelly was a close personal friend of the Duke. Mr Harverson and Mr Fawcett were the then Prince of Wales's communications secretary and a senior Palace official respectively, so it is possible that these numbers were held for proper professional purposes. The phone numbers of Mr Harverson and other associates, Princess Diana's mother, her brother, Earl Spencer, and Hasnat Khan, were also found in the Palm Pilot of Mr Harwood, who explained that his Palm Pilot contained his entire personal and professional telephone list but did not say why these names and numbers specifically were present. I bear in mind that Mr Evans also said that not all the numbers in his Palm Pilot were for phone hacking purposes.

601. Mr Buckley did not give evidence to explain whether the Duke and his close associates were personal or professional contacts. Given the findings that have already been made about Mr Buckley's involvement in phone hacking at the Sunday Mirror, and without any evidence explaining the presence of these contact details, the only sensible inference in relation to the Duke's, Ms Phillips' and Mr Pelly's numbers is that they were there in connection with Mr Buckley's VMI activities. It is difficult to imagine why else the Duke's highly confidential phone number might be there.

602. The Duke gave evidence at some length, both in his written witness statement and when cross-examined. His witness statement was, in large part, an argument against the vicissitudes of the Press, and MGN in particular, and an explanation of the misery that (it is common ground) he has suffered from Press intrusion, rather than factual evidence that he could give about the specific matters in issue. It did not remotely comply with all the requirements of CPR Practice Direction 57AC, in limiting its scope to matters in issue about which the Duke was personally able to give evidence in chief, excluding comment and argument - for which his solicitors rather than he are culpable.

603. Factual evidence that he gave relevant to the question of whether his or his associates' voicemails were hacked was that:

    a. he used a mobile phone (having provided his two numbers in a confidential schedule to his Particulars of Claim) from the time when he first went to Eton College (which would have been in September 1998) and thereafter during the relevant period (which in his case was 1996-2011);

b. he used his mobile a lot as a means of staying in regular contact with his family and friends, and would constantly have been leaving and receiving voicemails. It was his main method of communicating with friends and family, his girlfriends and those he was working with;

c. he recalls strange mobile phone activity, such as hearing for the first time a message that was not designated as "new", on occasions not receiving voicemails that people said that they had left for him, missed calls and hang-up calls. At the time, he did not make much of this;

d. when he would arrange to meet Chelsy Davy, when she flew into Heathrow Airport, they would be surprised to find journalists and paparazzi present and waiting for them. That would happen constantly;

e. whenever he was in or rumoured to be in a relationship, the partner's friends and family would be dragged into the media chaos and find themselves the subject of scrutiny;

f. when private (secret) holidays were booked, the Press would somehow be there;

g. in relation to many of the 33 individual articles, some of the content could only have come from people with personal knowledge of the matters reported, and so was likely to have been taken from voicemails that he had left or that had been left on his phone – though by the end of the cross-examination, the Duke was forced to accept that there clearly were legitimate sources in some cases. In other cases, it was perfectly possible that the information in question had been obtained by other means, including UIG, but not VMI;

h. in a few cases, the Duke was able to be specific that he recalled that information that had been obtained by MGN did come from particular messages that he had left, or that had been left for him, such as:

i. the comments made by the Duke to his brother about Mr Burrell and whether to meet him (article 14);

ii. a report on a row with Chelsy Davy that the Duke had left on his friend, Mr Pelly's, phone (article 18);

iii. comments made about the Duke's feelings about a proposed reunion with Ms Davy in Mozambique (article 23);

iv. messages that the Duke and Ms Davy had been leaving for each other at a time when their relationship was under stress (articles 24, 26);

v. arrangements for a secret dinner date that had been obtained by paparazzi who were inexplicably present (article 32).

604. While the Duke fairly agreed in cross-examination that the private information about which he complained in a number of articles was already in the public domain, or that it was quite possible that the information had been obtained

lawfully, in respect of other articles he doubled down on his case that he considered that the confidential information in the articles was taken from voicemail messages that he had left for others at the time, or that they had left for him. He explained why quotations in articles that were attributed to Royal sources could not have come from those sources.

605. The Duke confirmed that he did not in fact have a mobile phone until he went to Eton College, and he accepted that in most cases he did not read the articles published at the time of publication. He said that the newspapers were always available in Royal palaces and so were difficult to avoid completely – he would often see his name or photograph on a front page – but, understandably, he did not usually read them. He was however aware of and recalls some of the stories covered by them. He did read them when they were provided to him by his solicitors. He said that he found them upsetting, to see how his privacy and that of Ms Davy in particular, at a very young age, had been invaded at the time of publication.

606. In many cases, the Duke accepted that (understandably, given the length of time since the events in question) he could not specifically recall leaving or receiving voicemail messages in relation to a particular matter. He also struggled on several occasions to identify the information in an article that he said was derived from voicemails, and on other occasions disputed the accuracy of the information that had been reported, which tends to suggest that it could not have been derived from a voicemail left by or for him. The fact that the Duke cannot now remember these matters accurately does not mean that he cannot prove his case by other means, but I shall be cautious in making findings and – save in relation to a few articles – I cannot do so simply on the basis of the Duke's limited recollection.

607. In answer to my question, the Duke clarified that the strange mobile phone activity to which he referred in his witness statement was experienced from the first time that he got a mobile phone and "never stopped". He said that he got lots of very short missed calls and a lot of people asking "did you get my voicemail?" when he had not. He was unable to remember if there were particular times when it happened more, but suspected that that was probably the case. He said that it did not stop in 2011. Even assuming that the strange activity was indicative of attempts to hack his phone, that does not prove that it was MGN journalists who were trying to do so. I do not feel confident in relying on his recollection that strange activity started on day 1 and never stopped, but I do accept that there was strange phone activity at times.

608. The Duke did not call any other witnesses to support his case. MGN called Ms Kerr, who was the byline on several of the 33 articles and Mr Harwood, who was a joint byline on one. Both denied any unlawful activity.

609. MGN argued strongly that it was implausible that anyone would take a risk of intercepting the Duke's or his associates' voicemails, because of the high level of security surrounding him and his family; at least, they argued, not after the arrests of Goodman and Mulcaire in 2006 for hacking the Duke's and HRH Prince William's voicemails. As the Duke himself said in cross-examination, it was an incredibly risky thing to do. MGN also argued that the complete absence of call data relating to the Duke and very little relating to his associates suggested that

there was no VMI being attempted at all in his case. They also relied on the absence of relevant phone numbers from Mr Evans's Palm Pilot and his evidence that he did not hack the Duke's phone.

610. There was of course hacking of Royal mobile phones carried out at the News of the World, with which MGN's Sunday titles were competing directly, and the hacking was not just on one isolated occasion. It is not therefore right to believe that members of the Royal family were considered out of reach. The incident of Prince William's hacked message for the Duke gave rise to an MPS investigation, Operation Caryatid, which did not discover any further voicemail interception at the time. Although the terms of reference for Operation Caryatid were not limited to the activities of the News of the World, that was likely to have been the focus, given the trigger for the investigation. The evidence of hacking by Goodman and Mulcaire may have masked the activities of others, if they were more careful not to leave a trail; and the use of burner phones would have precluded the identification of others making calls. All of the incriminating calls of Goodman and Mulcaire were incautiously made on landlines.

611. It is, in my judgment, implausible that serial phone hackers at MGN's newspapers, who were using these techniques on a widespread and habitual basis, would have considered members of the Royal family off-limits. All three newspapers (and other tabloids) were obsessed with stories about the Royal family and about Prince Harry in particular, which doubtless reflected the apparent public appetite for information about his successes and failures, his career, and in particular his love life. I heard much evidence of intense competition between News Group newspapers and MGN newspapers for newsworthy stories and celebrity gossip. Journalists and editors at MGN papers would not have sat back (and did not sit back) and suffer being outperformed by their fierce rivals. Prince Harry in particular, because of the tragic life of his mother and the impact on him of her death, was of primary interest to the tabloid press, all the more so, seemingly, as it became apparent that there were further problems in his life.

612. I am sure that the three newspapers took particular care when using the "dark arts" to obtain information about members of the Royal Family and those close to them. The absence of the Duke's phone details from Mr Evans' Palm Pilot and back pocket list and its presence in Mr Buckley's Palm Pilot suggests that responsibility for collecting information about him might well have been delegated to particular journalists only, or possibly even one person at a time in each newspaper. Mr Johnson and Mr Hipwell did not claim knowledge of phone hacking of the Duke, but that is far from conclusive – Mr Johnson saw virtually no hacking, he said, and Mr Hipwell had been expelled in 2000, relatively early in the Gulati period during which UIG and VMI peaked. Importantly, Mann J accepted Mr Evans' evidence that the majority of phone hacking was done using untraceable burner phones. That would have been an obviously sensible precaution in the case of members of the Royal Family, and would explain why there is so little call data. (In addition, there were was no call data before 2002 and there are substantial gaps in the call data records thereafter, particularly in 2005, so the picture is incomplete.) I reject MGN's argument that the absence of

recorded call data is a strong indication that there was no phone hacking of the Duke and his associates.

613. MGN's argument that the Duke was not the subject of any VMI at a time when he was so frequently a lead story in its newspapers, and when its journalists were clearly using PIs to a great extent to obtain information for stories about him, is improbable. The documentary evidence shows that there was a frenzy of activity involving PIs in relation to some of the stories published about him. As is often said, stories sell newspapers, and the reputations of tabloid and Sunday newspapers depend on prominent scoops, stings and other groundbreaking stories. The attempts of some of MGN's witnesses, in particular Mr Harwood, to downplay the importance to the financial health of the newspaper of the main story lines were unpersuasive. The Duke has been one of the most important story lines in town for much of his life, and remains so. The idea that MGN carefully eschewed in his case what had become a primary journalistic tool – which it otherwise used on a widespread and habitual basis – is unconvincing. Indeed, no one on behalf of MGN positively gave evidence that that was so: Ms Kerr and Mr Harwood said that they did not phone hack and were unaware of it going on. MGN's case is therefore only based on inference, not on evidence.

614. I find the opposite to be the case, namely that MGN journalists did make use of VMI, though I have no doubt that editors and journalists took great care in the Duke's case, particularly after 2006. It may be that they mainly targeted his associates rather than him, which, if successful, would be likely to provide them with the Duke's own thoughts and plans. Further, as I have already stated in reaching my conclusion about phone hacking between 2006 and 2011, there are stories in some of the published articles in the Duke's claim that are inexplicable save on the basis that phone messages left by or for him were intercepted.

615. I find that the Duke was targeted by MGN journalists using VMI, but in a much more limited way than some of the victims who were on Mr Evans' back pocket list. I am doubtful that the VMI would have been, as the Duke suggested, from the very first day that he received his mobile phone. A first time user would not be likely to be conscious of strange phone activities, so his evidence in that regard is probably a mistaken recollection; and it must have taken PIs some time to be able to identify the phone number, which was presumably kept highly confidential. The evidence from the articles that I address individually below suggests that there may have been no voicemail interception directed at him or his associates until 2002, although I only have a partial picture from the 33 articles addressed at trial. There is no evidence about when Mr Buckley obtained the Duke's phone number and put it in his Palm Pilot, or when the other newspapers did.

616. As for UIG other than VMI, the Duke relies mainly on the existence of invoices and CRs relating to him from PIs who are established in the generic case to have been conducting UIG for MGN journalists. There are many more CRs than invoices in the Duke's case: these contain no detail about the commissioning journalist and little about the nature of the commission. It may be that narrative invoices were avoided deliberately in his case. The assessment of unlawfulness from an invoice alone is a calculus that involves weighing the identity of the PI, the identity of the journalist, any information about the instruction, the price

charged, and the proximity of that invoice (and any related invoices) to published articles or any other significant event. Given the lack of detail on CRs, it is right to take a sceptical approach.

617. The 33 Articles (which, as previously explained, are a mixture of articles chosen by the Duke and by MGN) seek to illustrate the issues that arise in relation to all the articles and cover the full period in relation to which the Duke makes his claim. In order to succeed in his claim for damages in relation to any article, the Duke must prove that the (or some of the) information contained in it is material in respect of which he had a reasonable expectation of privacy, and that MGN's misuse of that information was unjustified in the circumstances. It is important to emphasise that the claim is not in respect of publication of the information but in respect of the unlawful way in which MGN is alleged to have obtained it. It is therefore no answer for MGN to say that the information was in the public domain if it has independently conducted UIG or VMI to stand up the story or obtain further details. The Duke's pleaded case identifies specifically the information in each article that he contends was private.

618. It is not in dispute that private information obtained by phone hacking, blagging, or by committing other criminal offences is unjustified; nor, at the other extreme, is it suggested on behalf of the Duke that information that is publicly available is private. There is a grey area where information in respect of which the Duke had a legitimate expectation of privacy had wrongly been placed into the public domain to some extent by someone other than MGN.

619. MGN's case, forcefully advanced on its behalf, is that save in respect of the admitted 2004 Chinawhites invoice there is no evidence of UIG in relation to the Duke's private information. The one admitted invoice from Avalon is in respect of Mr Edmondson, a convicted phone hacker at The People. MGN did not explain why there was an admission in relation to this single invoice or what it represents, or why what underlies it is different from all the other invoices. Nor was it explained why it was the case that UIG was directed against the Duke by The People on only a single occasion. There are however 22 UIG Episodes payment records relating to the Duke where MGN formally does not admit the allegation of UIG, rather than denying it.

620. MGN contends, in many instances, that the information was either not by its nature private, or was not information in respect of which the Duke any longer had a legitimate expectation of privacy, because it was already in the public domain; and in other cases that the invoices and CRs relating to the Duke do not indicate any unlawful activity that obtained private information. Of the 115 Episodes payment records relating to the Duke rather than his associates, 57 are said by MGN to relate to an article not complained about, only 17 relate to articles that have been complained about (but which are not among the 33 being tried) and 41 cannot be matched to an article.

621. Of the 152 UIG Episodes payment records relating to the Duke's associates rather than him, 27 are in respect of certain PIs (Avalon, Andy Gadd/Trackers, Southern Investigations and its connected companies, and TDI/ELI) where MGN admits that a substantial proportion of their work was UIG, and 11 more relate to PIs where MGN admits that the PI engaged in some UIG. These payments are not

admitted, and all other payment records are denied by MGN as being for UIG. MGN notes in its closing submissions that 130 of these records do not relate to any article complained about. It adds that in many cases there is no apparent connection with the Duke of Sussex, though 23 of the invoices do relate to an article about him that he has not complained about.

622. MGN also contends that in many cases the information is trivial and so not capable of being considered information in respect of which the Duke had a reasonable expectation of privacy.

Legal principles

623. It is pertinent to summarise some basic principles before turning to the Articles about which the Duke complains. The summary is as applicable in the cases of the other claimants as it is in the Duke's.

624. In Campbell v MGN Ltd [2004] 2 AC 457, Lord Nicholls said of the misuse of private information cause of action, at [24]:

> "…(iii) The values enshrined in articles 8 and 10 are now part of the cause of action and should be treated as of general application and as being as much applicable to disputes between individuals as to disputes between individuals and a public authority: see para 17. (iv) Essentially the touchstone of private life is whether in respect of the disclosed facts the person in question had a reasonable expectation of privacy: see para 21. (v) In deciding whether there is in principle an invasion of privacy, it is important to distinguish between that question, which seems to us to be the question which is often described as whether article 8 is engaged, and the subsequent question whether, if it is, the individual's rights are nevertheless not infringed because of the combined effect of article 8(2) [justification of interference in certain cases] and article 10 …"

625. The two-stage test is now well-established and was recently confirmed by the Supreme Court in ZXC v Bloomberg LP [2022] 2 WLR 424 at [47], [49] and [50] in the joint judgment of Lord Hamblen and Lord Stephens JJSC:

> "In *Murray* the Court of Appeal endorsed the two stage test for whether there has been misuse of private information, as explained in the Court of Appeal decision in *McKennett v Ash* [2008] QB 73. As stated by Simon LJ at para 42 of his judgment in the present case, at stage one, the question is whether the claimant has a reasonable expectation of privacy in the relevant information; if so, at stage 2, the question is whether that expectation is outweighed by the countervailing interest of the publishers' right to freedom of expression. This two-stage test is now well established.
>
> Whether there is a reasonable expectation of privacy is an objective question. The expectation is that of a reasonable person of ordinary sensibilities placed in the same position as the claimant and faced

> with the same publicity – see *Campbell* [2004] 2 AC 457, para 99 per Lord Hope of Craighead; *Murray* [2009] Ch 481, para 35
>
> As stated in *Murray* at para 36, "the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case". Such circumstances are likely to include, but are not limited to, the circumstances identified at para 36 in *Murray* – the so-called "*Murray* factors". These are: (1) the attributes of the claimant; (2) the nature of the activity in which the claimant was engaged; (3) the place at which it was happening; (4) the nature and purpose of the intrusion; (5) the absence of consent and whether it was known or could be inferred; (6) the effect on the claimant; and (7) the circumstances in which and the purposes for which the information came into the hands of the publisher. "

In many cases, particularly where private activity happening in private is concerned, the seventh factor is likely to be of particular importance.

626. Article 8 rights can however be engaged even in public places, if the nature of the occasion is one that falls within the scope of article 8, such as a family outing. Weller v Associated Newspapers [2016] was a case where photographs were taken of children in public and published without the parents' consent. The Master of the Rolls said at [60]-[61]:

> "It is true that the photographs were taken of the claimants and their father in a public place. But it is well established in both the domestic and Strasbourg case law that there are some matters about which a person can have a reasonable expectation of privacy notwithstanding that they occur in public.
>
> The starting point is the place where the activity happened and the nature of the activity. As the judge said, this was a private family outing. It could have been a family visit to a local park or to a public swimming pool. It happened to be an outing to the shops and to a café which was visible from the street. The essential point is that it was a family activity which belongs to that part of life which is protected by the broader right of personal autonomy recognised in the case law of the Strasbourg court: see *R (Catt) v Association of Chief Police Officers* [2015] UKSC 9, [2015] AC 1065 per Lord Sumption at para 4. The family element of the activity distinguishes it from Naomi Campbell's popping out to the shops for a bottle of milk and Sir Elton John standing with his driver in a London street, outside the gate to his home wearing a baseball cap and tracksuit (see *John v Associated Newspapers Ltd* [2006] EMLR 27)."

627. As a matter of law, the fact that a person has chosen to put some aspects of their private life into the public domain does not mean that there is no reasonable expectation of privacy in respect of other aspects of their private life, and indeed speaking about one's feelings about a certain matter on one occasion does not forfeit the right to privacy in relation to one's feelings on another occasion, save

where the same feelings are in issue: see McKennitt v Ash [2006] QB 73 at [53], [54], per Buxton LJ:

> "If information is my private property, it is for me to decide how much of it should be published. The 'zone' argument [viz that once a person has revealed or discussed some information falling within a particular zone of their lives they had a greatly reduced expectation of privacy in relation to any other information that fell within that zone] completely undermines that reasonable expectation of privacy."

628. A separate issue that arises in the Duke's claim in particular is the drawing of adverse inferences from the absence of witnesses that the court would have expected to be called to give evidence, as they would clearly have relevant evidence to give. The legal position in relation to adverse inferences from failure to call witnesses, which had become a rather technical area of legal analysis, has been set out with clarity in the judgment of Lord Leggatt JSC in Efobi v Royal Mail Group Ltd [2021] UKSC 33; [2021] 1 WLR 3863 at [41]:

> "The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in *Wiesniewski v Central Manchester Health Authority* [1998] PIQR 324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult lawbooks when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence and the significance of those points in the context of the case as a whole. All these matters are inter- related and how these and any other relevant consideration should be assessed cannot be encapsulated in a set of legal rules."

I will approach the matter in accordance with that direction.

The Articles

629. I will consider all the issues that arise, article by article and Episode by Episode, in this Part of the judgment, though I have relegated the consideration of the UIG Episodes to the separate UIG Episodes Schedule. Where I find that there was an

actionable misuse of private information, I will address the appropriate quantum of damages for each such instance in Part XII.

DoS Article 1

630. This article entitled "Diana so sad on Harry's big day" (byline: John Todd) was published by the Mirror on 16 September 1996, the day after the Duke's 12th birthday. It was therefore a time before the Duke had a mobile phone.

631. The private content pleaded is detail of the Duke's feelings regarding the divorce of his parents and the ill health of a family friend. The article simply states that "[he] is believed to be taking the royal divorce badly" and "He is also as distressed as his father over the ill-health of ex-royal gardener Paddy Whiteland", and another similar comment.

632. The information (if accurate and sourced by Mr Todd) is clearly private, even if similar observations about the Duke, the divorce and the gardener had been published previously. Even if there was UIG, which is far from clear, in 1996 there was no cause of action for misuse of private information (see Part IX below).

633. The claim in relation to this article therefore cannot succeed in any event.

DoS Article 2

634. This article entitled "Princes take to the hills for gala" was published by the Mirror (byline: Ian Miller) on 17 July 2000. It refers to the impending public celebration of the 100th birthday of HRH Queen Elizabeth the Queen Mother. The Duke at the time was 15 years old.

635. The private content pleaded is information concerning the Duke's personal and family life, namely his plans to go on a rock climbing trip with his brother rather than attend the celebratory pageant. The article says that the Princes were sticking with controversial plans to join friends on a trip to the Lake District and will return in time for the actual birthday. The article contains detailed comment by St James's Palace.

636. It is unclear whether any of the content could be considered private in view of previous publicity about the intended trip, but in any event at the time there was no cause of action for misuse of private information (see Part IX below).

637. The claim in relation to his article therefore cannot succeed in any event.

DoS Article 3

638. This article entitled "Harry's time at the bar" was published by the Mirror (bylines: Jessica Callan, Eva Simpson, Polly Graham) on 19 September 2000. It relates to the Duke's 16th birthday celebration in The Ifield, Chelsea, and an earlier meal in a Pizza Express.

639. The private content pleaded is information concerning the Duke's private life, namely his whereabouts at a lunch to celebrate his birthday with friends. The article, which was written by the Mirror's 3am team, at which extensive phone hacking was being carried on at this time, tells of the Duke's pizza with a female acquaintance and then his birthday lunch with seven blondes and two male friends in tow.

640. It appears that a photo agency attended and took photographs (not published) and that as a result a journalist spoke to the chef-proprietor, who had some information.

641. Given the public nature of the venue and the limited content of the information in the article, it is doubtful that the Duke could establish a reasonable expectation of privacy in relation to it. His Counsel made some rather wild and unparticularised allegation of blagging of information, but there is no invoice that relates to this event. In any event, again the claim cannot succeed because the article was published two weeks before the Human Rights Act 1998, which made article 8 of the Convention on Human Rights part of the law of England and Wales, came into effect.

DoS Article 4

642. This article entitled "Snap .. Harry breaks thumb like William" (byline Jane Kerr) was published by The Mirror on 11 November 2000. It describes the Duke having his arm in a sling following an injury suffered while playing sport at Eton, and a minor operation.

643. The private content pleaded is: information regarding the Duke's personal life, namely an injury to his thumb.

644. This claim is hopeless, as all the content was released by St James's Palace in a briefing by a Palace spokeswoman the day before, and reported the day before the Mirror article by the Press Association, the Evening Mail, the Evening Standard, and in the Edinburgh Evening News and on BBC online, which both reported what the Palace spokeswoman had said. The information about when the Duke's surgeon looked at the X-ray and not being able to play sport are part of the quotations from the spokeswoman.

645. Although I accept the evidence of Mr Evans that prior publication did not stop MGN journalists from using UIG to check or add something to the reported story, to justify a new story being published, that would not have happened on every occasion. Ms Kerr said in evidence that she never invented content, because of her privileged position as a Royal reporter, but there is nothing new in what was published in this instance, just quotations and a slight paraphrase of what the spokeswoman had said. There was no reason for Ms Kerr to check up on this, in view of the Press Association's report, and no evidence that she did so.

646. There is no evidence and no inherent likelihood that VMI or UIG were used in this case.

DoS Article 5

647. This article entitled "Rugger Off, Harry" (byline: Andrew Buckwell) was published by the Sunday Mirror on 11 November 2001. It describes the Duke being signed off rugby after having injured his back playing polo.

648. The private content pleaded is: information concerning the Duke's personal life, namely an injury he sustained while playing rugby and medical advice he received about the health of his spine. MGN accepts that the information is private, albeit the fact of his being unable to play rugby would have been evident to all at Eton and not private. (The Duke's pleaded case is in error in suggesting that the injury was sustained playing rugby.)

649. The sensitive information is the warning given by doctors to the Duke that any more tough tackles could cause lasting damage to his spine, and that the Duke did not yet know when it would be safe to play rugby again. MGN claims a confidential source at Eton for the information published and a CR for £400 to a redacted source exists, approved by the Deputy Editor, Mark Thomas. The redaction was done pursuant to an agreed protocol that allowed the claimants to challenge the redaction, but no such challenge was made in this instance. The right conclusion is therefore that there was a source for the story, and the relevant question is whether UIG followed to obtain the medical details that were published.

650. The Duke's case relies on an invoice from Warner to The People on 5 November 2001 for a "Prince William summer story", and suggests that Christine Hart would have been doing a medical blag for the Sunday Mirror at the same time. That is pure speculation. There is also reliance on a payment to Jonathan Stafford by the Sunday Mirror for work done in November 2001 (total: £3,495), but where the schedule to the invoice has been removed. Mr Sherborne submitted that in any such case I should apply an Armory v Delamirie (1722) 1 Stra.505 presumption that the schedule, had it not been destroyed by MGN, would have supported the Duke's case by demonstrating a blag in relation to his information shortly before the date of the article. The equivalent submission is made in relation to every single missing Stafford invoice for the month in which an article was published, regardless of whether there is any evidence that Stafford was involved in the story.

651. I reject that submission, which seems to me to be going too far in terms of any reasonable inference. I have found that the schedules were removed and destroyed by MGN to conceal the fact that Mr Stafford was engaging in UIG on a large scale. I have no difficulty in reaching the conclusion, adverse to MGN, that the schedule would have shown that a large proportion of the work done by Mr Stafford that month was UIG. But to infer, additionally, that Mr Stafford was instructed and did work during that month in relation to the Duke specifically in relation to this article goes too far, in my judgment.

652. The argument, if correct, would potentially enable any claimant to prove that Mr Stafford carried out UIG in relation to them for any month for which there is a Stafford invoice. Such an inference would only be appropriate if there were some evidence either that Mr Stafford was instructed in relation to the Duke at that time

or that the schedule was destroyed in order to conceal *that fact*. The only evidence is that Ms Louise Flood instructed the removal of schedules on JJ Services invoices generally, giving rise to an inference that it was to conceal the scale of UIG being conducted. I cannot properly infer, absent some supportive evidence, that Mr Stafford was instructed to blag medical information about the Duke in that month. The same conclusion applies in relation to all other occasions on which the claimants seek to rely on the mere fact that there is a Stafford invoice for the month of the article in question.

653. The Duke was eventually constrained to admit in cross-examination that, he being who he is, there are many ways in which information about him can enter the public domain. The Duke nevertheless still preferred the inference that this information would have been obtained by VMI. Standing back, it seems to me most likely that this information was the sort of information that a 17-year old keen sportsman would be likely to share with his schoolmates – to whom some explanation of why he could no longer play rugby would be required – and that that information was divulged to a contact by the schoolmate. In the absence of any other evidence of UIG proximate to the article, and given the nature of the private information, I consider that it is more likely that not that there was no unlawful means used to obtain this information.

DoS Articles 6 and 7

654. These two articles, one published by the Sunday Mirror (byline: Gerard Couzens) on 13 January 2002 and one published by the Mirror (bylines: Jane Kerr and Jeff Edwards) on 14 January 2002, relate to allegations that the Duke had smoked cannabis at a country pub near Highgrove and are principally about his father's reaction to learning about that.

655. The private content pleaded is: allegation that the Duke smoked cannabis and his father's reaction. MGN's case is that the Duke could have no reasonable expectation of privacy in relation to his smoking proscribed drugs in a public house, all the more so if it was part of a gathering involving the taking of hard drugs (by others in the group) and underage drinking. Alternatively, there is a public interest in obtaining this information for publication, such that there is no wrongful conduct even if the information is private.

656. The event itself happened some months before the publication of the story, which reports the steps that the then Prince of Wales, the Duke's father, took to deal with the matter. The story was first broken by the News of the World in its first edition on 13 January 2002. This contained St James's Palace reaction to the story, as the News of the World had sought Palace confirmation and comment before publication. The Palace was reported as accepting the fundamental truthfulness of the story and the fact that publication was in the public interest. The Duke expressed his frustration that this had been agreed between his father and Mark Bolland without his agreement, and said that much of the follow-up story in the Daily Mirror, including the account of the police investigation, was inaccurate.

657. The story was then taken up in later editions by just about every national Sunday paper, including The People and the Sunday Mirror. The Sunday Mirror

publication is therefore likely to have involved some investigation at breakneck speed, following collection of the News of the World first edition. The article published by the Mirror had the benefit of up to 24 hours' consideration and further investigation. It is evident from the documents disclosed that the Mirror journalists went into an investigative frenzy over the storyline, as one might expect.

658. The author of the Sunday Mirror article, Gerard Couzens, had a clear history of UIG: see Part III and PI Schedule above. He is named on 186 TDI/ELI and 602 C&L invoices. On 13 January 2002, Mr Couzens commissioned TDI and C&L in relation to the owners and chef of the pub, assisted by Mr Evans and Mr Stretch, who targeted friends and the rehab clinic that the Duke was forced to visit. Mike Hamilton at the Sunday Mirror instructed TDI in relation to Mr Pelly and members of his family, as well as the occupants of the pub. Other names were the subjects of TDI searches commissioned by Mr Couzens and Mr Hamilton in the following days. (Mr Pelly was in Mr Buckley's Palm Pilot.) There is a redacted CR dated 15 January 2002 in the sum of £230 relating to the Sunday Mirror article, but no one on behalf of MGN gave evidence about what it represented.

659. This PI activity is clearly not Mr Couzens seeking to verify the story or doorstep the occupants of the pub, but digging for further information about those involved in or witnessing the drug taking. As explained by Mr Harwood, a journalist in the position of seeing a story broken by a rival's first edition has a very short time in which to stand up the story and try to find a new angle.

660. Given the identity of those involved, the importance of the story and the urgency of developing it, I consider that it is more likely than not that some UIG occurred following the News of the World publication. It is unlikely to have affected the content of the Sunday Mirror article, which was only a re-hash of the News of the World story written in a hurry; but following publication, Mr Couzens, Mr Evans, Mr Stretch and others would have followed up by targeting those associated with the Duke's activities. I am not however persuaded that this would have involved VMI of the Duke himself, in the absence of some material that is likely to have been obtained in that way. It seems likely, given the date of the article and the persons involved with the story, that attempts were made to hack the phones of Mr Pelly and others who were named in the News of the World article. I find that that was the purpose of some of the instructions to TDI. Those further instructions are not covered by the public interest in the initial storyline and the further information gathering attempts were unlawful in nature.

661. MGN's defence to article 7 is expressed to be the same as for article 6, but the Mirror's article the following day contains more material, including some quotations attributed to the Prince of Wales, such as his being "hugely relieved" that the Duke had not taken harder drugs, but "worried sick" about it, and that the Duke was "very fed up and cheesed-off indeed", which were not in the Sunday newspapers. The article reported that the Duke was back at Highgrove, ready for another meeting with his father, and that he was not allowed out without his brother or father or trusted friends being with him. The article attributes a number of quotations to a "source close to [HRH Prince] Charles" and "a family source".

662. Ms Kerr, a joint byline on the article, claimed that she could not remember the story very well and does not know the source of the quotations. She said that it was possible that they came from another paper, or from a contact of her joint byline, Mr Edwards, or from Piers Morgan. She did not vouch for any confidential source. Her joint byline did not give evidence. John Peacock of the Mirror commissioned four C&L inquiries on 12 January, as soon as the story broke, and Rod Chaytor commissioned five C&L searches the following day, in the names of friends of the Duke, those running the pub and family of an alleged supplier of drugs.

663. In the same newspaper on the same day, a further article by Jane Kerr and Jeff Edwards purported to quote Prince William saying to his brother: "This serves you right. You have been partying far too hard and too recklessly to not eventually be caught. You've been an accident waiting to happen. Let this be a lesson to you". Ms Kerr was unable to explain where this quotation came from, except that it was not through anything that she had done, but she felt sure there would be a legitimate source.

664. The Duke clearly had a reasonable expectation of privacy in relation to private conversations between him and his father – which was part of his father's reaction – beyond what was put into the public domain by the Palace's response to the News of the World's allegations. The private relationship with Prince William was not the subject of the article under consideration, which only said that Prince William was one of those without whom the Duke was not supposed to leave Highgrove. I accept that his domestic arrangements of this nature were ones in respect of which he had a reasonable expectation of privacy. Those expectations were not outweighed by MGN's article 10 rights because the public interest material in the story did not extend to these intensely private matters.

665. There are a lot of unexplained quotations and material in article 7. The obvious inference, and one which I draw, is that others at the Mirror (either those who commissioned TDI and C&L or others who were tasked with such matters) set to work, either with phone numbers that they knew or with the benefit of the searches that they had commissioned, to obtain information about what had happened following the Prince of Wales's discovery that his son had been taking drugs. Ms Kerr, who said that she was not involved in phone hacking and would never have made up information, herself suggested that others, such as the editor, Piers Morgan, might have contributed, and it is clear that someone did.

666. Again, given the importance of the storyline in these two articles, I find that it is very likely that unlawful methods were used, including VMI, though I am not persuaded that this included the Duke's own phone. He was still legally a child (aged 17) at the time, and particular care would probably have been taken in his case not to transgress in that regard. There is no evidence that MGN had the Duke's phone number by then, though I suspect that it was obtained as a result of scrutinising others' phone records at about this time. I find that Ms Kerr knew about this unlawful activity at the time, though she is now unable to remember it. While I accept her evidence that she did not personally do or instruct VMI, it is not credible that she – who had instructed C&L 894 times during the period in issue in this case – did not know the nature of the work that C&L did, and how

what they provided was then used to enable further unlawful information gathering to take place.

667. In summary, taking articles 6 and 7 together, I am persuaded that VMI of some of the Duke's associates probably took place, though not of the Duke himself, and that there was other UIG which included call data. These would have disclosed some of the Duke's private phone calls and conversations.

DoS Article 8

668. This article entitled "Harry's sick with the 'kissing disease'" (byline: Jane Kerr) was published by The Mirror on 29 March 2002. It describes his illness and the fact that it would not prevent him from joining the family skiing holiday to Klosters.

669. The private content of the article pleaded is the Duke's health, in particular the diagnosis of glandular fever. The Duke said that the article was correct but that he did not know how anyone outside his immediate family knew about it, as he was ashamed of contracting it and did not tell anyone. He said that in commenting publicly, the Palace was responding to a storyline put to it as it would not have volunteered such information. The article included the St James's Palace spokeswoman's comments. It said that the Duke's friends and his brother had teased him about contracting the 'kissing disease'.

670. MGN's defence speculates about how this story was obtained by the Mirror, saying that Jane Kerr was well connected, that the Palace probably discreetly released it before the skiing trip, or that Mark Bolland might have told Piers Morgan during a drinking session, meal or phone call. It admits that the information was private, but not once it had been released by the Palace. That nevertheless leaves the question of whether Ms Kerr had found the story first, which resulted in the Palace being asked to confirm it, and if so how the story was sourced; and secondly how content that was not put into the public domain by the Palace was sourced.

671. Ms Kerr's evidence was that she did not remember how that story was obtained, save that the article reports what the spokeswoman said. She felt that a Palace source might have given her the information about teasing, as a throwaway line.

672. The news about the Duke's illness was published on the same day in other newspapers, including The Sun, which reported that the fact had emerged the previous night. It is clear from other reports that the date of publication was the first day of the skiing holiday, at which the Princes traditionally took part in a photo shoot in the morning. It therefore seems likely that it was the Palace spokeswoman who first put the information into the public domain. I consider it plausible and more likely than not that the Palace did so because of the skiing holiday that was about to start, and the need to give some explanation. I think that the Duke was mistaken about this: there was a sensible reason for the announcement.

673. This does not explain how the Mirror, unlike all the other newspaper reports, was able to say that the Duke was being teased about it by Prince William and his

friends. It does look suspicious. However, communications between the Duke and his friends and family was not the private content that was pleaded, only the fact of the illness itself, so there is no claim in respect of any UIG relating to these communications in any event.

DoS Article 9

674. This article entitled "No Eton Trifles for Harry, 18" (byline: Jane Kerr) was published by the Mirror on 16 September 2002, the Duke's 18th birthday. It describes how the Duke had a quiet lunch with his father and brother on his birthday before being driven back to school.

675. The private content pleaded is how and when the Duke celebrated his 18th birthday with his family.

676. The article quotes the Duke speaking about lessons that he had learned earlier in the year and on how he wanted to emulate his late mother by doing charity work.

677. The defence is that the content is derived from information the Duke provided to the Press Association in an interview to mark his 18th birthday, which had been circulated to media organisations on 14 September 2002 under embargo. Anything beyond that material was trivial and not private.

678. In my judgment that defence is fully made out. The only sentence in the article that is not fully covered by the Press Association interview is that he was driven back to Eton. Ms Kerr said that she would have worked out that as term at Eton started on the Monday he would have been driven back to school on the Sunday.

679. The claimants had no other persuasive argument as to why this information would have been obtained by UIG or why there was a reasonable expectation of privacy about it, after the event.

DoS Article 10

680. This article entitled "'Matured' Harry is a godfather" (no byline) was published by The People on 20 April 2003. It describes how Prince Harry was chosen to be invited to become the godfather of the nephew of his former nanny, Tiggy Legge-Bourke.

681. The private content pleaded is details of the Duke being invited to become a godfather.

682. The article explained that the Prince of Wales, the Duke's father, had approved of the request and hoped that it might be the making of the Duke, quoting "a Royal insider" and Ms Legge-Bourke's brother.

683. The Duke admits the truth of the article but cannot understand where the story had come from, as private matters such as this would not be released in advance of the event itself. He said that it appeared that Mr Legge-Bourke had been approached for a comment.

684. MGN disputes that the information was private, as the role of godfather was a public one, but that misses the point, in my view, which is that until the godparents or godfather chose to release the information it was a private 'family' matter. Nevertheless, MGN points to the information having been previously published in the Mandrake column of the Daily Telegraph on 13 April 2003.

685. Although MGN has called no witness to explain the source, it is obvious from the phraseology of the Mandrake column and the article that the former is the source. The Duke points to a CR for £200 to a freelance journalist, Chris Murphy, authorised by James Scott, and a TDI invoice headed "Pettifer/Bourke" for £85 dated 15 January 2002, suggesting that as a result The People had their phone numbers and Mr Scott hacked their phones, resulting in The People being able to add the comment about the Prince of Wales being keen.

686. In my judgment, it is much more likely that the addition was made by Mr Murphy, to add colour to the story that he supplied, or by a person unknown at The People (though no one has claimed a byline for it). It is inherently unlikely that Prince Charles would have left a voicemail for one of the Legge-Bourkes, though doubtless there was a conversation at some time seeking his approval.

DoS Article 11

687. This article entitled "Harry to lead cadets' march" (no byline) was published by the Mirror on 29 April 2003. It states that the Duke had been chosen to lead military cadets at an Eton parade – he would be in charge of the school's CCF tattoo and was said by a spokesman to be "delighted".

688. The private content is pleaded as the content of the article.

689. I cannot see how this could be regarded on any view as a matter on which the Duke had a reasonable expectation of privacy. The Duke said that he regarded it as an honour and feared a backlash from publicity, but he could hardly have expected to lead the tattoo in private, or for his intended role to be kept confidential. If the information was confidential in any sense, it would have been confidential to the school, not to him.

690. In any event, the story line was publicised by St James's Palace the day before the article and was reported by the Press Association on the same day.

691. The Duke accepted in cross-examination that the article was no more than a composite version of the Palace announcement and the Press Association report.

692. There is no documentary material to suggest otherwise, in support of the claim in relation to this article, and one does wonder what kind of judgement was exercised when claims are pursued to trial in respect of articles of this kind.

DoS Article 12

693. This article entitled "Harry is ready to quit Oz" (byline: Jane Kerr) was published by the Daily Mirror on 27 September 2003. It describes how the Duke was being

pursued by camera crews in Australia, on his gap year, and might be brought home.

694. The private content is pleaded as private information concerning the Duke's personal life, namely details of his considering abandoning his gap year due to media attention. But in fact the article does not say anything about the Duke's feelings or what he was considering.

695. The article quotes a St James's Palace statement about the problem of the media not leaving the Duke alone and the Duke did accept that a Palace statement was made relating to his circumstances in Australia. The same story appeared the same day in essentially the same terms in the Daily Telegraph, the Daily Express and the Daily Mail, all of which referred to appeals from Royal aides to leave the Duke alone.

696. It was also published in The Sunday Age in Australia. This publication referred to the Duke's minders saying that he was sitting inside the ranch watching videos, quoted Mark Dyer as saying to reporters: "I've got a young man in there in pieces", and quoted Frank Thorme as saying that Mark Dyer said that he could not do anything useful on the ranch without having his photograph taken.

697. It appears therefore that the source for the story was a Palace briefing and comments made by the Duke's own companion in Australia.

698. Undeterred, the claimants contend that proximate CRs for Frank Thorne are indicative of UIG. But the first of these clearly relates to a different article, about which the Duke has not claimed; and the second, with the description "Prince Harry watch Hunter Valley (Ellis)" refers to a different publication date (albeit only one day earlier), and the location is entirely different – the Hunter Valley being north of Sydney in NSW and Tooloombilla being 370 miles west of Brisbane, in Queensland.

699. The claim in respect of this article is also hopeless.

DoS Article 13

700. This article entitled "Beach Bum Harry" (byline: Jane Kerr) was published by the Mirror on 16 December 2003. It describes how the Duke enjoyed playing in the sea in Noosa, Queensland, following the end of his jackaroo stint. It said that the Duke was due home in time for Christmas.

701. The private content is pleaded as: details of the Duke surfing with friends while on his gap year.

702. The beach was a public beach and the Duke was unaware at the time of photographers.

703. MGN's defence is that the information in the article (which is really only comment on the photograph) came from an Australian freelance photographer, Jamie Fawcett, and had been printed first in the Evening Standard the previous day, and was then published in several newspapers on the same day as the Mirror

article. The Duke's intended visit to the Sunshine Coast, and Noosa in particular, had been published by the Evening Standard and the Evening Mail on 12 December, four days before the article in question.

704. Ms Kerr said that her article was just commentary on the photograph and that it was possible that she spoke to the photographer for a description. The return for Christmas was a deduction from the Palace's previous announcement of the length of the Duke's visit to Australia. But she was unable to say how the photographer knew to be at Noosa that day.

705. The claimants rely on the fact that Mr Fawcett had been labelled a dangerous "cowboy" by a court following a failed defamation case. The judgment referred to Mr Fawcett's belief that celebrities had no right to expect any privacy in Australia and considered him to be a "recklessly irresponsible photojournalist".

706. I am unable to see how that makes it more likely than not that the photographs taken or the content of the commentary on them were a misuse by MGN of the Duke's private information. The photographer was obviously not commissioned by MGN, otherwise the photographs would not have appeared in numerous newspapers. They were taken by a freelancer and offered to the Mirror, and Ms Kerr appended a suitable commentary based on what she saw and what was already in the public domain. The quotation from the "onlooker" is very likely to have been the photographer, though Ms Kerr could not positively remember that she did speak to him.

DoS Article 14

707. This article entitled "WILLS. Seeing Burrell is only way to stop him selling more Diana secrets HARRY NO .. Burrell's a …." (byline: Rachael Bletchly) was published by The People on 28 December 2003. It describes how the two Princes, William and Harry, had had a strong disagreement about whether they should meet Paul Burrell to seek to end his sale of secrets of their late mother, Diana, Princess of Wales.

708. The private content of the story is pleaded as: an alleged disagreement with Prince William about whether to meet Mr Burrell.

709. The story reports a clash over a planned New Year meeting, which the Duke wanted to cancel, and sets out what each of the Princes' views were and what each thought of the proposed meeting and of Mr Burrell. It reports that the Duke brands Mr Burrell a "two-faced s***". It also attributes very detailed comments to an unidentified "senior Royal source" and "insider" and a brief comment to a "Buckingham Palace spokesperson".

710. The Duke said that what was attributed to the Royal source reflected exactly his private feelings and that he would have used the expression "two-faced s***" and suspected that this could have been lifted from a voicemail that he had left. In cross-examination, the Duke said that he "certainly" used that phrase and left it on voicemails. He was challenged with a different account in his book "Spare" about whether he did or did not want a meeting and became rather confused about what the position was at the time, but said that he was leaving voicemails for his

brother (at the time he was in Australia), but did not specifically recall leaving a message using the words "two-faced s***".

711. The defence is that although some of the information was private there was a legitimate confidential source for the story – said to be a person who specialised in royal matters and had extensive royal contacts – and an overriding public interest in the story.

712. There had been an earlier article published by The Evening Standard on 27 October 2003 claiming to report a disagreement between Her Majesty the late Queen and Prince William about whether he should meet Mr Burrell. The two Princes had made a joint statement when Mr Burrell's proposed book was publicised, saying that they could not believe that he, who was entrusted with so much, could abuse his position in such a cold and overt betrayal. They had therefore, to that extent, put their feelings about Mr Burrell into the public domain. There had also been a report in the Daily Express on 8 December 2003 that a crisis meeting between the Princes and Mr Burrell would take place over the Christmas holidays.

713. The Duke's case is that Rachael Bletchly was a prolific user of PIs, including 20 instructions to ELI and 66 to Mr Whittamore, and that three of her other articles have previously been admitted by MGN in the MNHL to be the product of UIG. She continues to be employed by Reach plc, but was not called to give evidence about her sources for the article, nor did any other witness for MGN explain where the story came from. The Duke relies on an invoice from IIG Europe (Gavin Burrows) to Senga Irvine at The People dated 13 February 2004 for "Extensive enquiries – Prince William", noting that other invoices tend to show that Mr Burrows invoiced late and in batches for work done.

714. The fact of a serious disagreement between the Princes was clearly a private matter, regardless of the fact that they had previously made their joint feelings about Mr Burrell known and the fact that it was in the public arena that Prince William wanted a meeting and H.M. The late Queen did not want that.

715. What is reported is self-evidently derived from private conversations between the Princes or other means of communication between them. If there had been a legitimate source for this aspect of the story, MGN could have called Ms Bletchly to vouch for it, and to explain how the person who specialised in royal matters explained their source. I am left with the Duke's evidence, which seems inherently credible, given that on 16 December he was still on a beach in Noosa and would therefore have been communicating with his brother by phone. Upon his return to the UK for Christmas, he would have been with his family (including Prince William) in person.

716. In my judgment, it is probable that this private information was obtained by VMI of messages between the Duke and his brother or other associates. The People therefore probably had the Duke's mobile phone number by this time, at the latest. As I have already found, it is likely that it made use of it, cautiously, on occasions. I consider it unlikely, given the risks, that it was used routinely or indiscriminately, in the way described by Mr Evans for targets on his "back pocket list".

DoS Article 15

717. This article entitled "Harry is a Chelsy Fan" (byline: Anthony Harwood) was published by the Mirror on 29 November 2004. It describes how the Duke had enjoyed a romantic liaison with Ms Davy during a stay on a ranch in Argentina. The short article was written by Mr Harwood, who had been sent personally to cover the Duke in Argentina (at the time he was based in New York, but if there were any doubt about the importance to MGN of storylines about the Duke, his travel dispels it).

718. The private content is pleaded as: information regarding his personal life, namely "details of his relationship with Chelsy Davy".

719. The article contains legitimate quotations from construction workers near the ranch, who had observed the couple, and a student who had met the Duke earlier on his trip. The critical issue is how Mr Harwood managed to confirm that the "pretty blonde" in the accompanying photograph was Ms Davy.

720. MGN's defence is that the information was not private, as visible to all at the ranch, and that the story was legitimately sourced from a report in the Mail on Sunday the day before, two confidential sources and a South African photographer. I disagree that there was no legitimate expectation of privacy: this was a private holiday for which significant efforts had been made to keep it, and the identify of those present, secret.

721. The Duke said that he had met Ms Davy in England, when she attended a school near Highgrove, and then spent some time with her in Botswana. He was unaware that Mark Dyer had personally arranged for Ms Davy to join him in Argentina.

722. The Mirror had published an article on 27 November 2004 (bylines: Mr Harwood and Mr Brough), two days before, reporting excessive drunkenness in Lobos and at the ranch in Argentina, a claim of a kidnap plot that had been faxed to the British embassy, and the return of the Duke to the UK on 26 November. An owner of a bar said that "the group was accompanied by a mystery blonde". An accompanying piece written by James Whitaker said that the return to the UK was not a change of plan, as "His flight was booked a month ago. The reservation will prove this."

723. Mr Harwood then reported back and the Mirror night log early on the Saturday morning records that he was working on finding the identity of the blonde girl, and whether she was Kelsey whom the Duke had kissed in a Cape Town night club earlier that year, and that "Locals in Lobos seem to think girl Harry was with this time around was called Chelsy or Kelsey, which obviously fits. I have got a freelancer in Cape Town, Mike Behr, working on finding out what he can on this girl … He is now trying to see if she is the same girl who has just returned from Argentina."

724. Mr Harwood claimed that Mike Behr was a freelance journalist, though it is evident from the night log that he did not know him, as he was recommended by Mark Ellis. He said that he sent his contact, a Spanish freelancer, back to the ranch to talk to those present.

725. On 28 November (Sunday) the Mail on Sunday carried the story of the Duke's "first true love" in Argentina and named the blonde as Chelsy Davy.

726. Mr Harwood said that it was likely that the photograph of Ms Davy on the "Harry is a Chelsy Fan" article was taken in Cape Town on Ms Davy's return.

727. Mr Harwood emailed a draft article to the Mirror at 5pm GMT on the Sunday afternoon. It contained the content of the final article, confirming Ms Davy's identity, but also much more, including that the Duke's trip had been cut short by a security scare, the relationship's earlier stages, the fact that the Duke had been at the ranch for several days before Ms Davy arrived, the fact that she had flown back to South Africa on the same day that the Duke flew back to London, and that her plane had left two hours before the Duke's did.

728. Mr Harwood denied that the flight information came from flight blags and felt that he must have got the information from an Argentine stringer, or from reports in the local media. He said that Mr Brough, who was in London, had put in calls, as he speaks Spanish, and anything he found out would have been put into the story, but he did not know what that was. However, there was little in the story that was not in Mr Harwood's draft, except the comment of the student with whom the Duke had danced at a night club in Lobos. What is significant is that all the flight detail was taken out of the final version.

729. Mr Harwood accepted that there was no payment record for the Argentine source for the story. Mr Harwood said that he did not know that Mr Stafford carried out flight blagging then but now knows that MGN has admitted it. He said the use of Mr Behr in Cape Town was a "punt", and that he was not aware that Mr Behr blagged flight details. Asked to explain how he was able to identify that it was Chelsy Davy who had flown out from Argentina to South Africa two hours before the Duke flew to London, Mr Harwood said that he did not speak to Mr Behr and that Mr Behr did not blag flight details on this occasion but would have been making what enquiries he could:

> "Admittedly they were limited but, you know, he was being put on order. You never know what a freelancer might get from another paper or what he might pick up on the ground…You have to get on the ground, don't you?...
> …everyone knew that she had flown out from Buenos Aires on the Friday morning to Argentina [sic] a couple of hours before Harry flew back to London, so someone was flying back to Argentina [sic] and, you know, it was a long shot but, you know, you've got to chase every long shot and that's what he was presumably being told by the night newsdesk to do."

Mr Harwood accepted that the Mirror would have been trying to do its own checks to confirm the identity of Ms Davy.

730. There are numerous payment records relating to the Duke's visit to Argentina, including four for Gerard Couzens between 25 and 28 November (for all three MGN papers), two photograph agencies, two redacted CRs, two CRs for a Tania

Coetzee in Cape Town and two CRs for Mike Behr, all relating to this article publication date.

731. As previously detailed in the PI Schedule, there is credible evidence of Mike Behr having conducted or organised flight blagging and telephone bill blagging in relation to Chelsy Davy on other occasions. It is evident that the Mirror journalists had obtained details of the Duke's flights. In my judgment, the story in this article – particularly the all-important confirmation of the identity of Chelsy Davy – was probably stood up by the Mirror by commissioning PIs to blag flight information, credit card details or phone billing data, to confirm that it was Ms Davy who had been in Argentina. That unlawful activity was, I find, specifically instructed from London, not undertaken at the whim of Mr Behr. Mr Harwood's attempt to explain how else Ms Davy's identity was confirmed was wholly unconvincing. It follows that, since MGN directed the unlawful activity, the tort is established.

DoS Article 16

732. This article entitled "When Harry met Daddy (.. the biggest danger to wildlife in Africa" (byline: Graham Brough and Jane Kerr) was published by the Daily Mirror on 13 December 2004. It describes how the Duke met Ms Davy's father at a beach holiday in Bazaruto, Mozambique. He was alleged to be a "safari tycoon" in Zimbabwe, running trips for hunters wanting to shoot big game. Most of the article was about Mr Davy's business interests, but it stated that the Duke would be flying back to Britain on 19 December 2004, was said to be besotted with Ms Davy, and that they wanted to marry, according to Ms Davy's Uncle Paul.

733. The private content pleaded is: details of the Claimant's personal life, namely details of his relationship with Chelsy Davy and the Duke meeting her father for the first time.

734. The joint byline, Ms Kerr, said she did not remember this story well, but that the holiday was already in the public domain after the couple had been spotted at Durban airport en route for Bazaruto. She said that she called Clarence House for comment but was told that it was a private matter, and that she then probably called some charities for comments on Mr Davy's hunting business. All other material was likely to have come from desk top research or cuttings.

735. In fact, information about the romance and the holiday had been published the previous day and the weekend before by the Mail on Sunday, which revealed the holiday plans and the depth of the romance in a long article that included comments from Uncle Paul Davy. There had also been earlier articles on Mr Charles Davy, an article in the Daily Express nine days before, which said that the Duke and Ms Davy had been dating for eight months and were going to spend a holiday at Bazaruto Lodge, and an article in The Sun four days before, which said that the Duke flew from Durban for a week on the island of Bazaruto.

736. The new material in the Mirror's article was that Mr Charles Davy had flown in to Bazaruto on the previous day to meet the Duke, when 11 family members were already there; that the Duke would fly back to London on 19 December, and a

"pal close to Harry" saying that the possibility of marriage "should not be taken too seriously".

737. The only payment records to which the Duke is able to point are a Jonathan Stafford composite invoice (without schedule) for December 2004 and four Big Pictures CRs for "Prince Harry" covering the period 10-13 December and charging £300 a day for unidentified services.

738. What is evident from this coverage is that once again the Mirror was able to be specific about flight arrangements. I reject Ms Kerr's explanation that the return to London could be calculated from a previous publication, which did not refer to the Duke's visit being for 5 nights. The majority of the writing of the article, focussing on the threat that Mr Davy posed to African wildlife, was done by Mr Brough, as a draft demonstrates, and it appears that Ms Kerr was asked to add in a bit of romantic interest. Most of it appears to be lazy journalism, picking up pieces from previous articles, but it is evident that someone at the Mirror obtained flight details relating to the various parties' journeys to and from Bazaruto. I find that this was likely to have been done in England, by a PI by unlawful means. There is, however, nothing to support a case that VMI was used.

DoS Articles 17 and 18

739. These articles entitled "Harry's Girl 'to dump him'" and "Chelsy is not happy" (byline: Jane Kerr) were both published by the Mirror on 15 January 2005. They relate to Ms Davy's reaction to an unfortunate episode in the Duke's youth when he attended a fancy dress party dressed as an Africa Korps soldier, wearing a swastika armband, and then had "a leggy brunette draped across his lap".

740. The private content is pleaded as: information regarding the Duke's personal life, namely details of his relationship with Chelsy Davy and the 'tongue lashing down the phone' after flirting with a brunette at a party.

741. MGN denies that the Duke had a reasonable expectation of privacy in relation to the exchanges between him and Ms Davy, and that the speculation about the effect of his behaviour on his relationship with her was trivial and obvious. It also denies any UIG, contending that the information came from prior reports in the public domain, Paul Davy and a confidential source.

742. The Sun had published an article "Harry the Nazi" two days before the Mirror's articles, breaking the story of the fancy dress and the brunette.

743. Ms Kerr said that the copy that she filed did not contain the sentence "was so furious he flirted with a mystery brunette she gave him a tongue lashing down the phone" and suggested that someone else had added it. The draft indicated that Paul Davy was the source of some of the information. Mr Conor Hanna and Mr Richard Wallace were involved in email traffic prior to publication. The joint byline, Richard Smith, was a West of England correspondent and, Ms Kerr said, might have gone to the area to talk to people who had been at the party. Ms Kerr was unable to explain how the line "angry Chelsy phoned him at his father's Highgrove home" came to be in the article, or "A friend said 'She's not happy at all'". In an earlier version of the article, there was reference to how long a

telephone call on New Year's Eve lasted, but that was removed from the publication article.

744. The Duke's case relies upon a CR for a payment of £150 to Mike Behr "Calls re Chelsy Davy story (kerr)" that states a publication date of 22 January but no relevant article of that date has been identified, and so it is likely to relate to Ms Kerr's instruction of Mike Behr on 14 January to "find out what Chelsy thinks of this and whether they have split or likely to split as a result". There is a single recorded call to Guy Pelly's landline on 13 January of "null" duration. There is also a further CR payment to Barbara Jones for "Chelsy Dave b'ground re Prince Harry (Kerr)" dated 21 January 2005, after Ms Kerr emailed Louise Flood at MGN to request payment to her for "Chelsy Davy (Prince Harry's girlfriend) background and contact telephone numbers".

745. Some of the content of the articles has plainly come from earlier publications, or could have been stood up or added to by contact with any one of 250 people present at the party. However, the very specific information about what Ms Davy said to the Duke and how long their private conversations lasted could not have been obtained in that way. Nor was that content attributed to Paul Davy in the draft because it was not in the draft.

746. In my judgment, it is reasonably clear that billing/call data relating to Chelsy Davy's mobile phone must have been obtained by MGN for the specific content identified to be added to Ms Kerr's draft. How exactly this was done and by whom is unclear, though Mr Hanna and Mr Wallace were both involved and it would have been instructed from London. I consider that it is also probable that VMI was used, though there was no case advanced that the Duke's own phone was hacked on this occasion.

DoS Article 19

747. This article entitled "You did what!" (byline: Simon Wright) was published by the Mirror on 6 February 2005. It is the product of an investigation into who photographed the Duke in Africa Korps uniform and then sold the photograph to The Sun. The alleged culprit was named and shamed, with a full sized photograph of him and his girlfriend and another picture of the Duke and the swastika armband.

748. The private content is pleaded as: information regarding the Duke's family life, namely details of the farm work he was made to do as a punishment imposed by his father.

749. The relevant part of the article was the statement that the Duke was "sulking like a teenager" after being grounded; that Prince Charles had ordered the Duke to carry out lowly jobs on a farm as a punishment for the Nazi gaffe; that he spent days cleaning out sties and helping with cattle on Home Farm; and that he was ordered to keep a low profile, which included not travelling to South Africa to see Ms Davy.

750. MGN's defence is that the information came from prior reports in the public domain and a confidential source; and that the Duke did not have a reasonable

expectation of privacy in relation to the nature of his punishment for his misdeeds, given the publicity for the formal apology.

751. There is a large array of payment records for ELI in relation to this story, commissioned by James Saville and Simon Wright, two C&L invoices commissioned by Nick Buckley and Sara Nuwar, and three AJK Research invoices commissioned by Nick Buckley and James Saville. These relate to the investigations into Mr Springfield and Ms Grievson and others for the main storyline, not the information about the Duke's punishment. Nevertheless, based on Mr Wright's huge number of instructions of C&L, ELI and AJK Research and 366 telephone calls and 3 incriminating emails to Jonathan Stafford, and in the absence of any evidence from MGN as to how the story was obtained, it is highly likely that UIG was involved in the preparation of the article throughout. Mr Buckley, who had the Duke's phone number in his Palm Pilot, was involved.

752. Focusing on the allegedly private information in the article, it is difficult to see how that information is likely to have been obtained by interception of voicemails, unless it was matters that the Duke was reporting to Ms Davy or other friends. However, there was no specific evidence to support that case and Mr Sherborne's closing submissions were that this information was obviously obtained from conversations between him and his father (though it was not explained how Mr Wright or his PIs would have obtained this). There were 3 calls to Paddy Harverson on 2 February 2005 but no case was explained about why his voicemails would have the information in them. The Duke did not say that he left a voicemail for Mr Harverson or that his father might have done, in relation to the punishment.

753. In fact, most of the information that the Duke complains about had already been put into the public domain on 17 January 2005 in an article in The Sun and on 30 January 2005 in an article in the Mail on Sunday. The only non-public material was that the Duke was sulking (which is only an expression of opinion) and that he was ordered to keep a low profile.

754. Given what had already been put into the public domain, I do not consider that the Duke on 6 February 2005 had a reasonable expectation of privacy in relation to the additional point (if it was correct) that he had been ordered to keep a low profile. This was really implicit in the other details of the punishment, which had been made public. I am also not persuaded that this information was obtained by UIG – the efforts of those involved in preparing the article was on identifying who had "betrayed" the Duke by selling the photograph, not on the detail of the punishment. That was not his private information.

DoS Article 20

755. This article entitled "Who Dares Windsors" (byline: Jane Kerr and Chris Hughes) was published by the Mirror on 4 March 2005. It concerns the appointment of Jamie Lowther-Pinkerton as private secretary to the Duke and his brother.

756. The article is not relied on by the Duke as an occasion of misuse of his private information but only as evidence of UIG.

757. The article is principally about the career of Mr Lowther-Pinkerton but also says that both Princes helped to choose him and get on very well with him. The Duke said that that was true.

758. It was published the day after an announcement by Clarence House. Much of the content of that announcement is in the article. Ms Kerr said that she suspected that her joint byline, Mr Hughes, was responsible for collecting quotations from former colleagues of Mr Lowther-Pinkerton.

759. The Duke relies on a 52 second phone call from Ms Kerr to Mr Lowther-Pinkerton on the date of the announcement as evidence of VMI. In my view, that is most improbable, and far more likely that Ms Kerr was phoning him for any comment that he felt able to make.

760. Other than that item of call data, the Duke relies only on the extent to which Ms Kerr and Mr Hughes are proved by documents to have made extensive use of PIs involved in UIG. However, in this case, the nature of the comments attributed to ex-colleagues of Mr Lowther-Pinkerton are not at all suspicious and are very unlikely to be the product of UIG.

DoS Article 21

761. This article entitled "Chelsy's Gap EIIR" (byline: Dean Rousewell) was published by The People on 24 April 2005. It concerns the Duke's relationship with Chelsy Davy and their communications by telephone and their plans. It is the first of 30 articles with Mr Rousewell's byline about which the Duke complains. Mr Rousewell was by that time the royal editor of The People.

762. The private content pleaded is the Duke's relationship with Ms Davy and her plans to take a gap year to spend more time with him. The article describes in some detail the feelings of both the Duke and Ms Davy, how long they spend on the telephone, the intention to take a gap year and how it would be spent, and what the Duke had told his brother about Ms Davy, among other things.

763. The Duke said that he found the level of detail in this article disturbing, as both Ms Davy and he were very careful not to talk to people about their relationship and were careful to keep their plans a secret. He said that he would not been telling friends how long he was spending on the phone to Ms Davy.

764. MGN's defence is that the information was not private because the relationship was in the public domain and information about their plans was trivial, and not something in which the Duke had a reasonable expectation of privacy. It says that in any event the information came from a news agency and there is no evidence of VMI.

765. There is a £600 CR for Ferrari Press Agency for the publication date of the article, authorised by Mr Proctor and Mr Mark Thomas. The claimants point to emails passing between these two men in 2004 (unconnected to the Duke's case) passing on mobile telephone numbers of celebrities.

766. Ferrari was run by Matthew Bell, who had gone "freelance" after a career at the Sunday Mirror where he was the news editor and made much use of the services of Jonathan Stafford and TDI. The claimants do not plead a generic case against Ferrari or Mr Bell, however.

767. MGN called no evidence to explain where the story came from, but asserted in closing submissions that it came from a news agency and prior reports in the press, namely a Daily Mail article four days previously, which reported the holiday in a South African hunting lodge, referred to in the Rousewell article, and a Daily Star article four months previously, which suggested that Ms Davy sent the Duke "10 sexy phone calls and texts a day" and that the couple were madly in love with each other.

768. The detail in the article about the gap year plans and hours spent on the phone to Ms Davy, the Duke's moods and feelings and what he told his brother are not explained by prior publications. It seems obvious that someone has had access to phone records, and voicemails too, to be able to report on this.

769. Mr Rousewell still works for MGN and is believed to be the news editor at the Mirror. No explanation was provided for why he did not give evidence to explain how he wrote the story. Given Mr Rousewell's involvement in 30 articles in the Duke's case, I would have expected to hear his account of what was happening on the royal desk at The People at this time and how he wrote the stories that he did. Mr Green argued that no adverse inference could be drawn, and stressed that MGN could not have signed the statement of truth on its pleaded defence if Mr Rousewell had told its lawyers that UIG was used. (In fact, two of the Rousewell articles in issue in this trial are "not admitted" to be the product of UIG, rather than "denied".)

770. If MGN was properly able to deny that the other articles (of which this is one) were the product of UIG, one might have expected some evidence to support the case, but there is none, other than a CR to Ferrari, which proves nothing and is unexplained by evidence. It is simply wrong to assert that no adverse inference can be drawn from failure to call relevant evidence where privilege is asserted in relation to how that decision was reached: what cannot be done is to draw an adverse inference from the assertion of privilege. Whatever the reason, the court is left without the benefit of what is likely to be highly material evidence from the author of the article about how the story was obtained. I draw no conclusion from the absence of an explanation for not calling Mr Rousewell, but equally I cannot assume in MGN's favour that there is a good one. The inference from the absence of Mr Rousewell is nevertheless obvious: Mr Rousewell was considered unable or unlikely to provide supportive evidence, or evidence that would stand up to scrutiny.

771. Regardless of that inference, the Duke's case and evidence raises a strong *prima facie* case that UIG and VMI were used to obtain this story, casting the evidential burden on MGN to explain; but there is no evidence from MGN to rebut it. It is not necessary to make a finding about who carried out phone hacking in this case and I do not do so, but Mr Rousewell's record of instructing PIs who engaged in UIG (ELI, JJ Services, C&L and Avalon) and the nature of some of these

commissions show that he must knowingly have used unlawfully gathered information.

772. I reject the argument that the Duke had no reasonable expectation of privacy in relation to Ms Davy's plans to spend time with him on a gap year, his feelings about that, how often he was *at that stage of their relationship* on the phone to Ms Davy, and what he told his brother about his feelings. These things are private by their nature, but particularly so given the difficulty that the Duke and Ms Davy had in conducting their relationship in the glare of publicity. Any secrecy or privacy they could get was of great value to them.

DoS Article 22

773. This article entitled "Harry Carry!" (byline: Dean Rousewell) was published by The People on 15 May 2005. It concerns the Duke's knee injury that left him allegedly unable to participate in runs at Sandhurst, and how his relationship with Ms Davy would be affected by his initial officer training.

774. The private content pleaded is quite narrow: information regarding the Duke's private and professional life, namely details of being let off marches due to his knee injury.

775. The Duke said that he did not discuss his medical issues freely at Sandhurst, or discuss his email contact with Ms Davy with anyone. He also said that the article was inaccurate in that there were no 5-mile runs during the first week of training.

776. It had previously been publicised that the Duke had problems with a knee injury but there had been no recent publicity about it since his entrance to Sandhurst was deferred from January to May 2005. On 15 January, The Independent reported concern from officers at Sandhurst about the knee problem being the reason for the Duke's deferral while he continued to ski and play football, and said that "other cadets may feel he is getting preferential treatment."

777. There is a CR for £150 for John Ross for a "Harry Sandhurst asst", authorised by Ben Proctor and a CR for £1,500 for Ferrari Press Agency Ltd for a "Harry at Sandhurst" contribution, authorised by Mr Proctor and Mr Mark Thomas, a further redacted CR for "Harry at Sandhurst" for £500, and two CRs for reproduction of photographs. It is therefore obvious that The People had invested in several different means of obtaining information about the Duke's progress at Sandhurst. One of those may have been a fellow cadet, which would explain some of the quotations in the article. The involvement of Mr Ross is unexplained, as is the very substantial payment to Ferrari.

778. MGN does not admit that the information was obtained by UIG, but, despite that, sought in closing submissions to advance a positive case that much of the information came from a confidential source who specialises in royal matters and has extensive royal contacts. I reject that argument, as it is inconsistent with the pleaded case and unclear why royal contacts would have information about the experiences of the cadets at Sandhurst. The involvement of Mr Ross and Mr Bell of Ferrari suggest that there may well have been UIG.

779. However, I do not consider that the Duke could have a reasonable expectation of privacy in relation to a matter of his ability to participate in fitness training and what other cadets thought of the fact that he had been excused part of it. Subject to any regulations imposed by Sandhurst, any of the cadets or officers would have been entitled to tell family or friends what they had seen. If they were not, the confidentiality was imposed by Sandhurst and was for its benefit. There is no case advanced that the Duke had the benefit of that confidentiality arising from the terms of his service or otherwise.

DoS Article 23

780. This article entitled "Chel Shocked" (byline: Dean Rousewell) was published by The People on 9 April 2006. It concerns details of a night out that the Duke and other Sandhurst cadets enjoyed at Spearmint Rhino, involving "lap dance antics", and Ms Davy's reaction to hearing about it. It purports to relate content of the telephone conversations between the Duke and Ms Davy, attributed to a "highly placed source". The article also says that the Duke and Ms Davy were going to spend a 5-day holiday in Mozambique later that month.

781. The private content pleaded is: information regarding the Duke's personal life, namely details of his relationship with Ms Davy and her anger in a "string of phone calls" after the Duke visited a lap-dancing club. MGN denies that the information was private on the basis that Ms Davy's anger in response to the event was obvious and trivial.

782. The story of the visit to the club had been broken the previous day (Saturday) by numerous newspapers and one had speculated about Ms Davy's likely reaction. It is inevitable that the Sunday tabloid newspapers would have gone into overdrive to find out more and, if possible, what Ms Davy's reaction actually was.

783. The News of the World published its take on the same day as The People's article. The article was probably the most significant article in the long history of phone hacking. It was entitled "Chelsy tears strip off Harry!" and the bylines were Clive Goodman and Neville Thurlbeck. They reported that the Duke had been given a furious dressing-down and ear-bashing by telephone, but the only telephone call reported was made by Prince William leaving a prank voicemail on the Duke's phone pretending to be an offended Chelsy Davy. This obvious hacking of the Duke's phone was reported by Buckingham Palace and the MPS started the investigation into hacking of Royals' phones that led to the arrests of Goodman and Mulcaire in August 2006.

784. The Goodman/Thurlbeck article only referred to the fact and content of text messages from the Duke to Ms Davy, not voicemails or phone calls, though it is obvious that Ms Davy was doorstepped in Cape Town and refused to comment. Interestingly, the article also referred to Clarence House releasing an official portrait of Prince Charles and Camilla on their first wedding anniversary and refusing to comment on the reports of lap-dancing.

785. MGN's defence is that the story came from two freelance journalists (one confidential, who had extensive royal contacts) and a news agency, Ferrari, also said to specialise in royal stories. They point out that the fact of an intended

holiday in Mozambique had already been publicised a week before the article, but that does not extend to the 5-day duration.

786. The explicit reference to a string of phone calls and a further call lasting half an hour suggests that someone obtained call data for the phone of one or other (or both) of the Duke and Ms Davy. There is no explanation of how a "highly placed source" would be able to inform The People that Ms Davy went berserk at the Duke and then called him back and ranted at him for half an hour.

787. The article also refers to "Charles and Camilla's anniversary joy". I have considered on several occasions whether there may be a more straightforward explanation for some of the journalism in issue, namely that journalists just recast what has already been published and invent a few details to add some colour to the story before publishing it. However, Ms Kerr explicitly denied that a royal correspondent would risk doing that, and Mr Evans and Mr Johnson both explained that even with a story that had broken, MGN journalists would use UIG to make sure that the story stood up or alternatively find an additional angle on the story. There is no evidence from Mr Rousewell or anyone else that lazy journalism is the explanation, so I put that possibility aside.

788. Once again, with this article, there is a strong *prima* facie case that there was UIG or VMI, or both, used to capture this story. There is no evidence other than some CRs (that provide no detail) and which are unexplained in evidence to set against that case. In this instance, it may be that VMI of the Duke's phone can be discounted, on the basis that the MPS will have examined carefully the call history at about the date of The Sun's and The People's articles and are likely to have indicated if other suspicious calls were made at about the same time as Mr Mulcaire was intercepting voicemails left for the Duke. On the other hand, it is possible that calls from another untraceable mobile number (Goodman and Mulcaire had both used traceable landlines to make their calls) were identified but could not be investigated further.

789. Although MGN denies it, the nature, length and content of private phone calls between the Duke and Ms Davy are self-evidently private in nature. The fact that it may be "obvious" that a girlfriend would be upset by a boyfriend enjoying lap-dances does not mean that the detail of Ms Davy's actual reaction and communications to the Duke, and their feelings about each other, are not private. They are certainly not outweighed by freedom of expression, given the unlawful way in which they were obtained.

DoS Article 24

790. This article entitled "DavyStated!" (byline: Dean Rousewell) was published by The People on 16 September 2007 (the Duke's 23rd birthday). It concerns a series of rows between the Duke and Ms Davy after she flew from Cape Town to spend time with him in London before starting her law degree in Leeds.

791. The private content is pleaded as: details of the Duke's relationship with Chelsy Davy and three arguments the couple had. MGN admits that the content was private but denies VMI or blagging.

792. The article describes in great detail the feelings of Ms Davy and what was said between them and what the rows were about. It purports to quote a "Palace source" at some length, and then what a "friend" said about Ms Davy's intelligence and aptitude for studying.

793. The nature of the content of most of this article, things said by the Duke to Ms Davy or vice versa, is by its nature material that was very unlikely to be available to third parties by lawful means. (The same may not be true of the comments attributed to a friend of Ms Davy.) The article refers to a "Palace source" but the Duke said, convincingly, that he never discussed the details of his relationship with anyone at the Palace (by which expression I took him to mean Royal servants rather than members of his own family or close personal friends). He was convinced that the "Palace source" is the product of VMI, and he accepted that his relationship with Ms Davy was strained at the time.

794. Although there is no call data disclosed from Mr Rousewell's extension, there is evidence of 9 calls from Mr Harpin's mobile phone and 2 calls from his extension to Rob Palmer in the previous week (though Mr Harpin is not bylined on the article).

795. MGN relied on a Sun article the previous day as the obvious source of the information about the Duke attending a Ricky Gervais performance with his brother rather than Ms Davy, and says that the source was otherwise a Palace source, but gives no detail about how the source would have obtained this kind of detail. There is no CR for a legitimate source.

796. No evidence was given on behalf of MGN to explain the provenance of this article, despite the fact that MGN denies rather than not admits that it was the product of UIG. Again, I infer that Mr Rousewell's or others' evidence would not have supported MGN's case that there was a legitimate source.

797. I conclude that, in the absence of some plausible explanation, this article was obtained by VMI of the Duke's or Ms Davy's or their associates' telephones, and by obtaining telephone call data. It seems likely that whoever was charged with obtaining information about the Duke and Ms Davy at each of the three newspapers will have been active following this publication, to see how the story line developed over the following days and weeks.

DoS Article 25

798. This article entitled "Hooray Harry's Dumped" (bylines: Zoe Griffin and Nick Owens) was published by the Sunday Mirror on 11 November 2007, about two months later. It reports that the Duke and Ms Davy had split up is concerned with allegations of drunkenness at a nightclub called Amika in Kensington, where the Duke had gone with friends.

799. The private content pleaded is: details of the breakdown of the Duke's relationship with Ms Davy.

800. The Duke raises questions about how anyone knew that he was going to be at that nightclub but from an email from Ms Griffin to Mr Saville, Mr Hamilton and Mr

Scott it seems that she received a report from someone unnamed at 11.30pm and Ms Griffin attended the night club at 12.30am and witnessed what happened. It also appears that there was information obtained on behalf of MGN about the booking and the bill by unlawful means. In any event, that is not the private content in issue.

801. The story line of Ms Davy "dumping" the Duke had first been published by the News of the World in its first edition on the same Sunday ("Chelsy dumps Harry; Exclusive"). There was considerable detail about the events leading to the break up. The story in the Sunday Mirror was only published in its third edition, so an hour or two after the News of the World. There is an invoice for BDI for £200 entitled "Project Harry" the previous day, which suggests that the Sunday Mirror was engaging in attempts at the time to uncover stories about the Duke. The invoice bears the name of Mr Hamilton and is signed "p.p. N.B." which suggests that Mr Buckley was still the person responsible for payment of such invoices.

802. There appear to have been continuous attempts to find out about the Duke's activities at this time, which led Ms Griffin to the night club. There were several calls made to Paddy Harverson the previous day, which are unexplained by MGN, though they might have been innocent, given Mr Harverson's role as Prince Charles's press secretary.

803. In my judgment, the content about the Duke splitting up with Ms Davy and "drowning his sorrows" and what Ms Davy thought about the Duke's "hooray lifestyle" and the fact that they had hardly seen each other recently was still private notwithstanding the slightly earlier publication by the News of the World. People who read the Sunday Mirror's edition on the date of publication are unlikely already to have learnt about the story from reading the News of the World. I reject the argument that the current state of their relationship was a matter in the public interest to publish, even if a proportion of the population found it very interesting to know about it.

804. However, I consider it more probable than not that the limited private content complained about in this article was taken from the News of the World article. It is not the main focus of the Sunday Mirror article, which was the drunken activities alleged to have happened in Amika, and the break up story line appears to be super-added, on short notice. I accept the argument that an MGN journalist would even in such circumstances have tried to find out more, or stand the story up independently, but there is no evidence of that having been done on this occasion. It seems very likely that there were attempts to cover the Duke's activities generally at around this time, but that the private information about his relationship was not obtained unlawfully on this occasion.

DoS Article 26

805. This article, entitled "Down in the Dumped" (byline: Emily Nash) was published by the Mirror on the following day, 12 November 2007. It reports that Ms Davy had suggested to the Duke a trial separation and that he had only visited her once

in Leeds, where she was studying. A quote from a "friend" says that they needed time out but were likely to get back together again.

806. The private content is pleaded as: details of a trial separation from Chelsy Davy.

807. The Duke said that by this point he and Ms Davy were not discussing anything with anyone, and that voicemails between them were very likely, owing to the difficulties in the relationship.

808. MGN's defence is that the information was already in the public domain and that there is no evidence of VMI or UIG in relation to the article. Much of the content had already been published the previous day, in particular in the Mail on Sunday, which had reported a trial separation, the Duke's single visit to Leeds and the possibility of getting back together. The content was also to be found in the News of the World and in Reuters coverage on the Sunday.

809. There is a considerable number of CRs for the date of publication, but none appears to be to a source for the information in the article. It is not clear how Ms Nash obtained some of the other information in the article relating to Ms Davy's course and unhappiness in Leeds, but that is not the material in relation to which the Duke claims.

810. Although one can imagine that someone at the Mirror would have endeavoured to stand up the story published over the previous weekend, there is nothing to support the Duke's case that details of the trial separation were confirmed by VMI or UIG, and no new detail was published by the Mirror. In my judgment, this is likely to be another case of lazy journalism.

DoS Article 27

811. This article, entitled "ER, ok if I drop you here?" (byline: Susie Boniface) was published by the Sunday Mirror on 2 December 2007. It reports that Ms Davy had spent the night at Kensington Palace and emerged at lunchtime the next day wearing a different outfit from the previous night.

812. The private content is pleaded as: details of his relationship with Chelsy Davy and her spending the night at Kensington Palace. MGN does not admit that the content was obtained by UIG, though Ms Boniface still works for MGN and was not called to give evidence.

813. The article alleges that Ms Davy had found texts from another woman on the Duke's phone, and that he had been begging her to take him back since they had split up.

814. The Duke said that photographers do not routinely wait outside the gates to Kensington Palace but admitted that anyone walking past could look up the driveway.

815. There is a CR in respect of Newsreel (Jonathan Stafford) headed "Chelsy" for £500, authorised by Mr Buckley, and one for £360 to the photographer who took the picture. MGN says that it is unable to explain to what the Newsreel CR

related. Call data shows that Ms Boniface called Stafford on 52 occasions in total from her extension and is named on one instruction to him for four flight blags. There are incriminating emails between Ms Boniface, Mr Stretch and Mr Saville disclosed relating to blagging and cracking mobile phones. In her autobiography, Diary of a Fleet Street Fox, she admits to blagging and phone hacking and opines that it is justified in some cases.

816. In my judgment, information about the whereabouts of Ms Davy and the arrangements for her to spend the night in Kensington Palace are likely to have been obtained by voicemail interception. Ms Davy's arrival and departure were carefully observed, and the photographer was not there by accident. The information about the state of the relationship and their sleeping arrangements (which were discovered by subterfuge) are clearly private and had not previously been put into the public domain.

DoS Article 28

817. This article, entitled "Harry fear as mobile is swiped" (no byline) was published by the Mirror on 26 July 2008. It reports that the Duke was pickpocketed in Lesotho while partying and that the incident raised security concerns, though his contacts and texts were password protected.

818. The private content is pleaded as: personal information about the Duke's mobile phone being stolen.

819. It is clear that this story had already been broken by the time that the Mirror published it. Agence France-Presse had reported it the previous day, as had the Telegraph, which said that royal sources had said that contacts and texts were password protected.

820. There are no invoices or CRs relating to this story, nor is there any new content. This is another instance of lazy journalism (to which no one was willing to put their name).

DoS Article 29

821. This article, entitled "Soldier Harry's Tali-Ban" (byline: Dean Rousewell) was published by The People on 28 September 2008. It reports that the Duke had been blocked from undertaking a second tour to Afghanistan on the ground that it was too risky.

822. The private content pleaded is: private information regarding the Duke's professional life namely being banned from going back to serve in Afghanistan. MGN does not admit that the content was obtained by UIG.

823. The article cites "royal sources" and one that claimed that the Duke was "absolutely desperate" to return to duty and believed that there was a vital job to do there. A source is quoted as saying that the Duke did not agree that he had proved himself and believed that if he missed out on the most dangerous missions he would be seen as a lightweight soldier.

824. There is a CR for Rob Palmer for £500 for this article, authorised by Lee Harpin.

825. The Duke said that the reporting was accurate and that he was speaking to those closest to him about his frustration, including his private secretary, Jamie Lowther Pinkerton, but he does not believe that anyone who had information contained in the article would jeopardise his career by talking about it to others, given that media indiscretion was the reason why he had been withdrawn previously. He rightly accepted in cross-examination that the article was not (solely) about his private life and that the question of whether he should serve on the front line was in the public interest. However, in so far as the article reported his personal feelings about the decision and ambition, that was in principle a private matter.

826. In my judgment, given the involvement of Mr Harpin and Mr Palmer, and the absence of any explanation from a witness called by MGN, there is likely to have been VMI or other UIG involved in reporting this story. The story was not already in the public domain, though issues about the safety of the Duke serving in Afghanistan were. However, the fact of the Duke's non-deployment was not private to him and further was in the public interest to publish. That does not, however, extend to what is attributed to a "source" about the Duke's personal feelings, which is the private information regarding his professional life about which complaint is made.

DoS Article 30

827. This article, entitled "HE just loves boozing & army SHE is fed up & is heading home" (byline: Grant Hodgson) was published by the Sunday Mirror on 25 January 2009. It reports that Ms Davy had dumped the Duke because he loved the Army more than her, and that Ms Davy would be returning to Cape Town once her course in Leeds was finished. It alleges that the Duke had spoken to his father about Ms Davy and his proposed helicopter pilot training.

828. The private content pleaded is: details of the breakdown of his relationship with Chelsy Davy and her view that he loves the Army more than her. This article is not admitted by MGN to be derived from UIG, even though it appears that Grant Hodgson still works for MGN.

829. Call data records show that Mr Hodgson called Mr Stafford of Newsreel 142 times and instructed ELI 141 times, together with 2,377 C&L instructions. There is an incriminating email dated 8 July 2005 from Mr Hodgson to Mr Stretch and Mr Saville, which shows steps that he was taking in order to enable voicemail interception or other unlawful activity to take place. Mr Hodgson's extension also called Ms Davy three times on the day before the publication: these could have been attempts to obtain a response directly from her or to access her voicemails.

830. The story was broken by the News of the World online on Saturday 24 January 2009 and then by the Telegraph and the Mail on Sunday, which also said that Ms Davy could not cope with the Duke's military career. But this article has added a considerable amount of detail about the reason for the break up ("the final straw came when he signed up for a 21-month helicopter training course"), the attempts

to rescue their relationship ("several tense meetings with the 24-year-old Prince last week") and the Duke's and Ms Davy's feelings, as well as acrimonious rows on a Mauritius holiday over the previous New Year period, an abandoned trip to South Africa and a conversation between the Duke and his father.

831. The Duke denied the accuracy of the story in so far as it blamed his career for the break up. That would suggest that his voicemails were not the source of the private material.

832. There is a CR to Newsreel for £100 – "Chelsy & Harry assist" and a later invoice from BDI – "Project Student", addressed to Nick Buckley. This was too late to relate to the article but it makes it clear that Ms Davy was being targeted. The People was at the same time instructing Rob Palmer under the reference "Harry booze bungles". In this frenzied atmosphere of trying to find out about the breakdown of the relationship, I have little doubt that the newspapers were trying everything they could to get more information.

833. I reject the argument that this kind of detail about the nature of the breakdown and the feelings of those involved were not private and that there was any proper public interest involved.

DoS Article 31

834. This article, entitled "What a way to Harry on" (bylines: Clemmie Moodie and Danielle Lawler on the 3am column) was published by the Daily Mirror on 26 March 2009 and reported that the Duke was "openly cavorting" with his new girlfriend, Astrid Harbord, in a hospitality box at Twickenham.

835. The private content of this article is pleaded as: information regarding the Duke's personal life, namely his relationship with Astrid Harbord and the couple's 'secret dates'.

836. The article reports that Ms Harbord was very physical with the Duke at the match and that, according to a "spy", they had been on a few secret dates over the previous 3 weeks and things were "going well".

837. Some of the content in this article also appears identically in a Press Association article circulated on the previous day – the Duke accepted that a sentence appeared to have been copied and pasted from that publication, but he denied the accuracy of much of the Mirror's article. He said that Ms Harbord was never his girlfriend but that they were in regular contact, by text, phone and voicemail, as they were in the same circle of friends and spent a lot of time together. The article was the subject of a complaint from the Duke's assistant press secretary to the editor on the basis that Ms Harbord was not at the rugby match.

838. There are 5 searches conducted by C&L earlier in the same month in the name of Astrid Harbord and her relative Charles Harbord, which suggest that someone at the Mirror (the contact named in the invoices is John Peacock, though the invoices are sent to Louise Flood) was anxious to obtain information about Ms Harbord. That was because there had been a good deal of publicity already about the Duke spending time with Ms Harbord, in articles published by 9 different newspapers

from 8 to 22 March 2009. There may well have been UIG in relation to Ms Harbord at an earlier time, but not in relation to the Duke's private information.

839. In my judgment, this 3am article was just lazy journalism, "our spy" was an invention, and no UIG was involved in relation to the Duke's private information, which in any event could not include what happened in a hospitality box at a public event.

DoS Article 32

840. This article, entitled "Harry's Date with Gladiators Star" (byline: Katie Hind) was published by The People on 19 April 2009. It reports a dinner date of the Duke and Caroline Flack at the house of a friend, Mark Dyer, in Fulham, and leaving together at about midnight in the Duke's protection police's people carrier.

841. The article reports that the Duke had dashed straight from training in Lincolnshire to be at the dinner party and quotes "an onlooker" about how they looked very happy together as they walked down the street, and that Ms Flack was just the Duke's type. It claims that the two met through their mutual friend, Natalie Pinkham.

842. The private content is pleaded as: the Duke's relationship with Caroline Flack and their attendance at a dinner party together. MGN admits that, apart from what could be seen in the street, the information was private, but it denies any UIG, arguing that payment records show that the photographs were purchased.

843. The photographs were taken by Ikon Pictures and a CR for £2,500 relates to their purchase by The People. They were also sold to the Mail on Sunday, who also published the story. There are then separate payments to Ikon for £1,000 and £1,500, authorised by Harpin and Embley and Moyland and Embley respectively, for additional services that are not identified.

844. The Duke said that this event was very private and was arranged by Mark Dyer, and that only the people involved knew about it. He and Mr Dyer had exchanged voicemails to arrange it. He was horrified to see the Ikon Pictures photographers literally lying in wait for them, beneath a car, when they arrived. He had been in contact with Ms Flack for a couple of weeks and the event was arranged at Mr Dyer's house so that it would be private. The Duke said that he and Mr Dyer had exchanged voicemails about the event, and only they and Ms Flack knew about the plan.

845. There is a draft of the article disclosed in an email of the evening before publication, which has more detail in about Ms Flack. This was removed in the final version, which is written on the basis of what an "onlooker" saw on the street. MGN's defence is that it is essentially a picture caption story, based on photographs that it bought. But this does not explain how Ikon knew to be at Mark Dyer's house in the first place, or what the other two payments to Ikon on the same day were for.

846. There are C&L invoices for "electoral roll" searches for Ms Flack and a "DBaseSearc" for £33 each showing an enquiry by Irfan Cernal on 21 April 2009

– these therefore appear to postdate the article and show continuing interest at The People in private information about Ms Flack.

847. In my judgment, it is obvious in this case that the likely whereabouts of the Duke and Ms Flack at Mr Dyer's house must have been obtained by VMI. Given the limited group who knew of the dinner, it is wholly improbable that Ikon knew of Mr Dyer's flat or the arrangements otherwise. Although the Duke said that Ikon had stalked him for 10 years, they could not realistically have followed him from Lincolnshire to Mr Dyer's and been there on his arrival.

848. The information published about a first dinner party date and a possible romance was not trivial, as MGN argued, even if there had been previous publicity given to the relationship. That it was not trivial is evident from the trouble that those involved had taken to maintain secrecy.

DoS Article 33

849. This article, entitled "Chelsy 'New Fella'" (byline: Katie Hind) was published by The People on 26 April 2009, and reports Ms Davy telling the Duke that their relationship was over for ever as she had found someone else. The article describes how the Duke had been "bombarding" Ms Davy with calls asking her to take him back, before she told him that it was true that she had a new man. It purports to state the words used in conversations between Ms Davy and the Duke, and quotes an onlooker at a party in Raffles and a "close pal" of Ms Davy. The article was accompanied by photos of the Duke and Ms Davy, but not the "New Fella", who was not named.

850. The private content pleaded is: the Duke's relationship with Ms Davy and his attempts to win her back by bombarding her with calls. MGN admits that the information was private but denies any VMI or UIG.

851. The Duke said that he would not have told anyone about his contact with Ms Davy at this stage and that she was similarly guarded. He said that he could not remember the evening that is described in the article.

852. The Mail on Sunday, the Daily Star Sunday and the Sunday Express all reported on the same day that the Duke and Ms Davy had been partying in near proximity to each other and the Star published a picture of Ms Davy and her new boyfriend. However, in Ms Hind's article there is more detail about what one had said to the other and about the volume of telephone calls between them. There is no explanation of how Ms Hind obtained the information.

853. MGN relies on an email dated 5 March 2009 from a redacted source to Mr Saville at the Sunday Mirror saying that they had made contact with Ms Davy and would pass on information. They say that the information therefore most likely came from a source close to Ms Davy. But there is no evidence of any information being passed on to The People at the time of this article. That is pure speculation by MGN who could have called evidence to explain where the private content in the article came from, but did not.

854. In my judgment, the most probable explanation is that The People had obtained call data or access to voicemails, or both.

Duke of Sussex 'Episodes'

855. In addition to the 33 articles that I have considered in detail, the Duke's case relies on a large number of other invoices. These are rather chaotically pleaded in the Re-Amended PoC and various schedules to it, and one (the 2004 Chinawhites invoice) was admitted by MGN. They are each relied on as being an occasion of UIG in relation to the Duke himself or his associates – in their cases in circumstances such as were likely to involve the misuse of the Duke's private information.

856. In the event, the invoices that related to the 33 articles were dealt with as part of the Duke's case for those articles. The claimants explained that they have not dealt with other invoices that relate to the other articles that were not tried. That leaves a rump of payment records that are unconnected with articles complained about, on which the Duke separately places reliance in this trial.

857. Hardly any of these invoices were introduced in written or oral opening submissions, considered in evidence, or addressed in oral closing submissions. They were addressed in written closing submissions by the claimants by means of a separate schedule of "Episodes of Separate UIG", produced by them without notice to MGN with their written closing submissions. This schedule comprises 61 different "episodes" in which UIG is alleged, some involving a significant number of payment records and some only one. 5 or 6 examples from the schedule were addressed very briefly, orally by Mr Sherborne, in his closing submissions in the Duke's case, but that was to show me how the Episodes schedule was compiled and how it should be read, using the submissions about the PIs involved. MGN addressed the invoices in a more conventional way (not having been given notice of the claimants' intention to do it differently) by adding their comments to the schedules of 115 invoices relating to the Duke and another 274 relating to his associates. These were necessarily in summary form and quite basic.

858. Again without notice of their intention to do so, the claimants produced a further version of these schedules in the course of their oral closing submissions, with an added column containing their reply to MGN's comments in the schedule concerned with records relating to the Duke himself, and a more generic response in the part concerned with records relating to his associates. Although MGN protested at this late addition to the written closing submissions, I allowed the claimants to rely on it, as it did not appear to add very much but just distilled the point(s) of difference between the parties. In many cases, this simply came down to whether a particular PI has been proved in the generic and/or individual cases to have been conducting UIG.

859. I record here frustration that, as a result of the claimants significantly overloading their case for what was only going to be a 7-week trial, the court has been left with a very substantial volume of material raising issues for decision on which very little help was given at the trial and no argument addressed, simply because

the parties did not have time to do so. In effect, a swathe of material has been dumped on the court with a request for a paper determination on top of all the issues that were properly ventilated and explored at trial.

860. I also record annoyance that as a consequence of the parties' inability or unwillingness to communicate sensibly between themselves during the trial, which recurred far too frequently, the parties' cases on the same issues have been presented in writing only in two totally different formats, which do not cross-refer to each other, and without MGN having an opportunity to respond to the claimants' Episodes document in the way that they might have wished to. The consequence is that I have had to spend extra time trying to do the cross-referencing. The blame on this occasion lies squarely with the claimants: had their intention to re-present the invoices claim as Episodes been raised, it is likely that I would have approved it (as it helps to make some sense of what individual payment records represent, in context) and given MGN time to respond to that document, instead of expending its efforts on responding to the previous schedules.

861. I have however, done the necessary cross-referencing exercise, so that in relation to the records relied on for each Episode, I can refer to MGN's case and response. That said, it is not possible to do more than a summary and short determination, by evaluating the credibility of the points made in the light of my findings about the PIs involved. Many of the allegations have zero credibility and seem to have been included in a list indiscriminately.

862. One issue that arises on numerous occasions is the right approach where the PI (usually a freelance or 'stringer') is operating abroad. I am in no position to judge whether what was done abroad was illegal under local law, and the question of how English private international law applies in relation to activities conducted abroad was not addressed at all by the claimants. I will therefore only find that the payment record is evidence of UIG if it is clear that the work must have been instructed by the journalist or editor (from England or Wales) knowing that what was requested was unlawful under English law as a misuse of the Duke's private information.

863. A second general point of common application is that the Duke complains about many payments for C&L "Elect Roll" searches and "DOB" searches against his associates. These may well have been done with a view ultimately to finding out information about him, but the results of the initial searches would not have produced that information, nor misused any of his private information. The Duke's only legitimate complaint in such cases is the subsequent UIG, if any, that made use of this initial information, or further information thereby obtained, to procure unlawfully *his* private information. He has no claim in respect of the initial searches against his associates that will only have produced *their* private information.

864. In order to reduce the length of the main judgment, I set out my decision in the UIG Episodes Schedule attached.

Conclusions

865. I have only a partial picture of all the articles about which the Duke complains in this action. I have reached conclusions based on the 33 articles and UIG Episodes considered at trial about the occasions when VMI or other UIG directed at the Duke took place. It is difficult to reach conclusions about the frequency with which he was targeted save for the conclusions that I have already indicated. Given that I only have an incomplete picture, it is difficult to make an overall award of damages to reflect the extent to which the Duke was targeted and subjected to hacking and other UIG generally. I will address the damages by working backwards from the articles where I have found that unlawful activity must have taken place to give rise to the publication, and work from those invoices in the UIG Episodes where I have found that unlawful searches or blagging were conducted and directed at the Duke, either personally or through his associates.

866. My overarching conclusion is that VMI of the Duke personally did not start until late 2003 at the earliest, and then did not happen on a regular basis, but only in a more targeted and controlled way, subject to the oversight of a few journalists only (and perhaps only conducted by one at each newspaper). VMI of the Duke's associates probably started in 2002. Once started, it would have continued, as and when needed, throughout the period 2002-2011 (with perhaps a hiatus of several months after August 2006), but not on a continuous or even regular basis.

867. So far as the Duke personally was concerned, his phone was probably targeted on occasions when there was an important storyline that MGN journalists were chasing, such as the ups and downs of the Duke's relationship with Ms Davy. It was done carefully and with control (more so after 2006), given the evident risks, but it nevertheless took place on occasions.

868. Less care was taken with Ms Davy's phone. She and her family and friends were clearly not considered off limits and I am satisfied that she was subjected to UIG and VMI regularly, as a means of obtaining information about their relationship and the Duke's life.

869. The same applies to the Duke's other girlfriends and his close friends, in particular Guy Pelly, Natalie Pinkham and Tiggy Legge-Bourke, who were regularly targeted with a view to obtaining information about the Duke. I am satisfied that they would have been subjected to VMI and other UIG.

Part VI: The claim of Michael Turner

Contents

- Conclusions (1064-1069)

Mr Turner's claim and his evidence

870. Michael Turner is well known as the actor who (under the stage name Michael Le Vell) for many years has played the part of Kevin Webster in *Coronation Street*. As such, he was of some interest to most tabloid newspapers, including MGN's three national titles. Interest in him increased markedly when in 2011 he was arrested and charged with a serious offence (Articles 18-28 relate), of which he was later acquitted.

871. Mr Turner's claim spans most of the period for which the claimants alleged a widespread and habitual use of phone hacking and other UIG, and approximately coincides with the period that I have found proved. His first article is January 1995 (though in fact his claim asserts that unlawful activity started in 1991) and the last is November 2011. I have already found that there was no widespread and habitual use of phone hacking before 1998, but that there were occasions on which VMI and UIG were used before then. I have also found that phone hacking and UIG reduced in volume after 2006, so that it became less widespread than it previously was during the peak years of 2003-2005; but I have found that it was still widespread up to and including 2011, albeit less so than in 2003-06.

872. Mr Turner's claim is in the tort of misuse of private information only and is based almost exclusively on the content of the 28 articles about which he complains. The claimants' closing submissions really only focussed on these, but it is understood that his case is advanced in the context of the generic case and the findings that I have made in that regard.

873. There is no call data in relation to Mr Turner's phone numbers to support his claim and only very little in relation to one of his associates, Alan Halsall. There is no evidence that Mr Turner was in anyone's Palm Pilot or on Mr Evans' back pocket list or other lists of names for regular hacking.

874. Mr Turner relied originally on six payment records that have a variant of his name on them, only two of which clearly related to him. Three ELI invoices clearly did not relate to Mr Turner, but despite MGN's case as to why they did not being made clear before the trial started, there was no concession from Mr Turner's legal team at any stage before closing submissions. There were also six payment records that related or might have related to associates of Mr Turner. There were no UIG Episodes relied on in the same way as in the Duke of Sussex's and Ms Sanderson's claims, and eventually there were only 4 invoices relied upon that did not result in the publication of an article on which Mr Turner relies.

875. Mr Turner referred frequently in his witness statement to the likelihood of voicemails having been left and intercepted, but it was clear from his cross-examination that he cannot actually recall having left a voicemail on a particular occasion, or in relation to a particular matter. That is unsurprising: the events in some cases were more than 25 years ago and even the more recent ones, 12 years

ago, and he accepted in relation to most articles that he had not read them at the time they were published, so he would not have thought about it at the time.

876. Mr Turner did confirm that he was in general a heavy user of mobile phones and voicemails. He said that he would usually have his phone turned off while he was at work, so often received voicemails. He described how he was the "Union Rep" for the Coronation Street cast and as such was often the recipient of a lot of private information relating to his co-stars, which he felt made him a target for MGN. He did not recall having re-set a PIN code. His claim form and his witness statement contained the same, somewhat formulaic assertion of suspicious telephone-related activity on his mobile phone that appears in every claim in the MNHL. Mr Turner said that he was constantly surprised at photographers turning up at obscure locations, when hardly anyone knew that he was to be there. However, he never suspected that he had been hacked before his friend, Sally Dynevor, told him in 2020 that he might have been.

877. MGN's defence is that there is no evidence at all of voicemail interception directed at Mr Turner and that, in many cases, the private information asserted was already in the public domain. That would be a complete answer were the claim based on publication of articles, but it is not: it is based on the underlying UIG. If MGN independently conducted invasive UIG into Mr Turner's private information, by phone hacking or blagging, whether independently of another newspaper or to stand up or add to that paper's story, it is usually no answer for MGN to say that the information had already been published.

The Articles

MT Article 1

878. This short article entitled "Kev's dressed to thrill!" (no byline) was published by The Mirror on 16 January 1995. It concerns Mr Turner's forthcoming appearance in a theatre in Chester.

879. The private content pleaded is quite narrow: private information about Mr Turner's professional life, in relation to a theatre role he previously turned down and which was the subject of voicemail messages left by or for him.

880. The article says (correctly) that Mr Turner turned down the role because he did not want to strip naked on stage, and that only his wife Jeanette and the theatre company knew about this.

881. In fact, Mr Turner had given an interview to the Manchester Evening News and had disclosed this information (the play was *Equus*), which was published by that newspaper on the same day as the Mirror article. The information complained about was therefore no longer private at the date of publication.

882. Even if there was UIG, which is far from clear, in 1995 there was no cause of action for misuse of private information (see Part IX below).

MT Article 2

883. This article entitled "Baby joy for Kevin: Actor Michael Le Vell becomes a father" (no byline) was published by The People on 1 October 1995. It concerns Mr Turner being present at the birth of his daughter, who was a week overdue.

884. The private content pleaded is: private information about the birth of Mr Turner's daughter, her gender and the fact that she was overdue.

885. Mr Turner had in fact publicised the fact of his wife's pregnancy and the due date by giving an interview to The Sun in March 1995. Shortly before the birth, they attended a friend's wedding, which was reported by the News of the World, which commented on Janette's pregnancy. Mr Turner accepted that his wife would have discussed the impending birth with others at the wedding. Only the date of the birth, Mr Turner's presence and the gender of the baby were therefore in any sense private.

886. Mr Turner was unable to say for whom he might have left a voicemail about these matters prior to the date of the article, but it is a safe inference that he would have told his family and friends. He did not say that he was keeping the relevant facts from anyone or seeking to keep them confidential.

887. There is a SAFS payment recorded for Jonathan Stafford for work in the month ending 31 October 1995, but no indication that he was working on this story. As explained in Part V above, it is not sufficient for the claimants to point to a monthly invoice of this kind without some further evidence that Mr Stafford was involved in relation to the article.

888. Even if there was UIG, which is not clear, in 1995 there was no cause of action for misuse of private information (see Part IX below).

MT Article 3

889. This article entitled "Street Star's Safe House" (byline: Brian Roberts) was published by the Sunday Mirror on 20 October 1996. It concerns the decision by Mr and Mrs Turner to leave their isolated country house and move into Hale, and the fact that his niece, Jackie Green, had given each of them £100,000 following her lottery win, which had helped them to move.

890. The private content pleaded is: information about a burglary that occurred at Mr Turner's family home, and in relation to financial assistance he received from a family member to purchase a new property.

891. In fact, details about the burglary had already been published by the Sunday Mirror when it occurred, in 1993. Mr Turner spoke to the journalist on that occasion and he was quoted in that article. But this article goes further in saying that Janette had never got over the burglary and always felt vulnerable.

892. As for the lottery win, that also attracted publicity earlier in 1996, with quotations from Mr Turner. The fact that Ms Green chose to share her winnings with her large family, and that Mr Turner was one of those benefited, was also the subject

of an article in the Mirror on 8 July 1996. The amount that he received (and Janette's benefit) were not covered though.

893. There is a payment of £56.40 to Severnside recorded on the SAFS system for the date of the article, with a description "M Turner aka M Lavel Trac", which suggests a trace or attempt to connect an up-to-date address with Mr Turner. Eight days later there is a record of a payment of £94.01 for a "Turner Special Invest" but that was charged to the Mirror. Neither record identifies that it was Taff Jones who was providing the services, though this is probable given my conclusions about Severnside at that time and "specials". Mr Turner says the payments demonstrate the level of interest in him at that time, and that Severnside should be assumed to have provided his mobile telephone number to MGN.

894. Mr Turner seeks to rely on the existence of two payments to Christine Hart by the Sunday Mirror for the week ending 21 October 1996, of £485 and £290, recorded as being for "7 x Trace Inqs w/e 21/10/" and "4 x Trace w/e 21/10/96" respectively. Given the identity of the payee, this may well indicate UIG being carried on, but there is nothing to connect it with Mr Turner.

895. The byline, Brian Roberts, was also bylined on five articles that were admitted in Gulati to have been the product of VMI and a further four articles in other cases – but the Gulati articles dated from 2002 and 2003, and there was no evidence about when and where the other admitted articles were published. Although there is therefore evidence that Mr Roberts wrote articles with the benefit of information obtained by VMI, this does not prove that he did so in 1996, which was very early.

896. Even if there was UIG directed at Mr Turner at this early time, which is far from clear, in 1996 there was no cause of action for misuse of private information (see Part IX below).

MT Article 4

897. This short article titled "Re-tyred mechanic" (on the Matthew Wright column) published by the Mirror on 19 November 1996 concerns Mr Turner's embarrassment at being unable to mend a flat tyre and having to call out the RAC. It purports to set out what Mr Wright had been told by Mr Turner:

> "'I once had a flat tyre and had to get the RAC out to change it for me', Michael, 31, tells me. 'It wasn't quite as bad as it sounds because they had difficulty getting the tyre off the wheel. But I still felt an idiot'"

898. Mr Turner denied saying that to Mr Wright but accepted that he might have said it to somebody, possibly a freelance journalist. There is a CR for an agency called Starplus Features in respect of the publication date.

899. While Mr Wright has not been called to explain when he had this conversation with Mr Turner, it appears inherently likely that the Mirror paid an agency for the story. There is no invoice that appears to relate to this publication other than Starplus features.

900. In any event, it is difficult to see how this information could be regarded as information in respect of which Mr Turner had a reasonable expectation of privacy. I agree that it is trivial.

901. Further there was no cause of action for misuse of private information in 1996 (see Part IX below).

MT Article 5

902. This article titled "Love sizzles for Kevin and Sally" (no byline) was published by the Sunday Mirror on 2 November 1997 and concerns the story in the intended Christmas Day episode of Coronation Street.

903. This article contains no private information about Mr Turner and is only about the plot line that involves his character in the soap opera.

904. However the unidentified author obtained the story (which seems most likely to be from someone on set when it was being filmed), there is no claim that can be brought by Mr Turner in relation to it. Moreover, there was no cause of action for misuse of private information in 1997.

MT Article 6

905. This short article titled "Mike's Baby Break" (in the Matthew Wright column) was published by the Daily Mirror on 11 February 1999 and concerns Mr Turner and his wife expecting another baby in 2 weeks' time and Mr Turner being given 6 weeks off filming to help with the baby. The article also refers to a viral illness that Janette had suffered before her first child was born.

906. The private content is pleaded as private information about the birth, the time that Mr Turner would be taking off and medical information about his former wife.

907. The article itself states that Mr Turner had only told family and close friends, and a quotation about his excitement and intention to be present at the birth is attributed to a "pal". He said he assumed at the time that the information had come from the Coronation Street press office. Ms Sinclair said in evidence that this was a time when many stories were being published without the knowledge of the press office or the subject of the story. It was also close to the time identified by Mr Hipwell by when phone hacking at the Mirror was rife.

908. Mr Turner's case on VMI depends on Severnside's prior involvement for two newspapers in relation to him, and the assumption that it provided Mr Turner's mobile phone number.

909. The information about the pregnancy was private because, as the article implicitly acknowledged, Mr Turner and his ex-wife had chosen to keep it so. The information about his ex-wife's illness had however been put into the public domain by Mr Turner himself in a conversation with Woman's Own magazine, and was publicised by the Press Association. It was no longer private. Mr Turner's paternity leave was, at that time, probably still a private matter between

him and Coronation Street, but it was trivial and normal, and would soon have become apparent in any event.

910. Mr Wright, who is the byline on 66 "non-admitted" (rather than "denied") articles in the MNHL, and who was named by Mr Hipwell in his evidence in *Gulati* as one of those who were involved with phone hacking on the showbiz desk of the Mirror, has not given evidence to explain the source. Neither has any of the other 6 journalists identified Mr Hipwell. Nicola Methven made a witness statement but at a very late stage MGN decided not to call her, for reasons that were unexplained.

911. The source could have been a friend or contact at work or a member of the press office, but equally it could have been someone listening to voicemails. It is material to note that Mr Wright's column did invite readers to submit gossip and provides a phone number for him, Polly Graham and James Scott (who were also named by Mr Hipwell), and an email address. Even if supplied in that way, the members of the showbiz desk would very likely have tried to stand it up or obtain further information by unlawful means. It is clear that at this time the showbiz desk and Mr Wright were showing a particular interest in Mr Turner.

912. However, the article is pre-2 October 2000, so there is no cause of action in misuse of private information as pleaded.

MT Article 7

913. This article titled "Quality Street" (in the Matthew Wright column) published by the Mirror on 22 May 2000 concerns Mr Turner's move to Bowdon in Cheshire and identifies the property. The story is attributed to "my spies" and "an insider" by Mr Wright.

914. The private content pleaded is purchase of a new home and Mr Turner's family's living arrangements while waiting to move there.

915. Although the location of the house would have become known to local people in time, publication of the address in a national newspaper is a gross invasion of Mr Turner's privacy. But Mr Turner's case is based (as it has to be) on any underlying information gathering, not the publication.

916. Again, the case on UIG is inferential and the article is suspicious, but in any event the article pre-dated 2 October 2000 and so no cause of action as pleaded exists.

MT Article 8

917. This short article in the Surveillance section of the Mirror's 3am column (bylines: Jessica Callan, Eva Simpson and Polly Graham) was published on 6 February 2001. It merely records that someone has spotted Mr Turner at Costco, Old Trafford, buying Pampers and pitta bread.

918. The private content pleaded is private information about Mr Turner's whereabouts on a private outing, demonstrating continued surveillance of him.

919. The 3am column was the subject of evidence from Mr Hipwell, Mr Scobie and Mr Wegg-Prosser, as well as observations from Mr Seymour and Ms Cantor, which I have already addressed as establishing that UIG including VMI was being used extensively and habitually on that desk. Ms Callan is bylined on 32 admitted articles in the MNHL, Ms Simpson on 29 and Ms Graham on 13, with 10, 10 and 5 for each respectively where VMI was admitted in 2014 and 2015 at the time of the *Gulati* trial. That speaks for itself about what was happening in the 3am column, though only one of these admitted articles was before 2002, and it does not mean that every story reported in the column was obtained by VMI. In particular, the Surveillance section was most likely to be the product of readers phoning the desk or emailing - as the column invites them to do - with sightings of celebrities.

920. Mr Turner said in his witness statement that it was likely that he would have left Janette a voicemail to say where he was going. Challenged about this, he accepted that he did not read the article at the time, and said that he was not suggesting that the Mirror knew in advance that he was going to Costco. In my judgment, he could not possibly have recalled, when he was shown the article by his solicitors prior to making his witness statement, that he likely left a voicemail for his wife to tell her he was going to Costco on that occasion. As with the witness statements of the other claimants, it is clear that to a significant extent these statements were wrongly used as a means of asserting a case, rather than giving evidence of fact compliant with Practice Direction 57AC.

921. There is no evidence to support a case of physical surveillance of Mr Turner at this time. In my judgment, this was merely a public sighting that was reported and no UIG was involved.

922. If so, there is no reasonable expectation of privacy in any event, as Mr Turner as a celebrity is subjecting himself to the public gaze by being visible in public and the shopping is not in the nature of a family life occasion. (It might be different if photographs or information was obtained by deliberate surveillance or stealth.) Mr Turner accepted that he was famous and one of the most well-known faces and likely to be recognised by many people.

MT Article 9

923. This short article is also a report in the Surveillance section of the 3am column published on 18 April 2001 and reads "Corrie's Michael Le Vell in Knightsbridge branch of Boots with his daughters".

924. The private content is pleaded as his whereabouts on a private outing with his daughters (though Mr Turner pointed out in evidence that he has only one daughter) demonstrating continued surveillance of him.

925. In this case, the sighting of Mr Turner with his children in Knightsbridge was proved by MGN to have been made by a member of the public, who was paid £20 for his information. Mr Penfold gave evidence that he was a freelance journalist unconnected with MGN and he had phoned in scores of such sightings over the years. Mr Penfold said that although owing to the passage of time he could not positively remember the occasion when he saw Mr Turner, he would have seen

him by chance while he was down in London to cover a press event, at a large hotel or venue nearby.

926. Mr Turner said that he did not dispute Mr Penfold's account. The fact that Mr Penfold happened to be a freelance journalist does not change the position that this was a public sighting and no UIG was involved.

927. Given Mr Turner's concession, it is remarkable that his Counsel pursued this article in closing submissions. The argument is that Mr Penfold's evidence was vague and that 3am's reputation should lead me to conclude that the preparation included UIG "most obviously in terms of Mr Penfold being told where Mr Turner was likely to be, or addition by the 3AM column of detail to any information provided by Mr Penfold." Neither of these possibilities were put to Mr Penfold in cross-examination and therefore should not have been advanced in closing submissions.

928. I accept Mr Penfold's evidence, as Mr Turner properly did having heard him give his evidence, and reject the claim based on this article.

MT Article 10

929. This short article is also a report in the Surveillance section of the 3am column published on 20 June 2001 and reads "Michael Le Vell at the Trafford Centre in Manchester pushing a baby in a push chair" (no photograph).

930. The private content is pleaded as his whereabouts on a private outing with his son demonstrating continued surveillance of him.

931. Mr Turner said that his son would have been about 18 months old at the time and pointed to two CRs for the sum of £20 each "Spotted x 1" for the date of this column. The Surveillance section had three sightings on that day. Mr Turner's statement said that this demonstrated constant surveillance of him, but in cross-examination accepted that he got a lot of attention pushing his young son around and that someone in the Centre who saw him could well have called in.

932. Mr Turner argues that the absence of a positive explanation in evidence from MGN should lead the court to infer, based on 3am's proven track record, that UIG was used. However, the CRs in this case suggest that, as in the case of Mr Penfold, this was a sighting from a member of the public and no UIG was involved.

MT Article 11

933. This short article is another report in the Surveillance section of the 3am column published on 6 December 2001 and reads "Michael Le Vell looking miserable in the underwear department of Selfridges in Manchester".

934. The private content pleaded is Mr Turner's whereabouts on a private outing, demonstrating continued surveillance of him.

935. Mr Turner said that he was shopping on his own and was likely to have left a message for Janette to tell her where he was and what he was getting her for Christmas. In cross-examination he accepted that Selfridges was a popular and

busy department store, and that he would not have said that he was looking miserable in a voicemail.

936. As with the previous Surveillance sightings, it is more likely than not that this was a public sighting where no UIG was used. I do not accept that Mr Turner could recall leaving a voicemail for his wife about that expedition.

MT Article 12

937. This article entitled "Its Breastlife" (byline: Paul Martin "Ireland's No 1 showbiz editor") was published in the Irish edition of the Daily Mirror on 29 March 2003 and is about some of the cast of Coronation Street attending a *Westlife* concert at a nightclub called Lucid, in Manchester.

938. The private content pleaded is private information about Mr Turner being refused entry to the concert.

939. The article is principally about a fan undressing on stage interrupting the concert, but it lists a number of women Coronation Street stars said to have been present and that "their male co-stars including Michael Le Vell (Kevin Webster) and Steven Arnold (Ashley Peacock), Sean Wilson (Martin Platt) missed the fun. They were all stopped at the red ropes by security who insisted they couldn't come in without passes."

940. Mr Turner said that it was true that he was best mates with Mr Arnold and Mr Wilson but that he had no recollection of this occasion and did not think that it happened. It was more likely to have been something they joked about in voicemails or on the telephone. In cross-examination he confirmed that he did not go to the concert – he and friends might have chatted about it, but he decided not to go. He was not sure whether his friends went.

941. This presents the claimants with some difficulty, as their case was premised on the fact that Mr Turner was turned away, as reported. It appears therefore that Mr Turner's case, which was not pleaded as concerning such private information, was based on voicemails that he might have left or that others might have left for him about arrangements to go to the concert, about which there was no particularity.

942. Mr Paul Martin, whose byline was attached to the article, came to court to give evidence, in order, he said, to exonerate himself from the suggestion that he had engaged in UIG to get the story. He was the showbiz editor of the Irish Daily Mirror from 1998 to 2012, and also the editor of the Irish Sunday Mirror from 2010 to 2012. He said that he had never engaged in VMI nor ever paid for the services of a PI and "I am proud to say that I have never paid any third party for any information for a story throughout my career as a journalist". This rather hubristic statement was backed by an assertion that he was an honest person who was astonished to be sitting in court, an old-fashioned journalist who would contact the individuals concerned in the stories or the sources directly for comment. He said that his chief sources were usually the celebrities themselves, including the members and manager of *Westlife*.

943. He said that after the concert that he reported, the lead singer of *Westlife*, Mr Filan, called him to give him the gossip about the concert, including the information that Mr Turner and other Coronation Street stars had been refused entry. Mr Martin believed that Mr Filan would have been told about this by the band's head of security.

944. Mr Martin was then cross-examined by Mr Sherborne on his involvement in other stories. These included the late Gerry Ryan and personal papers formerly belonging to Mr Ryan concerning his partner, which the Irish Daily Mirror had published. Mr Martin first asserted that someone had brought these in, and then a different account that he had given in an interview was played to him, in which he accepted that he had raided the bins outside Mr Ryan's home and obtained the documents in that way. The claim that Mr Ryan's partner had consented to the publication was then proved to be false, both by an apology that the Mirror had published in the UK and by Ms Verwoerd's own published account (which Mr Martin described as "her truth").

945. Mr Martin admitted that he was convicted in 2017 of benefits fraud. He accepted that he had probably written 40 articles about Brian McFadden, at one time a member of *Westlife*, in relation to which Mr McFadden had brought a phone hacking claim, which was settled by MGN, and 61 articles about Kerry Katona, who had brought a phone hacking claim against MGN, and also articles about Cheryl Cole, George Michael and Natalie Imbruglia, who similarly had brought phone hacking claims. He denied that he had a regular journalistic practice of phone hacking and said that he had never hacked.

946. As to the storyline in article 12, he asserted that the names of the Coronation Street stars who entered and those who were refused would have been passed by the doorman to the head of security, who would have told Mr Filan, who told him the next day.

947. Mr Martin was then shown CRs for three articles about Kerry Katona on which he was bylined, which showed that contributors had been paid in respect of the stories, one of which was a press agency and two were freelance journalists. Asked how this squared with his statement that he had never paid a third party for a story, Mr Martin asserted that these were agencies and that the newspaper would have just thrown the filings to him as a young journalist and told him to top and tail them. Since Mr Martin was at the time the editor of the showbiz desk, this seems inherently unlikely.

948. I regret to say that I feel unable to place reliance on any evidence that Mr Martin gave. He was caught out lying on two occasions and the explanations that he gave were inherently implausible. Given that there is no pleaded allegation of phone hacking against Mr Martin, it is inappropriate for me to reach a conclusion on that, but I am satisfied that the information in the article was likely to have been the product of something that would be unlawful if done in England and Wales. Mr Martin is a citizen of the Republic of Ireland and events of which complaint is indirectly made may well have been carried out there and not in England and Wales. This was a matter that the claimants at no stage addressed and it would be wrong for me to make a finding about the relevant law in Ireland.

949. Ultimately, the only private information complained about in the pleaded case was Mr Turner being refused entry, which he said did not happen, not what was said to or by Mr Turner in voicemail messages (eg that he did/did not want to attend). I find, on the basis of Mr Turner's evidence, that the information was simply incorrect as regards Mr Turner, and therefore (apart from the jurisdictional issue) no case of misuse of that private information can be proved. There may well have been unlawful gathering of information about the attendance or refusal of entry of his friends – but there is no sufficient evidence that his voicemails were hacked in England and Wales.

MT Article 13

950. This short article is another Surveillance piece in the 3am column published by the Mirror on 2 August 2003 which said: "Corries Michael Le Vell walking around Padstow in Cornwall with his family".

951. Mr Turner said that there were three CRs for this date, all headed "Spotted" or "Spotted x2" for £20 and £40 respectively. He claimed that this showed that MGN was paying people to track his family down, but the sums paid are self-evidently not for tracing or surveillance work but a small sum for reporting a sighting to the 3am team, as for previous articles.

952. MGN also points to an article that appeared in The People almost a month later, written by Terry Lloyd, about celebrities holiday in Cornwall, which states: "The first star we bumped into, in Padstow, was Coronation Street's Michael Le Vell (Kevin Webster). Sally and the Weatherfield garage were a world away as Michael wandered around the colourful harbour clutching a cuddly toy lion with his real-life wife and kids". There is a photograph of the author and his sons at the Jamaica Inn. Whether Mr Lloyd would have provided the sighting to The Mirror is uncertain: no evidence was called but MGN seeks to infer it.

953. There is nothing in the evidence to displace the obvious inference that this was a casual sighting of Mr Turner.

MT Article 14

954. This short article is another Surveillance piece in the 3am column published by the Mirror on 14 January 2005 which said: "Michael Le Vell, from Corrie, shopping in the Trafford Centre, Manchester".

955. As with previous pieces of this kind, there is nothing to displace the inference that this trivial piece of information was sent in by someone who observed Mr Turner there. There is no evidence to support a case at this time of constant surveillance of him. If there were, the 3am column would presumably have been overrun with sightings of him. But this was only the third in three years.

MT Article 15

956. This article entitled "Corogaytion St: Schoolgirl Pic Gets Kev New Male Fans" (byline: Bob Roberts) was published by the Mirror on 12 April 2005. (It is considered that the byline was in error and should be Brian Roberts, as Bob

Roberts was the Mirror's deputy political editor, who was covering the 2005 general election at the time.)

957. The article reports the response to the publication of a photograph published by the Mirror on 19 March 2005, taken at the time of a remake for charity of a video of a famous Queen song, I Want to Break Free. Mr Turner and other Coronation Street stars dressed in drag for the occasion. The response was a good deal of attention and attempted contact from the gay and transvestite communities, who were allegedly led to believe that Mr Turner was a bisexual cross-dresser. The article includes an image from the original Queen video and the photograph of Mr Turner dressed as a schoolgirl.

958. The private content pleaded is: private information about Mr Turner becoming a "gay icon" after appearing in the sketch, and letters that Mr Turner received from fans as a result. This content was alleged to have been the subject of voicemails left by or for Mr Turner.

959. Mr Turner said that the occasion was a private event filmed at an ITV studio on a Saturday and he did not know where the photograph had come from (though this had previously been published, as already explained). He agreed that he did receive a lot of gay fan mail after the original publication and that he spoke to friends, family and colleagues about the fan mail he was receiving, which would also have been mentioned in voicemails he was receiving or leaving. He was particularly surprised that things that he was saying at the time, e.g. that he "sees himself as a man's man and is a bit shocked", were appearing in the newspaper (though he did not see the article at the time).

960. The article includes quotations attributed to "a Coronation Street source" and "Our Corrie mole" commenting on the content of the fan mail and Mr Turner's reaction to it.

961. Mr Halsall gave evidence about this event and said that he found it strange that the media knew the information underlying the photograph, namely that it was done for charity and as a tribute to Queen. He recalled saying to Mr Turner at the time that it was bizarre that journalists seemed to know more about it than they did, but now it seems clear that they were listening to voicemail messages "when we were making arrangements about this". However, it is unclear how arrangements about the filming would have produced information about the content of fan mail reacting to the later publication of it.

962. Mr Turner relies on the fact that Brian Roberts was bylined on 5 admitted *Gulati* articles and 4 other articles in the MNHL. He instructed Jonathan Stafford and Christine Hart as well as LRI and C&L. Jonathan Stafford billed the Mirror £8,005 (inc VAT) for the month in which this article was published, but there is only evidence that Mr Roberts used Stafford on one occasion, plus one call from his mobile phone, so it cannot be assumed that Stafford was involved in research on this story.

963. MGN's defence is that the story came from a news agency, Media Liaison Services, with established confidential sources at Coronation Street, and that the information is not private by its nature.

964. In my judgment, the fact that Mr Turner was willing to discuss publicly (many years previously and some years later) being a gay icon does not mean that private mail that he received from fans was not private, however mistaken or amusing the content could be made to seem. It did not cease to be private in nature because he chose to discuss the contents with a few chosen friends and family. The privacy is however marginal, as it does not disclose anything about Mr Turner's own sexuality.

965. If Mr Turner was, as he says, talking to friends, family and colleagues about the fan mail, there is an obvious possibility that it was one of them who told someone else and the information ended up with someone who gave it to Media Liaison Services. It is not an agency that the claimants allege acted unlawfully. The £600 payments suggests that what was provided was something substantial.

966. However, by this time, when UIG was at its peak and the Mirror (as well as The People and the Sunday Mirror) were fixated with the lives of the Coronation Street stars, and phone hacking of some of them has been admitted by MGN previously, I consider that it is probable that the information supplied by the agency would have been followed up and that it is likely that this involved some VMI of others' phones to pick up what Mr Turner was saying about the communications he had received and his feelings about them. I therefore find that there was some private material, in the form of Mr Turner's comments on the event to others, that were picked up by VMI.

MT Article 16

967. This article entitled "Panic in the Street; Every Star Fears the Axe" (bylines: David Jeffs and Katie Hind) was published in the Eire edition of The People on 12 April 2009 and relates to ITV cutting its budgets, and feared job losses at Coronation Street.

968. The private content pleaded is: in relation to Mr Turner's professional life, in particular job security and a potential pay cut, as well as a new financial role he had taken on.

969. There had been a considerable volume of publicity already given to the proposed ITV cuts and concerns about the loss of roles played by various actors on Coronation Street. However, this article purports to quote Mr Turner and other stars about their concerns – but he denied ever having given an interview on this subject to The People, and denies that some of the words used ("reign supreme") are words that he would have used. Subject to that, he said that the quotations are the sorts of things he was thinking and saying privately to his friends and colleagues at the time, including by voicemail.

970. The article also disclosed that Mr Turner had become a board director of Ratio Money, which helped consumers who had been "ripped off" by lenders.

971. It is notable that this article is a full four years after the previous article complained of by Mr Turner. If MGN were routinely hacking Mr Turner and his associates by 2005, it seems that they must have stopped, or at least significantly reduced. There are some emails relating to Mr Turner, but nothing about which

he complains. The bylines on the article are also new to Mr Turner. Neither of them gave evidence.

972. Articles about the proposed ITV cuts and the risk to Coronation Street had been published by The Guardian on 14 February 2009, the Sunday Express on 15 February 2009, the Daily Star on 16 February 2009, the Manchester Evening News on 3 March 2009, the Daily Telegraph, The Sun amd The Daily Star on 4 March 2009, the Daily Mirror and The Sun on 5 March 2009, the Daily Star, the Guardian and the Daily Telegraph on 9 March 2009, the Express on Sunday on 15 March 2009 and, belatedly coming to the party, The People on 22 March 2009, in the shape of an interview with a cast member who expressed concern about her job security.

973. The People obviously considered that there was more mileage in the story and turned some big guns onto it, in the shape of Mr Jeffs and Ms Hind. Ms Hind was in email contact with Bell Pottinger North, PR consultants for Ratio Money, who were apparently engaged in trying to locate and interview Mr Turner. He was unavailable, on holiday in Canada in early April 2009. Ms Hind suggested that the PR employee call her on Monday 6 April with any news.

974. On 7 April 2009, Ms Hind emailed Lee Harpin under the subject Michael Le Vell with what appear to be some comments and suggested content, including quotations from Mr Turner, including:

> "We are all scared of being axed but all we can do is get our heads down and work hard so that we can produce the best show on telly, he said we will just carry on and what will happen will happen and hopefully the show will reign supreme".
>
> "I want to be on Corrie forever, Kevin is Mr Solid, I won't be going anywhere unless I am told to go".

975. Mr Turner denied that he provided any quotation or spoke to anyone from his holiday in Canada, but said that he may have given the quotations on another occasion.

976. There is a CR for the publication date for £2,000 payable to Mediamates Ltd ("Coronation Street recession fears"). This was authorised by Lloyd Embley. The claimants have no case against Mediamates Ltd.

977. Mr Turner's case that VMI was involved in obtaining the content of this article rests heavily on the associations of Mr Jeffs and Ms Hind with UIG and the involvement of Mr Harpin, "the Dauphin of phone hacking" as he was described to and by Mr Basham. All three had frequent involvement with Rob Palmer of Avalon, in respect of which MGN has made admissions of UIG, which included blagging activity. Mr Embley, who approved the CR for Mediamates, approved the payment of 33 Avalon invoices. There is an unconnected email in which Ms Hind passes on to a colleague instructions of how to hack a mobile phone.

978. The circumstances may be regarded as suspicious, but there are ultimately rival cases about how the quotations from Mr Turner, which is what his claim is really about, were obtained. Mr Turner says that what Ms Hind sent Mr Harpin on 7 April had been hacked from voicemails; MGN says that it was provided by Bell Pottinger North on behalf of Mr Turner, in return for a plug about their client's business in the penultimate line of the article.

979. In my judgment, MGN's case is likely to be correct on this occasion, as regards the quotations attributed to Mr Turner. The last three "quotations" are not the kind of material that would have been said in a voicemail message by or to Mr Turner. Mr Turner also claimed in relation to the disclosure of his interest in Ratio Money, even though his directorship was publicly available at Companies House. But Bell Pottinger were clearly involved on behalf of that company and it is highly likely that they assisted in providing the information that Ms Hind was seeking on 4 April in return for a mention of Ratio Money. The words of the "quotations" in the article are in part paraphrase and partly development of what had been provided in the 7 April 2009 email, but they are grounded in that information.

980. What is odd is that MGN have not disclosed an email or text from Bell Pottinger to Ms Hind containing the information, but it is possible that the information was conveyed in some other way.

981. What Mr Turner complains about is only part of the article. Other quotations are attributed to an "outraged insider". It is unclear where that information came from. Ms Hind's sending the quotations to Mr Harpin, who was not a byline, tends to suggest that further investigation on the storyline was also done. But, even if UIG was involved, that was not the private content about which Mr Turner complains, and was not in any event private by the date of the article, in view of the large number of earlier publications. The only private content was his feelings about it, if they were only disseminated in confidence, but I have found that that was probably not the case.

MT Article 17

982. This article entitled "Corrie rat's cash blow" (byline: Vaz Sayed) was published by The People on 11 April 2010 and concerns Mr Turner's losses when Ratio Money became insolvent.

983. The private content pleaded is: private information about Mr Turner's financial affairs, in particular a failed investment in Ratio Money. In his witness statement, Mr Turner complained that the article was portraying him as a fraudster, and said that the information as to the amount of his investment must have come from telephone messages between him and Mr Porteous, the company director.

984. The truth was that the information about the interest that Mr Turner had taken in the company was publicly available at Companies House and had previously been published by business newspapers, and the amount of his investment could easily be calculated from that information. Confronted with this, Mr Turner accepted that it could therefore not be private information.

985. He was asked on what basis he suggested that the article portrayed him as a fraudster, but was unable to say. The article title is explained in the text, which refers to Mr Turner playing "grease monkey love rat Kevin Webster" in Coronation Street. Mr Turner said that he did not write the words in issue in his witness statement.

986. In closing submissions, Mr Sherborne said that Mr Turner no longer relied on this article as the product of UIG "but nevertheless relies on it as an occasion of interest from MGN's journalists *and thus likely associated UIG*". It is said that from late 2009 The People had accessed Mr Turner's private information via credit reference checks, and had used private information to obtain access to Mr Turner's telephone communications and banking details. This new allegation in an attempted change of case was not explained further and in any event goes no further than two C&L invoices, which I will deal with separately ([1060]-[1062] below). There is no article in late 2009 following these.

987. The hopeless allegation in relation to the 11 April 2010 article should not have been pursued at trial, nor is it appropriate for a complete change of position to be attempted in this way at a late stage.

MT Article 18

988. This article entitled "I am lost for words but I will clear my name .." (byline: Stephen White) was published by the Mirror on 7 October 2011. It relates to the arrest of Mr Turner on suspicion of having committed sexual offences and reported his denial of them. This was, it goes without saying, a huge storyline for the tabloid newspapers and their readers at the time. The story had been broken by The Sun the previous day and Mr Turner had obviously made a public statement at that time.

989. The private content pleaded is information about his relationship with his then wife, Janette, following his arrest.

990. Mr Turner said in his witness statement that the private content was accurate, "right on the money", but that he was only confiding in close friends and family at that stage. He recalls at the time reading the article, looking at his friends and wondering which of them had leaked the information. In cross-examination, however, he said that by the time of the article he had been separated from Janette for 2-3 months and that what was written in the article was *untrue*. He alluded to the reason for this.

991. The particular content in dispute is the following:

> "Yesterday Sally Dynevor, who plays his on-screen wife Sally, told friends she was 'so shocked'"
>
> "One pal said: 'Mike and Janette have been together for ages. Mike has told us he has had his ups and downs in the last year or two but he sincerely hopes that Janette will be right by his side as they come to terms with what has happened. If Mike denies something, we believe him. Mike is saying he is 100 per cent innocent.'"

Ms Dynevor gave evidence but said nothing about this article or the comment attributed to her.

992. I accept the evidence that Mr Turner gave in cross-examination. It follows that what the pal said could not have come from any voicemail left by or for him. It was either a comment obtained from a friend, or (possibly) an interception of what one friend had said to another in a voicemail. The same applies to the comment attributed to Ms Dynevor.

993. There are three CRs that relate to this article: two for photographs of Mr Turner and a third paid to Disley Communications Ltd of £100 for "07/10/11 Sally Webster – LeVell reaction". This was the company of Jan Disley, a former MGN journalist, who had in 2010 sent in a tip about Ratio Money. Mr Turner seeks to make something of Ms Disley's antecedents as a byline on four admitted articles in the MNHL and as the commissioner of C&L on many occasions. But on this occasion, given the money paid, it seems more likely that she obtained a quotation from Ms Dynevor and passed it on. If that had not been the case, I would have expected Ms Dynevor to say so in her witness statement.

994. I therefore find that there was no VMI of any voicemails left for or by Mr Turner in relation to the private content identified, or for or by Ms Dynevor.

MT Article 19

995. This article entitled "I need time off Corrie to battle sex claims: Michael's plea as co-star backs him" (byline: Stephen White) was published by the Mirror in its Eire edition on 8 October 2011. It relates to Mr Turner's request for extended leave in order to deal with the allegations against him, and the public backing given to him by his on-screen wife, Sally Dynevor, and others.

996. The private content pleaded is information about Mr Turner's absence from work following his arrest, and support he had received from colleagues.

997. Mr Turner says that the matters reported were true, but the absence from work was only aired in a private telephone conversation with his bosses and he would not have spoken to anyone about it. He relies on a CRs for £350 payable to Streetwise Media Ltd, authorised by Stephen White. This agency was also paid in respect of 4 other Coronation Street stories in October and November 2011 (see articles 22, 23 below).

998. MGN contends that the information came from prior reports in the Press and a news agency with a confidential source at Granada, but that fact has not been proved by evidence. The facts of a request for more time off and a large number of supportive messages from colleagues had been reported in several newspapers the previous day and by The Sun on the same day as the Mirror article.

999. I agree with MGN that the fact that Mr Turner had asked for and been given some additional time off work to deal with the allegations was obvious and trivial in its nature (despite the seriousness of the allegations that had already been publicised) and not something – given that publicity and the total normalcy of compassionate leave being given – in respect of which he had any reasonable expectation of

privacy. Mr Turner agreed in cross-examination that it was not at all distressing that that fact had been reported, which underscores that the information was not by its nature private.

1000. I also agree that the fact of considerable support from colleagues at Coronation Street was already in the public domain by the time of the Mirror's publication, as indeed Mr Turner fairly accepted in cross-examination. The precise quotation from the source is new, but it is something that anyone could or would have said in the circumstances.

1001. It is highly likely that the information reported, given its nature, was given by someone with knowledge of what was happening on the set. The failure of MGN to call Mr White to give evidence does not outweigh that conclusion.

1002. Were there evidence that Mr Turner and his associates were being routinely hacked by the Mirror at this time, the conclusion might be different, but that has not been established. However, the arrest of Mr Turner and the prospect of a trial in the full glare of publicity undoubtedly served to whet the appetite of MGN's journalists for information about him.

MT Article 20

1003. This article entitled "Kev Plot Crisis; Exclusive 2" (byline: David Jeffs) was published by The People on 9 October 2011. It relates to the problems with the plot and filming of Coronation Street that Mr Turner's likely trial presented.

1004. The private content pleaded is: Mr Turner's return to work after his arrest, and it is contended that the subject was discussed between him and Granada producers over telephone calls at the time. The article reports that he had already had a meeting with "show chiefs" over his immediate future.

1005. The source quoted in the article says that it could not have arisen at a worse time for Mr Turner, as he was scripted for some major storylines over the coming months. Mr Turner says that the content of the article is true and that he would have shared his concerns with family and close friends in telephone calls and voicemails.

1006. MGN says that this information did not relate to Mr Turner's private life and was obvious, and the detail of the storyline had already been published in an interview with Sally Dynevor. The information is said to have come from a confidential source.

1007. Mr Turner's case is that Mr Jeffs is a prolific user of PIs to conduct UIG, and there are undoubtedly many invoices to PIs like Rob Palmer and ELI. But there is nothing in this case to support the inference that Mr Turner seeks to draw, other than one CR for £200 which has been redacted to protect the confidentiality of the source. (This was in accordance with an agreed protocol and was not challenged by Mr Turner pursuant to that protocol, so it must be assumed that the source was a proper confidential source.)

1008. The nature of the information reported is, by its nature, inherently likely to have been provided by an insider. Voicemails to or by Mr Turner would not have recorded the fears of show chiefs rather than his own concerns – which are not reported. In my judgment, there is no sufficient evidence here that the information complained about was obtained unlawfully.

MT Article 21

1009. This article entitled "Corrie Kevin's Return to the Street" (byline: Simon Boyle) was published by the Mirror in its Ulster edition on 13 October 2011. It relates to the first time after his arrest that Mr Turner returned to the set of Coronation Street.

1010. The private content pleaded is: Mr Turner's state of mind following his arrest as well as private information in relation to his professional life, namely his return to work. An allegation is made for the first time that this article demonstrates "continued surveillance". It is also alleged that the information was the subject of voicemail messages left by or for him.

1011. MGN's denial is, oddly, on the basis that the information came from the picture agency that took the picture as Mr Turner was arriving by car at the studios, and in prior reports in the public domain. It is hard to see how the comment that Mr Turner had gone through hell that week but had had enough of hiding and that he was scheduled to return to work the following week (which was the only new material in the article) could be sourced from the photographer of their agency. The issue is therefore whether these comments were previously in the public domain and, if not, whether they were sufficiently private in the circumstances. There is also an issue about whether the photographers were tipped off by UIG about Mr Turner's intended visit.

1012. Mr Turner said the information about his return was on a "need to know" basis between him and the programme producers, but that there would have been voicemails exchanged relating to this. While his witness statement said that the photographer's presence was appalling and made his blood boil, in the witness box he agreed that there was nothing objectionable about a photographer taking a photograph of him arriving at the set. This is another example of incorrect material being wrongly written into claimants' witness statements.

1013. It is inevitable that interest in Coronation Street would have increased significantly since 6 October, when the story about the charges against Mr Turner broke. There is no relevant payment record other than the CR for the photographic agency, Xposure. On balance, I consider it more likely than not that the photographer was there hoping to photograph members of the cast and got lucky with Mr Turner's arrival. The photographs were also sold to The Sun and the Mail Online, so they were not commissioned by Mr Boyle. The presence of such a photographer outside the gates of the set does not amount to unlawful surveillance.

1014. While it is conceivable that, as a result of the storyline about Mr Turner, someone at one of MGN's tabloids would have decided to monitor his voicemails, it cannot simply be assumed that this happened. (Mr Cardy produced a witness statement

supported by a late hearsay notice that he was commissioned by The People on a "words watch" in relation to Mr Turner soon after the allegations were made public, and that two local freelance photographers were put on a "picture watch" for Mr Turner, but the activities that he describes, if true, were not unlawful as such, however distasteful many people would find them.) The Turner story is at a time when the Leveson Inquiry was sitting and the extent of use of PIs had significantly reduced, so whatever had been happening at MGN's titles in the peak period of 2003-2005 was not necessarily happening in October 2011.

1015. The content of this article and the others considered above is not suspicious, indeed it is rather obvious (given Mr Turner's request for an extra week off), and could easily have been obtained from speaking to insiders. I find the case in respect of this article unproven.

MT Articles 22 and 23

1016. These articles entitled "Sex Case Corrie Star in Rovers Return" and "Back on the Street" (bylines: Nicola Methven and Steve White) were published by the Mirror on Friday 21 October 2011. They relate to Mr Turner's return to work on the set of Coronation Street the previous day. Article 22 is a very short front page piece, with the main article 23 following on page 7.

1017. The private content pleaded is: private information about Mr Turner's return to work, and Mr Turner's case is that these facts were the subject of voicemail messages left by or for Mr Turner and demonstrate continued surveillance of him.

1018. The articles state that "Set sources say staff shook Michael's hand, one-by-one, in a unanimous show of support" and an insider is reported as saying "It was all very emotional. Everyone backed him wholeheartedly, without exception – shaking his hand and offering their support…" Mr Turner agreed that this took place, but inside the studios, so that it would not have been visible to journalists or photographers. Ms Dynevor said that no one would have telephoned a journalist to say that it had happened and Mr Turner said the same. However, the fact of the friendly reception would not have been left in voicemails for Mr Turner and Mr Turner did not say that he left voicemails for anyone else later that day. This is therefore not an article containing material that was obtained by VMI.

1019. The issues raised by Mr Turner are how the photographer knew that he would be arriving on set that Thursday and how the information about what happened on set that day was provided to Ms Methven or Mr White.

1020. As with the previous article, there is nothing suspicious about the CR of £165 to the photographer. There is also a CR for Streetwise Media Ltd in the sum of £150. Despite submissions made by Mr Sherborne, there was no evidence to identify this agency as suspicious: it is not one of the PIs against which the claimants have pleaded a generic case.

1021. Instead, Mr Turner relies on the fact that Ms Methven was TV editor for years, sitting on the showbiz desk, which was routinely carrying out phone hacking of stars, and on documentary evidence supporting Mr Hipwell's evidence in *Gulati* that she would have been at least aware of phone hacking. Ms Methven, though

she had signed a witness statement, was not called to give evidence and no explanation of why was given. She provided very little evidence in relation to Mr Turner in her statement; it is far more likely that she was not called because her evidence about seeing nothing on the showbiz desk and not believing that there was anything suspicious about TDI and ELI was likely to be incredible. Mr White (who did not provide a witness statement) was not called either. Like Ms Methven, he still works for Reach plc.

1022. Notwithstanding the suspicion about the bylines, the greater likelihood given the nature of the material is that the agency had a contact who was on the set that day. The article records that there was a large presence of actors, and Mr Turner fairly accepted in cross-examination that it could have been any one of them who spoke to someone about what had happened. Much of the same story was published at about the same time in Mail Online, which supports the conclusion that I have reached, as does the fact that there is no other relevant payment record or call data that assists Mr Turner's case.

MT Articles 24 and 25

1023. These articles entitled "I want this to be over" and "All alone with his packet of cigs, mobile phone and five pints of lager" (byline: Nick Dorman) were published by The People on 23 October 2011. It relates to Mr Turner going to the pub alone after the funeral of a long-serving Coronation Street actress. Article 23 was the front page lead story, a "Corrie Kev Exclusive" and "Picture Exclusive", which contains the following harrowing commentary on the photographs of Mr Turner slumped over a pint of beer:

> " A sad and lonely figure … Street star Michael Le Vell is struggling to deal with the agony of his marriage break-up and his arrest over child rape allegations."

The inside article is in the nature of a diary of Mr Turner's few days from his return to work on the Thursday, following him from pub to pub and quoting what he was overheard as saying and what friends, onlookers and locals said about him.

1024. The private content pleaded is: private information about Mr Turner's whereabouts, on a private outing to various pubs, and in relation to his state of mind following his arrest. Like the previous articles, these articles are said to have been the subject of voicemail messages and to demonstrate continued surveillance of Mr Turner.

1025. The Sun and The Star had broken the story of Mr Turner's separation from his wife on 15 October 2011, in an article that said that it happened several months before his arrest. This was therefore not the news in the article, just a way of presenting the trauma that Mr Turner was suffering.

1026. I have already described how Mr Cardy said that two photographers were briefed to follow Mr Turner. These photographs are clearly the fruit of that surveillance. Mr Turner said that he knew the followers were there, just out of sight, and that "there was a real sense of constant watch and I felt like a hunted animal". There are CRs for payment of the two photographers for 4 days, at £400 each per day,

with further payments to them of £750 each, and a CR for £150 payable to MCPix Limited (a freelance photographer based in Cheshire) – all authorised by Gary Jones.

1027. Mr Turner accepted in cross-examination that anyone could have followed him to the pubs, many would have recognised him, and that anyone at the pub who was minded to listen could have overheard what he was saying to a friend (Mr Halsall joined him at one stage) or on the phone.

1028. Mr Turner clearly had no reasonable expectation of privacy about the fact of his sitting inside or outside a pub, or how he looked or what he drank. Private conversations discreetly conducted are another matter. Ms Dynevor said that cast members were discussing his case at the time and left voicemail messages. Mr Turner's *case* is that his comments "I just want this to be over" and about his being in turmoil were obtained from voicemail messages, but his *evidence* does not support that case, and Ms Dynevor's evidence, which could not be tested by cross-examination, was only very general. Again, it is conceivable that someone at The People did decide to hack Coronation Street stars' phones at this stage, in order to find out more information about Mr Turner, but the evidence to support that theory is thin.

1029. Instead, Mr Sherborne sought to rely on a C&L invoice dated 14 May 2009, for £33 for an "Elect roll" search on the name Michael Levell at a Hale address, which he said was the occasion when The People obtained data about Mr Turner that enabled them to hack his phone in 2011. The client identified was Bob Brookes on The People's picture desk. Even allowing for the fact that "Elect roll" probably concealed an unlawful search, I do not see how I can draw the conclusion from this that Mr Turner invites me to draw.

1030. Mr Sherborne said that I should give no weight to Mr Cardy's witness statement on the basis that the doctor's letter in support of the hearsay notice was unsatisfactory; but then he spent some time in his closing written submissions addressing what Mr Cardy said and even relying on it, so far as the picture watch photographers were concerned. There is also an email from Mr Cardy to Lee Harpin at 19:10 the evening before the publication, which contains the two quotations that appear in the first part of the article. Mr Sherborne's argument is that the article had already been written, based on intercepted voicemails, and that this email was created to provide an (inaccurate) record of the origins of the article. Quite why that would have been done was not explained. I think it is unlikely.

1031. Given the inconsistencies between Mr Cardy's account, the email and what the article says, and the inability of the claimants to ask him questions, I do not feel that I can place any reliance on the specific content of Mr Cardy's statement relating to the articles. It is noteworthy that Mr Cardy says that he was a freelance at the time, but there is no CR or other evidence of payment for his claimed work.

1032. I do not accept the argument that Mr Turner and his friend were overheard in the pub, as reported. Equally, there is no sufficient evidence to justify a conclusion that voicemails left by Mr Turner or his associates were hacked to provide these quotations – which are self-evident truths rather than revelations. I consider it to

be most likely that Mr Harpin asked for some content to go with the photographs and narrative of movements that the photographers had supplied, and that Mr Cardy – who was on "words watch" – supplied it. It cannot just be assumed that Mr Cardy hacked phones to obtain information that is no more than fairly obvious commentary.

1033. The article and the way it was created is to no one's credit, but that does not mean that it was the product of illegal activity, as Mr Turner claims. There was undoubtedly surveillance of Mr Turner, by the two photographers, but that does not mean that the fact of his being at a pub became private information, as there was nothing of a private/family nature about it.

MT Article 26

1034. This article entitled "Life can be difficult .. sometimes it makes me so sad – Despair of Corrie Kev" (byline: Stephen White) was published by the Mirror on the following day, 24 October 2011. It is similar to the article in The People the previous day but also adds and quotes from a number of tweets that Mr Turner published at a much earlier time, following his split from his wife, Janette.

1035. The private content pleaded is: private information about a private outing to a pub and in relation to how he was coping following his arrest and the breakdown of his marriage. Again it is suggested that the information was the product of VMI and that the article demonstrated surveillance.

1036. The tweets, published in May, August and September 2011, had been sent to Mr White by Brian Roberts the previous day at 08:55. Mr Roberts used an email address brian@streetwisemedia.co.uk, which shows that he had a connection with that company. The email was forwarded to Zoe Linkson at the Mirror with the statement "credit needs to be given to Streetwise Media – they are on the system".

1037. Apart from the tweets, the article quotes "a source" as saying that Mr Turner's world has fallen apart but he put a brave face on it by returning to work, but deep down he was "hurting like mad", and "It has been a harrowing year for Michael – He's a tough individual but clearly he has been finding it hard living on his own". Mr Turner said that these accurately reflected what he had been telling his close friends and family on the telephone, often by voicemails. His case is that these "quotations" are the product of UIG and are not covered by any prior public domain material or explained by MGN.

1038. MGN's case is that all the information in the article that is complained about was either obtained by photographers (and in any event had been publicised in The People) or had been put in the public domain by Mr Turner's tweets. His tweets indicate various levels of depression and unhappiness, but they relate principally to an earlier time, before the news of his arrest was made public. The "quotations" relate to the time of Mr Turner's return to the Coronation Street set and the days immediately afterwards.

1039. There are no CRs relating to the "sources" quoted in the article, or any identification of them by MGN. They are therefore either cover for UIG or cover for a paraphrase of the content of the tweets, updating them to 24 October 2011.

1040. Mr White was not called to give evidence, despite still working for MGN. The quotations are not simply a re-hash of the tweets, as a selection of the tweets is also quoted in the article and the "quotations" in issue are dealing with the current feelings of Mr Turner. Given Mr Turner's evidence and the absence of any explanation of how the quotations were obtained, I consider that the right inference in this case is that they are the product of VMI.

1041. The quotations are based on what Mr Turner has confided in only a limited number of people and so are private information.

MT Article 27

1042. This article entitled "Cuddly Kev: Troubled Street star Le Vall taking comfort from his pub pals" (bylines: James Davies and Philip Cardy) was published by The People on 6 November 2011. It relates to a story that Mr Turner poured out his heart to a girl in a pub in Mobberley, Cheshire and the following day confided in other pals at a pub in Mere, Cheshire, about his feelings and priorities. There are quotations from a friend, a fellow drinker, a local and Mr Turner himself in the article. These relate to the nature of the conversation with the girl, the "double stress" Mr Turner was living under, the nature of the allegations against him and the chances of their being dropped, and his priorities in dealing with his problems.

1043. The private content pleaded is: information about private outings to various pubs with his friends and private information in relation to his state of mind. The articles are said to demonstrate continued surveillance. Oddly, there is no specific allegation that what was published was in voicemail messages left by or for Mr Turner, just an allegation of UIG generally and that the article demonstrates surveillance of Mr Turner.

1044. For this article there is a CR for £750 and five further CRs which appear all to be for two days of shift payments for surveillance by the same two photographers. All these CRs are signed off by Mr Embley, the editor of The People, or Mr Harpin, the head of news.

1045. Mr Turner said that he went to the Mobberley pub with his friend Olivia in an attempt to find privacy, but when they arrived they saw the boot of a car lift and a photographer's lens point at them. When challenged, the photographer said "sorry mate, but I have to do this".

1046. MGN's defence is that the information came from freelance photographers, who were paid for it. However, there was no evidence called to that effect, and it seems improbable that the same persons could be clandestinely taking photographs of Mr Turner and eavesdropping on his conversations. MGN had originally sought permission for a witness summons to be served on Mr Cardy but then withdrew that application.

1047. There are 3 disclosed emails on which Mr Turner relies. They contain earlier drafts of the article.

a. The first is from Mr Cardy to Mr Harpin late on the evening of Friday 4 November 2011. It states "i've obviously left out anything that may ID the

girl and also his wife's cancer?". Mr Sherborne points out that the story of Janette's cancer was not in the public domain and suggests that this was omitted to avoid giving clues as to the illicit nature of the source of the information. The draft article included a quotation from Mr Turner confessing to pals that he had not been supportive enough over a couple of difficult years. That too was omitted from the final article.

b. The second is also from Mr Cardy to Mr Harpin at 11:50 on 5 November 2011, with some different quotations, including an onlooker saying that Mr Turner was whispering a lot of things to his friends.

c. The third sent a different version at 13:42 on 5 November, with the story of Mr Turner's alleged eviction from the Railway pub included.

The second version was forwarded by Mr Harpin to Mr Jeffs at 15:53, and then evidently later modified by editors.

1048. The conversations that Mr Turner was having were clearly ones in respect of which he had a reasonable expectation of privacy unless they were conducted in such a way that they would readily be overheard. It is notable that the comment about Mr Turner whispering a lot of things was removed. If they were not overheard, and no VMI is alleged to be the source of the private information obtained, it is unclear how Mr Turner's case of unlawful obtaining of the content is supported.

1049. In my judgment, there was clearly some unlawful activity prior to this article, which unearthed among other things the cancer and the separation of Mr and Mrs Turner. I also find that the surveillance on this occasion was fuelled by UIG: the photographers were present, hidden and waiting for Mr Turner when he arrived. It is impossible to work out exactly what happened in this case but the conclusion that UIG in one form or other was involved is irresistible. Surveillance there undoubtedly was too, and on this occasion it was connected with other UIG and an infringement of Mr Turner's privacy.

MT Article 28

1050. This article entitled "Michael Le Sell" (byline: Philip Cardy) was published by The People on 27 November 2011. It relates to the marketing of the Turners' family house.

1051. The private content pleaded is: Mr Turner's financial affairs and his search for a new home. It is alleged that this content was the subject of voicemail messages left by or for him. Mr Turner said that the contents of the article were true. He said that he did not share the information in it with anyone except close friends, but he did not specifically say that he left voicemails about it.

1052. MGN says that the information in the article came from a freelance journalist who had obtained the sale details from the estate agent and that there was no expectation of privacy in relation to material publicised by the agent on his behalf.

1053. Mr Turner's case is that there is evidence of UIG because of comments containing private information (Mr Turner's wishes and feelings) ascribed to "pals", and in one place actually refers to what Mr Turner has said to friends ("…has been moaning to friends about house prices").

1054. There are CRs for the photographers' shift pay and one for £750 for Mr Cardy, the freelance journalist who wrote the article.

1055. A draft article was sent by Mr Cardy to Mr Harpin two days before publication, which was forwarded unedited to Gary Jones, the deputy editor. Mr Jones obviously edited the article by removing references to the exact locations that Mr Turner was looking for a property and other content – Mr Sherborne suggests because it was too indicative of that information having been unlawfully obtained.

1056. No evidence was called from Mr Cardy, Mr Jones or Mr Harpin to explain how Mr Cardy obtained the quotations. In the absence of any such evidence or other explanation of the source, and given the nature of the information reported, I conclude on balance that there probably was interception of voicemails that provided the fact of, and some of Mr Turner's thinking about, this move and his feelings at that time. Although there was no specific evidence that voicemails had been left, it would have been improbable in any event that Mr Turner could accurately recall specific voicemails about this subject. Mr Turner did give evidence that generally he did communicate in that way. I do not accept that Mr Cardy happened to see first that Mr Turner's house was advertised at an estate agent's.

1057. Information about Mr Turner's preferred location, whether he could afford it, and how he was feeling about his problems, shared with friends, are obviously matters in respect of which Mr Turner has a reasonable expectation of privacy. I do not agree that these are trivial and obvious, even if Mr Turner's anxiety about his trial was obvious.

The UIG Episodes

1058. The invoices said to represent other occasions of UIG played a much smaller part in MT's claim than in the Duke of Sussex's.

1059. 11 invoices were pleaded in para 20(d) of Mr Turner's Amended Particulars of Claim, and some others appear to have been identified in a Schedule E that did not make it into the trial bundles. The parties exchanged their positions in relation to these invoices in the form of two schedules, once relating to Mr Turner personally and the other to his associates.

1060. In the event, however, in putting forward his claim for damages, there were only 4 Episodes that were relied upon in addition to the claims based on the UIG underlying the articles. These 4 are:

i. Severnside invoice to the Mirror ("Turner Special Invest") dated 24.10.96, a few days after a Sunday Mirror article about Mr Turner;

ii. C&L invoice to The People (Elect Roll Michael Levell – 15/12/64 – Kevin Webster "Corrie") dated 2 May 2009;

iii. C&L invoice to the Sunday Mirror ("Elect Roll Michael Turner/Michael Le Vell 15/12/84 'Kevin Webster' 'Corrie' & Janette Turner) dated 15 December 2011;

iv. VMI directed at Associates Paul Usher (2002) and Alan Halsall (2003-06)

1061. Although the 1996 invoice is likely to be in relation to Mr Turner rather than Anthea Turner or another Turner, it is not actionable as the tort of misuse of private information as it occurred prior to 2 October 2000.

1062. In accordance with my findings about C&L, the two invoices in 2009 and 2011 are likely to be for unlawful credit reference searches and will have produced some private information in consequence.

1063. There is no sufficient evidence that any unlawful activity of TDI and ELI directed against Mr Halsall and Mr Usher between 2002 and 2006 was likely to result in Mr Turner's private information being disclosed. It is wholly speculative that, if this unlawful activity led to VMI of Mr Halsall or Mr Usher's phones, any message of Mr Turner that contained his private information was obtained.

Conclusions

1064. Mr Turner was a well-known actor and of some interest as a result to readers of MGN's newspapers, but he was not of special interest, other than in relation to the developing Coronation Street plot, until he became involved in a newsworthy or sensational story, in particular his arrest on serious criminal charges in 2011. He was also married and, apparently, with a stable family life until his arrest, which reduced his interest to MGN's readers.

1065. Unlike Ms Sanderson, who was considered to be of great interest, Mr Turner was not the object of regular phone hacking until 2011. There undoubtedly was phone hacking of Coronation Street stars, particularly in the period 2000-2006 and there was also an inside source of information from the set. The one article before 2011 when I have found that Mr Turner's private information was obtained (Article 15) was probably in VMI of other Coronation Street stars, for whom he had left messages.

1066. Mr Turner was possibly tangentially affected by VMI in March 2003 (Article 12) but no private information of his was obtained.

1067. Matters changed with his arrest in October 2011. Even then, it appears to have taken MGN some time to deploy VMI (there was probably reticence because the Leveson Inquiry was sitting at that time), but they eventually did. On occasions he was just followed from the studios or a funeral of a former Coronation Street star that he attended, but later UIG was used to track him down to Cheshire pubs and photograph and listen to his conversations there. VMI was also probably used

to hear messages that he left for others, and possibly messages left for him at that time.

1068. In overall terms, however, the impact of phone hacking on Mr Turner was limited. I accept that the misery that he understandably suffered in 2011 was exacerbated by UIG that was directed at him, but apart from that time there was very little that was proved. A good deal in his claim was exaggerated and the allegations of hacking were artificial and largely without foundation.

1069. I deal with the damages that should be paid to him in Part XII below.

Part VII: The claim of Nikki Sanderson

Contents

Ms Sanderson's claim and evidence

1070. Ms Sanderson is an actress who rose to fame at a young age, first appearing on Coronation Street at the age of 15. She appeared in that programme from 1995 to 2005 and then had a prominent role in Hollyoaks from 2012.

1071. The woman that she played in Coronation Street, Candice Stowe, was a strong character who acted in unattractive ways, which provoked adverse comment and dislike from some fans of the programme who choose to comment on such matters on social media. This sometimes had unfortunate consequences for Ms Sanderson, in that some fans had difficulty in distinguishing Ms Sanderson the actress from the role that she played. On the basis of the evidence that I heard, Ms Sanderson was a different, more caring and loyal person than Ms Stowe. The feeling of being constantly watched in public, and comments (and even on occasions physical abuse) that was directed to her on the street, gave rise - according to her own Counsel's opening submissions, which she later confirmed in cross-examination – to a constant state of paranoia, distrusting everyone around her.

1072. Ms Sanderson claimed to be a heavy mobile phone user (she had five different mobile phone numbers during the period in issue) and she identified 17 associates with whom she was in regular contact and with whom she exchanged voicemail

messages. Some of these associates are as famous in their own right as Ms Sanderson is, being mostly other stars of Coronation Street and similar programmes. It therefore obviously does not follow that all or any particular calls made to these associates were connected with Ms Sanderson. Some of these associates, including Tina O'Brien and Ms Sanderson's mother, Judith, have brought and settled their own claims in MNHL.

1073. Ms Sanderson, like other claimants, used the same formula to describe "unusual telephone and media-related activity" that, with the benefit of hindsight, she says was indicative of phone hacking. She particularly complained about paparazzi turning up unexpectedly on many occasions when it was difficult to understand how they could have known about them in advance.

1074. Ms Sanderson's claim relates to the period 1999 to 2009. Like other claimants, her claim relates primarily to UIG that she says is demonstrated by and underlies 37 articles that were published by MGN, about which she complains. MGN admits that one of these articles, that entitled "Corrie Candice's Dad is secret love rat", was the product of UIG and does not admit that two other articles were. The remaining 34 articles are denied, which is to say that MGN felt able to advance a positive case that they were not the product of UIG. She also relies on some call data to her mobile phone from 2005 to 2007, identifiably from MGN, and a larger number of similar calls to her associates.

1075. There are 66 PI invoices and 92 CRs in Ms Sanderson's case that she contends are evidence of UIG in relation to her and her associates. Only 10 of the PI invoices relate to her – 16 relate to her friend and colleague Tina O'Brien and 19 to her friend and colleague Ryan Thomas. MGN admits that in relation to 4 such invoices its journalists were responsible for the instruction of UIG from PIs: those dated 23 June 2004 (an ELI invoice for extensive urgent enquiries made for Mr Scott at the Sunday Mirror on Ms Sanderson preceding Article 3, which may well have elicited her date and place of birth), 25 October 2004 (an Avalon invoice for enquiries made regarding N Sanderson and family, for Mr Edmondson at The People, which preceded Article 7), 25 November 2004 (an ELI invoice for extensive, urgent, detailed enquiries made for Ms Manley at The People on Ms Sanderson, following Article 8, which appears to have elicited Ms Sanderson's mobile phone number and her mother's address and phone numbers) and 28 June 2005 (an Avalon invoice for enquiries made regarding N Sanderson for Mr Jeffs at The People). The rest are denied by MGN.

1076. There is therefore a greater foundation in admitted UIG in relation to Ms Sanderson than there was in relation to the claims of the Duke of Sussex and Mr Turner. However, MGN submits that there is no evidence of VMI directed against her. It further submits that none of the articles about which Ms Sanderson complains contain her private information. It argues that in relation to each article there is evidence that the information complained about was legitimately sourced or already in the public domain.

1077. It is clear from the published articles that Ms Sanderson was of considerable interest to MGN's three national newspapers – or, to put it another way, the newspapers judged that there was a great deal of public appetite for photographs of her body and information about her and her friends' lives: what they looked

and dressed like, what they did in their free time, where they went on holiday, and in particular with whom they were romantically involved. Ms Sanderson had two relationships during the period of her claim which are the focus of several articles: with James Meakin (not himself in the public eye except as Ms Sanderson's companion) from 1999 to 2004, and with Danny Young (well-known as a Coronation Street actor) from 2005 to 2009.

1078. It is also clear that MGN's tabloids' interest in Ms Sanderson was not reciprocated. She said that she did not read any of the articles at the time that they were published, though the content of some of them was told to her, particularly the article about her father that MGN admits was partly based on UIG. In cross-examination, Ms Sanderson confirmed that she probably did not see most of the articles until her solicitors showed them to her, at the time when she was getting legal advice. She was made aware of some of the material that was published at the time but did not read them. Ironically, her mother kept some of the articles in a scrapbook – presumably not as egregious examples of UIG, but because they contained (as many did) flattering images of her daughter.

1079. Further evidence on which Ms Sanderson relies is the presence of her mobile phone number and the numbers of Mr Young and his mother in Mr Buckley's Palm Pilot and her own number in Mr Evans' Palm Pilot. Ms O'Brien's number was in Mr Scott's Palm Pilot. However, Mr Evans told the MPS that Ms Sanderson was an attempted hack and that he did not recall successfully hacking into her phone. Mr Evans did say that he had successfully hacked Mr Young's phone at the time that he was dating Ms Sanderson. However, Mr Evans left the Sunday Mirror in December 2004, about a month after Ms Sanderson started dating Mr Young, so it is more likely that any hacking of Mr Young's phone was during Mr Evans' time at the News of the World.

1080. There are disclosed emails from 2004 and 2005 that are suspicious and indicative of preparation for phone hacking.

1081. An email dated 23 April 2004 from Fiona Cassidy to Nick Buckley, subject "nikki sanderson", contains a detailed briefing on Ms Sanderson and her family background, including addresses (found using Cameo). On 23 June 2004, Emma Cox sent Mr Buckley Ms Sanderson's date and place of birth. On the same day, Mr Scott commissioned ELI in relation to Ms Sanderson and Mr Meakin. Given what is known about Mr Scott and ELI, this was very likely to obtain their mobile telephone numbers using the details that Mr Buckley had received. The fruits were probably given to Mr Evans at that stage. The Sunday Mirror was therefore slightly ahead of the game.

1082. On 24 November 2004, Ms Manley sent Mr Jeffs, Mr Proctor and Mr Bucktin Ms Sanderson's mother's address and mobile number, at a period of intense PI activity relating to Ms Sanderson and her love life – this was the time at which she moved out of her home with Jamie Meakin and started a relationship with Danny Young. On the following day there are two ELI invoices for urgent enquiries into Ms Sanderson (admitted as UIG by MGN) and Mr Meakin. On the following day, 26 November, Mr Bucktin asked Ms Manley for everything that she had on Ms Sanderson and Mr Young, including address and dates of birth.

Ms Manley obliged, sending Mr Bucktin and Mr Jeffs the details that she had. This preceded articles in The People on 5 December and 12 December 2004.

1083. Similarly, on 19 January 2005, Mark Thomas at The People emailed Mr Jeffs and Ms Manley asking for Ms Sanderson's mobile phone number, and Ms Manley provided it and Tina O'Brien's number the following day. The following day, Mr Saville was negotiating with an agency for photographs of Ms Sanderson and Mr Young on holiday in Barbados. Mr Coutts commissioned a C&L search on Mr Young and Mr Game asked Mr Scott for any flight information on Ms Sanderson so that they could be at the right terminal at Manchester airport on her return.

1084. This gives a flavour of the intense interest in Ms Sanderson at The People and the Sunday Mirror and indicates that UIG, including VMI, was being used at the time to try to find private information about the couple. Given the newspapers' obsession with Ms Sanderson, the limited admissions of UIG in Ms Sanderson's case, the findings in *Gulati* and the identity of some of the journalists involved, any other conclusion would be perverse. However, that does not, as Ms Sanderson and her legal team seemed to think, lead automatically to the conclusion that every article published about her, however trivial or innocuous, was obtained by VMI.

1085. Ms Sanderson in her evidence was unable to describe any voicemail that she left or received at any stage, in relation to any of her 37 articles, that contained private information that was published. She made general assertions that VMI would have been used and at times speculated about who might have left a voicemail, but she had no recollection. It is not remotely surprising that she cannot remember every message but it was slightly surprising that, with plenty of time to consider the matter in advance, she could not identify one where something she said, or that someone said to her, had appeared in print. Her case on VMI underlying a given article is therefore largely inferential, based on the content of the articles, the surrounding circumstances and any documentary evidence that supports her case.

1086. What was very clear from her evidence is that Ms Sanderson's concern at the time was about surveillance – people that she did not know watching her and following her, and that she was, as she said, paranoid about people listening in to her conversations. A primary concern was how paparazzi managed to find out where she would be. She did not consider at the time that her phone calls were being listened to, or her messages were being intercepted. She was unable to recall reading any of the articles when they were published, but heard from others about their existence and some of the content. The one article that she was able to recall being fully aware of at the time was Article 7, about her father, but she did not read it because it was too upsetting a subject for her.

1087. Unlike in the claims of the Duke of Sussex and Mr Turner, MGN pleads a full limitation defence to Ms Sanderson's claim. It contends that every claim raised is statute-barred. I have already ruled that a claim based on the fact of publication of in the articles themselves is statute-barred and this is now accepted by all the claimants. The claims are only pursued in relation to the underlying unlawful information gathering that led to the published articles, and in relation to other examples of UIG that did not lead to such publication. In relation to these claims,

MGN contends that Ms Sanderson has failed to discharge the burden that lies on her to prove that her circumstances fall within s.32(1)(b) of the Limitation Act 1980, with the consequence that the limitation period of 6 years expired well before her claim was issued on 7 December 2020. Ms Sanderson accepts that, unless it falls within s.32, her claim must fail.

1088. I deal with the facts and arguments relating to the limitation defence in Part X of this judgment.

The Articles

NS Article 1

1089. This short article entitled "Soap and Glory: Girls Bag Bargains (byline: Garry Johnson) was published by The People on 11 May 2003 and reports a shopping expedition in the Deansgate Centre in Manchester.

1090. The private content pleaded is: information about Ms Sanderson's whereabouts on a private outing with her co-star Tina O'Brien. VMI and surveillance is alleged.

1091. There is a CR for the freelance journalist who wrote the commentary and one for the photographer. The issues raised are how the photographer knew where the women were and how the author knew for what reason Ms Sanderson was shopping that day.

1092. Ms O'Brien's evidence was that they "could easily have arranged to meet somewhere over voicemail messages". However, evidence that they might have done (which is self-evident) is not evidence that they did.

1093. Ms Sanderson said that by 2003 she was getting a lot of attention and publicity. She was shown a series of interviews, articles and photoshoots about her that had been published, with her agreement, some of them by MGN. One had been with her in her underwear, talking about Jamie's feelings for her. She considered that MGN abused her when she was a child and that article 1 was abusive because surveillance was used, and it was suspicious that MGN seemed to know what she was shopping for.

1094. Ms Sanderson's case is that a photographer of the calibre of Mr Clarke would not have been hanging around the Deansgate centre and captured Ms O'Brien and Ms Sanderson by accident, and that the authorisation of the CRs by Mark Thomas and Paula Derry is suspicious. However, I heard no evidence about Mr Clarke or Ms Derry. Mr Thomas had a close working relationship with Tillen and Dove, but there is no evidence that Mr Clarke worked with him in a similar way.

1095. Ms Sanderson cannot complain about being seen in a busy public place and being photographed by chance, as a famous person. Her complaint therefore depends on establishing unlawful interception of the arrangements she made with Ms O'Brien to be where she was, or other unlawful surveillance that led to her being found there, and discovery by those means of the reason for their shopping expedition, viz to buy a dress to wear at the British Soap Awards dinner.

1096. A finding that MGN tipped off the photographer by VMI would require a conclusion that by May 2003 Ms Sanderson and Ms O'Brien were regularly being hacked, as there was no particular reason why their voicemails would have been hacked on or before the date of publication. There is no evidence to support that conclusion: such evidence as there is suggests that it was only in November 2003 that Mr Evans was attempting to hack Ms O'Brien's phone and in June 2004 that he was attempting to hack Ms Sanderson's (without success). Emails disclosed tend to show that The People only became very interested in Ms Sanderson in autumn 2004, with mobile phone numbers and other details being circulated in November 2004. Further, if MGN journalists had hacked to discover Ms Sanderson's or Ms O'Brien's arrangements, why would a freelance journalist have written the article? There is no case against Mr Garry Johnson that he was involved in UIG.

1097. Accordingly, I reject the argument that this article was the product of VMI. The photographer and/or Mr Johnson may have been following their subjects from the studios or merely happen to be in the shopping centre at the time. A photographer or journalist casually following a subject to see what they buy is not unlawful. Mr Johnson, writing an article about two soap stars, would doubtless have been aware of the date of the British Soap Awards and put two and two together.

NS Article 2

1098. This short article entitled "Girls' right Corrie-on" (bylines: Jessica Callan, Eva Simpson and Niki Waldegrave) was published by the Mirror on 20 December 2003. This article in the 3am column was little more than commentary on another photograph by Mr Clarke, showing Ms Sanderson, Tina O'Brien and Lucy-Jo Hudson posing for a photograph at a Christmas party. The same photograph and story was published in the Daily Star on the same day.

1099. The private content pleaded is: Ms Sanderson's whereabouts on a private night out in Manchester with her co-stars, and it is alleged that the information was the subject of voicemail messages left by or for her and demonstrates surveillance of her. There is a CR for £175 for Mr Clarke.

1100. Ms Sanderson said that the three of them would probably have arranged to meet and go there together, and Ms O'Brien said that the fact that 3am knew that they would be at Life Café must have been as a result of intercepting voicemail messages that they left on each other's phones to make arrangements.

1101. In my judgment, this evidence was no more than speculation by Ms O'Brien and Ms Sanderson, not a recollection of what they actually did in 2003, or even what they generally did at that time.

1102. Ms Sanderson expressed concern that the article showed that they had been "surveilled", as it was known that this was their second party in a week.

1103. Her case, as advanced by Mr Sherborne, really depends on inferences drawn from the fact that this was a 3am column, a part of the showbiz team at the Mirror, where, as Mann J and I have found, there was extensive and habitual hacking. There had by this time been an unsuccessful attempt by Mr Evans to hack Ms

O'Brien's phone, but there is no evidence of successful hacking by this time. The call data suggests that an attempt was made to hack Ms Sanderson's phone in January 2005 from Mr Buckley's extension at the Sunday Mirror. While it is not impossible that similar attempts were made at the Mirror using untraceable burner phones, the storyline and the photograph are otherwise explicable as being the fruits of a specialist celebrity photographer (against whom no allegation is made in the MNHL) being aware of where parties are taking place. Further, The Sun had published on 16 December that Ms Sanderson and Ms O'Brien were present at the Manchester United Christmas Party, which is likely to be the explanation for the comment about a second party in a week.

1104. There is in any event nothing intrusive about the photograph, which is posed, and the commentary is limited to matters that could have been observed by anyone. Further, the information provided is trivial.

NS Article 3

1105. This article entitled "Nikkini Babe" (a "picture exclusive" with words by Emma Cox) was published by the Sunday Mirror on 4 July 2004. It is commentary on a series of photographs taken of Ms Sanderson and Mr Meakin in the sea in Zakynthos.

1106. The private content pleaded is: information about a holiday with her former boyfriend as well as private financial information, and it is alleged that Ms Sanderson discussed the information over voicemail messages.

1107. The article contains five different photographs and commentary which is mainly a description of how attractive Ms Sanderson looked – the description is attributed to "one onlooker" – but also contains a comment that Ms Sanderson earned £60,000 a year but was clearly watching the pennies as the hotel only cost £28 a night. The photos are obviously taken without Ms Sanderson's knowledge or consent. JK Press were paid £2,500 for their photographs.

1108. Ms Sanderson said that she did not see the article, but when she returned from holiday the Coronation Street press office did show her the photographs.

1109. She remembered the holiday particularly for a strange incident that happened. Her mother phoned her to say that she had been phoned by Disney or Universal Studios who wanted to make contact with her about a part in one of their films. When she phoned the number given, she was told that the studios needed to send her urgently a telegram, and they needed the address of the hotel, which Ms Sanderson provided. She told the group that she was with what she had been told, but all that happened was that the press and pararazzi turned up at her hotel, not the telegram.

1110. An email of 18 June 2004 from Martin Coutts to Mr Buckley (cc James Scott) reported that Ms Sanderson had flown out to Greece for a holiday and suggested asking the Coronation Street press office if she would cooperate with some photographs for "one of our snappers over there". Mr Buckley responded on 18 June: "In case we don't get cooperation, do you know where in Greece, or can you find out".

1111. There is a C&L invoice for a commission about Judith Sanderson's address by Euan Stretch on 22 June 2004 and the admitted ELI invoice relating to Ms Sanderson and another ELI invoice relating to James Makin both dated 23 June 2004 commissioned by James Scott. Mr Buckley was provided with data for Ms Sanderson by email on 23 June 2004. There is also substantial call data from Mr Stretch's and Mr Scott's extensions to Jonathan Stafford in the period 30 June to 3 July 2004

1112. The journalist, Emma Cox, is bylined on 3 articles that were admitted in *Gulati* and a further 4 articles admitted in the MNHL.

1113. The inference from all the evidence is that the Sunday Mirror was determined to obtain photographs of Ms Sanderson on holiday. It may be that they tried and failed to find out where she was by voicemail interception (given those involved at the Sunday Mirror, I infer that this was the case) and so they tried a different ruse, which involved someone pretending to be from a Californian film studio needing to contact Ms Sanderson and send her something urgently. In effect, they blagged the location of the hotel out of her. MGN suggested that it could as well have been News Group Newspapers who used the ruse, but the documentary evidential background points clearly to MGN using ELI or Mr Stafford to do the blagging. Ms Cox simply wrote/invented the commentary that went with the photographs.

1114. The holiday with Mr Meakin and friends was a private holiday. Ms Sanderson did not have a reasonable expectation of total privacy, to the extent that she would not be seen by other holiday makers, who would be likely to recognise her; but she did have a reasonable expectation that details of her holiday and her body would not be plastered over the pages of the national press and exposed to every reader of the Sunday Mirror. The fact that on other occasions she had consented to exactly this happening, for reward or for other benefits, does not deprive her of a reasonable expectation of privacy in other circumstances, where she was not consenting to such exposure.

1115. The subterfuge and deception used by MGN (which was hurtful in itself) to trace Ms Sanderson tips the balance, in my judgment, when weighing the "*Murray* factors". In particular, the intrusion into Ms Sanderson's privacy was a serious one in that it took away the relative privacy of a famous person on a private holiday, it was done for the purpose of MGN's commercial interests, and it was done by deception, even if the attempted VMI did not succeed. Ms Sanderson's privacy was not outweighed by the article 10 rights of MGN because the material published was of no consequence to its readers or the public more generally.

NS Article 4

1116. This publication is a sentence in the "Surveillance" section of the Daily Mirror's 3am column (bylines: Jessica Callan, Eva Simpson and Caroline Hedley) published on 27 August 2004, which reads: "Corrie's Nikki Henderson in Topshop, Manchester".

1117. The private content pleaded is: information about Ms Sanderson's whereabouts on a private outing in Manchester, which is said to demonstrate continued surveillance of her.

1118. As with the Surveillance comments relating to Mr Turner, absent some further evidence it is most likely that this sighting was reported by a member of the public. Ms Sanderson says that it is probably not what happened as she "may have" left a message for Ms O'Brien or someone else from work to invite them to join her, and so this was the product of voicemail interception.

1119. It is clearly an insufficient basis for a finding of a criminal offence that a claimant says in a rather unspecific way, almost 20 years after the event in question, that they may have left a voicemail for someone. I do not accept that Ms Sanderson has any such recollection, she is simply trying to advance her case. In any event, VMI is not part of her pleaded case in relation to this article.

1120. I reject the argument that the sighting is indicative of unlawful surveillance of her.

NS Article 5

1121. This article entitled "Nikki Nightie" (byline Suzanne Kerins) was published by the Sunday Mirror on 26 September 2004 in its "Radar" column. It is commentary on a sighting of Ms Sanderson leaving a party in London.

1122. The private content pleaded is: information about Ms Sanderson on a private night out in London for a friend's hen do, and was alleged to be the subject of voicemail messages left by or for Ms Sanderson. The only information in the article, in addition to the photograph, was that Ms Sanderson was attending a friend's hen night at a trendy West End club.

1123. Ms Sanderson said that she made all the arrangements for the party and so would have left voicemails in that regard – but without identifying any person for whom she left messages. She could not remember any in particular. Ms Natalie Turner, whose evidence was not challenged by MGN, said that she attended the party, which was at Embassy, not Pangaea as the report said, and that there were lots of photographers outside the club, waiting to get a picture of Ms Sanderson. She could not remember, but she imagined that some of Ms Sanderson's arrangements would have been discussed over voicemail messages. There was no call data for Ms Turner.

1124. I am unable to find that there were voicemails that were left by Ms Sanderson, or for her, that were hacked and which enabled photographers to attend the club in London. There was no sufficient evidence of voicemails disclosing the venue. In any event, Ms Sanderson accepted that the club was a celebrity club. That would be why there were lots of photographers outside – MGN would not have sent lots of them if it had commissioned photographs of her. The photograph is credited to J. Taylor-Brett/Xposure. Although (a) Ms Kerins is bylined on 21 admitted *Gulati* articles, and so can be assumed to have been at the centre of phone hacking that was going on at the Sunday Mirror, and (b) the Sunday Mirror was by this time trying to hack Ms Sanderson's phone (see above), that does not mean that

every photograph taken of her or piece of bland commentary is the result of VMI. The information in the article is not the sort of information that would be obtained by phone hacking.

1125. Moreover, the information is trivial in the extreme.

NS Article 6

1126. This article entitled "Hen-joyable", a photograph with brief commentary published by The People in its VIP column (ed. Debbie Manley and Nadia Brooks) on the same day as article 5, has a similar but different photograph of Ms Sanderson arriving at Pangaea and a comment that she looked "game for a laugh".

1127. It is The People's equivalent publication to article 5 above. There is a CR for £100 for XPosure Photos Ltd. I reach the same conclusions as in article 5.

NS Article 7

1128. This article entitled "Corrie Candice's Dad is Secret Love Rat" (byline: Chris Tate) was published by The People on 31 October 2004. It is about Ms Sanderson's father and his 4 wives. The article is principally about Paul Sanderson and his wives but also includes comments on Ms Sanderson's feelings about her father and his behaviour.

1129. The private content pleaded is: private information about Ms Sanderson's childhood, her family and her relationship with James Meakin, and is alleged to have been the subject of voicemail messages left by her and her associates.

1130. The article was clearly a long time in preparation, as there is an email from Philip Cardy to Ben Proctor on 6 October 2004 detailing what the third wife had to say.

1131. MGN admits liability in part, in relation to an invoice from Avalon addressed to Ian Edmondson dated 25 October 2004 "Enquiries made regarding N Sanderson and family". There are also an invoice from Census Searches for searches in the name Sanderson on 3 and 7 October 2004, a C&L invoice for Elect Roll searches for ex-wives on 3 October. There are CRs for a freelance journalist for £500, who it is said contributed the interview of the fourth wife; one for the third wife, for £500; one for a photographic company, for £400; and one for Gerard Couzens for a "Coronation Street asst" commissioned on 5 October 2004. Mr Couzens was by this time resident in Spain, where Mr Sanderson lived. I find that it is likely that the Census Searches and the Gerard Couzens work was in connection with this article.

1132. Ms Sanderson said the comments attributed to her reflected things she was likely to have said to her mother or to her childhood friend, Victoria; that she had visited her father in Spain in 2004 and that there would have been conversations about him following the trip. Ms Judith Sanderson said that Ms Sanderson would have discussed everything with her, but said nothing about voicemail messages.

1133. The quotations from "pals" and "sources" are unexplained by MGN which says that the information published was not Ms Sanderson's private information

because the only part that related to her had been put in the public sphere by her mother in March 2003, describing how her husband had left when Nikki Sanderson was only 18-months old. Despite admitting the unlawful involvement of Mr Edmondson and Avalon, MGN tries to minimise the role of Mr Edmondson in this story. It argues that the 20 calls from his extension to Trackers between 26 and 29 October 2004 are unlikely to be about this article, as he was the assistant news editor and would have been involved with other (unidentified) stories at the time, and he was not copied in to Mr Cardy's email to Mr Proctor. I do not accept the argument. In the absence of any evidence of what Mr Edmondson and Trackers were discussing in the week before the article was published, I infer that it was to do with the same article in respect of which he had earlier sought Avalon's unlawful assistance.

1134. In my judgment, the parts of the article particularly complained of, namely the comments about Ms Sanderson's feelings when she learnt in full of her father's serial misogynistic behaviour, were private, even if other parts were not, or were no longer, her private information; and those parts that were private – which are wholly unexplained by MGN – were probably the product of UIG.

NS Article 8

1135. This article entitled "Nikki Dumps Lover. I'm gutted, wails Jamie" (byline: Martin Coutts) was published by Sunday Mirror on 21 November 2004. It is about the end of Ms Sanderson's relationship with Mr Meakin.

1136. The private content pleaded is: private information about the breakdown of Ms Sanderson's relationship with her boyfriend and details about her living arrangements after the separation. The content is said to have been in voicemail messages left by or for Ms Sanderson.

1137. The article is accompanied by a large, posed photograph of an almost naked Ms Sanderson and describes, purportedly in the words of Mr Meakin, Ms Sanderson's decision to end the relationship because she was not ready to settle down. There are also lengthy quotations attributed to "pals".

1138. According to Judith Sanderson's evidence, the break up had been sometime before the article and Ms Sanderson had moved out of the shared house and moved back in with her mother. They both thought at the time that Mr Meakin must have told the story to the paper, but now they believe that it was voicemail interception – though no voicemails left are identified.

1139. MGN's case is that the information was provided by Mr Meakin, via a source close to him. There was no oral evidence about the source of the article, but MGN relies on emails passing between Mr Coutts, Mr Buckley and Ms Weaver. It is necessary to quote them in full to get the flavour of what was going on at the time within the Sunday Mirror:

    a. Buckley to Weaver 23.11.04 12:49: "Can you sign off [redacted] for £1,500 on the Nikki Sanderson story. The contact is actually her boyfriend's [redacted] and is promising us the name of her new lover if we get [redacted] the money up today"

b. Weaver to Buckley 23.11.04 13:11: "Did [redacted] give it to the NoW too?"

c. Coutts to Buckley 23.11.04 22:29: "Hi Nick, The bloke she is believed to be shagging is Paul Tierney who is a defender for Manchester United reserves. His date of birth is 15/9/82. His address is [address provided]. He lives there with his parents and drives a black VW Gold. The phone number for his house is [number provided]. I spoke to my Utd contact tonight and he is hopeful of getting a mobile number of Tierney by close of play tomorrow …Apparently Jamie is being bombarded by the Screws – they've been harassing him at work … and have been camped outside both Jamie's and his mum's house. Jamie's mum and immediate family are all telling him he should talk to a paper but he is having none of it."

On the same day Mr Coutts commissioned a DOB search on Mr Tierney from C&L.

1140. These emails are two days after the article was published. An article was published on the same day by the News of the World breaking the same story, but in far more critical terms towards Ms Sanderson than the Sunday Mirror article. It is clear that there had been a race between different newspapers to publish the story, and according to Mr Coutts' email Mr Meakin was not the source of the story. The words "last night, Jamie … poured his heart out to the Sunday Mirror", which were in the draft article, were removed from the final version. But it appears that someone in his family might have provided some information. Mr Buckley's email to Ms Weaver is likely to be genuine – there would be no reason to hide phone hacking from Ms Weaver.

1141. However, the Sunday Mirror clearly did not stop there. The day before the article, Mr Coutts had commissioned a "DOB" search for Ms Sanderson from C&L. Others at the Sunday Mirror had already obtained Ms Sanderson's and Mr Meakin's mobile phone numbers and information about her mother. The draft article was emailed to Mr Saville the day before publication. Given the identity of those who were involved in the story line, it would be astonishing if there had not been an attempt to hack relevant phones and obtain voicemail information. The contents of the article – in particular quotations from pals of Ms Sanderson and from Ms Sanderson herself – are not fully explained by Mr Meakin's relative telling Mr Coutts, or someone to whom Mr Coutts was talking, what Mr Meakin thought about the break up. I am satisfied that some of the information that was published was obtained by unlawful means, probably voicemail interception.

1142. The information published was clearly private and sensitive, and did not cease to be so because Ms Sanderson had been willing to speak previously about her relationship with Mr Meakin. The fact that Mr Meakin had stayed in the house and that Ms Sanderson had moved back to live with her mother was not obvious or trivial. This was a serious invasion of the privacy of Ms Sanderson at a difficult time, which the Sunday Mirror was preparing to make worse for her by publishing allegations of Ms Sanderson being alone at 2am with Mr Tierney, with whom they believed she was having sex.

NS Articles 9 and 10

1143. These articles entitled "Nikki's Fun & Games" (byline: Suzanne Kerins) and "Nikki's Fun & Games with Man Utd Star" (bylines Martin Coutts and David Hudson) were published together by the Sunday Mirror on 28 November 2004, the weekend after the publication in article 8 above. The articles describe how, prior to the split between Ms Sanderson and Mr Meakin, Ms Sanderson had been called by him at 2am and heard Mr Tierney present. Mr Meakin asked Ms Sanderson what Mr Tierney was doing there, and was told that they were playing Monopoly.

1144. Bearing in mind Mr Coutts's email to Mr Buckley on 23 November 2004 (see article 8 above), it is evident that Mr Coutts had spent the week trying to find something to stand up the information that he had been given.

1145. The private content pleaded is private information about the breakdown of Ms Sanderson's relationship to her former boyfriend and in relation to a private evening spent with Mr Tierney. It is alleged that the information contained in the articles was the subject of voicemail messages left by or for Ms Sanderson.

1146. Ms Sanderson said that there were nuggets of truth in the articles (including the playing of Monopoly) but other parts had been fabricated by MGN, including the 2am phone call. She said that there had been a group of friends at her house playing games and drinking, and that Mr Meakin was away on a work trip. Mr Tierney was just the last to leave. She felt that they had left voicemails (her, Mr Meakin, Mr Tierney and his girlfriend and other friends in the group). Ms Godby said that Ms Sanderson told her at the time that the articles were fabricated. Natalie Turner said that others told her that it was true that they had been playing Monopoly that evening, and Ms Sanderson was suspicious that one of the boys had said something about her and Mr Tierney, but that everyone in their friendship group was thinking: "who would have said that to the press?"

1147. The articles – which are really in substance the same story, but Ms Kerins just used it in her Radar column too – say that Mr Meakin is convinced that Ms Sanderson and Mr Tierney are "an item".

1148. Following the search described under article 8 above, Mr Coutts instructed C&L on 24 November to do a search (Elect Roll) on Susan and John Eckersall, Mr Meakin's mother and stepfather. Mr Coutts emailed the information about Mr Tierney to Mr Buckley (see under article 8 above) and there is then an ELI invoice to Mr Buckley dated 29 November 2004 for "P Tierney" for work carried out on 24 November. One photographer was then paid for a 4-day watch of Ms Sanderson and a second was paid for 2 days, no doubt hoping to capture a photograph of her and Mr Tierney together. (The People was simultaneously chasing the same story, but that is of no relevance to the genesis of this article.)

1149. The clear inference is that the relative of Mr Meakin who was paid £1,500 by the Sunday Mirror divulged the name of Paul Tierney and the team there then went to work to find out what they could about the new relationship.

1150. MGN contends that the story was sourced from a confidential source, a freelance journalist and photographers. It accepts that the information about the alleged involvement with Mr Tierney was private.

1151. The freelance journalist was Mr Cardy (later employed by MGN and who made a witness statement in relation to Mr Turner's claim but not in relation to Ms Sanderson's, and was not called to give evidence). He was apparently paid £500 in cash, at the request of Mr Honeywell to Mr Buckley. Why Mr Honeywell was involved is unclear, but it does show how close he was to the journalistic methods being used.

1152. There were 28 calls to Mr Stafford from the extensions of Mr Stretch, Mr Saville and Mr Buckley between 23 and 27 November 2004, but no obvious involvement of Mr Stretch and Mr Saville with this article.

1153. This is another case in which MGN has called no one to explain in evidence how the article was put together from legitimate sources. It is obvious that Mr Tierney's name came from Mr Meakin's relative, but the story about Mr Tierney and what "friends" said about her getting close to Danny Young are unexplained. I infer that elements of this story, as reported, relating to Mr Tierney's involvement in the breakdown of Ms Sanderson's relationship, and the material relating to Danny Young, would have been obtained from voicemail interception and these elements were private. The mistaken information about an Amsterdam stag trip and a 2am call may have been invented, based on other material that was sourced, but they are not explained on MGN's version of events either.

NS Article 11

1154. Meanwhile, The People's own investigations were bearing fruit and led to the publication of "Nikki's in a tryst!" (byline Debbie Manley) the following weekend, on 5 December 2004. This reports that at the Coronation Street 44th anniversary party in Manchester on Friday, 3 December 2004, Ms Sanderson and Mr Young were romantically together and their mothers were also getting on well.

1155. The private content pleaded is: Ms Sanderson's relationship with Mr Young and the relationship between their mothers. It is alleged that this was the subject of voicemail messages left by Ms Sanderson and her associates.

1156. Ms Sanderson could not recall what happened between her and Mr Young at the event but said that it would have been obvious from their voicemails that there was something going on romantically. But she could not say whose voicemails could have been intercepted. Mr Young said that he thought the article was wrong in suggesting that they were kissing at the party, but that it was true that their mothers were getting on well and were present that evening. He also said that it would have been clear to anyone listening to their voicemails that there was something going on between him and Ms Sanderson. His evidence was not challenged by MGN.

1157. MGN claims that the information came from a confidential source and a photographer, and that the information that Ms Sanderson was seeing Mr Young

had been reported by the News of the World the previous weekend. Ms Manley had sent Mr Bucktin and Mr Jeffs Ms Sanderson's mobile phone number and date of birth on 26 November 2004, together with a news cutting about Mr Young. Two C&L inquiries were then made on 29 November, as previously described.

1158. Mr Bucktin emailed Ms Manley on Saturday 4 December 2004 at 10:30 a draft article from someone whose name was redacted as a confidential source. It contains all the material published in the article relating to Ms Sanderson and Mr Young. The source is therefore apparently a freelance journalist and seems to be familiar with the house style (" a pal said …"). This is more likely to have been the product of a former MGN stringer, such as Mr Cardy, than a confidential source. Where the source obtained the quotations attributed to a pal is unclear, though anyone could have seen what happened at the party itself (which was not a closed Coronation Street cast event).

1159. It is apparent that whoever drafted the article must have been at the party or had a report from it. The report is accepted to have been accurate in some respects. If, as Ms Sanderson and Mr Young claim, there was no public kissing, there must have been a degree of invention in the story, which would not have come from voicemails. It is however likely that Mr Bucktin or Ms Manley would have tried to stand up the storyline if the sender of the draft article had not already done so – Ms Manley had obtained relevant phone numbers of the Sanderson family on 24 November 2004 from ELI and distributed them.

1160. In the absence of any proper explanation from MGN and bearing in mind the evidence of Mr Evans and Mr Johnson about the way that VMI was used, I consider it more probable than not that at some stage the voicemails of Ms Sanderson and her mother were listened to, by someone on behalf of MGN, to check what verification there was of the Danny Young story. There was clearly UIG going on at the time, as evidenced by the payment records, though it is not evidence that The People had yet successfully hacked Mr Young's mobile phone.

1161. The information in the story about Mr Young and Ms Sanderson having become really close very quickly and spending a lot of time together was private information, verified unlawfully.

NS Article 12

1162. This article entitled "Love Nik!" (byline: Debbie Manley and Nadia Brooks) was published by The People in its VIP column on 12 December 2004. It is about Ms Sanderson allegedly talking about her relationship with Mr Young at a party in Manchester's Ampersand club, and scotching rumours of a romance with Alan Smith.

1163. The private content pleaded is: Ms Sanderson's personal life and her relationship with Mr Young, and is alleged to have been the subject of voicemails left by Ms Sanderson and her associates. Ms Sanderson said she would not have said what the article contains to someone at a party.

1164. MGN's defence is that the information was not private, having been in the public arena for 2 weeks, and that it was provided by a confidential source. There is a

redacted CR for £75 for "Corrie babe Nikki Sanders" but nothing is known about the nature of the source. There had been reports published by other newspapers linking Ms Sanderson with Alan Smith.

1165. Following the ELI invoices for Ms Manley in late November 2004, there is a C&L payment for an Elect Roll search in the name of Danny Woolley-Young dated 9 December 2004 and for a DOB search in the name of Tracey Woolley, Mr Young's mother. There is no reference to Mrs Woolley in the article, so it is a legitimate inference that the date of birth was obtained for other purposes, namely (as the claimants allege generally) to help to crack PINs.

1166. It is therefore sufficiently clear that Ms Manley was using UIG to assess the storyline that was provided. There is likely to have been VMI conducted at this time. The content of Ms Sanderson's voicemails is of course private, even if the main aspects of the story were already in the public domain. They were trying to play down their relationship in public at this time.

NS Article 13

1167. This article entitled "Street Mates" (bylines: Jessica Callan, Eva Simpson and Caroline Hedley) was published by The Daily Mirror in its 3am column on 17 December 2004. It is about Ms Sanderson and Mr Young being photographed in public and then separating when they saw the camera.

1168. The private content pleaded is information about Ms Sanderson on a private outing with Mr Young, and is said to demonstrate continued surveillance of her.

1169. The photograph was taken by Cavendish Press and there is a CR for £150 in respect of it.

1170. It is hard to see that this is anything other than a snap taken by a photographer in a public place which was then sold to the Mirror, with a bit of commentary about the occasion added (whether true or untrue). Ms Sanderson was unable to explain how this could have been the result of VMI, which in any event is not pleaded. There is no evidence of unlawful surveillance.

1171. The information is in any event trivial.

NS Article 14

1172. This article entitled "Coronation Sweet" (no byline) was published by The Sunday Mirror on 13 February 2005. It is about Ms Sanderson shopping for a Valentine's card for Mr Young.

1173. The private content pleaded is information about Ms Sanderson purchasing a Valentine's card for Mr Young. It is said to demonstrate surveillance of Ms Sanderson and the information was the subject of voicemail messages left by her and her associates.

1174. The photograph was taken by David Hopkins and there is a CR for £500 for the photograph. Mr Saville sent Mr Buckley an email on 12 February saying that he

has "been offered some exclusive pics from a snapper pal of Nikki Sanderson buying a Valentine's day card for Danny".

1175. Again, this article is nothing more than commentary attached to a photograph. Whether the quotation about the choice of card was really said by anyone, or made up on the basis of the photographer's description of what he saw, it appears inherently unlikely to have been said in a voicemail left by Ms Sanderson, and even less so by one of her associates. Ms Sanderson said there "could have" been a voicemail about a large teddy bear that Mr Young had once bought her, and Mr Young also said that they "may have" spoken about it in voicemails, but I am not persuaded that either of them has any recollection of this and it is merely speculation intended to bolster a weak case.

1176. There is nothing in the article other than what anyone in the shop would have observed and inferred. The content is also trivial.

NS Article 15

1177. On the same day, The People published an article headed "Nikki's hot Young love" (byline: Laurie Hanna), labelled a Picture Exclusive, which has an attractive photograph of Ms Sanderson and Mr Young walking in Manchester (taken by Eamonn & James Clarke) and some commentary.

1178. The private content pleaded is: information about Ms Sanderson on a private outing in Manchester with Mr Young, and the information in the article is said to be the subject of voicemail messages left by her and her associates, and to demonstrate continued surveillance of her.

1179. There is a CR of £700 for Mr Clarke and another for £100 to an anonymous source, who appears to be a freelance journalist rather than a confidential source. The article does refer to a future Coronation Street plot line, which might explain the further payment.

1180. Ms Sanderson's real concern was nothing to do with voicemail hacking but a concern that MGN knew where she was and that she was being followed. The documentary evidence suggests otherwise: there is no payment for a surveillance shift, just a photographer payment.

1181. Again, the information in the article was trivial by this stage, when a good deal had been written about Ms Sanderson's new romance.

NS Article 16

1182. This article entitled "Luv, in a Cold Climate" (bylines: Jessica Callan, Eva Simpson and Caroline Hedley) was published by The Daily Mirror in its 3am column on 8 March 2005. It is about Ms Sanderson allegedly attending and singing at the Opera House in Manchester, wearing a skimpy dress. There is a large photograph of Ms Sanderson by Farrell/Cabarazzi.

1183. The private content pleaded is: information about Ms Sanderson on a night out in Manchester with Mr Young, which is said to be the subject of voicemail messages

left by her and her associates. However, Ms Sanderson denied having ever sung at the Opera House and said that she would not have done so wearing such a dress, so the commentary with the photograph is apparently incorrect. There were, however, other articles by other newspapers that reported her singing at the Opera House that day – one on 28 February in The Sun, giving notice that she would be singing that week with Cole Page, and two others (published in The Sun and The Star) published on the same day, reporting on the event.

1184. The only content that relates to her and Mr Young is the comment that it was "a night out with co-star boyfriend, Danny Young".

1185. If the photograph was taken on the occasion of the Opera House event, it is far more likely that the picture was taken by a photographer present than her whereabouts were discovered by voicemail interception. Ms Sanderson points to 3 phone calls from Mr Clements' extension to Mr Stafford the day before the article was published (Mr Clements was at the time the Showbiz editor), but there is no connection with that particular article rather than one of the many other showbiz articles published on the same day or in the following days.

1186. In my judgment, there is no private content in this article: it merely describes the public occasion that Ms Sanderson and Mr Young attended, and the information contained in it, if private to any extent, is trivial given the degree of reporting of the relationship by that time.

NS Article 17

1187. This article entitled "Nikki's Coribbean Cuddle" (byline: Rachael Bletchly) was published by The People as a Picture Exclusive on 13 March 2005. It describes a holiday that Ms Sanderson and Mr Young had taken together in St Lucia. There is one large photograph of Ms Sanderson in a bikini on the front cover and four further photographs of her and Mr Young on p.3. The credit for the photographs is bigpicturesphoto.com. There is a CR for Big Pictures (UK) Ltd for £4,500.

1188. The private content pleaded is: information about Ms Sanderson on a private holiday with Mr Young, and is alleged to have been the subject of voicemail messages left by or for her.

1189. The holiday had already been reported in the Daily Star and OK! Magazine in January and February 2005. It is therefore likely to have happened in January. The Sunday Mirror (Mr Coutts, Mr Buckley and Mr Saville) had been active in January 2005 seeking to find information about a holiday thought to be in Barbados at that time, and was trying to buy photographs from Neon PR. There was a CR for them for £6,000, dated 16 January 2005. MGN contends that Neon was Ms Sanderson's agent.

1190. Mr Buckley phoned Mr Young's mobile number from his landline extension three times on 18 January 2005. On 19 January Mr Thomas, the editor of The People, asked for Ms Sanderson's mobile phone number and Ms O'Brien's number, which Ms Manley provided.

1191. There is a clear inference from this activity, which I draw, that UIG was being conducted by the Sunday Mirror and by The People in order to find out where Ms Sanderson was on holiday, so that photographs could be taken. The photographs published by The People are different from those published by others.

1192. The occasion published by The People is clearly a private holiday in principle, in respect of which Ms Sanderson had a legitimate expectation of privacy and that it would not be splashed over the front page and page 3 of a UK newspaper.

1193. However, by the date of publication by The People, numerous other photographs of the holiday had been published. The Sun published 5 photographs on 25 January, two of which are virtually identical to two published by The People, and the Caribbean holiday was referred to in other articles in January and February 2005.

1194. OK! Published 17 photographs from St Lucia in a long article dated 8 February 2005, credited to Sanpix/Ward, with a lot of information about Ms Sanderson and Mr Young. Ms Sanderson could not remember whether this was a fully consensual article or whether the draft was simply sent to her agents for approval. In my judgment, based on the content of the article, it was consensual. Ms Sanderson had therefore chosen to put all the content into the public domain. There was nothing more of any substance in the commentary of Ms Bletchly and I find that the quotation attributed to a fellow holidaymaker is just made up. It is clearly not itself the product of VMI though, as I have found, there probably was a VMI involved in attempting to find Ms Sanderson in January. The obvious inference from the date of The People's publication is that the attempt to get a photograph at the holiday location was not successful at the time, and the photographs were acquired from Big Pictures at a later time.

NS Article 18

1195. This article entitled "Nikki to tie knot?" (bylines: Jessica Callan, Eva Simpson and Caroline Hedley) was published by the Mirror in its 3am column on 25 March 2005. It contains speculation that Mr Young would propose marriage to Ms Sanderson on her 21st birthday, and purports to quote Ms Sanderson herself as well as "a close pal" of Mr Young as well as "our spy".

1196. The private content pleaded is: information about Ms Sanderson's relationship with Mr Young and it is alleged that the content was the subject of voicemail messages left by her and her associates. It appears to have been based on a sighting of Mr Young looking at rings in a jeweller's. Mr Young said, unchallenged, that he expected that they would have discussed the ring over voicemail messages. Both Mr Young and Ms Sanderson deny that they were considering getting married, but she did ask for a ring for her birthday.

1197. There is no payment for a source for this article, except for re-use of photographs. There are no payment records. There are 8 calls from Mr Clements to Mr Stafford on the day before publication, but no proof that these related to the article in question rather than other articles.

1198. The claimants did not address it in their submissions, but there were articles already in the public domain that covered this story. On 20 March 2005, 5 days before the 3am article, the Daily Star published an interview with Ms Sanderson, in which she said that she had been in a jewellery shop recently with Mr Young and that she was getting a ring for her birthday but not an engagement ring, and that she was planning to leave Coronation Street when Mr Young's contract ended so that they could stay together. On the same day, the Sunday Mirror published a Radar article ("Nik: I'm Weddy for Dan"), which suggested that Ms Sanderson told Ms Kerins that she dreams of Mr Young proposing to her on her 21st birthday and "I've been dropping hints and we looked around jewellers at watches and bracelets … and some rings. I'm not sure it will be an engagement ring. But I love him to death – I'm really, really happy". No complaint or claim was made in relation to either article by Ms Sanderson.

1199. The theme of The Mirror's article is essentially the same but the focus is slightly different, in that there are comments about Mr Young's attitude and wishes. But the quotation attributed to Ms Sanderson is lifted straight from the Sunday Mirror article.

1200. The real question, therefore, is whether the article is copied and partly invented by the 3am team (none of whom gave evidence) or the gaps were filled by UIG. The new material would be most likely to have been left by Mr Young in a message to an associate of his, but there is no clarity about who this might have been.

1201. In my judgment, despite the fact that the showbiz desk was a main centre of VMI at the Mirror at this time, and despite no evidence having been called by MGN, the new content of the article does not strongly suggest that VMI was involved, nor is it obvious who might have been hacked to provide it.

NS Article 19

1202. This article entitled "Corrie Nikki and Danny on Rocks" (byline: Nadia Brooks) was published by The People as an Exclusive on 10 April 2005. It describes how the couple were on the verge of splitting up owing to a string of furious bust-ups, as their careers moved in different directions.

1203. The private content pleaded is: information about Ms Sanderson's relationship with her boyfriend.

1204. Ms Sanderson disputed that the content of the article was true: she had not been given an ultimatum to choose between her career and Mr Young, and they had not had serious rows at that stage of their relationship. They were discussing their future as Mr Young was planning to move back to Essex when he left Coronation Street. Mr Young gave similar evidence. Ms Sanderson said that it was true that she had her birthday party in the Victoria and Albert Hotel but she did not tell the media about the venue. In cross-examination, however, she accepted that that was not correct, OK! had covered her birthday party and been told about it, and the event and venue had been publicised in the Daily Star two days before.

1205. Mr Young, whose evidence was not challenged, said:

> "we certainly would have been having conversations over voicemail messages discussing how we both felt about this and these conversations may well have been tense, particularly if I was down south at the time and Nikki was in Manchester. These conversations could have been dramatised by MGN's journalists."

1206. I consider it unlikely that such difficult matters were being discussed "over voicemail messages". I also consider it unlikely that, 18 years after the event, Mr Young could remember reliably how and when these matters were discussed, though I obviously accept his evidence that they were discussed. Since Ms Sanderson denies much of the content of the article, it seems unlikely that it was taken from voicemails left by either of them.

1207. There are two relevant CRs: one to Mr Cardy for £100 for a "Nikki Sanderson assist" and one to an anonymised contributor for "Corrie Nikki and Danny on rocks" for £500. These were not explained by any evidence from MGN.

1208. Nothing was said in submissions by the claimants about the byline, Nadia Brooks. On balance, I consider it is more likely that the story, perhaps erroneous, was written on the basis of the contribution recorded in the CR. There was no challenge brought by Ms Sanderson to the propriety of the redaction. Mr Cardy's contribution was obviously only a minor one on this occasion, judging by the size of the payment. There is no payment record to suggest that any UIG was being conducted on this occasion.

NS Article 20

1209. This small article was published in the Surveillance section of the 3am column (bylines Jessica Callan, Eva Simson and Caroline Hedley) by the Mirror on 29 April 2005. It reads: "Corrie's Nikki Sanderson having a drink with her co-star boyfriend Danny Young in the Cherry Tree pub in Brentwood, Essex".

1210. The private content pleaded is: Ms Sanderson's private outing to a pub in Essex with Mr Young.

1211. There is a redacted CR for this date for £40 for "3am Spotted x 2/CH". The fact that two spottings were being paid to one contributor suggests that this was Ms Sanderson and Mr Young who were seen together – not both of the other two celebrities in the same column, one of whom was in Notting Hill and the other in Kent.

1212. As with previous Surveillance spottings, it is highly likely that these were phoned in by members of the public, absent some further evidence of surveillance by MGN. There is no such indication in respect of this article.

NS Article 21

1213. This article entitled "Corrie's Nikki set to be the new Kylie" (byline: Louise Burke) was published by The Sunday Mirror in its magazine on 1 May 2005. It describes how Ms Sanderson was considering embarking on a singing career and reports on the occasions on which she had performed on shows.

1214. The private content is pleaded as: information about Ms Sanderson's professional life, her relationship with Mr Young and private financial information. It is alleged that this content was the subject of voicemail messages left by Ms Sanderson and her associates.

1215. Ms Sanderson accepted that she had had offers from record labels, which she would discuss with her agent, Carol Godby, but said that she did not sign anything as she wished to continue acting. The article was therefore wrong to say that she had signed a £200,000 deal with Universal. Ms Godby said that she had lengthy discussions with Universal over voicemail messages. There were conversations about money and she went with Ms Sanderson to a meeting in London. Ms Godby's evidence was not challenged, but she did not say that she believed her voicemails had been hacked, and there are only 2 phone calls and one text to her in 2006.

1216. MGN's defence is that all the information in the article was already in the public domain, following Ms Sanderson's success on *Celebrity Stars in their Eyes,* so was no longer private. The Sun reported on 31 January 2005 that Ms Sanderson was going to "do a Kylie" and the News of the World reported on 17 April 2005 that Ms Sanderson had signed a recording deal with Universal worth £200,000. Some of the exact language of the article can be found in a Daily Star article dated 6 February 2005. MGN called no evidence to explain how it obtained the detail in the article.

1217. There is one CR for £40 which appears to be to a freelance photographer (as the originator of the CR is identified as the "Mags Pics" department.

1218. The real issue with this article is whether the writer simply re-hashed previous material and added a few comments disguised as quotations from "a pal" and "a friend", or whether the story and Ms Sanderson's feelings about her career were stood up by VMI of messages left by her and Ms Godby. Given that the article is a magazine article and given the identity of the writer, who is otherwise unknown in the realms of UIG, I consider it more likely than not that UIG was not used. There is no evidence that Ms Godby was hacked. This and other such articles are an indication that the form "a pal said" had become embedded as part of the house style and is not always indicative of phone hacking or even a confidential source.

NS Article 22

1219. This article entitled "Corried away" (byline: Jessica Callan, Eva Simpson and Carline Hedley) was published by The Mirror in its 3am column on 23 May 2005. It is merely a commentary on a photograph taken outside the Embassy Club in London, which Ms Sanderson had attended with Mr Young. The photograph shows what I believe is generally referred to as a "wardrobe malfunction".

1220. The private content is pleaded as: information about Ms Sanderson on a private night out in London with her boyfriend. It is alleged that the content was the subject of voicemail messages left by Ms Sanderson and her associates.

1221. This may be an article that Ms Sanderson remembers that she saw at the time of publication (at least the photograph) because she felt that it was making her "look

bad"; however, she was not sure that this was the article. She objected to the comment that she was "wobbling her way towards a waiting car" but did not complain about inaccuracy at the time. She accepted that it might be taken outside the Embassy. A similar photograph was published by the Daily Star on the same day.

1222. There is a single CR for Exposure Photos Ltd, which is credited with the photograph in the article.

1223. There is no clarity about Ms Sanderson's case in relation to this article, with the main fire being directed at the conduct of the 3am team in general. The gravamen seems to be that MGN called no evidence to explain how the photographer knew to be present, but surveillance is not the allegation in the pleaded case, and there was no evidence in support of the pleaded case of voicemail interception.

1224. In my judgment, the claim based on this article is hopeless. The obvious inference is that a photographer was stationed outside a celebrity nightclub and the 3am team added some anodyne commentary. There could be no expectation of privacy in relation to arriving at or leaving a celebrity nightclub, and the information that they attended a party is trivial.

NS Article 23

1225. This article entitled "Corriebbean Cuddle" (no byline) was published by The Mirror on 31 May 2005. It is a photograph of Mr Young and Ms Sanderson in swimwear in the sea, supposedly in the Caribbean, with short commentary saying that they had flown out for a break.

1226. The private content pleaded is: Ms Sanderson's holiday with Mr Young, and it is alleged that it was the subject of voicemail messages left by or for her. The allegation is therefore that Ms Sanderson's or Mr Young's phone was hacked to discover the location of their holiday, enabling MGN to send a photographer. If that is established, it is clearly an invasion of Ms Sanderson's privacy.

1227. The source of the photograph was Big Pictures, alleged by the claimants to be a picture agency that conducted UIG. A series of similar photographs were published on the same day by the Daily Star, also credited to Big Pictures.

1228. Ms Sanderson's closing submissions allege that Big Pictures itself engaged in UIG, including by means of an airline insider who sold to it flight details of celebrities. They say that it is "unclear how Big Pictures were able to know the whereabouts of Ms Sanderson and Mr Young and obtain the photographs". That undermines the pleaded case that voicemails were hacked to obtain the details of the holiday, which is not pursued. Ms Sanderson even disputed that they had gone to the Caribbean a second time.

1229. Big Pictures Ltd may on occasions have involved itself in UIG (see PI Schedule) but if, having done so, it offered photographs to MGN and The Star to buy, even at the fancy price of £2,000, that is not a claim that can be or has been made against MGN.

NS Article 24

1230. This article entitled "Plane Careless – Corrie Couple Late so Barred from Flight" (byline: Deirdre O'Donovan) was published only in the Sunday Mirror's Eire edition on 7 August 2005. It describes Ms Sanderson and Mr Young missing a flight to Dublin and having to rush to reach a Dundalk nightclub in time. It is accompanied by a flattering, posed photograph of Ms Sanderson and a second, flattering, posed photograph of her and Mr Young, presumably on the occasion of the visit, though there is no credit published.

1231. The private content pleaded is: Ms Sanderson missing a flight to Dublin, which is alleged to have been the subject of voicemail messages left by or for her.

1232. The article contains significant material attributed to "an insider" describing what happened, how the flights were changed and that Ms Sanderson had to change in the toilets at Dublin airport to make it to the club on time. MGN speculates that there was probably a tip off, but there is no CR nor any evidence to support that. It does seem improbable that a tip off was able to report on the late arrival at the airport, the change of plans, the notification to the organisers and what happened in Dublin airport.

1233. The fact of Ms Sanderson travelling to Ireland, missing a flight and changing in an airport lavatory is trivial, but that would not be an answer to any voicemail interception, as the voicemails themselves are private communications.

1234. There is no evidence however to establish that any UIG was conducted in England and Wales. The byline may well have been based in Ireland and conducted voicemail interception from there. This is not addressed at all in Ms Sanderson's case. Without such evidence, argument and explanation, I am unwilling to assume that any tort was committed under English law.

NS Article 25

1235. This article entitled "I'm a Corrie Crimper … get me out of hair" (byline: Brian Roberts) was published as an Exclusive by The Mirror on 29 August 2005. It describes bosses of *I'm a celebrity, get me out of here* wanting Ms Sanderson to appear in the next series of their TV reality show.

1236. The private content pleaded is: information that Ms Sanderson could appear on the show, and it is alleged that this was the subject of voicemails left by or for her.

1237. Ms Sanderson said that whether to appear on the show would have been a conversation that she would have had with her agent and it would have been kept secret. She said in cross-examination that she did not know whether it was the result of phone hacking. Ms Godby also remembered having discussions about it and said that she chatted a lot with a contact called Daisy at ITV and went for a meeting about it in London, but Ms Sanderson declined in the end. There was no oral evidence to support a case of VMI.

1238. Once again, the claimants' case really amounts to reliance on phone hacking generally being carried out at this time, and on Mr Roberts' five admitted Gulati articles and four further MNHL admitted articles. That does not, however, mean that every article that is written by him is the product of UIG. The source quoted is a source about the show's wish list and others who are on the wish list, so it is unlikely to have been sourced from any information that Ms Sanderson had. It is hard to see how the information that ITV had about its plans was Ms Sanderson's private information, though the content of the discussions with ITV (which are not quoted) might be.

NS Articles 26 and 27

1239. These short articles are published in the Daily Mirror's 3am column (bylines: Jessica Callan, Eva Simpson and Caroline Hedley) on 5 September 2005 and 10 September 2005. The relevant text reads:

> "CORRIE's Nikki Sanderson, right, carrying Karen Millen bags in Covent Garden …" (accompanied by a portrait photograph)
>
> "Corrie's Nikki Sanderson and Danny Young in WH Smith, Euston train station …"

1240. The private content pleaded is: Ms Sanderson's whereabouts on a private outing (in the second case, with her boyfriend), said in both cases to demonstrate continued surveillance of her.

1241. As with previous "Surveillance" sightings, the inherent likelihood is that these sightings are made casually by passers by who respond to 3am's invitation to send in information about celebrities that they see. It is true, however, that there are no CRs for payment of £20 for each spotting, as is sometimes the case. Ms Sanderson's case is entirely formulaic and does not identify any evidence that supports a case of surveillance of her.

1242. Ms Sanderson's presence in these two public locations was not private information, so in the absence of any evidence of UIG or surveillance, there is no claim in relation to these articles.

NS Article 28

1243. This article entitled "Telly lovebirds house bust-up" (byline: James Desborough) was published by The People (in its 2 star edition) on 18 September 2005. It describes an alleged series of "huge bust-ups" that Ms Sanderson and Mr Young had had about whether she should live with him in a flat in London or remain in Bury, near her mother.

1244. The private content pleaded is: Ms Sanderson's relationship with Mr Young and her living arrangements following the sale of her home in Bury, and it is alleged that this information was the subject of voicemail messages left by or for her.

1245. Ms Sanderson said that they were having conversations about this subject but that there was no big bust up. Mr Young, whose evidence was not challenged, agreed

that this was a conversation that they were having in connection with Ms Sanderson leaving Coronation Street, but untrue that he was renting a flat in West London. He said that it was very possible that this was discussed over voicemail messages.

1246. On the same day, The Daily Star published an Exclusive in its first edition saying that Ms Sanderson had dropped the bombshell the previous week that she would not be moving to London with Mr Young. That article purports to quote a source close to Mr Young and Ms Sanderson herself.

1247. MGN called no one to attest to a confidential source CR for £300 and any use that was made of the Daily Star's first edition before its own second edition was published. The content about huge bust-ups and being close to breaking point is accepted to be private, as it seems to me is any decision made to stay in Bury (though that, as a fact, was made public in the Star's first edition) and Ms Sanderson's views about her financial position.

1248. It is, in my view, an obvious inference that this story was responsive to the Daily Star's Exclusive on the same day. A Sunday paper would not have saved a story like this, if it had one, to a later edition of its paper. Much of the content repeats what is in the Star. MGN then paid £300 to someone for something, but there is no explanation of what. The new material in The People is the alleged series of huge bust-ups.

1249. Mr Desborough is the byline on 8 admitted articles in total in the MNHL, and sent an email to Mr Jeffs (cc Mr Proctor) in November 2004, which is evidence of involvement in UIG. This was during the time of heaviest use of PIs and phone hacking. I consider that, faced with such a story, The People would have done whatever it could to seek to stand up the story and add something to it, in line with the evidence of Mr Evans about the use of VMI. In the absence of any evidence about the nature of the independent source, I consider that it is more likely than not that VMI was used by The People on this occasion to stand up the story, before it published in its second edition. The fact that there is no traceable call data disclosed is irrelevant, as non-traceable burner phones were mainly used for this purpose, and it is possible that Mr Desborough sub-contracted the work to the so-called source.

NS Article 29

1250. This article entitled "Splice Girl" (bylines: Debbie Manley and Alice Walker) was published by The People in its VIP column on 5 February 2006. It describes how Ms Sanderson and Mr Young were spotted looking at engagement rings in a jeweller's in Manchester.

1251. The private content pleaded is: Ms Sanderson on a private outing with Mr Young, and it is alleged that the article demonstrates continued surveillance of her.

1252. Mr Young said (and Ms Sanderson agreed) that they were not looking at engagement rings but that she did buy him a Gucci ring at that time. He said that they would have exchanged voicemails about it and which jewellers they would go to.

1253. MGN says that the story came from a freelance photographer, Dave Nelson, pointing to a CR for £75, but without explaining why Dave Nelson was there. Anyone who was there could easily have seen that Ms Sanderson and Mr Young were looking at rings, however. Given that Ms Sanderson had previously spoken publicly about the buying of an engagement ring, it is likely that the "spy", who observed them, jumped to an obvious conclusion but got the story wrong.

1254. This article, which is wholly innocuous, is unlikely to be the subject of UIG. The fee paid to the photographer is too low for a surveillance operation. There were 12 calls from Ms Hanley and Ms Walker's landline extensions to Rob Palmer in the 5 days leading up to the publication date. While this supports the conclusion that they were at the centre of UIG activities on the showbiz desk at The People at this time, there were many other articles on the VIP page that day and two other articles in that edition of The People on which Ms Manley was bylined, so it cannot be said that those calls related to Splice Girl, which has every appearance of a chance sighting by a photographer in a public shopping area.

NS Article 30

1255. This short article entitled "Life's loser" (bylines: Debbie Manley and Alice Walker) was published by The People in its VIP column on 5 March 2006. It alleges that Ms Sanderson came out with the "don't you know who I am routine" in a row over a sale item at Top Shop in London.

1256. The private content alleged is information about an exchange involving Ms Sanderson whilst shopping in London, and it is alleged that the information was the subject of voicemail messages left by her and her associates.

1257. Ms Sanderson said that this would never have happened as they are not words that she would use, but she might have made a joke in a message about an incident that she does not remember.

1258. There is a CR for £30 to a confidential source, authorised by Ben Proctor. There are 8 calls to Rob Palmer from Ms Manley's extension or mobile in the 4 days leading up to publication – but there is nothing to show that any of these related to the article in issue as opposed to the rest of the VIP column or 2 other articles in the same edition on which Ms Manley was bylined.

1259. The nature of the storyline and the size of the payment make it most probable that this was something reported by someone who claimed to have observed it happen. If Ms Sanderson is right that it did not, then it cannot have been the subject of voicemails. The argument that there might have been voicemails by way of a joke about an unremembered incident was very unpersuasive.

1260. The subject matter of the article, if true, is otherwise trivial. A legitimate complaint might have been that it was untrue and libellous, but no such complaint was ever made.

NS Article 31

1261. This article entitled "Zoe foots Strictly bill" (no byline) was published by The Daily Mirror in its Eire edition on 10 March 2006. It describes how among others Ms Sanderson was tipped to be in the next series of *Strictly Come Dancing*.

1262. The private content is pleaded as: information that Ms Sanderson was due to appear on the forthcoming *Strictly Come Dancing* series, and it is alleged that this information was the subject of voicemail messages left by or for Ms Sanderson.

1263. Ms Sanderson said that it was untrue and she had never been approached. She said that there might have been messages between her and her friends, in which she said that she would like to be in it, but accepted that that information could as well have come from someone talking about her and that she was speculating about this.

1264. I agree with MGN that this was not information that was private to Ms Sanderson as it had never been shared with her, if indeed it was correct. As a prediction or thought of someone else, it was also trivial information. MGN relied on a CR for a confidential source, for a modest £25, which is indicative of a tip-off, possibly from within the BBC, as it named 3 possible contestants.

1265. There is no credible case of voicemail interception.

NS Articles 32, 33 and 34

1266. These short articles are "Surveillance" notes in the 3am column (bylines: Kiki King, Eva Simpson and Caroline Hedley) published in the Daily Mirror on 1 May 2006, 20 June 2006 and 5 March 2007. They read (in order):

> "Nikki Sanderson partying with mates at Panacea, Manchester…"
>
> "Nikki Sanderson looking at lacy thongs in La Senza, Bury, Lancs…"
>
> "Ex-Corrie star Nikki Sanderson eyeing up Chloe bags in Selfridges, Trafford Centre…"

1267. The private content pleaded is: Ms Sanderson's whereabouts on a private night out with friends / on a shopping trip in Bury / whilst shopping in the Trafford Centre in Manchester, and the articles are alleged to demonstrate continued surveillance of Ms Sanderson and the Panacea sighting to be the subject of voicemail messages.

1268. As with previous spottings reported in "Surveillance", absent some other indication of UIG these are most likely to represent sightings reported by passers-by, though there are no CRs for these articles.

1269. Ms Sanderson relies on call data to her associate Ryan Thomas in May 2006, but all of this is significantly after the first article and significantly before the second. She speculated that she might have left a voicemail message about Chloe bags and probably left a message for her mother before she went to La Senza, but VMI

is not alleged in relation to those articles. There is no evidence to support a case of constant surveillance of Ms Sanderson, notwithstanding the name of the section of the 3am column.

1270. In my judgment, it is most improbable that the information in any of these articles was the result of phone hacking and, otherwise, Ms Sanderson has no reasonable expectation of privacy in relation to doing ordinary things in these public places.

NS Article 35

1271. This article entitled "Raver's Return" (byline: Brian Roberts) was published by the Daily Mirror on 7 June 2007. It describes a projected return of Ms Sanderson's character, Candice Stowe, to Coronation Street. It purports to quote a Coronation Street insider and Ms Sanderson herself in describing her projected return.

1272. The private content pleaded is: information in relation to Ms Sanderson's professional life, and alleges that the subject matter was discussed over telephone calls and voicemail messages between Ms Sanderson and her agent, Carol Godby.

1273. Ms Sanderson said that there were discussions about her coming back to film a further episode but in the end it did not happen, probably because the filming dates clashed with another commitment she had. Ms Sanderson said that she did not give the quotations that are attributed to her and believes that her comments were taken from the press release when she left the show.

1274. Ms Godby said that the casting department would ring her first, in connection with such matters, and that she would then have rung Ms Sanderson or left her a message. Ms O'Brien said that the information would not have come from Ms Sanderson, who would not have spoken about it, and speculated that it could have been obtained from press office voicemails left for her.

1275. MGN relies on a confidential source, though no one gave evidence to explain the nature of the source or to verify it. There is a CR for £350 to an anonymous contributor. The substance of the article had already been published by the Daily Star on 2 March 2007 and The Daily Record on the same day, which said that there were secret talks going on to bring Candice Stowe back, in order to bring back her "sex appeal", and the possible plot development was described.

1276. There is no evidence to support the allegation that there were voicemail messages that were hacked, only an acknowledgment of the possibility that voicemail messages were left for Ms Sanderson or for Ms Godby. Notwithstanding Mr Roberts' antecedents, the case advanced is therefore really only speculation. Given the anonymous CR for a reasonable sum (the redaction not being challenged by Ms Sanderson before trial), it is likely that an inside source provided the Coronation Street take on the issue and that Mr Roberts wrote the rest from already published material.

NS Article 36

1277. This article entitled "Tina Tryin' a Ryan" (bylines: Alice Walker, Emma Donnan and Katie Hind) was published by The People in its VIP column on 2 March 2008.

It is primarily about Ms O'Brien, but mentions Ms Sanderson too in connection with a proposed trip to Los Angeles for Ms O'Brien to see Michelle Ryan's agent, with Ms Sanderson accompanying.

1278. The private content pleaded is: information in relation to a trip to Los Angeles that Ms Sanderson had planned with Ms O'Brien, and it is alleged that this was the subject of voicemail messages left by or for Ms Sanderson.

1279. Ms Sanderson said that she did not know whether the article was true, but that she and Ms O'Brien had toyed with it for a while, so perhaps there were messages left between them. The information was very specific, so something must have been said between them. Ms O'Brien said that she could not recall ever planning to go to LA but it is the kind of thing that they would have discussed over voicemail messages, and they may have discussed how well Michelle Ryan had done and that they should do the same. It looked to her as if this article contained word for word what she had said to Ms Sanderson in voicemail messages. Ms O'Brien's evidence was not challenged by MGN.

1280. The article was therefore clearly wrong in contending that Ms O'Brien was going to LA to be shown around by Michelle Ryan's agent. That means that the source was either wrong, or that someone was listening to the chit-chat that Ms O'Brien described taking place between her and Ms Sanderson and drawn some erroneous conclusions.

1281. There is a CR for £50 to a confidential contributor but nothing is said as to the nature of the source, nor is it vouched for. Oddly, it is authorised by Lloyd Embley, who was acting editor of The People by that date, though the amount of the expense would have been below the level of the most junior of those permitted to authorise payments.

1282. There were 16 calls to Rob Palmer from Lee Harpin's mobile phone between 26 February and 1 March 2008 (he was then deputy news editor). While this may say a lot about what Mr Harpin was involved in, there is no reason to think that his calls related to this very short article for which the three bylines on VIP were responsible.

1283. Nevertheless, the very precise information that was published (which was incorrect) is not satisfactorily explained, and there is something about this story that does not quite make sense. The information is more than a piece of idle gossip and it is difficult to imagine that any voicemail, if any was in fact left on this subject, would have justified what was published, given the vagueness of the aspirations that Ms Sanderson and Ms O'Brien say that they might have shared at some time. There is no suggestion that being shown around by Michelle Ryan's agent was discussed. That means that the information that was published, albeit wrong, is likely to have come from another source. The £50 paid for it may reflect the quality of the information gathering that was used.

1284. On balance, therefore, I reject the claim that this article was the product of VMI or other UIG (none is suggested by Ms Sanderson) on the part of MGN.

NS Article 37

1285. This article entitled "It's over, say the Street lovebirds" (byline: Mark Jefferies) was published by the Mirror on 26 February 2009. It describes how Ms Sanderson and Mr Young had "decided to call it quits".

1286. The private content is pleaded as: information about Ms Sanderson and the breakdown of her relationship to Mr Young, and it is alleged that this was the subject of voicemail messages left by her and her associates.

1287. Ms Sanderson said that they had in fact split up at the beginning of that year (2009) after a row on New Year's Eve, and she would have told close friends at the time that they had broken up, but that the information in the article has come from someone that she has told over voicemails weeks later and had not had a chance to tell previously. She did not believe that friends would have spoken to the papers. Mr Young said that he though that Ms Sanderson and he might have spoken again at around this time, which might be how MGN found out.

1288. MGN's case is that the story came from information from an Irish Mirror journalist; and that having spoken to the media previously about her relationship with Mr Young, Ms Sanderson had no reasonable expectation of privacy.

1289. I am surprised that the argument was even run by Mr Green that there was no reasonable expectation of privacy in relation to the reasons for the break-up of a long-term relationship and the parties' feelings about that. Saying six months before a break-up that one is blissfully happy in one's relationship does not waive the right to keep private what went wrong later or one's profound unhappiness at what happened: see McKennitt v Ash at [620] above. Even when the fact of the end of the relationship becomes publicly known, the reasons for the breakdown and particular feelings (rather than what is self-evident) may remain private.

1290. There is a CR for €170 for DeMelza de Burca, an Irish journalist working at the time for MGN, who appears to have provided the story, but it is quite unclear what her source was.

1291. The same storyline was written by MailOnline on the same day as the Mirror's article, which purports to quote "Nikki's spokesperson" and a friend of Mr Young. What is attributed to the friend is word for word identical to the quotation from the source close to Mr Young. There is therefore either the same ultimate source or one publication has copied the other. It is unclear which was published first, but MGN did not advance a prior public domain argument, so I find that the Mirror did not copy the MailOnline's account.

1292. The article is written as if the break-up had only just happened. If, as Ms Sanderson suggested, someone had listened to a recent voicemail of her telling a friend what had happened, it is surprising that the fact that it happened two months previously was not mentioned. If, on the other hand, older voicemails were intercepted, the story would have broken sooner. The primary information reported is that attributed to the source close to Mr Young, which again suggests that it was not Ms Sanderson's voicemails that were intercepted. Given that the break-up had happened two months previously, it would be unsurprising if a

friend of Mr Young had spoken to another friend and the story had emerged and reached the source in that way. Given that there is no real UIG case raised against the byline, Mark Jefferies (4 non-admitted articles) and given the lapse of time between the events described and the publication, I consider, on balance, that it is more likely that the information emerged over time and reached the Irish Mirror than that it was the product of recent VMI.

The UIG Episodes

1293. Ms Sanderson pleaded a large number of payment records disclosed in the MNHL that she says evidence UIG other than that in relation to the articles about which she complains. The number pleaded exponentially increased in May 2023, as a result of late disclosure by MGN. The payment records comprise 36 separate records relating to Ms Sanderson herself, many of which are payments for photographs of her, and 116 relating to her associates. Only 23 of these were pleaded in Ms Sanderson's amended particulars of claim in the trial bundle and responded to in MGN's defence. Although not in the trial bundles, it appears that there was prepared a further version of the statement of case, including reference to all the articles in the form of a schedule prepared by the claimants.

1294. No time at trial was spent on this, but in their closing submissions, exchanged and filed in accordance with the court's directions, MGN included a further version of the table with an added column summarising its case, and including a few admissions. In relation to the table of payment records for associates, MGN (understandably) only summarised its case generically in relation to each PI, rather than advance a case invoice by invoice.

1295. Perhaps conscious of the limits on my consideration of a schedule, the claimants presented their case in written closing submissions in a different format (without notice to MGN). Ms Sanderson's case was presented in writing first in relation to the 37 articles, and then in a separate document in relation to what are alleged to be 15 "Episodes of separate UIG". These episodes were taken chronologically, newspaper by newspaper. No time was spent in oral submissions developing the argument in relation to these Episodes. I will address them in that format, for convenience, but of course bearing in mind MGN's response in its schedules to the case based on particular payment records.

1296. In the course of their oral closing submissions, the claimants produced (again without prior warning) a further version of the tables, with an added column containing their response to each invoice, in the part concerned with records relating to Ms Sanderson herself, and a generic response in the part concerned with records relating to her associates. Although MGN protested at this late addition to the written closing submissions, I allowed the claimants to rely on it as it did not appear to add anything but just distil the point of difference between the parties. In most cases, this simply comes down to whether a particular PI has been proven in the generic and/or individual cases to have been conducting UIG.

1297. A considerable amount of the Episodes claim depends on an assumption that UIG directed at Ms Sanderson's equally famous associates (for the most part) was a means of obtaining her private information and would have succeeded because she would have left voicemail messages for her associates. While I accept that

Ms Sanderson was a regular mobile phone user and would have left voicemails in the ordinary course, as any other user would have done at that time, I am unable generally to find, on a balance of probabilities, that a particular occasion of UIG (even if proven) aimed at an associate did in fact provide access to Ms Sanderson's private information. There is (understandably) no evidence of particular messages having been left at particular times, so the court is being asked to do no more than speculate that on a particular occasion Ms Sanderson's messages would have been intercepted, even though the target was not necessarily her at all.

1298. For convenience, I deal with the Nikki Sanderson episodes in the UIG Episodes Schedule rather than in the main body of the judgment.

Conclusions

1299. Unlike Mr Turner, it is clear that there was a time, 2003-2005, when Ms Sanderson was regularly targeted by MGN, which included the use of VMI. There is no evidence, however, that during that time she was hacked on a daily or even weekly basis. There was a particularly intense period between November 2004 and January 2005 when she does appear to have been hacked routinely. If she had been hacked routinely at other times, there would have been more coverage of Ms Sanderson's life at those times than there was. It is clear that Ms Sanderson became of less interest to MGN when she left Coronation Street in 2005, except where there was a particular story that would excite its readers' interest, such as a career development or a relationship breakdown.

1300. Ms Sanderson in retrospect, and for the benefit of the court, was inclined to make much more of some of the articles than they merited, expressing outrage at the level of surveillance or interference with her right to choose when she allowed her image to appear in newspapers. It was certainly more than she made of the articles at the time, as most of them she was wholly unaware of, and those that she was made aware of she did not read.

1301. There is however no doubt that she was plagued at the height of her fame with photographers seeming to follow her around, more so than by published articles. I infer that there probably was more phone hacking during the period 2004-2005 than is revealed by published articles and the UIG Episodes, though much of this would have been targeted at her co-stars.

1302. I deal with the appropriate quantum for her claim in Part XII below.

Part VIII: The Claim of Fiona Wightman

Contents

Introduction

1303. Unlike Ms Sanderson, Ms Wightman was not a famous person in her own right and has never sought the limelight. She was married in 1992 at a relatively young age to Paul Whitehouse, who at that time was unknown but over the years became a celebrated comedian and television star. Ms Wightman became of interest to the media only as his wife and as a means of obtaining information about Mr Whitehouse.

1304. Ms Wightman had the misfortune to suffer from a particularly serious cancer while she was the mother of two young children. She was treated for this from March 1997 to about 2000, and less intrusively thereafter, and happily appears to be fully recovered. For many years, as she movingly described, she struggled with her health, bringing up her children and at the same time coping with the breakdown of her marriage to Mr Whitehouse, which happened in 1999. They separated in September 2000 and were divorced in 2003.

1305. There are only two articles about which Ms Wightman complains, and the second of these only as marking an occasion on which UIG was used in relation to her, as opposed to the publication of her private information. MGN denies that either of these articles is the product of VMI or UIG. There are however 13 invoices, dated between 21 June 1998 and 4 July 2005, which are relied upon as evidence of UIG directed at her. Some of these invoices are closely connected with the allegations made by reference to the articles. By the stage of closing submissions, 7 of these invoices were admitted by MGN to mark an occasion of UIG, with one further invoice "not admitted". There are also 17 invoices that were relied upon as evidence of UIG in relation to certain associates of Ms Wightman.

1306. Ms Wightman said that she had a mobile phone from the early 1990s but would have kept her medical condition very private and only told her closest friends about it. These were her sister, Helen, Mr Whitehouse, Arabella Weir, Berrin Bates and Lesley Bonner. Even at the difficult times, she said, she would have left messages for Mr Whitehouse. She confirmed that she was on the Orange network throughout the relevant period of her claim. This is of significance because it means that, if Ms Wightman had set a PIN[1], anyone at MGN minded to access her voicemail inbox could do so, untraced, by using the Orange platform

[1] The only evidence relating to the need for this was given by Mr Evans at the Gulati trial, who accepted the case of MGN that access via the platform could not be obtained unless the subscriber had registered a PIN.

(as described in detail by Mann J in his *Gulati* judgment). Ms Wightman could not remember whether she did set a PIN.

1307. Ms Wightman names 13 associates with whom she was in regular contact and exchanged voicemail messages. The principal ones were her ex-husband, Mr Whitehouse, and Ms Arabella Weir and Ms Berrin Bates, close friends, who made witness statements in support of her claim.

1308. Ms Wightman too makes the formulaic assertion that, with the benefit of hindsight, she experienced unusual telephone and media-related activity that was indicative of VMI and other UIG. She also complains of private information being reported and being doorstepped by reporters and photographers at her home. The exaggerated and formulaic assertions about journalists and photographers being unexpectedly everywhere she went were corrected by her in cross-examination. It was only at two times in her life that she was doorstepped by journalists at home, and on one occasion a journalist attended her parents' house in Redcar.

1309. Mr Whitehouse appears in the Palm Pilot and contact list of James Scott, which raises an inference that he was hacked by Mr Scott and, as a result, voicemails left by Ms Wightman for Mr Whitehouse could have been heard by Mr Scott.

1310. Nevertheless, MGN argues that there is no evidence at all that Ms Wightman or any of her associates were the target of VMI or that journalists even had her mobile phone number. It contends that none of the admitted instances of UIG directed at her were the source of the articles complained about, though it admits UIG on 7 occasions.

1311. As with the claim of Ms Sanderson, Ms Wightman's claim is defended in its totality by MGN on the basis of limitation. I deal with the evidence relating to that aspect in Part X below.

1312. The claimants presented their written closing submissions in Ms Wightman's case solely as a case of 17 separate episodes. I consider that in the case of Ms Wightman, it is sensible to analyse her claim by reference to the chronological sequence of invoices on which she relies as relating directly to her, and to deal with the two connected articles as part of that sequential exercise. I will then deal briefly at the end of this Part with the invoices relating to Ms Wightman's associates.

The Fiona Wightman invoice and article claims

FW Invoice 1

1313. An invoice from Christine Hart to the Sunday Mirror news desk for services in the week ending 21 June 1998, including the following, provided to Terry O'Hanlon:

> "Fiona Whitehouse clinc. enqs £75
> Fiona Whitehouse doc. Search £75"

Mr O'Hanlon was named on 16 of the few surviving Jonathan Stafford invoices, and had a contact list where the name of Mr Stafford had prices for specific unlawful services added to it: see the PI Schedule.

1314. This is admitted to represent UIG and appears to be steps taken preparatory to seeking to obtain under false pretences information about Ms Wightman from her clinic and doctor. An attempt to do so was made by someone at about the time of this and the next invoice, when Ms Wightman's doctor's secretary first checked with her before providing the information that the caller requested. It is therefore highly likely that that attempt was on the instructions of MGN, using Christine Hart.

FW Invoice 2

1315. An invoice from Christine Hart to the Sunday Mirror news desk for services in the week ending 29 June 1998, for the following services provided to Terry O'Hanlon:

> "Whitehouse St Marys further enqs -- 75.00
> Whitehouse Middlesex FR – 100.00"

This invoice is admitted by MGN and is likely to have been an attempt to blag information from Ms Wightman's hospital, or steps preliminary thereto. It is to be presumed that the attempt was unsuccessful because no article about Ms Wightman's cancer treatment ensued and the information sought was not provided by the surgeon's secretary. There is an invoice from Mr Stafford to the Sunday Mirror (naming Mr Bell and Mr O'Hanlon) at the same time for "Ex.D P.Whitehouse/N5" which is likely to be an unlawful attempt to obtain the phone number of the Whitehouses' home in Highbury, North London: see [1348(ii)] below.)

FW Invoices 3 and 4

1316. These are two TDI invoices with reference "James Scott – Showbiz", both for "urgent enquiries made on your behalf" and subject "F Whitehouse", for £225 plus VAT and £270 plus VAT respectively, the first dated 31 October 2000 (the day after Ms Wightman's first article, which details the separation of the Whitehouses) and the second 2 November 2000. Both invoices are admitted by MGN to represent UIG. There is a further invoice from TDI dated 2 November 2000 for "urgent enquiries" Subject "P Whitehouse", which is obviously connected and appears to be the mirror image of the invoice for UIG directed at Ms Wightman (and so this one is not directed at her). Before his arrest in 2013, Mr Scott was named on no fewer than 1,201 ELI/TDI invoices, which was therefore the main PI fuelling his phone hacking activities.

FW Invoice 5

1317. This is a C&L invoice for an Elect Roll search of Fiona and Paul Whitehouse commissioned on 30 October 2000 (the date of the first article) by Rick Hewitt of the Sunday Mirror which provided, or was in respect of, the N5 address. Although an electoral roll search only, on the full version of the roll, was lawful

before 31 July 2002, my conclusion is that C&L Elect Roll searches were probably not limited to searches of just the electoral roll, despite the name given to them, and so this search is probably unlawful even in 2000.

FW Invoice 6

1318. This is a Jonathan Stafford invoice where the schedule is present and contains two entries on 30 October 2000, for "Ex D + 2 Lines" and "Trace + pretext" targeting "28 Liberia Road/Whitehouse" and "London Man/Whitehouse", for a total of £200. The obvious inference is that the address provided or confirmed by the C&L search was then passed to Mr Stafford to obtain information about the Whitehouses' telephones, and possibly to locate a new address for whoever had moved out of the family home. It is unknown who was the subject of the pretext call.

1319. This invoice too is admitted by MGN to represent UIG of Ms Wightman's private information.

First Article

1320. The first article is entitled "Fiona has devoted herself to Paul and the kids .. she's heartbroken" (byline Nathan Yates) was published by the Daily Mirror on 30 October 2000. It breaks the news of the separation of the Whitehouses and quotes Ms Wightman refusing to comment about the separation and "friends" who give voice to their feelings. There was a photograph of the couple on the front page of the Mirror with a heading "Fast Show Paul splits from wife".

1321. The private content pleaded is: the fact and details surrounding the breakdown of the marriage. It is stated that the comments made by Ms Wightman and reported in the article were reactive to an approach from MGN journalists asking for comment, and that reliance is placed on the proximate invoices for an inference that the article was the product of UIG. Voicemail interception is alleged in the amended particulars of claim to be the origin of the story.

1322. Ms Wightman said that it was impossible that friends of hers had told the Mirror about her private affairs, which were kept closely confined.

1323. There is no evidence that anyone ever hacked Ms Wightman's voicemails, or even tried to do so. It is very likely that Mr Whitehouse's phone was hacked, given that his number appeared in Mr Scott's Palm Pilot, but there is no indication that the showbiz desk at the Mirror had it or tried to hack him at this time. There is very limited call data from MGN landlines of Kevin O'Sullivan, Fiona Cummins and Emma Cox to Mr Whitehouse, Ms Weir and Ms Berrin in 2003 and 2006, which include some suspicious "double taps".

1324. Ms Wightman's case is that her phone would have been hacked via the Orange platform. But that depends on her having chosen a PIN and she was unable to remember having done so. Ms Wightman confirmed that she does not recall any suspicious activity on her mobile phone. She could only remember one occasion (by inference, before Mr Whitehouse left the home) when she answered his

mobile phone, which was ringing, and it started to play his voicemail messages to her.

1325. What is of significance, I find, is that the full story relating to Mr Whitehouse's relationship and love child with Natalie Rogers did not emerge until much later. Even when the second article was published in 2002, it only reported a new love in Mr Whitehouse's life, not that they had first had an affair in 1997 and had been together since 1999 and had a child born in June 1999. Ms Wightman accepted that she was told about the affair in 1998 and of the pregnancy before the birth in June 1999, and that there were many voicemails left at that time within the expanded family, making arrangements for the birth of the baby. It is clear therefore that MGN could not have been regularly hacking the phones of those affected at that time, or subsequently. Ms Wightman described how the three of them and the three children did lots of things together and became a large family. If there had been extensive phone hacking, particularly of Ms Wightman's phone, the journalists would have found the Natalie Rogers story at some time by the date of article 1.

1326. Ms Wightman said that from the time of this article, for a few weeks, different journalists would from time to time come to her door and ask for comments. She identified Dominic Mohan of The Sun as one who was particularly persistent and unwelcome, but could not identify others. They only came one at a time, and a few per week. She refused to make any comment, and accepted in evidence that she was not asked on those occasions about her cancer treatment.

1327. MGN called no evidence to explain how this article was written. Their case is that it was comprised of speculation sourced from public domain information, and that in any event Ms Wightman had no reasonable expectation of privacy in relation to the breakdown of her marriage and the reasons for it. Once again, MGN tries to argue that because Mr Whitehouse (not Ms Wightman) had previously put general information about their marriage into the public domain, all rights to privacy about different aspects of their relationship were lost. I reject that argument. These matters were clearly intensely private, not least because the parties had evidently attempted to keep them so for a considerable time, only allowing close friends to know about it.

1328. MGN's closing submissions run into trouble when they seek to elaborate on the public domain information that sourced the speculation. They merely assert that the "majority information contained in this article is clearly information that would have existed in the public domain" and attribute Ms Wightman's comments to her.

1329. Given that MGN could have explained by evidence how the Mirror showbiz team and Mr Yates worked on this story, or the interest that its newspapers were taking in Mr Whitehouse generally at that time, I decline to accept such bland submissions. There is no legitimate PI invoice or CR that might explain how the private information that was obtained. There is no explanation of the basis upon which Mr Yates might have speculated about the end of the relationship. It is likely in my view that the story was obtained by voicemail interception, which, on the general and the specific evidence that I have heard, was rife on the showbiz desk of the Mirror at this time. It is impossible to be confident about whose

voicemails were hacked: it could have been Mr Whitehouse but is, perhaps, more likely to have been an associate or close friend of his, as the source did not apparently have the full story, and did not obtain it subsequently. It seems likely that the story line was found by chance. On that basis, I find that it was not Ms Wightman's message that was hacked but probably a message that Mr Whitehouse left for another well known person. Nevertheless, Ms Wightman's private information was obtained by this unlawful means.

FW Invoice 7

1330. This invoice commissioned by Rick Hewitt of the Sunday Mirror on 31 October 2000 is for Jonathan Stafford and is work to find an ex-directory telephone number for "Whitehouse/London Ex D" for £50. This is obviously a follow up from the C&L search (invoice no.5) and probably relates to the N5 address of the Whitehouses. Mr Stafford had already done this work for the Mirror the day before and so was able to charge modestly. It is still the product of UIG and is directed at both Whitehouses.

FW Invoice 8

1331. This is another Christine Hart invoice (sub nom. Warner Security Services) for work done for Rick Hewitt of the Sunday Mirror in the week ending 10 November 2000, which has two entries:

> "Fiona whitehouse Searches X 3 hos. – 250.00
> Enqs Dr. Whitehouse -- £195".

This invoice, which is admitted by MGN to represent UIG, probably represents an attempt to blag information about Ms Wightman's medical condition from hospitals and a doctor.

FW Invoice 9

1332. This TDI invoice is for James Scott on the showbiz desk of the Mirror dated 10 November for urgent enquiries about F Whitehouse, charged at £405 + VAT. It is admitted by MGN to relate to UIG.

FW Invoice 10 and 11

1333. These invoices are for basic searches carried out by C&L and Census Searches (the Teviots) on 27 March 2001 for Dominic Turnbull at the Sunday Mirror. C&L did an Elect Roll search on Fiona and Paul Whitehouse for £20 and Census did professional research on "Whitehouse" for £30. This probably related to both Whitehouses, as it came from the same journalist on the same day as the C&L search. The results were then used by Mr Turnbull to instruct Warner in the week ending 4 April 2001 for "Paul Whitehouse searches".

1334. The C&L invoice is probably unlawful because C&L used to a significant extent fuller search capability offered by Equifax or Experian, not just the electoral roll (which was by then available within MGN on Cameo), but the Census search was

itself lawful. The results of both searches were used, knowingly, by MGN to provide material to assist UIG conducted by Warner.

FW Invoice 12

1335. This invoice was for a further C&L search commissioned by Rick Hewitt at the Sunday Mirror on 9 August 2001 on Fiona & Paul Whitehouse for the address in London N5. The invoice describes it as an Elect Roll search. Mr Hewitt had obtained the results of such an Elect Roll search by C&L previously, on 30 October 2000. (Mr Hewitt then obtained two more such searches against Paul Whitehouse only on 8 November 2001.) These facts demonstrate that it was not the case that "Elect Roll" was a search of the public version of the electoral roll. Why would Mr Hewitt have wanted the same (historic) results three times within 10 weeks? What would have been of considerable value to him was any more recent address with which either of the subjects was connected, or some other information that might have been contained in a result of any broader searches that were undertaken.

1336. I therefore conclude that the 9 August 2001 search was also unlawful.

Article 2

1337. This article entitled "Suitor You, Sir" (byline James Scott) was published by the Sunday Mirror as an "Exclusive" on 13 April 2002. It describes how Mr Whitehouse met Natalie Rogers in 2001 on his new TV show and has been dating her since January 2002. It quotes a "close friend" about the lovers' feelings and their new relationship and then repeats a lot of the information that had been written in article 1 about Mr Whitehouse's career and his break-up with WI.

1338. The private content pleaded is: details surrounding Paul Whitehouse's relationship with Natalie Rogers. The article is not alleged to include Ms Wightman's private information but is relied on solely as marking an occasion on which UIG was carried on in relation to Ms Wightman.

1339. It is plain that the information that appears in the article was in large part incorrect. It is unlikely that if a close friend of the lovers had provided the story they would have got it wrong, unless, perhaps, deliberately false information was provided to throw journalists off the scent of an even more satisfying storyline.

1340. There is however no CR for a confidential source for the main storyline. The email dated 18 April 2002 that MGN relies on as indicative of legitimate information gathering postdates the article by 5 days and is between Mirror journalists, not Sunday Mirror journalists. The information in the article that relates to Ms Wightman had nevertheless been in the public domain since October 2000 and had been repeated in several publications in other newspapers between 31 October 2000 and 22 September 2001.

1341. The only new information in the article was not Ms Wightman's private information. Once again, the inference is that there was no voicemail interception in relation to Mr Whitehouse or Ms Wightman otherwise the full story, including the regular meetings and the third child, would have been obtained.

1342. I can infer from the fact that James Scott wrote the article that he would have used VMI if he could. He had the mobile phone details of Mr Whitehouse in his Palm Pilot, but it is unclear when they were added, or even whether he succeeded in hacking him. There is no call data, but that would be the case if Mr Scott used the Orange platform or a burner phone.

1343. Significantly, perhaps, given the nature of the storyline, there is no CR for a confidential source – which one might otherwise have suspected, given the length of time for which the relationship with Ms Rogers had been concealed and the inaccuracy of the information. There are, however, two TDI invoices addressed to Mr Scott dated 10 April 2002, one for extensive enquiries in relation to Mr Whitehouse and one for urgent enquiries in relation to Ms Rogers. Each invoice is for £270. A third TDI invoice of the same date for £235, addressed to Mr Scott, relates to a production company for which Mr Whitehouse and Ms Rogers worked. These are, judging by the amounts charged, more substantial pieces of work than merely searches.

1344. This is clear evidence of UIG in relation to Mr Whitehouse and Ms Rogers but it is not directed at Ms Wightman. It seems likely that TDI managed to extract information about Mr Whitehouse's and Ms Rogers' relationship by means other than VMI of either of them. It is pure speculation on the part of Mr Sherborne that Mr Scott would have sought to intercept Ms Wightman's messages to Mr Whitehouse to find out what she thought about the new relationship. Had that been done, one would have expected to find some up to date comment in the article about her views.

1345. I therefore find that there was no UIG of Ms Wightman's private information in the preparation of this article but that there was probably UIG in relation to Mr Whitehouse and Ms Rogers.

FW Invoice 13

1346. This invoice is for a C&L Elect Roll search on 27 June 2005 on "Fiona and Paul Whitehouse" commissioned by Jon Clements, the showbiz editor of the Daily Mirror. This led to an instruction of ELI by Mr Clements on the same day for two items of research relating to Mr Whitehouse only. This demonstrates the way, as alleged by the claimants, that PIs were used in sequence to obtain the information that the journalists wanted.

1347. Other than any up to date details relating to Ms Wightman that were obtained by C&L, by unlawful Elect Roll search, it does not appear that this search led Mr Clements any further so far as her private information was concerned.

Invoices relating to FW associates

1348. Ms Wightman pleaded 22 other invoices relating to associates of her, but in closing submissions not all of these were pursued. I set out my conclusion briefly below in relation to those where a claim was maintained:

a. Mr Whitehouse

i. 29.10.97 Severnside – payment of £152.75 by The People for "Whitehouse/Enfield Invest". This obviously relates to Mr Whitehouse's career and business interests and there is no case advanced as to why it relates to Ms Wightman's private information, or what the information was.

ii. 24.6.98 J Stafford – payment of £40 for Ex D P.Whitehouse/N5. This clearly relates to the marital home telephone number and so relates as much to Ms Wightman as to Mr Whitehouse and is unlawful.

iii. 2.11.00 TDI – payment of £285 for urgent enquiries made in relation to P Whitehouse for Mr Scott – this was one of a pair of parallel invoices (see FW Invoices 3 and 4, above) and so the one relating to Mr Whitehouse can be assumed to be in relation to his private information, not Ms Wightman's.

iv. 29.10.00 and 5.11.00 – two payments by The People to Tony Bassett of £50 and £20 for the supply of BMD information on a "Paul Whitehouse asst" – accepted by the claimants to be lawful in itself and therefore (whatever use may subsequently have been made of it on other occasions) not UIG, and not obviously relating to Ms Wightman's private information rather than or in addition to her then husband's.

v. 10.11.00 – payment of £260 + VAT to TDI by Polly Graham at showbiz desk of the Mirror for urgent enquiries in relation to P Whitehouse. There is no case made out by Ms Wightman that this inquiry related to her private information, though it might have done (e.g. if it was telephone call data). The case is not proved.

vi. 19.12.00 – payments of £298 + VAT, £338 + VAT and £60 + VAT to Law & Commercial Services (which was related to Southern Investigations) commissioned by Mr Mark Thomas for (1) confidential inquiries in relation to Paul Whitehouse at the Highbury address, (2) confidential enquiries as required and tracing information as necessary in relation to Paul Whitehouse at a different phone number, and (3) confidential enquiries as required in relation to Paul Whitehouse. Given the combination of Law & Commercial and Mr Thomas, I am confident that all three relate to UIG, but only the first probably relates to Ms Wightman's private information too, as her address is used in connection with the work done.

vii. 28.1.01 – payment of £50 to Tony Bassett, in respect of "Paul Whitehouse asst", but his work is agreed to be lawful and there is no evidence that this related to Ms Wightman's private information.

viii. 4.4.01 – payment of £195 + VAT to Warner in respect of "Paul Whitehouse searches". This was probably UIG but there is no evidence that it was directed at Ms Wightman's private information.

ix. 19.9.01 – payment of £83.50 to Law & Commercial in respect of a commission by Mr Thomas at the Sunday Mirror to trace "Reilly". This was Ms Wightman's maiden name and three of her associates were Reillys. Although this might relate to a different person called Reilly, given Mr Thomas's continued involvement, I consider it more likely that this relates to Ms Wightman's family and is very likely to be UIG.

x. 7.10.01 – a CR for Scott Tillen for £1,000 for "Paul Whitehouse – unused" ordered by Stacey Quinton of The People on 9.10.01. It is unclear what this related to but there is no basis advanced for the suggestion that it involved private information of Ms Wightman rather than Mr Whitehouse.

xi. 8.11.01 – two C&L payments for Elect Roll searches of Paul Whitehouse by Rick Hewitt of the Sunday Mirror. Unlike a 9 August 2001 search in the joint names of Fiona and Paul Whitehouse, this relates only to Mr Whitehouse and there is no case advanced that this relates to Ms Wightman's private information.

xii. 10.4.02 – an invoice for £270 + VAT from TDI for P Whitehouse. It is clear in context that this work related to the story that Mr Whitehouse was in a new relationship with Ms Rogers, not to Ms Wightman's private information.

xiii. 17.3.05 – an invoice for £165 + VAT from ELI for enquiries in relation to P Whitehouse, commissioned by Mr Proctor at The People. Although Mr Proctor is seen from other documents to be closely involved with Mr Thomas and obtaining mobile phone numbers, there is nothing to connect this work with the private information of Ms Wightman, from whom Mr Whitehouse was divorced by this time.

xiv. 1.7.05 – an ELI invoice for £205 + VAT for enquiries on 27.6.05 in relation to P Whitehouse, commissioned by Mr Clements of the Mirror. There was a separate work stream on the same day in relation to Fiona and Paul Whitehouse, so this particular invoice is likely to be in relation to Mr Whitehouse only, and there is no evidence that Ms Wightman's private information was involved.

xv. 8.8.05 – an ELI invoice for £90 + VAT commissioned by James Scott for extensive urgent enquiries on P Whitehouse. Even if this amounted to UIG, there is no basis on which to conclude that it involved Ms Wightman's private information.

b. <u>Anita Whitehouse</u>

i. 7.11.01 – a C&L invoice for £20 directed to Rick Hewett for an Elect Roll for Anita Whitehouse, who was Mr Whitehouse's mother. While this is likely to be UIG or preparatory to UIG in relation to Mr Whitehouse, it is not directed at Anita Whitehouse as an

associate of Ms Wightman, and the information obtained will be limited to data about Anita Whitehouse.

c. Arabella Weir

i. 3.7.10 – a C&L invoice for £34 for a "Phonebase" search on A.Weir for Mr Saville. This is alleged to be for the purpose of voicemail interception directed at Ms Weir, with the consequence that Ms Wightman's private information left for Ms Weir on voicemails would have been heard. However, there is no evidence that Ms Weir was then hacked.

Conclusions

1349. There are 7 invoices that are admitted to have been in relation to UIG directed at Ms Wightman, and 8 others than I find to be in relation to UIG directed at her or her and her then husband jointly.

1350. No issue in relation to pre-2 October 2000 causes of action was raised by MGN in defence of this claim and MGN made admissions about UIG.

1351. The 2000 article involved VMI, did not involve hacking of Ms Wightman's phone or any message that she left for another, but probably did result in her and Mr Whitehouse's private information being obtained. The 2002 article is not relied on by Ms Wightman for damages but as evidence of likely UIG. It does not appear to be the product of VMI.

1352. Subject to the issue of limitation, which is addressed in Part X below, Ms Wightman is therefore entitled to damages for the 15 invoices and the one occasion of phone hacking that I have identified. The quantum is assessed in Part XII below.

Part IX: Jurisdictional Questions

1353. MGN raised two different issues relating to whether the court can properly entertain certain claims made by individual claimants. These are not jurisdiction questions in the true sense, as no one disputes that this court is properly seised of the disputes in relation to all claims.

Pre-HRA claims

1354. The first question is whether the claimants have any valid claim in relation to alleged misuse of private information that occurred before 2 October 2000. That was the date on which the Human Rights Act 1998 came into force, which made

the European Convention on Human Rights part of the substantive law of the United Kingdom.

1355. The claim for the tort of misuse of private information is derived from Article 8 of the Convention: right to respect for private and family life. It was confirmed in Vidal-Hall v Google [2016] QB 1003 that misuse of private information is a separate and distinct cause of action, albeit one that emerged by a process of absorption of Article 8 and 10 rights into the existing action of breach of confidence: ibid , at [20]-[21].

1356. MGN therefore submits that a valid claim cannot arise before 2 October 2000, as it is well-established (and common ground) that the Human Rights Act 1998 did not have retrospective effect: see A v B plc [2003] QB 195 at [11] and R (Johnson) v Secretary of State for the Home Department [2017] AC 365.

1357. I have already indicated, when dealing with some early articles relied on by the Duke of Sussex and Mr Turner, that I accept this argument.

1358. The only cause of action pleaded in these claims is misuse of private information. I have already held so in my judgment in Sanderson v MGN Ltd [2022] EWHC 1222 (Ch) last year. There was no appeal against that decision. There is no claim for equitable compensation in the current claims.

1359. The position was otherwise in the *Gulati* proceedings, where both misuse of private information and breach of confidence were pleaded and damages and equitable compensation were both claimed. In the event, relief was only pursued and awarded for misuse of private information. In more recently issued claims, only misuse of private information is pleaded. That is because the concept of "private life" is much broader than what is confidential in equity, and includes a person's physical and psychological integrity (see Von Hannover v Germany [2004] EMLR 21 at [50]). It is also because the basis for awarding damages is considered to be more favourable to claimants. (Mr Sherborne urged this on Mann J in *Gulati*.)

1360. There are therefore two good reasons why these claimants have claimed only for misuse of private information. The fact that there are occasional references in the claimants' individual particulars of claim to information being "confidential" does not amount to a pleaded cause of action for equitable compensation for breach of confidence.

1361. MGN put the claimants on notice in the pleaded individual defences that it was taking the point that there was no cause of action for an allegation pre-dating 2 October 2000 and it was repeated in MGN's skeleton argument for the trial.

1362. The claimants, in closing submission, argued that MGN's "highly technical argument was misconceived" and that "it would be a spectacularly unjust triumph of form over substance for MGN to be permitted to run a pleading argument". However, the basis on which it is argued to be misconceived seems to me to be wrong (I will not use the pejorative term that the claimants used), and why it is unjust to permit MGN to rely on something that was pleaded 2 years ago is beyond me.

1363. The first argument advanced was that there is an estoppel arising out of *Gulati* because MGN did not take the point in that trial that claims in respect of articles or UIG pre-dating 2 October 2000 were precluded. In fact hardly any of the claims did pre-date 2 October 2000; but in any event, it would have been a particularly arid point to take because, as I have said, causes of action for breach of confidence were also pleaded in those cases.

1364. Further, the fact that a point could have been taken does not without more mean that an estoppel arises. The modern approach, established in Johnson v Gore Wood & Co [2000] UKHL 65, is to treat the *Henderson v Henderson* branch of the law of issue estoppel as being a part of the law of abuse of process. The question is therefore whether taking a point in later proceedings (or later in the same proceedings) is an abuse of process, and it will rarely be so unless it is oppressive to the other party. There is clearly no abuse of process in MGN pleading and taking the point in claims in which only misuse of private information is relied upon, nor is it oppressive in any sense.

1365. The second argument is that the facts relied upon in these 4 claims give rise to "old-style" breach of confidence claims, regardless of the changes resulting from the importation of Article 8 jurisprudence. That may or may not be so, but it is irrelevant. There is no pleaded case of breach of confidence, nor any application to amend (as there could have been at the start of the trial). The suggestion that claims in breach of confidence would not raise "different issues and potential defences" is clearly not necessarily right – the claimants themselves submitted that Lord Hope in Campbell v MGN Ltd [2004] 2 AC 457 at [51] described the new, Article 8-based approach to personal information as being far broader than traditional breach of confidence law suggests. Further, the approach to compensating a misuse of private information is clearly different.

1366. I therefore do not accept that the pre-2 October 2000 incidents can be treated as if they were breach of confidence claims.

Wrongs committed outside England and Wales

1367. The second issue is that some of the articles complained about were only published outside England and Wales (e.g. by the Irish Mirror or the Mirror's Ulster edition) and some of the invoices relied on were for work that was commissioned from PIs who were based overseas.

1368. This is not a jurisdiction question in the strict sense, as no one disputes that this court has jurisdiction to determine the claims. It does however raise an issue of whether acts allegedly done outside England and Wales were actionable misuses of private information under English law.

1369. This was not an issue that the claimants attempted to grapple with until their closing submissions, and then they treated it principally as an issue going to the jurisdiction of the court to try the claims.

1370. Since there is no claim based on publication, it matters not where the article was published. What matters is whether what was done by way of phone hacking or other UIG was subject to English law, no claim having been brought under

foreign law. It is not in dispute that each of the claimants was ordinarily resident in England and Wales. As such, each in principle could have an expectation of privacy under English law for sufficiently private information, and MGN was subject to a duty not to misuse private information (which is not disputed). The issue is where the acts of misuse took place.

1371. The approach that I have taken is that, in the absence of any evidence of foreign law or argument from the claimants about the applicable principles of private international law, acts that were done abroad are not actionable torts under the law of England and Wales unless the acts can be taken to be the acts of MGN journalists in England and Wales. Since most if not all of the PIs are independent contractors, not employees or agents of MGN, the mere fact of (e.g.) a South African PI blagging flight details does not disclose a cause of action under English law. Further, an act of encouragement or assisting in the act of blagging would not be sufficient, as there can be no secondary liability without an established primary liability: OGB Ltd v Allan [2007] UKHL 21; [2008] 1 AC 1.

1372. Only where I can find that an MGN journalist or editor has instructed a specific act to be done abroad, knowing it to be unlawful under English law, have I been willing to find that the act, if done, is a misuse of private information, on the basis that it is then the journalist or editor who is doing the act through the agency or instrumentality of the PI.

1373. I have indicated in dealing with the articles and UIG Episodes of the 4 claimants above and in the PI Schedule where these issues arise.

Part X: Limitation

Contents

Introduction

1374. MGN contends that the claims of Ms Sanderson and Ms Wightman were brought out of time, more than 6 years after the rights of action accrued, and so must be dismissed for that reason, despite the findings that I have made about the misuse of their private information. The primary limitation period is that specified by s.2 Limitation Act 1980, namely 6 years.

1375. The claim form of Ms Sanderson was issued on 7 December 2020 and that of Ms Wightman on 30 July 2021. There is no dispute by either claimant that this was more than 6 years after any right of action that is relied on accrued, but each claimant relies on s.32(1) of the 1980 Act ("s.32"), which provides, so far as material to this action:

> "(1) … where in the case of any action for which a period of limitation is prescribed by this Act, either –
>
> (a) the action is based upon the fraud of the defendant; or
>
> (b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or
>
> (c) the action is for relief from the consequences of a mistake;
>
> the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.
>
> (2) For the purposes of subsection (1) above, deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty.
>
> …. "

Only paragraph (b) in subsection (1) is relevant to this claim. The effect of s.32 in that regard is to delay the running of the primary limitation period where deliberate concealment prevents a claimant from discovering facts relevant to their claim.

1376. Both of these claimants contend that the fact that MGN had obtained their private information by unlawful and indeed criminal means was deliberately concealed from them by MGN, first, by its attempts to hide these UIG activities at the time that they were carried on, then from the Leveson Inquiry and from the court in the course of the *Gulati* proceedings, and secondly, by deliberately and falsely implying in articles that the source of the private information was "friends or family" of the claimants. They say that they did not discover these concealments,

and the fact that they might have a claim against MGN, until each of them was told by a friend that they might have a claim and that they should get some advice.

1377. The s.32 limitation issue is one of importance to most of the claims remaining in the fourth wave of the MNHL. MGN therefore seeks a determination of the principles applicable to such claims generally, as well as decisions on the facts of Ms Sanderson's and Ms Wightman's claims. They seek, in effect, a decision that in no individual circumstances, or only in exceptional circumstances, can any claimant succeed in their reliance on s.32 where a claim is issued after a particular date – and MGN's final fallback position in this regard is 6 years after the date on which Mann J's judgment in *Gulati* was handed down and attracted considerable publicity. While I can and should decide any issues of principle that arise that relate to the claimants in this trial, I cannot of course finally determine whether a different claimant, in their particular circumstances, could with reasonable diligence have discovered the concealment they allege.

The parties' cases

1378. MGN does not in principle dispute that there was concealment in the way that unlawful activities were conducted and hidden, or in the misleading attribution to friends and family of private information unlawfully obtained (where this is proved), though in some respects it denies that the concealment had any effect. In particular, with regard to attempts in the published articles to disguise the source of the private information, it says that that concealment had no causative effect in the case of these claimants, since Ms Sanderson did not read any of the articles about her when they were published and was not misled by them, and Ms Wightman did not believe that any friend of hers would have spoken to the press about her difficulties. I will address the facts relating to these claimant-specific points later.

1379. The essence of MGN's response to the s.32 case is that there came a time, between 2012 and May 2015, when there was so much publicity about phone hacking - including hacking by journalists at its newspapers - following the News of the World scandal in 2011 that each of the claimants could then, by exercising reasonable diligence, have discovered the facts that gave them a claim for the rights of action that are now relied upon. That is to say, they could more than 6 years before issue have discovered the concealment because the truth was then apparent, upon the exercise of reasonable diligence.

1380. There is no assertion in this trial that either Ms Sanderson or Ms Wightman actually knew that they might have a worthwhile claim against MGN, just that each could with reasonable diligence have discovered the facts that would have led to that conclusion. While emphasising strongly that the burden lies on each claimant to prove that they could not reasonably have prepared to bring a claim more than 6 years before their claims were issued, MGN says that the time at which they could reasonably have discovered what they needed to know was in December 2012, when some other claimants did bring claims against MGN; or alternatively in September 2014, when public admissions of liability to the *Gulati* claimants were made, or at some later point between October 2014, when the Independent published a series of articles relating to phone hacking by MGN, and 21 May 2015, when the judgment of Mann J in *Gulati* was published. Since there

was no further concealment after 21 May 2015, MGN says that that is the latest possible date for the 6 year limitation period to start.

1381. The key issue in both of these claims (and probably in many others in this wave of the MNHL that await trial) is whether, and at what time, each claimant was sufficiently "on notice" that she might have suffered from wrongdoing by MGN and should investigate. Although the claimants do not formally admit it, it is relatively clear on the evidence, and common sense, that if either claimant was at any time put on notice, such that a reasonable person in their circumstances would then have investigated the matter, those investigations would surely have revealed the facts necessary to consider bringing a worthwhile claim against MGN. Seeking advice from a solicitor, or doing a web search aimed at understanding how private information was published by the Mirror, the Sunday Mirror or the People, would inevitably have provided the claimants with detailed information about the many claims being brought against MGN for phone-hacking, certainly by September 2014 and quite possibly before then.

1382. The claimants (on whom the burden of proof under s.32 lies) advanced no evidential case that by seeking basic legal advice or conducting internet research at any stage a claimant could not have discovered sufficient facts to realise that she had a worthwhile claim against MGN. Instead, the claimants emphasised, first, that they did not know any of these facts or that they had a claim that was worth investigating until 2019. Then, second, then they sought to rely on evidence (which in fact was adduced by MGN) as to the extent and coverage of media coverage of the unfolding phone hacking story, and of linked social media coverage. They submitted that the coverage was such that an ordinary individual with a busy life, who was not interested in such news stories, would *probably* not have heard about the story or the *Gulati* proceedings, and so would not have been put on notice that MGN might be to blame for what happened to them.

1383. Although the legal and factual issues that arise in these and other claims are relatively narrow ones, concerned with constructive knowledge of the facts needed to prepare a claim, it is necessary to summarise the applicable law in a little detail.

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

1384. The words in s.32(1) "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."

1385. More recently, the test has been scrutinised at the highest judicial 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*").

1386. *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.

1387. 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."

1388. 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.

1389. 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 MNHL have in pleading all the details supporting their allegations. The core of the decision of the Court of Appeal is contained in the following paragraphs of the judgment of Sir Geoffrey Vos MR, 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."

1390. 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?

1391. In *Gulati* it was held (and subsequently endorsed by the Court of Appeal at [2015] EWCA Civ 1291; [2017] QB 149) 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 MNHL and in the News Group Newspapers parallel litigation 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 have been 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 prevents a claimant from knowing all the relevant facts, to which the Master of the Rolls alluded. It is why the Master of the Rolls concluded, as I understand his judgment, that in a case concerned with deliberate concealment it was no longer necessary for a claimant to have discovered every essential element of the claim that has been concealed.

1392. In Grant v News Group Newspapers Ltd [2023] EWHC 1273 (Ch), I held that the right approach when considering the application of s.32(1) to this type of claim, where there may be multiple rights of action, is to consider whether the claim is pleaded on the basis of individual rights of action or pleaded as categories of

claim, intended to capture all rights of action within that category, whether known or unknown. Mr Grant's claim pleaded six distinct categories of wrongs, not individual rights of action arising from each act of UIG. He accordingly could not argue, in order to defeat a limitation defence, that he could not have discovered relevant facts relating to individual rights of action.

1393. In principle, however, if a claim form comprises 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 one or more, but not others, the fact that some causes of action are statute-barred does not mean that all others are: *The Kriti Palm*.

1394. In Ms Sanderson's and Ms Wightman's cases, there are no separately pleaded rights of action in relation to particular incidents of UIG or VMI. Both claims are pleaded as encompassing all occasions, known or unknown, on which VMI took place, or private information about them was blagged or otherwise obtained unlawfully by a PI. None of the parties sought to draw a material distinction in the application of the s.32 test to the facts of either case between any of the three different types of underlying unlawful activity, or in relation to occasions that led or did not lead to publication.

1395. As s.32(1) expressly provides ("…could with reasonable diligence have discovered it …"), a claimant who seeks to rely on that subsection is assumed to use reasonable diligence to discover whether they have a worthwhile claim.

1396. The application of the test as regards constructive knowledge of concealed facts was clearly explained by Males LJ in the important decision of the Court of Appeal in OT Computers Ltd (in liquidation) v Infineon Technologies AG [2021] EWCA Civ 501; [2021] QB 1183, as follows:

> "[27] … there will be cases, including the present case, where discovery of the relevant facts involves a process over a period of time as pieces of information become available. In such cases it may be difficult to identify the precise point of time at which a claimant exercising reasonable diligence could have discovered enough... In some cases identification of that point of time may be critical. In others, such as the present, it may be unnecessary to identify it with precision. Nevertheless the uncertainty to which this exercise may give rise is inherent in the section.
> ….
>
> [35]… In summary, when there has been deliberate concealment of a relevant factor, "reasonable diligence" will not require a claimant to take steps to discover that fact unless there is something (referred to in the cases as a "trigger") to put it on notice of the need to investigate. Whether there is such a trigger must be determined objectively as a question of fact."
> ….
>
> [37] In the Hong Kong case of *Peconic Industrial Development Ltd v Lau Kwok Fai* [2009] 5 HKC 135, para 30, Lord Hoffmann NPJ

preferred to leave open the question of "the extent to which the personal characteristics of the plaintiff are to be taken into account in deciding what diligence he could reasonably have been expected to have shown", noting that "It does not follow that because an objective standard is applied, he must be assumed to have been someone else".

[38] Commenting on this decision in *Hussain v Mukhtar* [2016] EWHC 424 (QB), Martin Chamberlain QC (sitting as a deputy High Court judge) suggested that this did not mean that personal characteristics such as naivete and inexperience in financial matters should be taken into account as to do so would involve a departure from the objective standard which the cases require. I would agree that personal traits or characteristics bearing on the likelihood of the particular claimant discovering facts which a person in his position could reasonably be expected to discover, such as whether the claimant is slothful, naive, shy, nervous, uncurious or ill-informed, are not relevant. But it does not necessarily follow, as Lord Hoffman NPJ said in *Peconic*, that the claimant must be assumed to be someone or something he is not.
….

[47]… although the question what reasonable diligence requires may have to be asked at two distinct stages, (1) whether there is anything to put the claimant on notice of a need to investigate and (2) what a reasonably diligent investigation would then reveal, there is a single statutory issue, which is whether the claimant could with reasonable diligence have discovered (in this case) the concealment. Although some of the cases have spoken in terms of reasonable diligence only being required once the claimant is on notice that there is something to investigate (the "trigger"), it is more accurate to say that the requirement of reasonable diligence applies throughout. At the first stage the claimant must be reasonably attentive so that he becomes aware (or is treated as becoming aware) of the things which a reasonably attentive person in his position would learn. At the second stage, he is taken to know those things which a reasonably diligent investigation would then reveal. Both questions are questions of fact and will depend on the evidence. To that extent, an element of uncertainty is inherent in the section.

[48] Third, while the use of the words "could with reasonable diligence" make clear that the question is objective, in the sense that the section is concerned with what the claimant could have learned and not merely with what he did in fact learn, the question remains what the claimant (or in the terminology of the section, "the plaintiff") could have learned if he had exercised such reasonable diligence. That must refer to the actual claimant, in this case OTC, and not to some hypothetical claimant.

[49] Fourth, the section applies to all kinds of claim where there is fraud, concealment or mistake. There is no warrant in the language of

> the section for a different test to be applied in certain kinds of case, such as cases where the claimant is carrying on business. The application of the test will differ according to the circumstances, but there is a single test."

1397. There must therefore be something, generally referred to as a "trigger", to put a claimant on notice of the need to consider or investigate, but the claimant is treated as becoming aware of those matters (amounting to a trigger) that a reasonably attentive person in their position would become aware of. There is a distinction to be drawn between the circumstances of the claimant, which are to be taken into account (in the sense that the reasonably attentive person stands in the shoes of the claimant, in her actual circumstances) and the personal characteristics of the claimant, such as naivety, lack of curiosity or being ill-informed, which are disregarded for these purposes.

1398. On the question of reasonable diligence by the putative claimant, in Law Society v Sephton & Co (a firm) [2004] EWCA Civ 1627; [2005] QB 1013 ("*Sephton*"), Neuberger LJ said at [116]:

> "…I consider that the judge was right in his conclusion that it is inherent in section 32(1) of the 1980 Act, particularly after considering the way in which Millett LJ expressed himself in *Paragon Finance plc v D B Thakerar & Co* [1999] 1 All ER 400, that there must be an assumption that the claimant desires to discover whether or not there has been a fraud. Not making any such assumption would rob the effect of the word "could", as emphasised by Millett LJ, of much of its significance. Further, the concept of "reasonable diligence" carries with it, as the judge said, the notion of a desire to know, and, indeed, to investigate."

1399. In the passage of the judgment of Millett LJ referred to (p.418 of the report), his Lordship said:

> "The burden of proof is on [the plantiffs]. They must establish that they could not have discovered the fraud without exceptional measures which they could not reasonably have been expected to take. In this context, the length of the applicable period of limitation is irrelevant. In the course of argument May LJ observed that reasonable diligence must be measured against some standard, but that the six-year limitation period did not provide the relevant standard. He suggested that the test was how a person carrying on a business of the relevant kind would act if he had adequate but not unlimited staff and resources and were motivated by a reasonable but not excessive sense of urgency. I respectfully agree."

Although MGN invoked regularly the expression "exceptional measures", this is only the antithesis of the measures that a claimant could reasonably be expected to take, bearing in mind that she has a desire to know and to investigate.

1400. The guidance in *Sephton* and *Paragon* was endorsed by Lords Reed and Hodge in their judgment in the Supreme Court in *FII* at [203].

How to apply the law to the claims of Ms Sanderson and Ms Wightman

1401. The claim form of Ms Sanderson claims injunctive relief to restrain future wrongdoing, and damages (including aggravated damages) for past wrongs, namely:

> "misuse of the Claimant's private information, including but not limited to the publication of articles about the Claimant or her private life in the Defendant's newspaper titles which derived from, or were based upon or corroborated by, the unlawful accessing of the Claimant's voicemail messages and/or unlawful obtaining of the Claimant's personal information through the use of private investigators or blagging".

The claim form of Ms Wightman includes no claim for injunctive relief, but claims damages in terms identical to Ms Sanderson's claim.

1402. The particulars of claim of each claimant plead out claims based on allegations of voicemail interception, blagging and other unlawful activities conducted by PIs, but not landline interception, bugging or any other specific category of wrongdoing. The claims are not limited to identified or known incidents but are general enough to cover any occasions of UIG falling within the broad description. It is unnecessary to analyse the pleaded cases further for the purposes of limitation. Neither the claimants nor MGN argued that the constructive knowledge test applies differently, or with a different outcome, in relation to any of the three pleaded categories of voicemail interception, blagging and other unlawful UIG by PIs.

1403. The right approach is therefore to consider at what stage each claimant could with reasonable diligence have discovered that they had a worthwhile claim (in the sense explained in *Gemalto*) for these wrongs (distinct from the wrong of publication of the private information obtained, which I have previously held to be statute-barred).

1404. It is not suggested by MGN in the case of either Ms Sanderson or Ms Wightman that the articles published about them were themselves sufficient to put them on notice of the possibility of unlawful conduct by MGN. MGN accepts that, at the time of publication, wrongdoing was concealed from the claimants. In Ms Wightman's case, MGN does contend that a combination of facts, including previous attempted blagging of information, publication of one article and doorstepping by journalists, put her on notice in 2000 to investigate whether she had a claim against MGN. I regard that contention as hopeless and will explain why later in this section of my judgment.

1405. Alternatively, and in Ms Sanderson's case too, MGN alleges that the trigger to investigate came at a later time, when they became aware, or could reasonably have become aware, of phone hacking allegations, both generally and in relation to MGN specifically.

1406. It is instructive to consider why MGN does not suggest that publication of articles containing the claimants' private information was itself a trigger.

1407. MGN argues that these two claimants, in common with many claimants in the MNHL, share four essential characteristics:

a. they were aware, as a result of publication of articles, that MGN had obtained their private information without authorisation;

b. they were upset and distressed about that, because the information was private and sensitive, or even confidential;

c. they had not seen any firm evidence as to how that information had been obtained; and

d. they had experienced suspicious telephone and media-related activity, eg malfunctioning voicemail systems, missed messages, or photographers or journalists inexplicably turning up wherever they happened to be.

1408. Despite these facts, which establish knowledge that something had gone wrong and a sense of grievance unassuaged by any clear understanding of how it had happened, MGN does not argue that each claimant was thereby on notice to investigate whether it had acted unlawfully against them by hacking their voicemails, blagging their private information or otherwise unlawfully obtaining it by use of PIs.

1409. There seem to me to be two reasons underlying MGN's admission, only the first of which was articulated by MGN in its primary case that time started to run as soon as December 2012, but if not then at some time in 2013, 2014 or 2015.

1410. The first reason is that, at the dates of publication in relation to these claimants, there was almost no publicity about phone-hacking or blagging (or associated or cognate unlawful practices) that would have been likely to lead a claimant to consider that that was a possible explanation. The claimant was therefore left confused but not on notice that the cause was any of the matters that are now alleged against MGN. MGN contends that the position in that regard changed in about 2012, to an extent that a number of complainants were able to bring claims that year alleging VMI against MGN; and 40 claims had been issued making similar allegations against MGN (with 12 more at a pre-action stage) by 7 December 2014. (This date is significant because it is six years before Ms Sanderson issued her claim form and two and a half months after MGN publicly admitted phone-hacking by its journalists, which attracted significant publicity at the time.)

1411. The second reason is that there existed a different credible explanation for the possession by MGN of private information, namely that a friend, family member or professional contact of a claimant (hereafter, for short, "friends or family") was leaking to MGN private information known to them or previously shared with them by the claimant. MGN had itself attempted to create this perception, by alluding to "friends", "pals", "bystanders" or such like, in many articles as being the source, when the source was in truth phone hacking. If it was seen as a likely explanation, a reasonably attentive person might well not suspect MGN of wrongdoing in relation to obtaining the information, as distinct from publishing

it. That indeed was exactly what MGN was seeking to achieve. The victim was "put off the scent".

1412. While the first reason for not being on notice of wrongdoing by MGN (lack of knowledge of phone hacking) was at some stage removed by general publicity about it, the second reason might not be removed by that kind of publicity, without there being additionally some indication that "friends and family" had been a deception or another reason for a claimant to consider that friends and family might not have been the means by which their private information was obtained.

1413. As to the second reason, it became part of each claimant's case at trial, as articulated by Mr Sherborne, that the attribution of some of the article content to friends or family misled her into believing that this was likely to be the source of the private information, thereby concealing the facts of MGN's wrongdoing - which are of course essential facts for her claim of UIG. If that is right (and I will consider below whether it was established on the facts of each case), until this concealment ceased to be operative, each claimant was arguably not on notice to investigate a different possible explanation. They would not be on notice if MGN's concealment, rather than their own lack of curiosity, caused them to be unattentive to the developing news story relating to phone hacking claims.

1414. In my judgment, both of the reasons that I have identified (lack of common knowledge of phone hacking and likelihood of another cause) are important considerations in determining when each claimant was on notice of a need to investigate whether MGN was responsible for the distress that they had suffered. I do not accept – to the extent that MGN advances the argument – that only the first reason is relevant, such that extensive publicity about phone-hacking generally in the period 2012-2015 was sufficient of itself to put each claimant on notice to investigate. If a claimant had been induced to believe and did believe (regardless of what may have happened to other celebrities) that her misfortunes had been caused by a disloyal friend, she would not necessarily be on notice to investigate a possible claim against MGN.

1415. The legal test nevertheless remains: what would a reasonably attentive person in the claimant's circumstances (disregarding her personal characteristics) have been on notice of? At all times, a claimant is required to be *reasonably* attentive to matters that suggest that further investigation is needed. The statutory criterion of reasonable diligence, which comprehends attentiveness to the need to investigate as well as the nature of the investigations conducted (*OTC*), applies in all cases. In view of that criterion, as explained in *Sephton*, a claimant cannot simply say that she was no longer interested in investigating how her harm was caused, or that it was reasonable to be inattentive. What degree of attention is reasonable depends on the facts of the individual case. Nor can a claimant say that the events complained of were so long ago that they had lost interest in the matter to excuse their lack of attention or diligence, because that is inconsistent with the claims that they have now brought, 6 years or so later, and with their assumed desire to know and investigate what had happened.

1416. The Claimants' approach to the s.32 issue, which was that if a claimant does not in fact know that she has a worthwhile claim to bring, time does not start to run

until (in each case) a friend happened to suggest that she was likely to have a claim, or that she should seek advice about whether she had one, is an approach that does not provide a satisfactory answer to the application of the law of limitation in these cases. That is because it largely removes from the applicable test the question of constructive knowledge (what a claimant *could* with reasonable diligence have discovered). The consequence would be that any claimant who does not in fact know that they should investigate whether they have a worthwhile claim, because they do not look after their own interests or pay any attention to news coverage or important current affairs, will never be out of time to sue, however obvious it would have been to a reasonably diligent person at a much earlier time that they should take advice. It would result in new claims being issued 10 or more years from now in relation to alleged wrongs that occurred in the 1990s, despite an increasingly large volume of publicity about the matter. The law would then be rewarding the indolent and the careless.

1417. The claimants' approach would also have the effect of displacing the onus that lies on a claimant to persuade the court, with argument based on evidence, that she could not with reasonable diligence have brought a claim before 7 December 2014 (in Ms Sanderson's case) or 30 July 2015 (in Ms Wightman's). In my judgment, MGN was right to argue that the Claimants largely overlooked the requirement for them to prove that (and, therefore, to explain how) they could not reasonably have investigated a claim at a time when others were bringing claims against MGN and that was attracting a lot of publicity.

1418. The mistake in the Claimants' argument is positively to rely on the fact that both claimants had no interest in following (or, as Ms Wightman said, time to follow) current affairs on the television, radio, online or in newspapers, or any matter relating to phone-hacking or the conduct of newspapers, and so in fact heard nothing about those matters. The claimants are persons who have suffered, on their own case, substantial injury from MGN's publication of their private information, and they are (as they appeared at trial to be) very aggrieved at the way in which they were treated. For the purposes of s.32(1), they are deemed to be persons who are desirous of discovering how their injuries were caused. What is critical, in my view, is the extent, if any, to which they were misled into believing in another cause and thereby deflected from being attentive and inquiring further; and what level of attention is reasonably to be expected in such a case.

1419. The guidance in *Sephton*, *Paragon* and *FII* was of course addressing constructive knowledge in the context of a corporate claimant. A private individual does not have the corporate responsibilities that a director of a company has. Nevertheless, it seems to me that an approximately analogous approach has to be applied in general to an individual claimant, absent evidence of disabling circumstances that prevented that individual from being attentive or applying herself reasonably diligently to the matter. In other words, in general it is to be assumed (unless proved otherwise) that the individual had the capacity (but not unlimited time or resources) to investigate, and that she was motivated by a reasonable desire to find out what had happened. The particular characteristics of the individual are irrelevant in applying this test (*OTC*), though it is important to take into account

her circumstances as a private individual, rather than a business with more extensive resources to deploy.

1420. In an individual case, a claimant can in principle seek to argue that the friends and family (or any other deliberate) concealment perpetrated by MGN "put them off the scent", and so being "reasonably attentive" in her case did not involve close attention or active investigation into other possible causes. However, this depends on evidence establishing that a claimant was indeed misled and acted differently as a result. How attentive she can reasonably be expected to have been depends on the facts of the individual case.

1421. Having discussed the applicable principles, I now summarise what seems to me to be the right approach in principle to deciding this issue on the facts of any given case, where MGN has concealed its wrongdoing:

a. Subject to the generous primary limitation period, the law requires a claimant to be reasonably attentive and proactive in looking for a remedy because she has suffered a wrong, to her knowledge, and has not received compensation or other satisfaction in respect of it.

b. Such a claimant cannot sit back and do nothing, then start to investigate many years after the event and belatedly bring a claim for damages if a reasonably attentive claimant in her position (but ignoring her personal characteristics) would have been on notice of a need to investigate more than six years previously.

c. What a reasonably attentive person in the claimant's circumstances would have become aware of is deemed to be known by the claimant, and may be sufficient to put her on notice that she should investigate. If so, she will be fixed with constructive knowledge of what reasonable investigations pursued with reasonable diligence at that time would have revealed.

d. In such cases, time will start to run at the first time when reasonable investigations would have shown that the claimant had a worthwhile claim against MGN.

e. However, if a claimant is misled by MGN into believing that there is a different cause of her loss ("cause 1") and that deception reasonably leads her to cease to pursue the matter, the claimant may not be expected to remain as attentive to another possible cause ("cause 2") as a claimant who has not been misled, though she is nonetheless required to remain as attentive as is reasonable in the particular circumstances.

f. Such a misled claimant will nevertheless be on notice again of a need to investigate when she learns (or can reasonably be expected to have become aware of) something that suggests that she might have been misled, or might have been wrong to believe in cause 1.

g. If on the facts no such deception led to a quietus in the claimant's mind on the question of wrongdoing, a claimant is deemed to remain as attentive as

any victim who desires to discover how their injuries were caused and who was to blame.

1422. Important questions, in the case of an individual claimant, are therefore likely to be some or all of the following:

i. Did the claimant conclude that someone other than MGN was responsible for the wrongful disclosure of the private information?

ii. Did the claimant in consequence cease to pay attention to how her injury was caused or to investigate further?

iii. Was her error caused by MGN's concealment?

iv. What level of attentiveness to publicity about phone-hacking or the cause of her injury is it reasonable in the circumstances to expect the claimant to have had?

v. Was there anything of which the claimant became aware that put her on notice that she should investigate or inquire further?

vi. Was there something to which the claimant should reasonably have been attentive that would have put her on notice to investigate or inquire further?

vii. If the claimant was not misled, or ceased to be misled, what publicity can a reasonably attentive claimant actively seeking to investigate her losses be expected to have been aware of?

1423. The onus of proof in relation to these issues lies on the claimant, and none of these questions is answered or sidestepped by proving that the claimant was in fact unaware of any relevant publicity, as the claimants seemed to think.

The evidence: publicity about phone-hacking generally

1424. MGN adduced evidence, through Mr Dave King, Chief Executive Officer of Digitalis Media Ltd ("Digitalis"), about the amount of coverage there was of the phone hacking narrative in the print media, online media and in the Twittersphere. He also addressed publicity about the *Gulati* trial specifically, in 2015. The claimants, on whom lies the burden of proving that they could not with reasonable diligence have discovered MGN's concealment, did not call any such evidence. Nevertheless, Mr Sherborne sought to make hay by cross-examining Mr King vigorously about the limitations of the exercise that had been conducted by Digitalis and therefore of the evidence that he gave.

1425. Mr King was not called as an expert witness but only as a witness of fact to present evidence that had been obtained from trawling the Factiva media database, searching web pages that were indexed by a key search engine, and scraping social media platforms. As a result, he was able to give evidence – within confines that were set by RPC on behalf of MGN, who instructed him – about the

number of articles published by print media or online between 1 December 2012 and 31 December 2016 that contained the words "phone hacking", and the number of times such articles were tweeted or re-tweeted and potentially seen by large numbers of followers.

1426. I will turn to the value of this evidence shortly, and what each side tried to make of it.

1427. It seems to me that there are three potentially relevant categories of publicity that emerge, sequentially, from the media coverage, which starts with the Millie Dowler tragedy and the fate of the News of the World and continues until after the judgment in *Gulati*. First, there is coverage of phone-hacking generally. Second, there is coverage of MGN's involvement in phone-hacking. And third, there is publicity that MGN had concealed its phone-hacking activities from victims in particular by falsely attributing the source of the private information to "friends and family". The third stage was only reached with publicity given to Mann J's *Gulati* judgment in May 2015. This may be of particular significance in a case in which a claimant proves that she was actively deceived and continued to be deceived by MGN's "friends and family" concealment, if reasonable diligence in those circumstances could not have uncovered that concealment before judgment was given.

1428. Publicity about phone hacking generally was extensive from 2011 (the Millie Dowler story on 4 and 5 July 2011) through to the setting up of the Leveson Inquiry a week later and its report on 29 November 2012. No significant publicity was given to early claims that were issued, even in the case of claimants whose stories, when broken by MGN, had caused something of a sensation, such as Ulrika Jonsson and Sven-Goran Eriksson. The story then became one about the demise of the News of the World and the arrest of its journalists and editors, leading to the Old Bailey trial in 2013-2014. During this period, more and more claims were being made and police investigations were continuing. There were stories about phone hacking that were published regularly throughout the period 2011-2015. It was a very big story indeed and seemed rarely to be out of the news for long.

1429. So far as the second category is concerned, the main points relating to publicity of phone hacking involving MGN journalists are the following.

1430. Mr Hipwell's allegations of phone hacking at the Daily Mirror were reported in The Times at the end of July 2011 and limited publicity was given to Mr Lewis's indication that claims would be issued against MGN. Denials by MGN executives at the Leveson Inquiry were of course also reported. The conclusions in the Leveson Report were widely reported, namely that:

> "the evidence drives me to conclude that this was far more than a covert, secret activity, known to nobody save one or two practitioners of the 'dark arts'....[there was] a willingness to deploy covert surveillance, blagging and deception in circumstances where it is extremely difficult to see any public interest justification."

1431. Thereafter, limited publicity was given to the issue of the first four claims against MGN in October 2012 and more publicity to police investigations leading to the arrests of Tina Weaver, James Scott, Nick Buckley and Mark Thomas in March 2013, which was quite widely reported. At about the time of the arrest of Dan Evans, in September 2013, MGN issued a statement admitting that a criminal investigation was being conducted by the MPS into unlawful information gathering at its publications. This was widely reported, with speculation in some newspapers that there could be hundreds of claims. In November 2013, Mann J's refusal to strike out the first four MGN claims was widely reported in the quality press.

1432. On 27 January 2014, it was reported that Mr Evans had pleaded guilty to phone hacking while at the Sunday Mirror and his evidence about his instructions and *modus operandi* were widely reported. That was followed by news that Piers Morgan had been interviewed under caution, in February 2014, and news in June 2014 that 20 further claims had been issued against MGN, though this was only reported in The Times and The Guardian.

1433. The next major event was on 24 September 2014 when MGN wrote to 10 claimants admitting liability for phone hacking and apologising to them. This was widely reported, in all the main TV channels' news programmes and in the print media, with some speculation about many more claims being issued. In October 2014, Mr Johnson was arrested and charged. The Independent wrote a series of reports at the end of October 2014 about the extent of voicemail interception at MGN and predicting many charges being brought against MGN journalists. Mr Johnson was sentenced in December 2014 and this too was reported in several outlets.

1434. A pre-trial review took place in January 2015 at which settlements with some claimants were announced and statements in open court were read. Mr Sherborne referred at the hearing to "a widespread and habitual practice of voicemail interception and the unlawful obtaining of information" at MGN's newspapers, and this was reported by the BBC, The Times and The Guardian.

1435. MGN published its public apology for hacking voicemails on 13 February 2015 (The Mirror) and 15 February 2015 (The Sunday Mirror and The People). TM plc published a trading update at the same time, announcing provision of £12 million for civil phone hacking claims. Both these matters were widely reported.

1436. The Gulati trial started on 3 March 2015. The allegations of phone hacking that were opened by Mr Sherborne on that occasion, and the evidence given on the following days, were extensively reported on television and radio and in the print and online media.

1437. Against that summary, I turn to Mr King's evidence about the prevalence of references to phone hacking in the media and Twittersphere.

1438. Mr King was asked by RPC to do searches to identify references to the expression "phone hacking" over a period of a little over 4 years, starting with the day on which the Leveson Report was reported in the newspapers. He searched for:

a. The total number of articles published in mainstream newspapers in that period that included the words "phone hacking" in that format, and the answer was 19,408 UK published articles. About 9,200 of these were in the 9 leading daily national newspapers, of which about 40% were published by the Guardian and The Independent, which led on the phone hacking stories.

b. The number of online publications by 17 main media outlets including the words "phone hacking" in the same period, as identified by key search engines. The result was 1,616 different online publications, with the highest years being 2013 and 2014. There were also substantial numbers of backlinks to these articles. There was also a search done for online publicity for key phone hacking events (which RPC had provided), and the answer for the key events was 243 in total, with 9,877 twitter shares. MGN's public admission of liability in September 2014 provided 10 online articles with 257 twitter shares. The Gulati judgment provided 32 articles and 2,174 shares. Mr King also did some research in relation to certain key articles that related to MGN.

c. The number of tweets by 11 main media outlets in the UK using the term "phone hacking", with the number of retweets, likes, comments and followers. There were between 2 and 353 tweets per outlet, a variable multiple of that number as retweets, varying between 2 and 20 times, a figure for likes of about 1/3 of the retweets figure, on average, and huge numbers of followers, of between 1 million and 15 million, excluding two outliers – but it emerged that these follower numbers were based on current figures, not the figures in 2012-2016, which it was admitted would be lower, possibly much lower in some cases.

d. The extent to which there was discussion of phone hacking on twitter, which of course produced variable results.

1439. Mr King was criticised by Mr Sherborne for conducting no analysis of the reliability of the results. Mr King accepted that the searches only picked up the term "phone hacking" and that there was no process of identifying and removing articles that used those words but were in fact about something completely different. He also accepted that the results (other than the core articles) did not only relate to articles about MGN and phone hacking – many would be about News Group and phone hacking – and that others may include denials of phone hacking by MGN. There was no relevance checking for relevance to MGN specifically.

1440. Mr King accepted that many of the articles identified could be in Scotland or even in some foreign newspapers, like the Wall Street Journal, and some were behind paywalls. He accepted that the "key event" searches were not for the event itself but only for articles on the day of, or the day after, the key event that used the term "phone hacking".

1441. The exercise was in my judgment of some value but it does not provide any answers. Mr King did not suggest that it did: he merely explained the results produced by the exercise that he had been asked to do. It is evident from the work done by Digitalis, interpreted in the light of concessions made in cross-

examination, that there was still a considerable volume of material published, backlinked, tweeted and re-tweeted that was about phone hacking, some of which related specifically to MGN and phone hacking allegations, but it was lower than the "headline" figures that appeared in the Digitalis report, once false positives and irrelevant results had been excluded.

1442. The number of people who actually buy print versions of newspapers, as a proportion of the population as a whole, is small and diminishing; the number who read newspapers online, larger and growing; and the number who received news via social media, including tweets, is of course very large indeed, and was growing quite fast at the time with which I am concerned, 2013-2015, but nowhere near as large as it is today.

1443. Mr King's evidence is not relevant to assessing what proportion of the population habitually or occasionally reads or listens to the news, in whatever format, or how many people may have heard or read coverage on a particular day, but what volume of information was available to someone who was curious to find out the answers to questions about how newspapers had been able to publish their private information. An exchange between Mr King and Mr Sherborne illustrated the different approaches that each had. Mr King happily conceded that the exercise that Digitalis had done was:

> "… an exercise to quantify coverage of matters related to phone hacking only".

Mr Sherborne retorted:

> "That's quite unsophisticated in terms of estimating how likely people in the UK were to come across evidence demonstrating that phone hacking was widespread and habitual at MGN, isn't it?"

1444. The relevant question, in my judgment, is not whether a claimant going about their normal daily life is more likely than not by chance to hear a relevant broadcast or read a newspaper article about MGN conducting phone hacking. It is whether information about phone hacking, and more specifically about MGN and phone hacking, is sufficiently available to someone who is reasonably attentive because they are desirous of knowing and investigating what happened to them that led to their private information being published. Availability of information relating to phone hacking and MGN is likely to be of particular significance.

1445. Where a claimant is not disabled by her circumstances from being attentive, nor deceived into believing that she had found the answer, she is expected to be reasonably attentive. To someone who was attentive to questions about newspaper and journalist malpractice, there was a considerable volume of information being put into the public domain and remaining there online, not just about phone hacking generally but about MGN's involvement too. The amount relating to MGN increased considerably over the period October 2012 (when there was very little) to May 2015 (when it was the entire focus of the coverage), as I have summarised above.

1446. Even information about phone hacking generally, without reference to MGN, would be relevant to someone who said that they had heard nothing about it, particularly where they had a worthwhile claim against other newspapers too. That is indeed illustrated by the way in which Ms Sanderson and Ms Wightman were each induced to go to a solicitor in 2019 to investigate whether they had a claim. They were each told by a friend that they had pursued a phone hacking claim and that they too might have a valid claim. There was nothing mentioned that related to MGN; indeed, the article that Ms Sanderson and Gary Lucy discussed was published by News Group; and both Ms Sanderson and Ms Wightman brought claims against News Group first.

1447. As I said in my judgment in *Sanderson v MGN Ltd*:

> "… a reasonably attentive person, who had suffered greatly as a result of MGN's newspapers publishing private information about them, as the claimants say that they did, would have picked up on some of the pre-[Gulati] trial or trial coverage. It would be, on the contrary, only an unattentive person in the claimants' circumstances who would not have learnt in this period that phone hacking activities had been conducted by MGN".

In fact, the coverage relating to MGN started earlier than the pre-trial process: the arrest of Mr Evans and MGN's admission of a police investigation was September 2013. Coverage increased during 2014. The pre-trial coverage only began in September 2014, when MGN apologised to 10 claimants for having hacked their phones. This was all in the context of huge coverage of phone hacking generally in view of the Rebekah Brooks, Andy Coulson et al. trial from autumn 2013 to June 2014.

1448. What I have to decide is how attentive these claimants can reasonably be expected to have been during that period, and at what stage reasonable attention would have provided a person in their circumstances (but disregarding their personal characteristics) with enough information to realise that they should investigate further.

The evidence: Ms Sanderson

1449. Ms Sanderson could not recall reading any of the articles at the time of publication. She said she only really read gossip magazines. She accepted that she was shown some photographs of one of the articles and recognised them as having been used previously, and she said that she was told about (and was upset by) some articles, even though she did not read them.

1450. It is reasonably clear from her evidence taken as a whole that she knew about the content of some of the articles that had been published. She disclosed some of them, because her mother had cut some out and kept them in a scrapbook. She knew about no.8 (Corrie Candice's Dad) and someone told her about the content of nos. 9 and10 (Nikki's fun & games with Man Utd star) by which she was hurt and upset. She said that she assumed that one of her friends who was there must

have told the story but could not work out who. She discussed with friends no.11 (Nikki's in a tryst!) and recognised the photograph as one that was being used everywhere. She thinks she saw no.17 (Nikki's Coribbean cuddle) but there were other similar articles published. She recalled people talking to her about becoming a popstar following no.21 (Corrie's Nikki to be the new Kylie). She said that she vaguely recalled no.22 (Corried Away) because it was making her out to be a bad person, but then said that she was not sure whether it was that article or another paper's similar article.

1451. With these exceptions, the evidence was that Ms Sanderson could not recall seeing the articles when they were published. She did however emphasise that she could not recall seeing them: she was not saying that she positively remembered that she did not see them. I consider that, particularly as her mother was saving some of the articles about her, it is likely that she was aware of a few more of them at the time than she is now able to remember, though I accept her evidence that she did not read any of them.

1452. In relation to one article (Nikki dumps lover), Ms Sanderson was asked to read it in cross-examination and she pointed out that there was a quotation attributed to her that she had not said:

> "Well, I haven't publicly said that. So there was things in there but I don't know how they got in there, because they're not quotes from me".

However, she was unable to say that she had read it at the time, and it seemed to me that this was a reaction to reading it in the witness box rather than any recollection of what she thought when the article was published.

1453. Ms Sanderson did say that she thought people around her were selling stories to the Press, so that for example she would tell things to someone who worked in the Press Office at Coronation Street and a few days later it would end up in the Press, so she stopped telling that person things. She said that Danny and she used to think for a time that travel agents were tipping off newspapers. Her mother said that she could remember on one occasion her daughter being angry because she believed that Mr Meakin had sold the story of their splitting up.

1454. Natalie Turner said that Ms Sanderson was suspicious at the time of articles 10 and 11 and could not understand how the Press had got hold of the information about the Monopoly night. She thought one of the boys had told the Press. Everyone was wondering who would have said it to the Press.

1455. Tina O'Brien said that she remembers that Ms Sanderson was really stressed when articles came out in the papers, when she did not know how the information had been obtained. She said that "it made her feel very uncomfortable to see the articles coming out and not to know where the information was coming from or how to stop them" She remembered Ms Sanderson "speaking to [her] about where these articles had come from … She was concerned that she did not know who she could trust. She was very paranoid and felt like it was someone that she knew that was telling the papers things". It is evident therefore that Ms Sanderson was genuinely troubled, apparently throughout the time that this was happening to her

– which was from 2003 to 2009, so it was not an isolated occasion that could be soon forgotten. She said that there were hundreds of occasions throughout this period when someone unexpectedly turned up and photographed her, so it happened all the time. She accepted that for years and years she was constantly wondering how the Press was turning up at unexpected locations and how it was getting its stories about her.

1456. Ms Sanderson described, and Ms Godby also described her, being in a state of constant paranoia about who was watching her and listening to what she and her friends said. She was questioned about this by Mr Green:

> "Q. It must follow from this constant state of paranoia that you were constantly questioning from where and how the press was getting its information about your life and your whereabouts?
> A. Yes.
> Q. So that must have been a topic of discussion with your close friends.
> A. Yes and no. Obviously I did speak to some friends about it and I did question about it, but when you don't know where it's coming from and you do have a big group of friends - I'm lucky that I do have a big group of friends and I've got family etc, and not just family but acquaintances - you don't speak to everybody about it, you wouldn't, but you would speak to some of your close friends but it's hard to be able to pinpoint who would have been doing it. You wouldn't have been able to, you wouldn't know."

This shows that Ms Sanderson was aware of the coverage and the presence of photographs but was unaware of how and why it was happening. There is an element of despair about not being able to stop it.

1457. There is no evidence in the witness statement of Ms Sanderson or any of the witnesses who made statements on her behalf that they read the articles and believed the attributions to "a pal", "a close friend", "a source" or "our spy", or similar expressions. There is no evidence that a friend pointed Ms Sanderson to the wording of an article as a result of which she considered that friends or family were to blame. Nor is there any evidence that Ms Sanderson reached a view that it was one or more friends, or a particular person that she could not identify, who was leaking the stories, and so decided not to pursue it further.

1458. What Ms Sanderson describes as her reaction at the time, and confusion about who was leaking stories, was mainly a reaction to the story line, or what someone had told her about it, not a reaction to the way that an article was phrased, in so far as it attributed a quotation to friends or family. This is understandable, because she did not read the articles at the time.

1459. The question of whether Ms Sanderson was at any time misled was raised in cross-examination, as a result of her trying to explain why she did not bring a claim at the time if she felt that an article was incorrect, or publishing her private information. She said that she did not do anything about it at the time:

> "A. …because at that time, when it says "a friend" or "a source close to", "a pal of", you presume that the people around you are selling your stories and selling your private information and your conversations so you do, you do think it's other people.
> Q. Well, you do presume that if you read the articles. But if you don't read the articles, you don't presume that, do you?
> A. Well – well, no, if you've not read something, you wouldn't presume that, if you've not read it. But if you're being told what's in these articles and the fact that people are saying that you've been quoted or a friend's been quoted, you can be made aware of that information."

1460. When asked directly whether she was saying that she was actively misled by MGN into believing that the stories had been sourced from her friends, she said:

> "I do, because how else would these have got in there? How else would these stories have arrived in the paper? At the time we were being massively convinced that it was a friend of, a source close to, a spokesman of. How are we supposed to know that wasn't actually the truth? You just wouldn't."

The answer conflates two separate points, the source for the story and what the article said about the source.

1461. I was not convinced by this belated attempt to blame the language of the articles for Ms Sanderson's belief that friends and family had leaked her private information. It was clear from Ms Sanderson's evidence that she was aware what points to try to emphasise in her cross-examination, and I think that this was a case of her understanding the significance of the point for her case. The fact is that Ms Sanderson probably did not read any article at the time, because she does not read newspapers, and I do not accept that she recalled in the witness box for the first time how her thinking between 2003 and 2009 had been affected by the content of the articles that she did not read. Mr Green put it to Ms Sanderson, without challenge by her or correction by Mr Sherborne, that only 8 of the 37 articles in fact had the suggested telltale reference to "a pal" or "a friend", though others referred to "a source". Ms Sanderson did not say that she read any of those 8 when published.

1462. I find that Ms Sanderson did think at the time that someone was leaking her stories, or giving away her whereabouts, and never reached a conclusion about who this was or how it happened. The belief in a leak was mainly fuelled by the private nature of the storyline (or her intended whereabouts) and the belief that it was not publicly known, though on occasions someone may have told her that a particular article said that a friend commented about her. The position is in my judgment more accurately represented by what Ms Sanderson said in her witness statement at para 11.4 ("I would presume they were selling stories to the Press") and elsewhere in her cross-examination:

> "…you couldn't really trust many people around you because all these different things were coming out in the papers and you didn't

> know how they were getting there. You presumed that people were selling stories …
> I would have presumed that pretty much all of the articles I'd have thought someone had sold a story or someone had told the papers about me."

It was a presumption based on the private content of the story.

1463. This conclusion is consistent with Ms Sanderson's pleaded case, which is that private information was appearing in the papers but its source was a mystery (para 28(e) PoC), not that she was led to believe that the source was "a pal" or "a friend". On different occasions she presumed that it was someone in the Coronation Street press office (para 9.2 of her witness statement) or a Sainsbury's security guard (para 7.1)

1464. There is one particular incident on which MGN relies to suggest that Ms Sanderson had constructive knowledge that she had a worthwhile claim. It is an occasion, on an unidentified date, when someone from the press office at Hollyoaks (where Ms Sanderson was by then acting) approached her to ask about phone hacking.

1465. In her witness statement, Ms Sanderson said that:

> "I can vaguely recall someone in the press office at Hollyoaks saying that they had received an e-mail from the police requesting some information. I can't remember how this was worded but I remember thinking that it had nothing to do with me and I told the press officer that I didn't have any information. I cannot say for certain when this conversation took place, but I joined Hollyoaks in 2012 and I think it was a couple of years after that. The whole interaction lasted about 20 seconds. I can't recall when the conversation took place."

That was not a full account of what happened. In her previous witness statement in response to MGN's strike out application in 2022, Ms Sanderson had said that the MPS had contacted Hollyoaks about an operation related to phone hacking, and she thought they were asking whether she knew anything about it. So it is accepted that the questioner referred specifically to phone hacking.

1466. In cross-examination, Ms Sanderson added further detail. She said that she was not sure what year it was when this occurred and she accepted that she knew then what "phone hacking" meant, and that she had heard by then of the Sienna Miller case. She said that when she was asked what she could contribute, she "just went, no, and kept on going, as I say, going on with my day" and "I didn't think it related to me so I didn't – I know this sounds horrible, I wasn't thinking about it". She said "I don't know if she was just asking me or if she was asking other people" and "I don't know… whether she was saying I had been [a victim] or not", and then said "I didn't ask any questions and I just went about my day".

1467. Later, she agreed that it: "…certainly wouldn't have been difficult to explain to the press officer that for years you had been the subject of unexplained press

attention" but she said that she didn't feel there was a need to go "into a big long conversation about it".

1468. This rather surprising lack of curiosity is, I find, typical of Ms Sanderson, but it is not a characteristic of the reasonably attentive person concerned to know and investigate what had happened to them. I find that, had Ms Sanderson engaged with the press officer to any extent, she would have found out that there was concern that she and other stars at Hollyoaks had been the subject of VMI and that the Police wanted to hear about it.

1469. On the day before the start of closing submissions, a witness statement was made by a Mr Lamont, a solicitor in the firm acting for Ms Sanderson, exhibiting a screenshot of an email to someone at Ms Sanderson's studios, which might have been forwarded to Ms Sanderson at the time. It was referred to on the second day of closing submissions, Mr Sherborne sought to rely on it as evidence to "demonstrate" that the conversation with the press officer at Hollyoaks took place in June 2015.

1470. I looked at the document (which was sent to me ahead of the application to rely on it being made) to understand the nature of what was being sought. It suffices to say that the document raises more questions than it answers, including why it had not been disclosed previously, as it was accepted that Ms Sanderson's solicitors had had it in June 2019. The document does not prove that the occasion that Ms Sanderson described was in June 2015. The document, if admitted, would have raised issues about authenticity, whether there were other such communications in the thread of communications, any responsive or follow up email, and any contact between Ms Sanderson and the recipient of the email (and if so what). It would also have led inevitably to further questions in cross-examination of Ms Sanderson.

1471. It was by then far too late to re-open the evidence in the course of closing submissions, given the tight timetable to conclude the trial and the delay that would have been caused, and I refused permission for it to be introduced and relied upon. I put its contents out of my mind.

1472. Ms Sanderson only became aware that she might have a claim when she spoke to a colleague, Gary Lucy, in the summer of 2019 when he mentioned to her, in a green room, that he was doing something about his phone hacking claim and suggested that she should "go for it" because she would also have been hacked. Mr Lucy told her about an article that was published about the two of them in a News Group newspaper, saying that they had left a party together, which subsequently caused them both embarrassment. She remembered the article and thought: "well, do you know what, even if it's that one story maybe I should contact … " and she said that she decided to go to solicitors about that article.

1473. Ms Sanderson said that she was doubtful that someone like her would have been hacked (even when faced with a colleague who was like her, who was telling her that he had been hacked), but she did go to see solicitors in July 2019. Her claim was not issued until December 2020.

1474. The actual trigger for Ms Sanderson making enquiries was therefore not knowledge of any allegation against MGN, just awareness that it is possible to raise a complaint about a newspaper article that might involve phone hacking.

Sanderson limitation analysis

1475. Ms Sanderson's legal team were reticent to advance any case on constructive knowledge. I think it only belatedly struck them that the answer was not simply lack of actual knowledge, or improbability of reading about MGN phone hacking, and that the onus lay on them to identify and prove by evidence a case that each claimant could not, by exercising reasonable diligence, have discovered that she had a worthwhile claim by the applicable date (in Ms Sanderson's case, this was 7 December 2014.) Ultimately, Mr Sherborne did submit that each claimant was misled by MGN's concealment of the origins of the private information that they had obtained and published.

1476. It is certainly right that, faced with numerous articles (not just in MGN newspapers) containing her private information, and photographers always appearing to know where she was going to be, Ms Sanderson did consider, in general terms, that someone (or more than one person) must have been leaking information and was therefore responsible for the disclosures. No particular person was identified by Ms Sanderson in her evidence as possibly being the culprit except, in relation to a limited number of stories, a Coronation Street press officer, a travel agent, and Mr Meakin. But Ms Sanderson was in a state of constant frustration that she could not find out who was involved or how it was happening, and so put a stop to it. There is no evidence to support a conclusion that she ceased to pay attention to how it was happening because she had concluded that one or more persons was responsible, or that there was a mole, and she could do nothing more about it.

1477. There is no reliable evidence that Ms Sanderson was misled by any concealment of MGN into thinking that a friend or family member was to blame. She was not misled by MGN into taking her "eye off the ball" so far as possible causes of her misfortunes was concerned. The invasions of privacy continued for years and she remained concerned and confused as to how it was happening.

1478. Ms Sanderson is, however, a naturally uncurious person, so far as issues that go on outside the small circle of her life, her career and her family and friendship group are concerned. She was very ill-informed about current affairs, news stories and the Press generally, despite their voracious interest in her, the fact that she benefited from the Press with remuneration for consented articles, photo shoots and features, and her fondness for gossip magazines.

1479. This lack of curiosity was well illustrated by her reaction to being told by the Hollyoaks press officer that the Police were investigating phone hacking and wanted to know if she had anything to contribute. Her instinctive reaction was that it had nothing to do with her, and she did not have time to stop and ask the few questions that would have opened her eyes to the fact that she, like many others in her world, was a possible victim of phone hacking.

1480. A reasonably attentive person in Ms Sanderson's circumstances, who had suffered at the hands of the Press to the extent that she says she did, would have taken some interest in the outcome of the Leveson Inquiry and subsequent developments in which phone hacking was on trial, admitted and achieved considerable publicity. She said that she was aware of the Millie Dowler story and about Sienna Miller's phone being hacked, but did not consider herself to be a famous person like Ms Miller. Given the extent of the interest that national (and, doubtless, regional) newspapers were taking in her over an extended period, that reaction was misguided and not one that a reasonably attentive person in her position would have reached.

1481. Ms Sanderson did not say that she ceased to pay attention to the Press because of anything written about her by the newspapers: she did not pay attention because she was not the sort of person to pay attention to newspapers, or other media in which matters of current interest were reported.

1482. In my judgment, there is no reason in Ms Sanderson's case for her to be less attentive to publicity about phone-hacking, or possible causes of the wrongs that she had suffered, than the ordinary, reasonable person in her position would have been. It is therefore, in accordance with the standard of diligence imposed by s.32, reasonable to expect her to be attentive to matters that could explain how she had suffered what she did and whether she had a remedy. There is no basis for treating Ms Sanderson differently from any other claimant who was not misled into blaming a friend or family member and who did not as a result put the whole issue aside.

1483. A direct comparison with other claimants with whom Ms Sanderson was acquainted, such as Mr Young and Mr Halsall, is inappropriate. Many (though not all) of the early claimants in the MNHL were informed by the MPS, or by someone else, that their names or phone numbers were on lists maintained by journalists who had been charged, or who were under investigation, and this was an obvious trigger that caused them to take advice and bring claims, some as early as 2012 but most in 2014. This emerged at a late stage to be the position in relation to Mr Halsall too, who brought his claim in 2014. There was no equivalent trigger in Ms Sanderson's case, but there was the incident with the Hollyoaks press officer that I have summarised above.

1484. In general terms, a claimant who (i) did not share Ms Sanderson's personal characteristics, (ii) knew that newspapers had improperly obtained and used their private information and whereabouts many times over an extended period, (iii) desired to know what had happened and investigate what had gone wrong, and (iv) was reasonably attentive to the developing story of Press misconduct, would have been more aware of that developing story by 2014 than Ms Sanderson was. They would have been aware, at a minimum, that the Leveson Inquiry had found that phone hacking was not something that was carried on in secret by only a few "rogue" journalists but was likely to be very widespread in many newspapers; and that, following a Police investigation, News Group journalists and editors were tried at the Old Bailey and some were convicted of phone hacking and some were acquitted. They might not have picked up on the significance of the arrest of Mr Evans and the information that he had been convicted, or the significance of that for MGN, but they probably would have been aware of the fact that Mr

Morgan was being questioned by the MPS about phone hacking while he was editor of the Mirror, and of the fact that the phone hacking story had not ended with the Old Bailey trial.

1485. Against that background, I find that a reasonably attentive person in Ms Sanderson's position, being informed that the MPS had contacted a Hollyoaks press officer to ask about phone hacking and that they wanted to know whether Ms Sanderson had any information to share with them, would have taken the time to find out what it was that the Police wanted to know and whether it was relevant to what had been happening to her. I agree with Mr Green that simply by asking an obvious question or two, such as "Are they asking about me?", "How does this relate to me?", or "What sort of information are they looking for?", Ms Sanderson would have been told enough to cause her to question whether what she had previously suffered might have been caused by phone hacking or other illegal activity. At that stage, it is not disputed that by going to a solicitor or by carrying out an internet search, she could readily have found the information necessary to start to prepare a claim for the categories of wrongdoing in respect of which she now claims.

1486. It follows that, on the evidence before me, I should conclude that it was probably in about the summer of 2014 that the conversation with the press officer took place. Mr Sherborne said that "about two years after" included the possibility that it was after 7 December 2014. That is possible, but not probable, given the terms of Ms Sanderson's own evidence. The burden of proof under s.32 lies on a claimant, and so the burden of proving that these events happened after 7 December 2014 lies on Ms Sanderson. It was a burden that she was unable to discharge.

1487. Apart from that specific incident, I would have held that coverage of MGN's apology to the *Gulati* claimants on 24 September 2014 was sufficient, if nothing before was, to put Ms Sanderson on notice that she should ask questions about what she had suffered from MGN's newspapers. A reasonably attentive person in her position would in my judgment have picked up on the developing story before September 2014, where there was coverage alluding to the culpability of MGN newspapers, principally Mr Evans's admissions, Mr Morgan's police questioning, and the claims that had been brought against MGN. But the news of MGN's admissions of phone hacking, which was widely covered (albeit not as widely as the *Gulati* judgment) was a major development, being the first time that MGN had admitted VMI. It was therefore an event of real significance for potential MNHL claimants.

1488. It is material too, in Ms Sanderson's case, that she had a claim against News Group, and had she been reasonably attentive she would have picked up on earlier publicity relating to phone hacking by the News of the World, alleged phone hacking at The Sun, and the trial of the editors and journalists of the News of the World. The 24 September 2014 coverage was therefore not something that came out of nowhere with no background to it.

1489. The claimants' approach was to attempt to assess from Mr King's evidence the chances of an ordinary person like Ms Sanderson happening to hear a particular broadcast or read coverage in a specific newspaper on a given day. They argued

that only a small proportion of people read a newspaper or follow the news on social media, and that therefore it was not probable that any ordinary person would have found the relevant coverage on a given day. That is not the right approach because the test is what a person in Ms Sanderson's circumstances, who has suffered unexplained wrongs, who desired to know the answer and pursue the matter, would reasonably have been alert to, and could reasonably have found out without the use of exceptional measures.

1490. As I have explained, if it were the case that Ms Sanderson had been "thrown off the scent" by MGN's deception, the degree of attentiveness to the possible causes of her injuries that could reasonably be expected would have been lower. (How much lower is likely to depend on the facts of particular cases and what a claimant reasonably believed and did as a result of the deception.) But neither that factor, nor any other "disabling" factor in Ms Sanderson's circumstances, is in play.

1491. Although, in September 2014, there might have remained questions in the mind of a claimant such as Ms Sanderson about whether it was in fact MGN or someone else to blame, Ms Sanderson did not need to know the answer to that question before she could make enquiries. She only needed to realise that there was something about which she should seek advice, or do some further research. The *Gulati* judgment provided proof of the extent to which phone hacking and other UIG had been conducted, and exposed MGN's deceptive allusions to "friends and family", but neither of those matters was material in Ms Sanderson's case. She did not need proof in order to make the preliminary enquiries that would have enabled her to discover that she had a worthwhile claim.

1492. A reasonably attentive person in Ms Sanderson's circumstances, if they had not made enquiries or done some research before 24 September 2014, would have done so then. A reasonably diligent person would have sought advice without delay, as Ms Sanderson in fact did when she was told by Mr Lucy that he had claimed in respect of a News Group article that was published about both of them.

1493. The claimants advanced no case on how long it would reasonably take a putative claimant to seek advice, or conduct a search, so as to discover that they had a worthwhile claim to pursue. I consider that the maximum period for that step was about 4 weeks. There is no dispute that those initial steps, if taken, would have revealed a worthwhile claim for VMI, blagging (where alleged) and other UIG by PIs on behalf of MGN by the end of October 2014.

1494. The result is that, despite the allegations of illegal and unlawful conduct being proved to some extent (as detailed in Part VII above), Mr Sanderson's claim was issued too late and her claim must be dismissed.

The evidence: Ms Wightman

1495. The relevant evidence in Ms Wightman's case is quite limited.

1496. She was aware in 1998 that someone had attempted to obtain information about her medical condition or treatment from her surgeon, because the doctor's

secretary phoned her to check to see if she was alright, whereupon it became apparent that whoever had phoned the secretary was making the call on a false pretext. Ms Wightman said that the call was obviously fake but she did not understand who could have done such a thing. She found it upsetting at the time, but there was nothing to link it with, such as a publication about her or Mr Whitehouse.

1497. Ms Wightman knew that someone was interested in her state of health. But there were no articles that were about her cancer. There were five articles that formed the subject of her complaint to News Group, including one in the News of the World in 2003 that broke the Natalie Rogers story, and one in the News of the World in 2005 that broke the story about Mr Whitehouse's and Ms Rogers' child. Although it was not the subject of evidence in this trial, because it did not relate to MGN, it is probable that Ms Wightman was again the subject of some intrusive Press behaviour at about the times of those articles.

1498. There were two admitted Christine Hart invoices in 1998, which were for an attempt to blag medical information about Ms Wightman, which apparently failed, as nothing resulted. There were various other invoices at about the same time, so there was a concerted attempt to find out information about Mr Whitehouse and her. Ms Wightman was wholly unaware of these at the time and until disclosure in her claim.

1499. There was then publication of Article 1, of which Ms Wightman was aware at the time, and which left her in a state of uncertainty as to how the information about her separation had got out. She said:

> "The article was written in a way as if it is somehow sympathetic to me, describing how a "friend" said "we all feel so sorry for Fiona". But really the article isn't sympathetic at all. It couldn't have come from a true friend, or anyone that truly cared for me. My friends would know the real me. They would know that I was not going to talk to a journalist, and they would know they should not talk to a journalist. So reading how a supposed friend spoke to MGN was confusing and made me nervous. *I remember thinking, this isn't possible.* I felt I was really careful about who to trust and reading a friend describe how I was feeling to the press was worrying and made me paranoid." (*emphasis added*)

and that:

> "The things in MGN's article would not have been said from a true friend of mine"

1500. In cross-examination, she confirmed that she did not believe that a friend had spoken to a journalist. She only confided in closest friends about her condition and what was going on with her marriage: her sister Helen, Arabella Weir (a close friend), and Berrin Bates and Lesley Bonner (girlfriends who did not really know her husband).

1501. She accepted that she was, at the time, newsworthy, because she was doorstepped by a series of journalists, and her parents suffered one visit in Redcar. She accepted that at the time of the doorstepping she had no way of knowing that it was MGN journalists. She did know that one journalist who tried to persuade her to tell her story, Dominic Mohan, was from The Sun, but there were various different journalists on different days. There was only one journalist at a time, and at most a few a week, for up to four weeks. Thereafter, the doorstepping in 2000 stopped.

1502. Ms Wightman was aware of the second article published in April 2002 concerning Mr Whitehouse's new romance. It did not mention her, and was clearly well behind the storyline. She said that "it also had quotes from a close friend. Had it really been a close friend, aside from the fact they would not have spoken to the Press in the first place, they would not have missed the fact that Paul and Natalie already had a child together."

1503. It is clear, therefore, that Ms Wightman was not fooled by the language of the articles into thinking that a close friend had spoken to journalists about her and her husband's lives. She was suspicious at the time.

1504. Ms Wightman would have been unaware of the other invoices, on which she now relies in her claim, until after she had issued that claim.

1505. She accepted that she was aware of the Millie Dowler case and Sienna Miller's claim, but she "made absolutely no connection between that and myself – I believed that the people within all of this were what the tabloids considered 'newsworthy people' and I was not that at all". In her case, that is a perfectly fair comment, though she must have realised that the Press was interested in her because of her relationship with a famous television comedian.

1506. She said that she did not read about the *Gulati* trial or anything about admissions made by Mr Evans or by MGN and only heard about them as a result of bringing her claim, which she was advised to do in 2019, following a chance encounter with a friend, Dan Fredenburgh, who mentioned that he had been a victim of phone hacking, and she said to him:

> "oh my god I've had such a terrible time"

and he gave her details of his solicitors.

1507. In cross-examination, she claimed that this was referring to the problems that she had had in about 2015, when both her parents were very ill. But it is obvious in context that she was describing her reaction to Mr Fredenburgh telling her about the experience that he had had at the hands of the Press when he was dating a famous actress. It was the equating of their experiences of the Press that led Mr Fredenburgh to give Ms Wightman his solicitors' details. What is notable in this is that Ms Wightman had not moved on and left the previous actions of the newspapers behind her. I accept that she was then, and remains, genuinely upset and distressed by the way that she was treated.

1508. In 2015, Ms Wightman said that she had a very difficult home life: her mother had dementia and was being cared for by her father, but her father became ill too. She was trying to help them both to cope. She said that she also had young children, but in fact her children were 20 and 23 years of age by this time. (Lauren, her daughters' half sister, would have been 16). Ms Wightman was working and did not have time to read the news and did not do so. For that reason, she was oblivious to the *Gulati* proceedings and anything else to do with phone hacking other than the Millie Dowler events and Sienna Miller's claim.

1509. There is no suggestion that Ms Wightman had further serious medical problems following her cancer treatment in 1997/98, although no doubt her health was delicate and she was vulnerable for some time. She said that in 2010 she was training to run a marathon in order to build up her stamina. She said that she had no time to conduct internet searches about MGN.

Wightman limitation analysis

1510. MGN argues that the combination of the attempted blag in 1998, the single article about Ms Wightman in October 2000 and the 5 articles about which she complained to News Group, repeated experience of journalists doorstepping her (and her parents once), her close relationship with Mr Whitehouse and the second article were sufficient to put Ms Wightman on notice of the need to investigate or contact solicitors.

1511. I reject that argument. Ms Wightman was aware that there was something going wrong in that others were able to obtain (or were attempting to obtain) private information about her and Mr Whitehouse, but there was nothing to put her on notice in 2000 or 2002 that it was VMI or UIG by MGN. The presence of journalists on her doorstep was readily explicable as a consequence of publication of the first article, and there was no overt connection in any event with MGN. Rather, it was The Sun that was identified as having a presence. There was no apparent connection between the attempted blag and the publication and doorstepping, as her medical condition was not raised in the article, or on the doorstep.

1512. Even if the articles put her on notice to make inquiries, reasonable investigations in 2000 would not have revealed to Ms Wightman that MGN was conducting VMI or instructing PIs to blag confidential information about her, or do unlawful searches. As MGN accepted in its submissions on the applicable law of limitation, at the dates of publication of most of the articles there was almost no publicity about phone-hacking or blagging (or associated practices) that would have been likely to lead a claimant to consider that as an explanation. The earliest allegation in the Press was an isolated one made by Mr Hipwell in 2002. The first legal claim was made by Gordon Taylor in about 2008 (and was quickly settled by the News of the World) and the first claims issued against MGN were not until 2012. Lawyers had not yet got going on such claims in 2000 or 2002. Ms Wightman therefore did not know at that time, and could not reasonably have discovered, that she had worthwhile claims against MGN for the types of claim that she has now brought.

1513. The next question is at the opposite extreme, namely whether what Ms Wightman experienced by about 2005 was too little to put her on notice at any time, even after phone hacking hit the headlines in 2010/2011. I do not accept that argument either, although Ms Wightman's known injuries were on a much smaller scale (one attempted blag, 2 articles) than other claimants. It is clear from the evidence that I heard that Ms Wightman also suffered attention from News Group journalists during the period 2000-2005, so it is not only the impact of the MGN publication that needs to be considered, in terms of her awareness that she was being wronged. That is reinforced by Ms Wightman's own perception, many years later, that she had "a terrible time". She also observed one strange mobile phone activity incident when Mr Whitehouse's phone rang, she went to answer it and the phone started to play his voicemails. All in all, she knew that something was badly wrong but had no idea what it was.

1514. As in Ms Sanderson's case, there was no operative deception by the use of the "friends and family" concealment in the articles. Ms Wightman was not "put off the scent". She was not persuaded that any "friend" would have spoken to the Press about such personal and sensitive matters. She was not induced to put the matter aside on the basis that it was a friend or someone else other than MGN who had leaked her information. She remained perplexed and unsatisfied. It is wholly understandable that, as it did not recur often (and not at all after 2005), she did not focus on it when she was struggling with her health and bringing up two children. By 2011, however, her circumstances were different. She was in marathon training and her life was back to something approaching normality. Her children were by then 19 and 16 years old.

1515. Despite the terrible time that Ms Wightman had with her health and family life, she was legally in no different position from anyone who had suffered injuries as a result of wrongdoing and wanted to know who did it and seek redress. In accordance with the standard of diligence and attentiveness imposed by s.32, it is therefore reasonable to expect her (certainly from about 2010) to be reasonably attentive to matters that could explain how and why she had suffered and whether she had a remedy. Subject to the question of Ms Wightman's personal circumstances in 2015, there is no basis for treating Ms Wightman differently from any other claimant who was not misled by MGN's "friends and family" concealment.

1516. Ms Wightman had a very difficult year in 2015. Many people are unlucky and experience such difficulties in family life; others are more fortunate. But there are not two categories of claimant for the purposes of s.32. Had Ms Wightman been so ill that she could not take in events in the outside world, that would be a "circumstance" relating to her that could be taken into account under s.32. But that would be because she could not reasonably have been attentive to events or diligently pursuing a remedy. Being a soldier on duty abroad for months might also be a circumstance that was relevant in that way.

1517. I am much more doubtful whether leading a hectic, busy and exhausting life can be treated as a disabling circumstance in the same way. The right approach is probably to say that it was part of the circumstances of Ms Wightman's life in 2015 but that such circumstances do not detract from a normal standard of attentiveness (particularly in an online, digital age) to possible causes of previous

injuries. In any event, more significantly, there was no evidence that her circumstances were the same in late 2012, 2013 and 2014, when the phone hacking litigation was gaining increasing publicity following the Leveson Report.

1518. MGN contends that Ms Wightman has advanced no proper case – and has not demonstrated by evidence – that she could not, without exceptional measures, have realised by 30 July 2015 that she had a worthwhile claim against MGN for VMI, blagging and other unlawful UIG by PIs. As with Ms Sanderson's case, Mr Sherborne focused on the fact that Ms Wightman was completely unaware of the continuing phone hacking story and the *Gulati* litigation, but, as in Ms Sanderson's case, that is no answer to constructive knowledge.

1519. Unlike in Ms Sanderson's case, there was nothing specific that triggered a reasonable expectation that Ms Wightman would inquire further about her personal experience. However, a reasonably attentive person desirous of discovering how their injuries were caused and seeking redress would have taken note of the developing phone hacking story that I have already summarised above, and in particular the investigations into MGN, the convictions of News Group journalists in June 2014 and the admissions made by MGN in September 2014, all against a much bigger backdrop of publicity about Press misconduct, in particular phone hacking. The applicable date in Ms Wightman's case is 30 July 2015, which is after the *Gulati* trial had taken place and the judgment was handed down, with very significant publicity that a person being reasonably diligent to pursue a remedy for the wrongs that Ms Wightman suffered would not have missed.

1520. In my judgment, the true position is that Ms Wightman left the injuries that she suffered between 1998 and 2002 (2005 in the case of News Group articles) behind her, because, entirely understandably, her life was centred on her recovery from illness, looking after her own two children and participating in the expanded family life that she enjoyed with her ex-husband and Natalie Rogers and their daughter. Seeking a remedy for matters that had long since stopped was not a priority for her, even by the time (2013) when both her two daughters were adults. But for the chance encounter and conversation with Mr Fredenburgh in 2019, she would not have brought a claim. If the claimants were right about the law, that encounter could have taken place in 2022 and Ms Wightman would then have had until 2028 to issue her claim. That cannot be right.

1521. Had Ms Wightman wished to pursue the matter, she could reasonably have discovered the basis of a worthwhile claim by about the end of October 2014 (allowing about a month from the publicity given to MGN's admission), and certainly by 30 July 2015, the applicable date in her case. There was nothing in her personal circumstances in 2014 that disabled her from being reasonably attentive to the developing story and seeking advice.

1522. The result can (and probably will) be said to be harsh in Ms Wightman's case and it is not a conclusion that I reach with any pleasure. Anyone who listened to her evidence in court would have a great deal of sympathy for all the things that Ms Wightman had to go through, starting with the cancer diagnosis and ending 26 years later with the ordeal of having to relive it all in the witness box. Ms Wightman made the obvious decision to prioritise her health and her children,

and did not give any attention to the wrongs that she had previously suffered at the hands of the newspapers. The law (s.32) however does not allow a putative claimant (who was not materially deceived by the defendant) to be inattentive to a possible remedy for their injuries and then bring a claim at any time in the future that they decide to take the matter up again. That is so even in the case of concealment of relevant facts by a defendant, as long as the facts could reasonably be discovered by the claimant. That is the policy that Parliament has enacted, to prevent defendants having to face stale claims, while giving claimants a fair chance to issue a claim. For whatever reason, Ms Wightman's claim was not issued until July 2021, which was too late.

1523. I therefore dismiss the claim of Ms Wightman as it is statute-barred.

Part XI: Applicable Principles for Damages

1524. Each individual wrong committed in relation to a claimant's private information is a separate occasion on which the defendant has committed the tort of misuse of private information: Gulati v MGN Ltd [2015] EWCA Civ 1291; [2017] QB 149. It is therefore appropriate to assess the quantum of a claimant's loss in respect of each such act of wrongdoing, whether that is the accessing of a voicemail message left by her on an associate's mobile phone, the blagging of her private information from a third party or the accessing of her own confidential information from unlawful searches conducted against her. It obviously also includes each occasion on which the claimant's own mobile phone inbox was accessed to listen to messages left for her.

1525. The use made by a defendant of the information once obtained can also be a separate tort. So sharing the private information with others in the defendant's organisation or selling it to third parties is a separate tort, as, generally, is the publication of the information in a newspaper without the claimant's consent, unless her Article 8 rights are outweighed by the defendant's Article 10 rights.

1526. The principles to be applied and the general approach to quantum of loss were determined by Mann J in the *Gulati* case and his approach was endorsed by the Court of Appeal. I shall therefore apply those principles in reaching a decision about the amount of damages to award against MGN for each tort it committed against each of the claimants.

1527. In *Gulati,* Mann J had evidence that some of the claimants were on a list kept for the purpose of hacking their voicemail inbox on a daily or almost daily basis, for a number of years. The judge therefore awarded damages to those claimants on the following basis:

a. "general hacking activity" – a starting point for someone who was hacked at least every few days, as a matter of routine, was £10,000 for each year in which it happened;

b. The PI investigations – there should in principle be separate awards for each proven occasion of invasion of privacy by PI activity;

c. Distress caused by the publication of individual articles that would not have been published but for the UIG;

d. General levels of distress (including distrust of and damage to relationships arising out of the pattern of conduct) caused, cumulatively, by the wrongdoing, but being careful to avoid any double-counting where awards are made individually for publications or occasions of UIG;

e. Possibly, aggravated damages, depending on the circumstances of the individual tort.

Damages are awarded both for distress and injury to feelings, and for the loss of autonomy or control over one's private information, on the basis that once the private information is publicised "the genie is out of the bottle" and cannot be replaced, and on the basis that even if nothing is done with the information there is an unjustified invasion of the victim's right to choose, dignity and self-respect.

1528. The court must then ensure that the overall sum awarded is proportionate and a proper reflection of the overall pattern of wrongdoing.

1529. MGN submits that an important factor in many of these claims is the extent to which information published or obtained unlawfully is already in the public domain. While that may mean that the information itself was no longer private, and so be a defence to a claim based on publication, it cannot affect liability for hacking into a claimant's voicemails or invading their medical records, which are themselves private even if some of the content has been publicised already. However, I accept that it is likely to be a factor in assessing the quantum of any such claim. So where, e.g., a person's medical records are blagged and the sensitive content published, the aggregate damages for the two wrongs will be likely to be high; but if, after publication, a second newspaper blags the medical records to try to validate the story but does not publish, there is no defence to the second blagging that the sensitive content had already been publicised; but the damages may reflect any difference in the nature of the wrongdoing and the fact that the sensitive content was already in the public domain. If the second newspaper were to publish the same story, the damages for publication might be lower, on the basis that the information was already in the public domain, so its publication did not cause the same degree of loss. However, repeated publication or violation of the right of privacy does not mean that no distress continues to be suffered by the repetition.

1530. In these current claims against MGN, I have already determined that any claim for the tort of publication without consent of an article containing private information is statute-barred. That is because the private content of the publication was not concealed – on the contrary – and so there was no deferment of the primary limitation period, under s.32 of the Limitation Act 1980 or otherwise: see *Sanderson v MGN Ltd*.

1531. The claimants therefore cannot claim damages for loss *caused by* the relevant publication itself. But, subject to the limitation defence, they can claim damages for losses *caused by* the underlying UIG, which was concealed and of which they were unaware until some considerable time after publication.

1532. In this trial, the claimants nevertheless contend that losses for distress suffered following publication of the private information are recoverable as losses caused by the underlying UIG. They say that this is because MGN obtained the private information unlawfully for the purpose of using it in its publications and did in fact publish an article containing the information, which, without the UIG, they could not otherwise have published. The loss resulting from publication is therefore sufficiently caused by the UIG and the damages awarded for the UIG should reflect the publication losses too.

1533. MGN submitted in *Sanderson v MGN Ltd*, following the handing down of my judgment, that it followed that the consequences of publication could no longer be claimed, and that I should decide that point summarily in favour of MGN. I declined to do so, on the basis that it seemed to raise properly arguable points and might turn on questions of causation, which would only be suitable to be decided on the basis of facts found at trial and with the benefit of fuller argument. I also questioned at that stage whether MGN could rely on its own subsequent wrongful act of publication as breaking the chain of causation.

1534. The claimants submitted that their approach was recognised as being correct by a passage in the judgment of Mann J in *Gulati*, at [223], [224]. In that passage, Mann J was addressing the question of how private the information published by MGN should be assessed to be. MGN tried to argue that in some cases it was not private at all, because the content was already in the public domain by other means. But, having made admissions in relation to the articles in question being a tortious wrong, MGN was not strictly able to go that far. And in any event, the focus in the trial had been more on the UIG (the VMI) than the publication, as being the serious wrong in issue. Mann J said:

> "The answer to the point seems to me to be twofold. The first is that the defendant's deemed admission does not admit to any particular level of privacy, and it is open to me to find that the privacy is at a trivial level if the facts require it in any particular case. The second is to recognise that merely identifying triviality does not necessarily mean that no substantial (i.e. other than nominal) compensation is payable in respect of that item. In respect of the bulk of the articles ("the admitted articles") the defendant's admission about source and causation has to be borne in mind - it has been admitted that they would not have been published but for the prior invasion of privacy from hacking or, perhaps, other allied wrongs. That means that the article is the exploitation of a wrong, and could attract compensation even absent any real privacy level in the information itself, albeit that a low, or even non-existent, privacy rating is likely to lead to low compensation. Insofar as it is realistic to assume that the particular piece of information was acquired as a result of activity which itself was an infringement of privacy (which is in most if not all cases) then a useful parallel would be to treat it as if it were covered by an express confidentiality obligation. The publication of such an item would be a breach of obligation. The significance of the information would be capable of affecting the compensation payable, but one would also have to bear in mind the fact that, on the admissions in the case, the

> article would not have been published had it not been for the wrongful act. That means one has to take into account the effect on the victim of the disclosure, who was in the circumstances entitled to have the matter not disclosed, and even if there might be a question mark about the privacy of the item, if the effect is serious then substantial damages ought to be payable even if someone else, discovering the information from a different route, and publishing it, might not be liable."

1535. The claimants say that this establishes that damages that would be awarded for publication reflect the seriousness of the underlying invasion of privacy, and that therefore damages for the underlying invasion of privacy should be awarded to take into account the actual use that was made of the information, namely its publication, because the article could not have been published without the UIG.

1536. In my view, that is turning the point that Mann J was making on its head. What the Judge was concerned with was whether the damages awarded for publication of something that was at best trivially private were necessarily very low or zero. All that he is saying in that paragraph is that it is necessary to bear in mind that, however trivial or public the information was at the time of publication, it was only able to be published because of a very serious invasion of the claimant's privacy in obtaining the information. Mann J was not concerned with a case in which damages could not be awarded for one of the wrongs of UIG and the publication, and his real concern was how to award the damages separately for each individual tort and avoid double-counting. He was certainly not purporting to decide that the damages that he should award for the separate tort of the underlying UIG should include the losses that the claimant suffered as a result of publication of the article. It is evident that Mr Sherborne has a different understanding of this part of the *Gulati* judgment because he invited Mann J to award compensation for a published article on the basis that that strand of compensation would include the compensation for the interception activities that led to the publication, and that, for that article, loss caused by the interception would not be included in the global award for phone hacking: see [146] of the judgment.

1537. It is a very different question that faces me, where there is no valid claim for publication and the only tort (in most cases) for which I can award damages is the unlawful extraction of the private information in the first place.

1538. Mr Sherborne submitted nevertheless that well-established principles of the law of tort support the conclusion that damages are awarded for the consequences of publication of an article obtained by UIG. He relied on the proposition that where repetition was reasonably foreseeable, the resulting damage was covered by the original wrong, citing McManus v Beckham [2002] 1 WLR 2982 and Douglas v Hello Ltd (No.3) [2006] QB 125 as the basis for that proposition, but without identifying any particular passage of the judgments.

1539. McManus v Beckham establishes that it is possible to recover damages extending to losses caused by the foreseeable re-publication by B of a slander by A, and so the claim on that basis should not have been struck out. It emphasises that the questions of causation and foreseeability in such cases are fact sensitive but that

there is also a value judgement involved in the decision. That was a case in which the slander was made in circumstances in which it was arguably obviously foreseeable that others would re-publish the slander, and that accordingly the defendant should be liable for those consequences, even though there would be a cause of action against the third party for the later publication. Waller LJ said at [34] that:

> "What the law is striving to achieve in this area is a just and reasonable result by reference to the position of a reasonable person in the position of the defendant. If the defendant is actually aware (1) that what she says or does is likely to be reported, and (2) that if she slanders someone that slander is likely to be repeated in whole or in part, there is no injustice in her being held responsible for the damage that the slander causes via that publication."

1540. Laws LJ agreed and said at [42] that:

> "The root question is whether D, who has slandered C, should justly be held responsible for damages which has been occasioned, or directly occasioned, by a further publication by X. I think it plain that there will be cases where that will be entirely just."

1541. In those examples, the defendant will be liable in tort for the consequences of a foreseeable act of a third person, even though the third person will also be liable for the loss that they have directly caused by re-publication. The act of the third person does not break the liability of the defendant for the consequences of her original wrong. It could be said that the original wrong continues to have an effect because of the re-publication of the defendant's words.

1542. As for Douglas v Hello, it covers very many issues relating to the impact of article 8 on confidential information, but does not seem to me to address the question of whether publication of photographs meant that losses arising from publication by B were caused by the unlawful taking of the photographs by A. The claim was one for breach of confidence, not (at that stage) damages in tort, and equitable compensation was refused by the Court of Appeal.

1543. The question of how the principle of causation applies in this context is capable of being affected by the decision of the Court of Appeal in *Gulati* that the invasion of privacy that provided the private information was a separate tort from the tort of publishing private information, and should be the subject of a separate award of damages,. As Mann J and the Court of Appeal held, the separate wrongs involved "had too great a degree of separation" for it to be appropriate to make a single, aggregated award of damages. Mann J also referred to the separate damage that was caused by the various different types of wrongdoing in issue and said at [155]:

> "I accept that there are three areas of wrongful behaviour which need to be looked at separately. First there is the general hacking activity. Each of the individuals had their voicemails (and some of those whom they rang) hacked frequently (in their own cases daily), with most hacks not resulting directly in an article. Their private information

> was thus acquired and their right to privacy infringed, irrespective of whether an article was published. That fact makes it appropriate to take the activity separately and address its effect (in terms of compensation) separately from damage arising from publication. It is something in respect of which the claimants are entitled to be compensated and if it is not treated separately from the effect of the articles its real impact may be last, or perhaps even exaggerated. The only sensible approach is to take it separately from the effect of the articles. It amounts to a separate category of wrong which has to be separately reflected in order to ensure that the objective of the damages award achieves its aim."

The real point here was that if the separate wrong of obtaining the information was not the subject of a separate award of damages, there was a risk of overlooking it, or possibly of over-compensating it. It was a question about the most suitable (and therefore, on the facts of that case, correct) way of approaching quantification of all the losses that the claimants had suffered.

1544. MGN submits that there are separate causes of action for the UIG and the publication, with different damage caused by each, and that if a claim for one of these causes of action is defeated (or not brought), the amount of compensation must necessarily be affected. They submit that if the claimants are right, there would be no difference in the quantum of damages and the claim based on the wrong of publication would have no independent value. The separation of the causes of action was indeed the very argument that was presented by Mr Sherborne in *Gulati* and which the Judge and the Court of Appeal agreed with: see at [152] at first instance and at [68] and [74] in the Court of Appeal.

1545. Mr Green submitted that Mann J found that each separate cause of action had its own independent existence and its own separate loss caused by the wrong, and that it was necessary to deal with the separate heads of loss in that "atomised" way. It was therefore impossible in law, in view of the approval of Mann J's approach by the Court of Appeal, to come to a conclusion that loss that followed publication could have been caused by the underlying UIG.

1546. I do not accept that argument, elegantly and persuasively though it was advanced. Mann J did not decide that each separate tort had its own ringfenced loss that was only caused by that tort. He did not need to address that question. He decided that, where there were claims for phone hacking generally, for individual hacks or blags, and for publication of articles, there were separate torts for which, in principle, separate damages should be awarded, and that in approaching the quantification of damages it was important to avoid both double counting of losses and failing adequately to compensate for one of the torts. That is why in principle it was right to seek to award separate damages for each tort. He was invited, in the event, nevertheless to wrap up damages for distress for the underlying UIG in the damages for distress awarded for publication. That is what he did. (He made a separate award for those cases of underlying UIG where no article was published.)

1547. Mann J did not have to deal with the case where the only cause of action was the underlying UIG, except where no article was published. I do not agree that he

decided that each tort had its own unique loss. On the contrary, he recognised that there was a risk of double counting damages when seeking to award damages on an atomised basis. That is why, pragmatically, he made wrapped up awards for distress caused by more than one tort.

1548. While it is clearly right to seek to deal with each individual cause of action separately, that does not mean that it must be assumed, as a starting point, that loss that was caused by one tort cannot have been caused by a different tort. It is perfectly possible in the law of tort for there to be two or more causes of the same loss. For each individual occasion of UIG, the relevant question is: what losses claimed were sufficiently caused by that occasion of UIG. The starting point is not (which was the effect of MGN's argument) to exclude certain losses if they would have been recoverable as damages for a different wrong.

1549. The underlying UIG wrong is *a* factual cause of the distress caused to each claimant by the later misuse of their private information. Without the UIG there could have been no publication. Further, in all cases, it is not disputed that the private information unlawfully obtained was obtained by MGN for the purpose of publishing it in its newspapers, if it was of interest. It was certainly perfectly foreseeable that MGN would publish the information that it wrongly obtained; indeed, MGN intended to do so and had control over that matter. It is not suggested by MGN that in any particular case there was such a hiatus between the two wrongs that there was no connection between acquisition of the private information and its publication. The original wrong was therefore an effective cause of the distress that each claimant suffered from publication, even if the unlawful publication was a more immediate cause.

1550. A second act of wrongdoing by MGN itself, namely publishing the private information, cannot be relied upon by MGN as breaking the chain of causation. That issue arose in a case called Coudert Brothers v Normans Bay Ltd [2004] EWCA Civ 215. The defendant solicitors tried to argue that a second negligent act by them (a claim in respect of which was statute-barred) broke the chain of causation between the first negligent act and the loss that the claimant suffered. The argument was rejected by the Court of Appeal on public policy grounds: a defendant cannot be allowed to rely on their own wrongdoing to secure a benefit in that way. Laws LJ also said at [64] that the result was:

> "…consonant with modern ideas of causation now being developed in the cases. Authority supports the proposition that the resolution of causation issues, certainly in the law of tort, is by no means merely a fact-finding exercise; in many instances it is an evaluative judgement, concerned to establish the extent to which a defendant should justly be held responsible for what has befallen the claimant."

If that was the right answer in respect of a supervening negligent act, it is even more clearly right in relation to a supervening deliberately wrongful act such as publishing private information that was unlawfully obtained.

1551. If the claim for the wrong of publication were not statute-barred and both claims were advanced, a claimant would not be able to recover damages twice for the same losses. However, that merely raises the issue of double-counting that Mann

J was alert to in dealing with the different causes of action in the *Gulati* judgment, and does not preclude a conclusion that the UIG caused losses that flowed from subsequent publication.

1552. The answer to the question of causation cannot therefore be that loss flowing from publication *cannot* have been caused by the UIG because it were caused by the publication. The relevant questions are whether, first, the post-publication losses claimed, whatever they are, were factually caused by the UIG *at all*: and, second, whether in law they should be treated as not so caused (i.e. as a matter of public policy).

1553. I have already explained that the underlying UIG wrong was *a* cause of the relevant loss and that the second wrong does not break the chain of causation. It is difficult to see why, otherwise, the law should treat distress resulting from publication of private information that was effectively stolen in order to publish it as not having been caused in law by the theft. The information was stolen for the purpose of putting it into the public domain, not for private enjoyment. The fact that there is, in principle, a separate cause of action for the later wrong that also caused the distress made no difference in the Coudert Brothers case.

1554. I therefore conclude that losses flowing from publication are recoverable as damages for the original UIG wrong. For transparency, when I award damages in Part XII below I shall make awards separately for, first, loss of privacy and autonomy, and second, distress suffered as a consequence of the UIG and the publication.

1555. If I am wrong about my conclusion, and the original UIG was not a sufficient cause of the losses (including distress) resulting from publication, the position would be as follows. A claimant would be entitled to damages for the interference with her privacy and loss of autonomy, in addition to damages for distress caused by knowledge that that had happened. The loss of control of the private information would have to be compensated to reflect the fact that the information that was private is (a) now known by MGN and (b) is at risk of being further disseminated, and published. If known about, that risk would be likely to cause considerable distress, but publication might be able to be restrained. If not known about (which was the case here in almost all cases), the loss of control was acute and the risk of publication was great. On any view, therefore, the damages awarded for each occasion of UIG would have to reflect the potential consequences for the claimant of loss of control over the private information, if the actual consequences are not awarded as damages. In the case of all the articles that I have found to include unlawfully obtained private information, it is known that that risk of publication eventuated.

1556. By that more indirect means, a substantial part of the losses flowing from publication of the article should in any event be reflected in the damages for the underlying UIG. I will deal with this alternative when assessing the quantum below.

Part XII: Quantum

Contents

Level of damages

1557. The most obviously relevant authority on the right level of quantum for various types of phone hacking, and for UIG conducted through PIs, is *Gulati*. In that case, Mann J dealt with a wide range of different types of hacking and unlawful PI activity, and awarded damages on an article by article basis, and on an overall basis depending on the number and type of PI invoices. I have looked at a series of more recent authorities provided by the parties in their submissions to see whether they justify moving the level upwards or downwards, but none of them other than Bull v Desporte [2019] EWHC 1650 (QB) is similar on the facts, and the award in that case is consistent with what was awarded in *Gulati* for cases of publication of intimate details of a sexual relationship and family relationships.

1558. I bear in mind that the *Gulati* levels were set in 2015 and in 2023 the value of money has been reduced as a result of a short period of high inflation.

1559. In *Gulati*, Mann J held that certain types of case should be regarded as at the upper end of a scale of what was appropriate for damages for a single article, with medical and significant financial information towards the top of the range and information about social meetings towards the bottom. Information about relationships is variable, depending on the nature of the information disclosed and on the level of distress caused by its publication. Disclosure that causes severe problems in the relationship is likely to be at the upper end of the scale.

1560. For very frequent hacking of a claimant's voicemails, Mann J awarded a base rate of £10,000 each year while serious levels of hacking were continued, though that may need to be adjusted in view of the particular sensitivity or otherwise of information accessed and on the number of articles for which individually assessed compensation was awarded, to avoid over-compensation.

1561. MGN produced a very helpful table of all the awards made in Gulati for individual articles. These establish an informal 'tariff', with occasional awards of £15,000 or more for exceptionally invasive or hurtful disclosure of very private matters, and otherwise awards of between £10,000 and £12,500 for publication of information at the top of the range, relating to relationships that were otherwise

secret, very personal details about health or relationships, and serious financial content, with a median range of between £5,000 and £7,500 applicable to serious cases, and awards of between about £3,000 all the way down to zero for hacking that produced material that was not so sensitive or not truly private at all. These awards rolled up the damages for invasion of privacy caused by the particular hacking and the damages for distress caused by publication as a single award.

1562. For PI invoices relating to other UIG, the awards generally averaged between £300 and £500 for each invoice, but an award was made on a global basis, according to the total number of invoices. The amount could vary if the nature of the UIG activity could be identified as being very serious, or less serious.

1563. Mann J also awarded damages for the general level of distress caused by repeated and frequent phone hacking and publicity of private information. This was to reflect additional cumulative distress that was not captured by the individual article awards. These damages ranged from £10,000 for a relatively short period of intensive hacking causing some significant distress to £30,000 in a case where the claimant was targeted regularly for years and suffered greatly from damage to friendships, stress and paranoia caused by the loss of privacy.

1564. The Court of Appeal held that the damages were high but appropriate, given the facts of those cases.

1565. I bear this in mind as an indication of the levels of damages that may be justified in comparable cases.

The Duke of Sussex's claim

Introduction

1566. In the Duke of Sussex's claim, I will start with the 15 articles where I have found UIG or VMI to have been used to obtain private information that was then published. I will award a sum by way of damages to compensate for the fact of that UIG or VMI and the loss of privacy and autonomy resulting from it, and a separate sum for distress caused either by the invasion of privacy, if known, but, more usually, from the publication. In many cases, any distress at the publication was not suffered until the Duke reviewed the published articles with his legal advisers, and again to some extent in the witness box.

1567. As indicated in the Conclusions section in Part V above, I am not in a position to draw overall conclusions based on a review of all 148 articles and associated PI activity and must therefore deal with loss of privacy and autonomy as part of the damages awarded for each article. In doing so, I bear in mind that, for the loss of privacy and autonomy resulting from regular hacking of their phones, Mann J considered that £10,000 a year was generally appropriate as compensation in addition to the article-specific awards. The Judge was however careful to avoid double-counting and so would have borne the general award in mind when awarding damages for the individual articles.

1568. I will then deal with the invoices within the UIG Episodes that I have found to evidence further UIG, where they are unrelated to any of the articles about which the Duke complains, and make an award for each of those. There was no publication involved and the invoices were not known about, so there is no distress component in these separate awards, as the Duke did not say that he was distressed by seeing any of them.

1569. I will consider in addition whether it is appropriate to award a lump sum to compensate for the general impact that the UIG (in whatever form) had on the Duke's life at the time. He says in his witness statement that there was real distress, concern about security, paranoia in his personal relationships generally, a feeling of being hounded everywhere in the world, and with particular relevance to the articles, pressure on his romantic relationships.

1570. In relation to the level of distress resulting from publication, it is obviously material that, by and large, the Duke could not recall having read the articles at the time of publication. He was aware of articles about the Rattlebone Inn because the publicity about drink and drugs had serious consequences for him at school: his school had a zero tolerance policy about drug-taking. Similarly, publicity about the Afrika Korps uniform caused a media storm. However, those stories were broken by the News of the World and The Sun respectively and the later media storm was a reaction to the photograph, not the further private material about family relationships and the relationship with Ms Davy that the MGN papers published.

1571. It is also material that the feeling of being oppressed and the loss of privacy and distress that the Duke describes generally was the cumulative result of all the media activity that was surrounding him. Even now, it is unclear to what extent other newspaper publishers and particular newspapers' journalists were conducting UIG and VMI directed at the Duke: he has other legal actions pending and he has made many allegations against them. On any view, the Duke's misery caused by Press behaviour, which MGN acknowledged, was not the fault of MGN alone, and I can only properly award damages against MGN for its contribution to the consequences of unlawful activity, not general hounding of the Duke by the Press that does not involve any UIG.

1572. Articles 27 and 32 are the other articles that the Duke said that he saw at the time, the former because his security would have brought it to his attention, and the latter because he witnessed the consequences of the VMI first hand, when being photographed, and so was aware that a publication would follow. Otherwise, he could not recall reading the articles at about the time of publication, or recall when he first saw them. I consider that in most cases it is likely to have been when he went to his solicitors to seek advice about bringing a claim. However, others close to the Duke are likely to have read the articles when published and any impact on them would be felt by him, to a degree.

1573. Save in relation to articles about Ms Davy that he heard about indirectly, the Duke therefore would not, generally, have suffered anguish or distress at the time of publication. That is because he did not read them. But where Ms Davy was a subject of the article, any impact on her would have affected their relationship and so had an impact on him. Although there was no evidence from Ms Davy, it

is an obvious inference that she would have read some of the publications that related to her and the Duke. The Duke said that all the publicity had an impact on their relationship because Ms Davy became withdrawn and anxious, and this would inevitably have had a damaging effect on their confidence in their relationship. The Duke said that, as a result of Press intrusion, she decided that Royal life was not for her. However, MGN was not to blame for all the Press intrusion.

1574. In some cases, distress was caused by the event itself, or by the underlying UIG. A good example of the latter is paparazzi lying in wait at the private dinner party held by Mark Dyer. The anger and distress on that occasion was caused not by the publication but by the fact, and consequences, of the underlying UIG as perceived at the time: the further consequences of photographs having been taken were entirely predictable.

1575. It is very difficult, in the Duke's case, to separate out the impact of wrongdoing by MGN from the conduct of other media at the time, e.g. the acknowledged wrongdoing of the News of the World. Nevertheless, in some cases, MGN's wrongdoing would have contributed to the considerable annoyance, distress, inconvenience and embarrassment that the Duke suffered.

The Articles

1576. Articles 6, 7. This was an occasion of use of UIG and VMI. The Duke's own phone was not hacked, but others were, and other UIG was done to find out the material that enabled the bylines to comment on, and even quote, private conversations. This was targeted at the Duke and was a serious invasion of his privacy, since the material obtained from others was his private information. It is likely that MGN obtained the Duke's private phone number at about this time, as a result of the investigations into his associates. This related to private family relationships at a time when the Duke was still legally a child. However, as was apparent from the Duke's evidence, the major distress caused to him was caused by the Palace's decision to admit the accuracy of the News of the World's story, which commentary was published by it. For the invasion of privacy, the appropriate award is **£6,500**, to cover the underlying UIG and VMI and putting private matters into the public domain; and for distress a nominal **£500**, given that it was not suffered except at a remote time.

1577. Article 14. This, in December 2003, is the first occasion on which it appears that a story was obtained and published about the Duke using VMI of him and/or his close relatives. It was clearly a serious matter to hack the private voicemails of the Princes, or their close associates, whichever of them was hacked. The invasion of privacy was at a serious level, as the information obtained related to close family relationships of a 19-year old and his older brother and late mother. For this more serious invasion of privacy, both by hacking and by publication, **£10,000**. There is no evidence that the Duke saw the publication but it is inevitable that others did consider it and bring the matter to the Princes' attention, given that the quotations were attributed to a "Senior Royal source", I find that some distress would have been caused at the time, in addition to annoyance at a much greater distance of time, and award **£2,000**.

1578. Article 15. This, in November 2004, is a case of UIG directed at Ms Davy, as a way of finding out, unlawfully, private and sensitive information about the Duke, who had been attempting to conceal his relationship with her. The UIG directed by MGN was serious, in principle, because it was for the purpose of confirming the identity of a girlfriend with whom the Duke was attempting to have a relationship away from public attention. In fact, by the time of the UIG and the publication, Ms Davy had already been named by another newspaper, but the Mirror's UIG served to confirm who she was. The main distress caused by this sequence of events was the fact that the Press managed to find the Duke at all in Argentina, and discover that a young blonde was there with him, for which there is no finding of unlawful activity. The degree of the Duke's privacy actually invaded by the UIG was therefore much reduced. The damages are **£2,000** for the interference with his privacy and only **£1,000** for distress, given that it could only have made a minor direct contribution to the distress that was caused by the identification of Ms Davy.

1579. Article 16. The UIG in this case was limited to blagging the Duke's flight details for his return from Bazaruto to London. As the Duke said, that gave rise to security concerns, though there was no specific evidence that anyone in the Duke's team knew about it at the time. The seriousness is nevertheless at the lower end of the scale and does not appear to have caused any distress. **£2,000** for the breach of privacy.

1580. Articles 17, 18. These articles were written following UIG in relation to Ms Davy's telephone records and possibly VMI too, though not in relation to the Duke's telephone. The content and duration of numerous phone calls between the Duke and Ms Davy was obtained and published. This was a serious violation of the Duke's and Ms Davy's privacy over and above the unfortunate publicity attendant on the Afrika Korps uniform and conduct at the party. **£5,000** for the invasion of privacy by the UIG and the publication. Any serious distress caused to the Duke by the episode is likely to have been caused by his admitted poor judgement about his party outfit, his father's reaction to it and Ms Davy's anger at his conduct with other women; but there will have been some distress, even in retrospect, caused by the realisation that phone records had been blagged and by the publicity given to relationship trauma, and I accept that this is genuine. **£1,500** for the distress.

1581. Article 21. The private information obtained for this article in April 2005 is towards the bottom end of the scale of sensitivity, but nevertheless it was obtained by serious invasions of private voicemails and phone records. There was however no specific evidence of distress being caused at the time, but there must have been some unhappiness for Ms Davy, and therefore by association for the Duke, in knowing that private matters that no one else had been told about were being put in the public domain. **£4,500** for the invasion of privacy, as VMI was clearly used, and **£1,500** as a modest amount for a basic level of likely distress.

1582. Article 23. April 2006. The private information obtained is not at the highest level of sensitivity but it is moderately sensitive as it relates to problems with the relationship of the Duke and Ms Davy as a result of a night out in a lap dancing club. The invasion of privacy is serious as it probably involved UIG and VMI in relation to Ms Davy's phone and call data. The divulged holiday duration is at the

bottom of the scale of seriousness. Again, there was no specific evidence of distress, but there must have been some in realising through Ms Davy that private matters were being exposed to full publicity. I therefore award the same as for the previous article, without any reduction for the repeated activity as it was a year later: **£4,500** for invasion of privacy and **£1,500** for distress.

1583. Article 24. This article disclosed highly personal content of conversations or messages between the Duke and Ms Davy, including 3 rows between them and a deterioration in their relationship. The story was fuelled by UIG and VMI and was therefore serious. The private information obtained was not of itself at the most sensitive level, but the publication of this information would have been particularly upsetting and the Duke said that it would have added to the pressure on Ms Davy, and, by inference, would therefore have impacted his relationship with her. I therefore award **£4,500** for this invasion of privacy too, given that the article is more than a year after the previous article and so is not just a continuation of the unlawful activity underlying that article, and an increased **£3,500** for the distress and unhappiness that it would have caused.

1584. Article 27. This was an occasion when UIG and VMI were probably used to track the movements of Ms Davy and arrangements that she had made with the Duke to spend the night with him in Kensington Palace. That was a significant invasion of the Duke's privacy but the privacy is not at such a high level as other cases. **£3,000** for the invasion of privacy. On this occasion, the Duke was aware of the publication but did not say that it caused any particular upset or distress, save that it raised a security issue about the photographer, though one can imagine that it probably did cause some distress to Ms Davy. However, I will award **£1,000** on the basis that it must have caused some disquiet.

1585. Article 29. The award for this article is only in respect of the UIG relating to the Duke's personal feelings about his not being allowed to go back to Afghanistan to serve, and the publication of that. There was probably VMI and other UIG involved. The underlying story was a matter that would inevitably have become public and was in the public interest to know about. The fact of VMI is nevertheless serious and therefore **£4,000** for the invasion of privacy, but on this occasion nothing for distress caused by the publication of this particular information, as there was no evidence of any distress and the comments about the Duke's feelings were seen as creditable to him.

1586. Article 30. Information was obtained by VMI and UIG about the breakdown of the Duke's relationship with Ms Davy, which was of a highly personal nature. Though the story had been broken elsewhere, there were details that had not been. **£6,500** for the invasion of privacy and, in the absence of any evidence of particular distress resulting from reading the article, a nominal **£500** for annoyance at a greater distance of time.

1587. Article 32. Private arrangements for a secret dinner date were intercepted by VMI, resulting in distress at the time when the Duke and Ms Flack were met by concealed photographers. **£7,500** for the serious invasion of privacy at a time of secrecy about a possible relationship, and a further **£7,500** for the very considerable distress caused by the privacy of the event being ruined, with the inevitable consequence that the Duke's evening with Ms Flack would be made

public, with photographs of them. The Duke "very much remembered" seeing the published article on this occasion.

1588. Article 33. The amount and content of telephone contact between the Duke and Ms Davy, at a time when each was dating another person, was obtained by UIG or VMI, or both. The content supposedly included the Duke bombarding Ms Davy with requests to take him back, and her telling him that she had found a new man. The Duke did not distinctly say in his evidence whether the reported information about the content of the phone calls was true. However, if the content was obtained by VMI, some of it at least will have been true. But the Duke did not say that he saw the report when it was published, and therefore any acute embarrassment that might have been caused to him at the time was not caused. I will award a further **£3,750** for the invasion of privacy, on the basis that it is partly a continuation of the previous article's unlawful activity, and a nominal **£500** for the belated annoyance caused by reading the article many years later.

The UIG Episodes

1589. I turn to the payment records that did not lead to published articles – the UIG Episodes, in relation to which my findings are set out in the UIG Episodes Schedule.

1590. Episodes 15 and 16 were in 2002 in the aftermath of the Rattlebone Inn coverage. There is one TDI invoice relating to Tiggy Legge-Bourke and six TDI invoices relating to the Duke's friends and associates, all of which are likely to have involved the Duke's private information to some (unknown) extent, or be an attempt to access it. Bearing in mind the award of £6,500 for the invasion of privacy leading to the two published articles, I award a further **£2,000** in aggregate for this further attempt to obtain private information relating to those matters. It is unknown what further information was obtained. There is then one further LMP invoice for UIG or VMI directed at the Duke, at a somewhat later time, for which I award a baseline figure of **£500**, it being unknown what was obtained.

1591. Episode 19: an IIG Europe CR for £5,000 is likely to have been more invasive UIG, though again what it produced is unknown. I award an uprated amount of **£1,000** for this.

1592. Episode 21 relates to two further IIG Europe CRs at about the same time directed at the Duke, and are likely to have been occasions of invasive UIG, for which I award **£1,500** in aggregate.

1593. Episode 28 is one further IIG invoice in respect of HRH Prince William, which is likely also to have involved some of the Duke's private information, for which I award the uprated amount of **£1,000**. There is a Warner invoice which would probably be for blagging in relation to Mark Dyer, and an ELI invoice in relation to him too. The last two are likely to be related therefore I will award **£1,000** in aggregate for both. Then there are two ELI invoices in relation to Natalie Pinkham on consecutive days, for which I similarly award **£1,000** for both.

1594. Episode 29 is the admitted Chinawhites invoice of Avalon, which is likely to have been a blag of someone at the club in relation to an occasion on which the Duke was present with someone, and probably relates to a personal relationship with someone at the time. In view of the likely proximity to the Duke but uncertainty what if anything of significance was obtained, I will award the uprated **£1,000** for this episode. I make no adjustment for the fact that this was admitted and MGN offered an apology at trial for this one episode of wrongdoing, given the implacable denials of any VMI and other UIG in the Duke's case.

1595. Episode 32 is a blag by Nick Pisa of flight details for the Duke returning from Argentina. As with Article 15, this is at the lower end of the scale of privacy that is protected, though of some significance for someone with the Duke's security profile. **£1,000**.

1596. Episode 33 is an invoice of ELI for inquiries into Natalie Pinkham, likely to be in connection with a VMI directed at her phone, to find any comments made by the Duke about the Afrika Korps party, and a payment to the bin spinner, Simon Lloyd, which are unconnected. It is unknown whether anything materialised from either, so £500 for each, **£1,000** in total.

1597. Episode 34 is a John Ross CR that is probably UIG of the Duke's private information. **£1,000**.

1598. Episode 41 includes the following, which are all directed at Ms Davy: a Newsreel (Jonathan Stafford) CR for £500 and a BDI invoice for "Project South Africa". Both these are likely to be related to the Duke's relationship with Ms Davy, but are unconnected otherwise, so £500 for each, **£1,000** in aggregate. There are then two BDI invoices for Project Chelsy which are clearly connected, so **£750** for both; and a further unconnected Newsreel invoice "re Chelsy Davy", so I award **£500** for this too.

1599. Episode 43: two CRs from Newsreel and BDI concerning the Duke himself and both are likely to represent some form of UIG in relation to the Duke, but it is unclear what if anything resulted. £500 for each, as they are apparently unconnected, so **£1,000** in total.

Damages for overall distress

1600. I then have to decide whether to make a further award to reflect the level of distress caused by the continuing conduct of MGN and the damage that was cumulatively done to the Duke's wellbeing. That is capable of being distinct in principle from the distress caused by individual publications; but it depends on there being something more than a series of distinct publications, each of which had (and only had) its own particular consequence for the Duke. That might be because it was evident that there was UIG being conducted continuously, beyond the individual instances that I have found proved and have addressed; or it might be because there were cumulative consequences that went beyond distress caused by each individual article.

1601. As to the first of these, I am not satisfied that there was obviously much more UIG being directed at the Duke himself than is evidenced by the articles and the

UIG Episodes. I have found, on the basis of the evidence that I have seen, that hacking of the Duke's phone did not start until towards the end of 2003 and was done in a controlled and more limited way than it was with the *Gulati* claimants. It was certainly not routinely done. Hacking by a journalist on a burner phone would however not be traceable, nor (once the newspaper had the Duke's phone number) would any further PI services be needed to continue to hack. It is therefore possible that further hacking was done without trace. This would be consistent with the Duke's evidence about strange mobile phone activity and his evidence that whenever he arranged to meet Ms Davy at the airport the paparazzi were always there. However, that may be explained instead by hacking of Ms Davy's phone.

1602. There may well have been more regular hacking of the Duke's associates, as this was the preferred, safer means of finding out about the Duke's thoughts and plans, and I have found that that was probably the case in relation to Ms Davy, Mr Pelly, Ms Pinkham, and Ms Legge Bourke in particular. However, there is no evidence that this was on a constant basis that itself enabled MGN to follow the Duke's whereabouts and life on a daily basis.

1603. Further, in terms of the impact of Press scrutiny, which has been felt most acutely by the Duke for most of his life, it is extraordinarily difficult to separate out the impact on him generally of all other lawful (but nonetheless oppressive) activity conducted by the Press, and also take out unlawful activity conducted by other newspapers and journalists, in order to identify what distress overall was caused by unlawful activity by MGN.

1604. So far as cumulative consequences of MGN's unlawful activity are concerned, I am satisfied that there will have been some. There will inevitably have been greater stresses placed on the Duke's relationships, particularly with his girlfriends, as a result of the pressure placed on the girlfriends by the publicity given to the relationship. Publicity of intimate and private detail is particularly corrosive. There will also have been mistrust of other friends caused by confidential material appearing in print. The Duke said, that as a result of the hacking that led to article 32, he did not speak to Mark Dyer, a close confidant, for some time, believing that he must have leaked the secret dinner date. However, it is important not to double count the awards that have already been made for the consequences of the individual articles, and it is important to recognise that the impact of unlawful MGN activity was only part of the picture of stresses that were created for the Duke by Press activity (whether lawful or unlawful).

1605. Nevertheless, I consider that there must be an additional element, most particularly the corrosive effect of the intrusion, hounding and publicity on the Duke's relationship with Chelsy Davy, which is not fully reflected in the individual awards that I have made, particularly as those awards are generally modest and are in many cases lower than they would have been because the individual effect of them was not perceived by the Duke at the time. But the articles will have had an impact on those with whom the Duke was close, who did inevitably see what was being written about them – the Duke said that Ms Davy became extremely guarded about their relationship, as a result of publicity. In those circumstances, while recognising that MGN's wrongdoing is only a part

of the overall picture and that damages have already been awarded for the individual impact of the articles, I would award a further sum of **£20,000** for the contribution that MGN's conduct made to the cumulative and lasting damage to the Duke's wellbeing.

1606. For the reasons already given, I will not make a *per annum* award for the hacking in the Duke's case. There is no sufficient evidence of continuous hacking of the Duke's phone at the level of the hacking activity in respect of the *Gulati* claimants. The awards that I have made for the individual Articles and UIG Episodes fully cover the unlawful activity that is proved. I leave it to the parties to consider how to dispose by agreement of the Duke's claims in relation to the remaining 115 articles and any connected payment records, based on my judgment. If they cannot agree and these matters have to be tried, I will be in a better position at that stage to form a view on whether any additional award to compensate for hacking or other UIG beyond the totality of the 148 articles and payment records is appropriate.

Aggravated damages

1607. All claimants claim aggravated damages for the fact that the UIG and VMI proved was conducted with the knowledge of the board and the legal department.

1608. The pleaded case in this regard is that members of the board of MGN and TM plc knew of the use of unlawful activities from 1999 (or certainly by 2007) and failed to take steps to stop them, and even concealed them and lied about them, and continued to conceal them. The individuals identified in the GenPoC were Mr Vickers, Ms Bailey and Mr Partington. Their knowledge is said to have aggravated the injury felt by the claimants.

1609. The case of the claimants was proved in this regard. Although the board as a whole did not know, the executives and lawyer who were identified in the GenPoC all knew and concealed the unlawful activities over an extended period.

1610. The purpose of aggravated damages is not to punish but to compensate a claimant for the circumstances in which an injury was done to them, which circumstances caused additional injury to the claimant's proper feelings of dignity, self-respect and pride.

1611. Given that I have awarded damages to the Duke for, among other things, distress and injury to his feelings, I must ask myself whether there was additional distress or injury caused by the fact, as is now known, that senior executives allowed the unlawful conduct to continue and covered it up. The question is whether the distress, humiliation and/or injury to feelings has been fully compensated by the damages that I have awarded, or whether there is something uncompensated.

1612. This is ultimately not a matter that is capable of fine analysis. The answer seems to me to be clear that there is a justified sense of outrage and additional hurt felt by any claimant in the Duke's circumstances, that it was not just out of control editors and journalists who were causing serious distress by invading his privacy, but that this conduct and its inevitable consequences were being accepted, and profited from, by those who should have stopped it. As a result, the conduct was

encouraged to continue and did continue, for years longer than it should have done. A significant amount of the Duke's claim relates to the period after 2006, by when Mr Vickers and Ms Bailey both knew that there was at least a strong likelihood of illegal activity at MGN. I bear in mind, however, that this was not conduct that the board as a whole endorsed. And I do not include anything to reflect the fact that the in-house legal team knew about it. That would seem to me to mistake the nature of the role of the in-house lawyer and be likely to trespass on matters of privilege.

1613. I will therefore award the Duke a further **£15,000** for aggravated damages.

Calculation

1614. Accordingly, the total damages awarded above is: **£135,000**.

1615. In view of the decisions of the Court of Appeal in Simmons v Castle [2013] 1 WLR 1239 at [50], explained in relation to damages for injury to feelings in Eurides Pereira de Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879 at [25]-[35], it is necessary to increase all damages awarded for mental distress, including injury to feelings, by 10%. This increase will therefore be made to damages for distress that I have awarded in respect of each of the articles individually (£21,000), the £20,000 general damages for distress, and the £15,000 aggravated damages. So an extra £5,600 is awarded on this basis.

1616. Grand total: **£140,600**.

Alternative basis of award of damages

1617. If I am wrong in holding, in Part XI above, that the underlying UIG was an effective cause of the losses resulting from publication, then the basis on which I have awarded damages for loss of privacy resulting from publication and the distress resulting from publication needs to be reconsidered. For convenience, I dealt with compensation for loss of privacy and compensation for distress as separate sums, though they were both damages for the misuse of private information constituted by the UIG.

1618. On the alternative basis, in principle it would be necessary to strip out of my awards of damages the amount by which the compensation for actual publication (whether for loss of privacy or distress caused thereby) exceeds compensation for the risk of publication resulting from the loss of control of the private information and any distress caused by that, if known. Since the reality of publication must always be worse than a serious risk of publication, I accept that some adjustment would be merited. But since the purpose of the UIG was to obtain private information for publication, or to confirm a story for publication, the difference is not great.

1619. If I were awarding damages in respect of the Articles on this alternative basis, the awards I would make are the following:

Articles 6, 7 - £5,000 for loss of privacy; £500 for distress;

Article 14 - £8,000 for loss of privacy; £1,000 for distress;

Article 15 - £2,000 for loss of privacy; £500 for distress;

Article 16 - £2,000 for loss of privacy; £0 for distress;

Articles 17, 18 - £4,000 for loss of privacy; £500 for distress;

Article 21 - £4,000 for loss of privacy; £500 for distress;

Article 23 - £4,000 for loss of privacy; £500 for distress;

Article 24 - £4,000 for loss of privacy; £500 for distress;

Article 27 - £2,500 for loss of privacy; £500 for distress;

Article 29 - £3,500 for loss of privacy; £0 for distress;

Article 30 - £5,000 for loss of privacy; £500 for distress;

Article 32 - £7,500 for loss of privacy and £7,500 for distress (on the basis that all the loss was caused by the UIG itself, the consequences of which were felt at the time, not by the later publication);

Article 33 - £3,250 for loss of privacy; £500 for distress.

1620. On the alternative basis, I would also reduce the additional damages for overall distress to £10,000 as it was publication of the articles that significantly contributed to the damage to the Duke's personal relationships. The aggravated damages would remain, as these are justified by the condoning and concealment of the UIG.

Michael Turner's claim

Introduction

1621. In Mr Turner's case, I have found that 4 articles are the product of VMI and that there were 2 additional unlawful searches.

1622. I have found that Mr Turner was not hacked at any time until October 2011, and even then it may only have been his associates who were hacked as a way of picking up information about him. There is therefore no award that is appropriate in his case for regular hacking. I will deal with the four articles first.

The Articles

1623. Article 15. This was VMI of Mr Turner's associates' phones, picking up (probably unintentionally) his comments about fan mail. The privacy level was marginal, and although the hacking is serious, it was probably directed at his

associates rather than him. I therefore award only **£2,000** for the violation of his privacy, both by the hacking and the publication, and **£500** for limited distress caused by the publication, which Mr Turner did not see at the time.

1624. Article 26. This was VMI of messages left by Mr Turner for close family or friends. Much of the material was already in the public domain (some had been put there by Mr Turner in his tweets), but nevertheless this is an invasion of his privacy by accessing messages left by him about his distressed feelings. This was a specific targeting of friends to get information about him, not just information that was harvested incidentally while hacking them, and was therefore more serious: **£6,500** for the invasion of privacy, as the material hacked was at a high level of sensitivity at a very difficult time for Mr Turner. Since, as Mr Turner confirmed in cross-examination, the article was not seen at the time, it would not materially have added to the anguish he was suffering. He did not say he was led to believe that others were breaching his confidence. Nevertheless, the publication is intrusive and upsetting, even in retrospect, and I therefore award **£1,500** for the distress caused by the invasion and publication.

1625. Article 27. This was UIG (possibly VMI) and surveillance. It was a serious, targeted interference with Mr Turner's privacy at a very difficult and sensitive time for him. It is evident that the UIG revealed information about his then wife's cancer, albeit they were separated by that time. The interference with Mr Turner's privacy and autonomy is equivalent to that in article 26 - **£6,500**. The distress caused by the surveillance was acute at the time, and misled him to blame his friends for giving away his whereabouts. The article was not read at the time but even subsequently publication caused some distress. I therefore award **£3,500** for distress caused by the surveillance and the publication.

1626. Article 28. This was VMI of messages left by Mr Turner for his friends. They revealed that he was selling his house, which in circumstances of marriage break down was sensitive for Mr Turner as it was his former family home. The invasion of his privacy was serious, as it was targeted VMI, but the privacy was towards the lower end of the scale. **£3,500** for invasion of privacy. Mr Turner confirmed that he did not see the article at the time, but was upset when he saw it later. I accept that he was upset, but most of the upset was attributable to the break down of his family and the need to sell the family home, not the fact that The People had published it. Nevertheless, there is some residual distress. **£1,000**.

The Invoices

1627. The two C&L invoices are for Elect Roll searches and therefore are likely to have revealed some private information. The purpose was to obtain information that would assist with other UIG or VMI.

1628. £250 for each, **£500** in total.

Damages for overall distress

1629. Given the limited extent of the UIG that affected Mr Turner, it would be inappropriate to award any sum for the overall impact of the hacking or other UIG that affected him.

Aggravated damages

1630. Mr Turner is similarly entitled to an award of aggravated damages to reflect the justified sense of outrage and distress that what he suffered (especially as it was mostly in 2011) was a consequence of senior executives turning a blind eye to illegal conduct and thereby encouraging it to continue, when it should have been stopped years before.

1631. However, the award must be proportionate to the extent of the distress that he was caused by the VMI and UIG, which is much more modest than in the Duke's case. I therefore award £5,000 in his case.

Calculation

1632. Accordingly, the total damages awarded is: £30,500.

1633. The *Simmons v Castle* uplift is 10% of £11,500 = £1,150, making a grand total of **£31,650**.

Alternative basis of award of damages

1634. In the equivalent case to that addressed in the alternative in the Duke's claim (see [1555] and at [1618]), I would reduce the damages awarded to Mr Turner as follows:

Article 15 - £1,000 for loss of privacy; £500 for distress;

Article 26 - £5,500 for loss of privacy; £500 for distress;

Article 27 - £5,500 for loss of privacy; £1,750 for distress;

Article 28 - £2,500 for loss of privacy; £500 for distress.

Nikki Sanderson's claim

Introduction

1635. I have dismissed Ms Sanderson's claim on the basis that it is statute-barred. I deal with quantum below in case it is subsequently held that I was wrong to do so, and that her claim succeeds to the extent that I indicated in my conclusions in Part VII above.

1636. I found that there were 9 articles in her case where private information was published that was obtained by UIG or VMI. It is clear that there was a significant period of time when the MGN newspapers had managed to hack her own phone, and they were collecting information about her from her voicemails to associates on a regular basis. This was particularly intense during the period November 2004

to January 2005, but probably continued to a lesser and diminishing extent during the rest of 2005, until Ms Sanderson left Coronation Street.

1637. In relation to distress caused by publication, it is material that Ms Sanderson did not read any of the articles when they were published, though she learnt about some of the content of some of them, most particularly the subject matter of the article, from talking to others. But in other cases she knew nothing about the article until her solicitors showed it to her.

1638. In view of my conclusions, I consider that it would be appropriate in Ms Sanderson's case to award a global sum for the relatively short period of routine hacking of her and her associates' phones and the invasion of privacy that that entailed. It was probably at no stage with the same intensity as in *Gulati* except in the period November 2004 to January 2005. For those 3 months I award **£2,500**. For the years 2003 and 2004 up to November, when Ms Sanderson's privacy would have been violated by the routine hacking of her associates' phones, I award a further **£2,500**, and for the remainder of the year 2005, when her own phone and those of her associates would have been hacked, a further sum of **£2,000**. I approach the quantum of the individual articles bearing those awards in mind.

The Articles

1639. Article 3. This is a July 2004 article and was written because Ms Sanderson's mother's phone number was obtained through Ms Sanderson's call data. Ms Sanderson was then duped into disclosing her location by ELI or Mr Stafford. The subterfuge used, pretending that a Hollywood studio wanted to contact her, was exploitative and hurtful. As a result, MGN was able to spy on Ms Sanderson on a private holiday and publish many photographs of her in a bikini. The UIG therefore had serious consequences. Ms Sanderson would have suffered the upset of discovering that she had been duped and that photographs of her private holiday were in the Sunday Mirror on her return. The blagging of phone records and deceit of Ms Sanderson and her mother to obtain her location and be able to spy on her was serious, though the information obtained was not at the higher end of the scale of private information. **£5,000** for the invasions of privacy and **£2,500** for distress caused by realising that she had been fooled and that she had been secretly photographed, and then, at a significant distance of time, how MGN managed to locate her. There is also in this case a justified award of aggravated damages for the unpleasantness of the Hollywood deception that would in itself have caused upset: **£1,500**.

1640. Article 7. October 2004. The private information in this article was probably obtained by listening to other Coronation Street stars' voicemails, where Ms Sanderson had left messages about her father. It seems likely that the father's phone was also hacked. These were family relationships (but not close ones) that were being intruded upon. The award for loss of privacy is modest as the information is not high on the scale and some allowance has already been made for general hacking in 2004. The award for loss of privacy is **£3,500**, to take into account the admitted Avalon invoice. No reduction on account of a belated apology in respect of only one invoice is appropriate. As for distress, any upset caused by publicity of the father's behaviour has to be disregarded: it is only

distress caused by MGN obtaining and publicising Ms Sanderson's feelings about him that falls to be compensated. Since Ms Sanderson did not read the article at the time because she was too upset about the story, there is limited distress caused by the UIG or the publication of the private information. **£1,000** to allow for very limited relevant distress at the time and the rest when seeing the article many years later.

1641. Article 8. November 2004. Most of the information for this story was provided lawfully by Mr Meakin's relative (unidentified) but there was a C&L search on Ms Sanderson (unlawful) and attempts to hack her and Mr Meakin's voicemails. The Sunday Mirror had probably succeeded in hacking Ms Sanderson's and Mr Meakin's phones by this time. This was a concentrated effort to obtain information about a relationship break up, but the story was out of date. There was an invasion of privacy by the C&L search, which went to assist phone hacking of her phone. The loss of autonomy was serious, given the sensitivity of the relationship break up. **£6,500** for that. Ms Sanderson did not read the article, the storyline itself had not been obtained by UIG, and Ms Sanderson's belief that Mr Meakin was the source was not attributable to the words of the article but only to the storyline. In fact, the story had come from Mr Meakin's family, who were apparently willing to cause upset to Ms Sanderson in return for payment by alleging that she was having a relationship with Mr Tierney. Limited distress in retrospect **£1,000**.

1642. Articles 9, 10. November 2004. These two articles should be taken together as they were published in the same edition. This was hacking to stand up a tip on Mr Tierney from Mr Meakin's relative. This story emerged well after the event, as it related to what happened one evening when Ms Sanderson and Mr Meakin were still together but he was away on business. Mr Coutts had been piecing the story together after the tip off. The story itself was not provided by Mr Meakin's relative, just the name of Mr Tierney. Searches were done for Mr Tierney and Mr Meakin's relatives. There was hacking of messages left by and for Ms Sanderson. This was towards the top end of the scale as it was implying that Ms Sanderson had been unfaithful to Mr Meakin. **£7,500** for the invasion of privacy. The story was misleading, according to Ms Sanderson's evidence that there was no relationship other than a friendship with Mr Tierney and his girlfriend. In this instance, the publication was known about and caused Ms Sanderson real distress at the time with Mr Tierney and his girlfriend, as well as embarrassment generally from the implication that she was unfaithful. **£7,500** for the distress caused by the hacking and the publication.

1643. Article 11. December 2004. Hacking of Ms Sanderson and her associates (mother) to stand up a report of romantic attachment to Mr Young, as they had been seen together at a party. The hacking was serious as this was a new relationship, but it was not secret by this time. **£5,000** for the invasion of privacy by hacking, bearing in mind the general award for hacking. There was limited distress caused by the publication as Ms Sanderson did not see it when published, though it would have contributed to public knowledge of a private matter. Ms Sanderson did not say this caused her any distress at the time (the relationship was already in the public domain). Only in retrospect was there some limited upset caused. **£500**.

1644. Article 12. December 2004. Hacking of Ms Sanderson's and her associates' voicemails. This was in reality part of the same sequence of VMI by the same newspaper, which has already been compensated in the general award for hacking and in Article 11 above. The distress caused by this further publication, which did not add much, was limited as Ms Sanderson did not see it. **£500** only for retrospective distress.

1645. Article 17. The article was dated March 2005 but there had been PI activity followed by hacking of Ms Sanderson in January 2005 in an attempt to locate her on holiday, and The People was unsuccessful in getting photographs at the time, but apparently did eventually locate Ms Sanderson. Photographs were much later acquired and published, a month after a consensual OK! photoshoot was published. The intrusion was therefore just more phone hacking of her (and possibly Mr Young's or his family's phones) to find out where she was. It was therefore not high up on the scale of invasion of privacy. **£4,000** for the UIG and the VMI. What was published was not the product of unlawful activity but photographs that had been purchased, and the text was made up. Ms Sanderson cannot recall reading the article at the time and no distress was caused at any time by further publicity of the holiday.

1646. Article 28. September 2005. This was hacking of Ms Sanderson's phone and Mr Young's phone to try to stand up a story broken in the Daily Star that Ms Sanderson was not going to move to London with Mr Young. This enabled The People to add a storyline about huge bust ups. The subject matter was sensitive and the hacking persistent and targeted. **£5,000**. Ms Sanderson did not read the article. Being aware of it much later, it would not have caused significant distress beyond the fact of being hacked. **£500** only for distress.

The UIG Episodes

1647. Episode 3. It is very likely that there was UIG by the Sunday Mirror in relation to Ms Sanderson's associates at the time (November/December 2003) but there was probably only low level private information about day-to-day matters left on Ms O'Brien's phone. However, this is covered by the general award in [1639] above, so no further award for this episode.

1648. Episode 4. This is the same picture, in relation to The People in January 2004 and is covered by the general award for phone hacking of associates. But there is also an ELI invoice in relation to Ms Sanderson dated 25.11.04, which is likely to be blagging personal details unlawfully so that they can be used in relation to voicemail interception of Ms Sanderson's phone, which I find started in about November 2004. **£750** for the unlawful blagging.

1649. Episode 5. This is covered by Article 17, above.

1650. Episode 7. There is one C&L search in relation to Ms Sanderson, which was likely to have been an unlawful unedited electoral register search or a credit reference search, for which I award **£500**, and an admitted Avalon invoice. There is no transparency about the admitted UIG so I infer that it is likely to be blagging of private information. **£750**.

Damages for overall distress

1651. There is no doubt that Ms Sanderson did acutely feel that she was being followed and "surveilled" generally, and was bemused by the publications of private information, though I have found this to be much more limited than she alleged. The impact on her may well have been caused by other newspapers to an equal or greater extent. There was, however, more hacking going on than just the articles and invoices that I have found were connected with UIG or VMI. That is why I awarded general damages for hacking during the period 2003 to 2005 (3 years). But there is nothing that Ms Sanderson proved to be unlawful after 2005.

1652. I consider that Ms Sanderson did become anxious and untrusting of friends as a result of her whereabouts always seeming to be known during that period and photographers and journalists seeming to follow her around. These were the consequences of the further hacking of her and her associates during that period, and I am satisfied that it had a cumulative and detrimental effect on her. I have awarded damages for that hacking however, and must avoid double-counting when considering what further sum to award for the generalised distress that MGN's activity (only) caused. In my judgment, a further sum of **£5,000** is appropriate.

Aggravated damages

1653. In Ms Sanderson's case, her losses were suffered in the period 2003-2005, by which time I have found that only Mr Vickers on the board was aware of phone hacking and other serious UIG at MGN. Ms Sanderson therefore cannot argue that her distress (principally in 2004 and 2005) was aggravated by the failure of Ms Bailey and Mr Vickers to investigate in 2006/2007 and put a stop to extensive and habitual phone hacking. I do not consider it appropriate to award aggravated damages on the basis that, if Mr Vickers had investigated in 2004, after Operation Glade, he might have discovered material that he should have reported to the board in 2004. It is too speculative that phone hacking would have stopped at that time.

Calculation

1654. Accordingly, the total is: £65,500.

1655. The *Simmons v Castle* uplift would be 10% of £20,000 = £2,000, making a grand total of **£67,500**.

Alternative basis of award of damages

1656. In the equivalent case to that addressed in the alternative in the Duke's claim (see [1555] and at [1618] above), I would reduce the amount in Ms Sanderson's case to the following:

Article 3 - £4,500 for loss of privacy; £1,500 for distress; £1,500 aggravated;

Article 7 - £3,000 for loss of privacy; £500 for distress;

Article 8 - £5,500 for loss of privacy; £500 for distress;

Articles 9, 10 - £7,500 for loss of privacy; £0 for distress;

Article 11 - £4,500 for loss of privacy; £0 for distress;

Article 12 – nil;

Article 17 - £4,000 for loss of privacy; £0 for distress;

Article 28 - £2,500 for loss of privacy; £500 for distress.

1657. I would also reduce the general damages for distress to £4,000, in this alternative, on the basis that only a small part of these general damages reflected the overall impact of the publications.

Fiona Wightman's claim

Introduction

1658. I have dismissed Ms Wightman's claim on the basis that it is statute-barred. I deal with quantum below in case it is subsequently held that I was wrong to do so and that her claim succeeds to the extent that I indicated in my conclusions in Part VIII above.

1659. I found that there was one article only in her case where private information was published that was obtained by UIG or VMI and that there were 15 invoices that represented UIG of her private information, some of which were serious matters and others of which were only unlawful searches. There was no evidence of VMI directed at her.

The Article

1660. Article 1 was written on the basis of a voicemail either left for or by Mr Whitehouse, probably the latter. The partly private information about Mr Whitehouse's separation from Ms Wightman was therefore obtained by VMI, but this was not directed at Ms Wightman; it was incidental. Further, the privacy was precarious because it depended on what Mr Whitehouse did with it, and he had obviously shared the information of his separation with someone else outside the family circle whose phone was hacked.

1661. Accordingly, the misuse of the information by MGN was not at a very high level of seriousness, despite the VMI. I would award **£4,000** for the loss of privacy and **£7,500** for distress caused by the publication. There is no doubt that the publication had a very serious impact on Ms Wightman because she became temporarily the centre of media attention, which she hated, and which exacerbated her poor health, and the publicity badly affected her children at school. She became extremely anxious at a time when her health was delicate and the burdens of her life were very heavy.

The invoices

1662. Invoices 1 and 2. It is appropriate to take these together as they constitute instructions to Christine Hart to investigate and then blag information about Ms Wightman's medical treatment. The attempt fortunately failed, but the intent was present and the invoices are admitted to represent unlawful PI activity. I consider that, exceptionally, higher damages should be awarded for this grotesque attempt to intrude on Ms Wightman's privacy on a highly sensitive issue. However, it must also reflect the fact that no breach of privacy in fact occurred. **£2,000**.

1663. Invoices 3 and 4. It is appropriate to take these together. They represent instructions to TDI to obtain information preparatory to an attempt to hack Ms Wightman and Mr Whitehouse, following publication of Article 1. The information is likely to have been in relation to their mobile phone numbers or accounts. **£1,250** for both of them.

1664. Invoice 5. A C&L unlawful Elect Roll search that would have produced results that included some private content. **£500**.

1665. Invoice 6. UIG by Jonathan Stafford to find the Whitehouses' telephone numbers and locations. **£750**.

1666. Invoice 7. A repeat of the work previously done in Invoice 6, for a different MGN customer. **£250**.

1667. Invoice 8. A further attempt by Christine Hart to locate and blag information from Ms Wightman's doctors, which did not succeed. As this was a further attempt two years after the first, I award the same level of damages. **£2,000**.

1668. Invoice 9. A TDI invoice for a significant sum, but unclear what the UIG was on this occasion. **£750**.

1669. Invoices 10, 11. Only one unlawful search, by C&L Elect Roll. **£500**.

1670. Invoice 12. A further C&L Elect Roll search. **£500**.

1671. Invoice 13. A further C&L Elect Roll search. **£500**.

1672. A Jonathan Stafford ExD search for the telephone number at Ms Wightman's Highbury home address. **£500**.

1673. A Law & Commercial Services invoice relating to the Highbury address. **£500**.

1674. A Law & Commercial Services invoice for a trace of a Reilly relative of Ms Wightman. **£500**.

Damages for overall distress

1675. As Ms Wightman was not the subject of repeated (or any) phone hacking and only limited PI activity that came to her attention at the time, no further damages for overall distress would be appropriate. The serious consequences of the publication of Article 1 are fully included in the sum for that article.

Aggravated damages

1676. All of the distress that Ms Wightman suffered that was legally attributable to MGN was concluded well before I have found that Mr Vickers and Ms Bailey should have taken steps to stop the illegal conduct at MGN. Aggravated damages for their knowledge and concealment would therefore be inappropriate in Ms Wightman's case.

Calculation

1677. Accordingly, the total is: £22,000. I do not consider that any discount is warranted for MGN's eventual admission of wrongdoing in the case of 7 of the invoices and apology for those at trial.

1678. The *Simmons v Castle* uplift would be 10% of £7,500, namely £750, making a grand total of **£22,750**.

Alternative basis of damages

1679. In the equivalent case to that addressed in the alternative in the Duke's claim (see at [1555] and [1618] above), I would reduce the damages awarded to Ms Wightman by £7,500, being the damages for distress following publication awarded for Article 1.

Duke of Sussex and others v MGN Ltd

PI SCHEDULE

Part I: Introduction

1. There are different allegations made against MGN in respect of a large number of PIs, photographic agencies, freelancers, 'stringers' and 'bin spinners' in the GenPoC (hereafter, together, "PIs" for convenience), and these PIs operate in many different ways. The different pleaded allegations overlap to a considerable extent but, as I explain in my judgment, only those allegations that are pleaded will be decided and only then if they are necessary to resolve an issue in dispute between the claimants and MGN. The findings that I make are in relation to issues between the MNHL claimants and MGN and bind those parties, not the PIs, who are not parties to these proceedings. In all but a few cases, I have not heard evidence from the PIs.

2. Some of the PIs played a very significant part in the story during the period from 1991 to 2011 in respect of which the claimants make allegations against MGN.

I have found that it cannot be said that MGN used voicemail interception ("VMI") or UIG on an extensive and habitual basis over the whole of that period and that extensive VMI was limited to the period 1998-2011 (and diminishing during the final years, particularly in 2011). That does not mean that VMI did not go on to some extent before 1998 (it clearly did) and extensively from 2007 to 2011. There was also very substantial UIG apart from VMI from 1997, and less in 1995 and 1996. In many cases, VMI and UIG went together. I have already made my findings in this regard.

3. MGN journalists did use PIs throughout the period 1995 to 2011 to obtain data unlawfully that enabled them to obtain private information about MNHL claimants. The allegations of unlawful use of PIs go beyond activity associated with VMI. MGN journalists used PIs to blag private information from third parties and obtain data that was used in other unlawful ways, sometimes by other PIs and sometimes by journalists.

4. I will address in this Schedule each of the PIs against whom allegations are pleaded. As presented by the claimants in their draft findings document, there are three different periods in which it is alleged that individual PIs operated (and many are in all three periods): 1991-1999 (pre-*Gulati*), 1999-2006 (the *Gulati* period) and 2006-2011 (post-*Gulati*). I indicate in this Schedule in relation to each PI the period(s) for which the claimants originally asserted UIG, but note that in many cases, in final written submissions, the actual period during which UIG was alleged is often shorter than the whole of these periods. I also indicate (using the key identified in this introductory section below) the kinds of allegations that are pleaded against each PI.

5. My findings and reasons are mostly concisely expressed in this Schedule, in order to avoid lengthening this judgment inordinately. The fact that I do not refer to all evidence and arguments does not mean that I have not considered them. I have carefully considered each side's closing submissions and the evidence referred to in them. My findings in this Schedule are generic findings; the particular role played by any of these PIs in the cases of the four individual claimants is considered in the relevant part of the judgment in which I address their claims.

6. The allegations pleaded against MGN in relation to the different PIs fall into the following categories in the GenPoC:

    i. Using PIs to blag or otherwise unlawfully obtain personal information about individuals such as mobile and landline phone numbers, itemised phone billing records, lists of "BT friends & family" numbers, utility credit card and banking information, medical information, ex-directory telephone numbers, vehicle registration numbers, criminal record checks and mobile phone reversals (**8.3 – "general"**)

ii. Using PIs to trace individuals and obtain personal information such as dates of birth, new addresses, former addresses, and the names of household members through the unlawful use of credit reference checks such as Experian, Equifax and Transunion without the subject's consent, and/or addresses, dates of move and ages by unlawful use of electronic electoral rolls (**8.3 (fa) (fd) – "search agent"**)

iii. Using PIs unlawfully to obtain private information by intercepting mobile and landline calls, mobile and landline voicemail interception, bugging rooms and residences and placing bugs or tracking devices in cars, and obtaining and supplying ex-directory landline phone numbers, mobile telephone numbers, PINs, itemised telephone billing records, lists of frequently called numbers, subscriber information for telephone numbers, credit card bills, utility payment records, bank records (and other financial information), travel plans, hotel and restaurant bookings, medical records/information, NI numbers and social security/benefits information (**8.3 (fb) (fc) – "hacker, blagger and/or information supplier"**

iv. Using freelance journalists and their agencies unlawfully to obtain private information, as above, either *directly themselves or indirectly* by using a search agent or a hacker, blagger or information supplier PI (**8.3 (fe) - "freelance/stringer"**)

v. Using freelance photographers and agencies unlawfully to obtain private information, as above, either *directly themselves or indirectly* by using a search agent or a hacker, blagger or information supplier PI in order to find out their location, movements and travel and accommodation plans to enable pictures of the target to be taken (**8.3 (ff) - "photographic agencies"**)

vi. Using "bin spinners" to obtain discarded confidential material (**8.3 (fg) – "bin spinner"**)

7. There are individual allegations pleaded in para 8.3(g) of the GenPoC in relation to the Teviots (Census Searches Ltd) and Greg Miskiw (Mercury Press), and some more specific allegations made against Christine Hart (Warner), Scott Tillen (Unique Pictures), Spencer Dove (Lenslife), Rachel Barry, and Jonathan Stafford (Newsreel).

8. From the above six categories, it can be seen that there is significant overlap between the **general** category and the **hacker, blagger and/or information supplier** category, but a distinction in principle between the **search agent** category and the **hacker, blagger and/or information supplier** category, which is of some significance for the claimants' case. In the final analysis, there is no particular significance in category (i) above as there is no discrete allegation in (i), and all the PIs fall into at least one of the other categories.

9. The principal **search agents** identified in the pleaded case are C&L, AJK Research (Andy Kyle), Searchline (Gwen Richardson), Paul Hardaker, Hogan International and JS3 (Tyler Williams, Tyler Morgan, David Woodward and Susan Lee-Woodward), who are only alleged to have operated in this way, not as blaggers or in other categories (though 2 other PIs named as **search agents** (JJ Services and Southern Investigations) are also named in the **hacker, blagger and/or information supplier** category). The claimants' case is that often a **search agent** was used initially to obtain a key piece of data (such as an address, a phone number or a date of birth) which was then passed on to another PI in the **hacker, blagger and/or information supplier** category to use to blag or unlawfully obtain private information, or crack a PIN, as the case may be. There was ample evidence that this was the case.

10. For **freelance/stringers** and **photographic agencies**, the allegations are very disparate – in some cases, the stringer is really only an ex-MGN journalist who continued to act in the same way as MGN journalists did, sometimes using other PIs to obtain information to write stories; in other cases, the stringer is alleged to be acting as a hacker or blagger. Some photographic agencies, particularly Scott Tillen and Spencer Dove, are alleged (but only generally, without specific allegations) to be closely involved themselves in hacking and bugging activities; others are alleged to sub-contract part of the work to other PIs, who then carry out the work of identifying the location of the celebrity.

11. There are, in relation to many PIs, generally pleaded allegations in the GenPoC that they engaged in landline and mobile telephone call interception, voicemail interception and bugging of homes, hotel rooms and cars. These allegations are of criminal offending, and no particulars are pleaded in relation to any individual PI. In the event, the claimants did not seem to have a positive case in any of these respects against the PIs themselves, save in relation to Mr Burrows of IIG Europe, on the basis that his website admits some of these activities, Southern Investigations, on the basis of Mr Haslam's evidence, and Tillen and Dove in relation to bugging. There was, in fact, no evidence of any of the PIs intercepting live calls or bugging rooms or cars, except for the one instance that Mr Johnson describes of Tillen and Dove attempting to bug Ms Welch's hotel room. There is virtually no evidence of PIs themselves conducting VMI. It is therefore unnecessary for me to say, in relation to each PI individually below, that I reject the allegations of bugging (save in relation to Tillen and Dove, in one case), interception of live phone calls and voicemail interception by PIs (save in the case of Mr Burrows and Southern Investigations) on the basis that the claimants have no evidence to prove them.

12. MGN's position is that it admits substantial UIG in relation to the few original PIs or groups of PIs whose payment records were disclosed in *Gulati* and whose conduct was the subject of findings in that decision: Avalon, ELI/TDI, Southern Investigations and its aliases, and Trackers (Andy Gadd). (It does not admit that

Rob Palmer and Abbey Investigations were connected with Avalon or, alternatively, that they were involved in UIG.) MGN also admits that a "limited" proportion of instructions to 5 other PIs were in connection with UIG:

(1) Christine Hart (Warner)
(2) JJ Services (Steve Whittamore)
(3) Jonathan Stafford (Newsreel)
(4) Paul Hawkes (Research Associates)
(5) Rachel Barry

The extent of the admission is imprecise, probably deliberately so.

13. For all the rest of the PIs against whom involvement in UIG is pleaded, MGN either denied or does not admit the allegations. That implied that MGN had a positive case to advance where it is denied that PIs did not engage in UIG for MGN – but MGN called very little oral evidence addressing their cases – with the exceptions of Annette Witheridge and Tom Worden. Mr Rice and Ms Kent were not called to give evidence and belated hearsay notices were filed.

14. There were two PIs who are not alleged to be culpable PIs at all, but genealogists, where the claimants do not allege wrongdoing by them: Census Searches (Lord and Lady Teviot) and Tony Bassett, who made a witness statement for this trial and whose evidence was accepted by the claimants.

15. A number of the PIs alleged to be **freelancers/stringers** were based abroad. These included Splash News, Big Apple News, Capitol, Mr Hanks, TAG Media, Mr Thorne, Mr Behr and Mr Pisa. The claimants did not grapple with the question of how to prove tortious conduct by MGN where the UIG was alleged to have been done abroad. I addressed the consequences of this in Part IX of the judgment.

16. In relation to the PIs who are alleged to be **search agents**, MGN's case was that searches of the full, unedited electoral roll were lawful before 31 July 2002, and that ex-directory numbers in old telephone directories could continue to be lawfully obtained. I accept that agencies, even credit reference agencies, were lawfully entitled to use and make available the full version of the electoral roll before The Representation of the People (England and Wales) (Amendment) Regulations 2002 came into force on 31 July 2002. I also accept that use of old editions of telephone directories did not become unlawful after the Privacy and Electronic Communications (EC Directive) Regulations 2003 came into force. Many searches made in the mid to late 1990s, in the pre-electronic age, will therefore have been lawfully made by reference to old, hard copy directories.

17. I am persuaded that many **search agents**, such as Searchline, would have started in business conducting searches in this way, and so in many cases will not have been acting unlawfully in doing those basic searches. However, as time went

by, the new Regulations came into effect and searches could be done online, there was much quicker and more expedient ways of obtaining unregistered addresses and telephone numbers. In some cases that involved employees of telecoms companies; in other cases, full credit reference searches that were carried out by the likes of C&L, which were unlawful because they were not carried out for authorised purposes or with the consent of the data subject.

18. For convenience, I will address the PIs dealing first, in Part II, with those that the claimants say are relevant to specific pleaded issues raised in the GenPoC and/or in the four individual claims; and then in Part III with those who are accepted only to be relevant to generic allegations. In the interests of proportionality, I will deal at greater length with those PIs who are particularly significant in reaching conclusions about MGN's *modus operandi* and the nature of the UIG conducted, and more briefly with those who play lesser parts in the story. In some cases, I have dealt in detail with the PI in the main judgment and cross-refer to that treatment.

19. Within each Part, I will deal with the PIs in alphabetical order.

Part II: 'Specific' allegation PIs

Andy Tyndall (1991-1999)

1. Although Mr Tyndall is named in the GenPoC as a **photographic agency** in his own right, nothing was said about him in the generic evidence. For the first time, in draft generic findings that were provided by the claimants at the conclusion of most of the generic evidence, it was said that Mr Tyndall was to be treated as part of Tillen and Dove and the appropriate finding was that use made of them were examples of UIG in the period 1991-1999.

2. There are however CRs from December 1996 to April 2002 for Mr Tyndall personally, many of which are for photographs or reproductions.

3. The claimants handed up no PI fact sheet for Mr Tyndall personally and the totality of their case against him is to allege that he worked initially with Scott Tillen in the mid-1990s.

4. I dismiss the allegation in relation to Mr Tyndall.

Avalon/Rob Palmer/Abbey Investigations (1991-2011)

5. The allegation against each of these three persons is that of being a **hacker, blagger and/or information provider** during the period 2000-2011.

6. Avalon was one of the PIs whose invoices were disclosed by MGN in *Gulati*. MGN admitted in December 2014 that an unquantifiable but substantial number of Avalon invoices were likely to have been to obtain private information unlawfully, but that was confined to the period 1999-2007. No admission was made to whether Mr Palmer personally was instructed to carry out UIG, and MGN denies that Abbey Investigations was connected to Mr Palmer.

7. I have already made findings, at [159]-[166] of the judgment, that Mr Palmer did indeed carry on from 2007 in his own name the work that he had previously conducted as principal of Avalon. There is no indication (rather the reverse) in the documentary evidence that Mr Palmer started to act lawfully when acting in his own name. I am satisfied that the majority of the work conducted by Mr Palmer and Avalon was UIG. The fact that MGN can point to a few examples of what appears to be perfectly legitimate journalism support does not mean that those documents are representative of most of Mr Palmer's work for MGN. But there is no evidence to support the generally pleaded allegation of interception of calls or voicemails.

8. Abbey Investigations is alleged by the claimants to be an alias of Mr Palmer but MGN denies that it paid or used any entity named Abbey Investigations that was connected with him. The claimants called no evidence in this regard. There are said to be 11 CRs for payments to "Abbey Investigations" between 1997 and 2001 and 62 invoices evidencing payment to another entity of the same name between 2000 and 2003. Why they are said to be different entities was not explained by MGN in their closing submissions. However, in annexe 15 to their written submissions, the claimants appear to accept that Mr Palmer "worked for" Abbey Investigations before setting up Avalon, and therefore that Abbey is not an alias of Mr Palmer. Indeed, the claimants rely on two invoices of Abbey Investigations for work commissioned by Sean O'Brien at The People in June 2002 and April 2003, which is long after Avalon had been set up.

9. Since Abbey Investigations is a (or more than one) different entity, conclusions from the conduct of Avalon cannot be carried across to Abbey. The invoices and CRs for Abbey refer only to "enquiries" or to locating dates of birth or marriage details, or address searches, which should be presumed to be lawful in the absence of any other evidence that Abbey acted unlawfully.

10. I therefore find that the significant majority of all Avalon and Rob Palmer instructions from 2000 to 2011 were for UIG, but that Abbey Investigations did not conduct UIG.

Benji Pell (Langley Management Services) (1991-2006)

11. Mr Pell is alleged to have been a **bin spinner** between January 1998 and January 2002. He was indeed a notorious bin spinner, who was convicted of theft in November 1999 and spoke publicly about what he did. The BBC

reported in July 2000 that Mr Pell's exploits were well known among Fleet Street editors. MGN admits that he did do bin spinning "on occasions" between January 1998 and February 2001 (on the basis that Mr Pell is reported to have said that he went straight in February 2001) and does not dispute that Langley Management Services was an alias for Mr Pell, but it denies that MGN instructed Mr Pell to do what he did.

12. I have referred to his contact with Mr Morgan in [105] in my judgment. The Elton John story got a great deal of publicity at the time and Mr Morgan wrote in "The Insider" about how he knew immediately when Mr Pell contacted him where he would have got the Elton John documents from, as his nickname in Fleet Street was "Benji the Binman". The event described was 13 January 1998. MGN then continued to use Mr Pell for another 4 years. Mr Watts, in his book "The Fleet Street Sewer Rat" commented on a recording of Mr Pell that "shows that Martin Cruddace … knew about the unlawful source of the story, and that the Daily Mirror misled their readers by attributing their story to a senior source at Elton John's manager's company".

13. There is no other specific relevance that Mr Pell's activities have to the matters pleaded by the claimants. The claim in relation to him is really a generic claim only. There are 373 CRs for Mr Pell personally or Langley, running up to January 2002 in the case of The People. I find that Mr Pell continued his unlawful activities up to that time.

14. I have no doubt that whoever at MGN was instructing Mr Pell (and many journalists and editors did), or was receiving and then using material that he provided, they knew exactly how the information was obtained and that it was theft by Mr Pell that provided the information.

Big Apple News Inc (Annette Witheridge) (1991-2011)

15. The allegation against Ms Witheridge and her company is that between 1995-2011 she was a **freelancer/stringer** who engaged in UIG through her news agency, Big Apple News, and then personally, either directly or by instructing others to do things on behalf of her clients. Ms Witheridge was at all times based in New York. She had been trained in the UK tabloids and moved to the US in 1995, setting up Big Apple News in 1997 and then selling it in 2005.

16. MGN disclosed 2,360 CRs for Big Apple News and 339 for Ms Witheridge personally.

17. I deal with Ms Witheridge's evidence at the trial and my conclusions at paras [210]-[215], in particular that MGN journalists commissioning Big Apple would have knows that Ms Witheridge used methods that would be unlawful in the UK.

18. In the absence of a case based on unlawfulness in the US or agency, I cannot conclude that MGN misused any claimant's private information by instructing Big Apple.

Big Pictures (Darryn Lyons) (1991-2011)

19. Big Pictures was little mentioned in the trial and Mr Lyons not at all. Big Pictures is a photographic agency and is alleged to have acted unlawfully under the heading **photographic agencies,** as described above. Its name appeared often on schedules of invoices in the Duke of Sussex's claim and Ms Sanderson's claim. The allegation against Big Pictures in closing submissions was that between 1995 and 2011 "on certain occasions it used travel or hotel blags to obtain the location of subjects in order to be able to take exclusive photographs". MGN denies any unlawful activity.
20. Another allegation made in the claimants' written closing submissions is that Mr Lyons was able to obtain flight details unlawfully and therefore on occasions he used UIG to locate and take photographs of people in the public eye. The claimants rely on two pieces of evidence:
    a) In April 2012, an article in the Press Gazette reported detailed evidence of leaks to Big Pictures of many celebrities' flight details by a Virgin Airlines employee. Virgin commented that it was taking the allegations extremely seriously and Big Pictures was unavailable for comment.
    b) An email dated 3 March 2010 from a redacted source to Emily Nash at The Daily Mirror provides information about a person called Marc Moon, who worked on Eastenders, alleged to be retained by Big Pictures and who sold them the Eastenders cast address list.

This is only hearsay evidence but the Press Gazette article appears compelling.

21. The case against Big Pictures goes no further than that. It is not suggested that all the work done by a large picture agency was unlawful or anything like that. The only allegation made is that set out in para 1 above, relating to "certain occasions". I am doubtful that any such occasions happened before about 1997, at the earliest.

22. Curiously, in Ms Sanderson's first schedule of invoices, relating to her, it is stated that she does not rely on the Big Pictures invoices as claims for damages. These invoices amount to 23 of the 25 invoices in that schedule and were only introduced by amendment in May 2023. In the Duke's second schedule of invoices, relating to his associates, it is stated that he is not relying on the invoices in respect of damages but to demonstrate the volume and intensity of UIG potentially directed against his associates. These written statements were not further explained in oral submissions.

23. There were about 16,000 CRs for Big Pictures disclosed by MGN, covering the period 1994 to 2011. The use made of them by MGN was therefore very extensive, but that is not surprising for a large international picture agency.

Emails disclosed by Big Pictures evidence lawful activity on the face of it, which supports the conclusion that the majority of its work was lawful. There is no case advanced that MGN did anything except receive the photographs and pay for them. However, I accept that "on certain occasions" Big Pictures may well have obtained information unlawfully, however there is no evidence as to the extent of such activity or MGN's knowledge of it, and no assumption can be made, without further evidence to support it, that a particular invoice from Big Pictures was necessarily in respect of photographs obtained by UIG.

Census Searches (the Teviots) (1991-2006)

24. There is no allegation of UIG against or directly involving Census. It is alleged to be a genealogist that lawfully provided BMD records, property ownership and company director information from lawful databases. It is alleged by the claimants that the information lawfully provided by Census was then used by MGN or other PIs to obtain further information unlawfully. That is not, however, an allegation against the Teviots.

25. None of the Census invoices therefore evidences UIG.

Code 10 (U.K.)/TDI/ELI/BDI (1991-2011)

26. The allegation against each of these 4 companies is that they were the corporate entities successively controlled by Lloyd Hart and Suzy Mallis from late 1998 until 2011, and that they each acted unlawfully in the **hacker, blagger and/or information supplier** category. There is a specific allegation that these companies themselves, or by using PIs, cracked PI codes or security questions, thereby enabling MGN journalists to access private information.

27. TDI/ELI invoices were disclosed in *Gulati* and MGN accepts that a substantial proportion of their work was UIG.

28. Mr Evans gave evidence in *Gulati* about the nature of the (principally blagging) work that TDI/ELI did: they were used to obtain financial information, telephone data, and addresses. Mr Johnson said he used them over 200 times between 2000 and 2005. I accept that not all the instructions were UIG, but probably a substantial majority were. It is clear from the way that TDI/ELI were instructed in individual cases that information derived from a search conducted by AJK or C&L was then passed to TDI/ELI for more intrusive investigation. Anyone instructing TDI/ELI would have known what they were asking Mr Hart or Ms Mallis to do and that it was unlawful by its nature.

29. I have already found that BDI was the same business continued in a different company from 2006, and that there was no change in the nature of the business conducted, to the knowledge of those at MGN using them.

30. There is no evidence that they intercepted telephone calls or planted bugs or tracking devices or that MGN instructed them to do so. The claimants have also failed to prove by any evidence that these companies themselves cracked PIN codes or security questions for MGN.

31. I am unable to conclude that Code 10 was the predecessor of TDI, as the claimants contend. Although there is a substantial volume of invoices from late 1998 to September 1999, there is no evidence on them of who was running the business. The firm's own reference on the invoices often contains "AR" or "AT" or "ST", but not "LH" or "SM". It is evidence from the invoices that Mr Pisa and Mr Rice were closely involved in instructing Code 10 or receiving and arranging payment of their invoices and that Mr Johnson and his wife Emma Jones often commissioned their work, but Mr Johnson said nothing about Code 10, nor did Mr Rice's statement, though he did address TDI/ELI.

32. I am therefore left with a paucity of evidence. There are some Code 10 invoices with a narrative, some of which are indicative of unlawful attempts to obtain information by blagging e.g. insurance companies (invoice re: J Hewitt dated 30.4.99), or by searches revealing successive addresses (invoice re G Scanlan dated 4.8.99) that would not be revealed by the public electoral roll. For most invoices, however, there is no narrative, or it is so limited as not to enable any conclusion of UIG to be drawn from them, or of association with Mr Hart or Ms Mallis.

33. The conclusion reached is therefore that Code 10 occasionally conducted UIG and that TDI/ELI and BDI did so on a very substantial scale for all three newspapers, such that the significant majority of instructions of those companies is likely to have been for unlawful work. An indication of the nature of the work done is provided by the following email from Susie Boniface of the Sunday Mirror to Euan Stretch dated 1.5.03 and headed "Fash's ex":
    a) "tdi have found a 322 crimmin bank account for maria into which she has £7 child benefit paid every month. The bank sends her statements to the 322 crimmin rd address. I have asked tdi to find the name of the current tenant at that address, in case it was maria and I was spun a line, or to find a phone number so we can do a blag call."

Commercial & Legal/System Searches (1991-2011) (Malcolm and Jackie Scott)

34. The allegation against Mr and Mrs Scott and their corporate bodies or operating names, C&L and System Searches, is that they were **search agents**, as described in the introduction to the PI Schedule, and in particular that they carried out between 1996 and 2011 unlawful credit check searches (without the subject's consent) and unlawful electoral roll searches (using the unedited full edition of the roll).

35. The invoices sent by C&L are each for a group of numbered searches, described as "Computer searches carried out as detailed in attached schedule", and the schedule identifies in relation to each search the client and contact name, the enquiry date and search type, the subject name and date of birth and the address searched (it being unclear whether this was an input or an output, but for some searches it would have been an input). The invoice schedule does not however purport to be the report: it is only part of the invoice, which is sent out generally 4-6 days after the request for a search was made.

36. There are two types of search regularly conducted, described as "Elect Roll" and "DBase Searc". Other searches are called "trace", "DOB" and "Phonebase" There seemed to be a standard fee of £20 per search at the beginning, which then increased in stages, reaching £34 in December 2009. C&L was clearly a bulk discount operator. 'Phonebase' may be a reference to a legitimate BT search facility for numbers that were not ex-directory.

37. Other searches shown by invoices include: Marriage, Birth, Directors, Death, Company, which may be lawful searches of public registers, but the substantial majority of searches even in 2011 are Elect Roll, Trace and Dbase Searc.

38. There is an enormous number of such searches carried out by C&L for each of the three MGN newspapers. Invoices evidencing about 33,000 instructions were disclosed by MGN in 2020 and several thousand more in 2022. There was still a large number of searches being done in 2011. It is wholly improbable that such a large number of searches was commissioned by MGN if C&L were doing nothing more than searches on a publicly available database. That is particularly so as journalists had been urged, by editorial management and editors from 2001 (including by Mr Buckley in an email dated 2 December 2004), to make use of the "free" in-house databases, or Companies House, rather than incur unnecessary costs.

39. The claimants' case is that the Scotts provided a same day service, with reports provided orally or by fax, which were then destroyed as part of the concealment exercise. That was Mr Evans' evidence. Only in a few cases is there any trace of the report, and this gives a clue about the lawfulness of C&L's methods.

40. MGN's case is that the searches carried out after 31 July 2002 were lawful searches of the public, edited version of the electoral roll and that Dbase searches were searches of other publicly available databases, or databases compiled from publicly available material. They had no evidence of that except what Mr Scott wrote to Mr Duffy in 2011 when Mr Duffy, faced with preparing TM plc's evidence for the Leveson Inquiry, was anxious to be told how C&L had operated lawfully for so many years.

41. The true position is that it was known that companies such as C&L were able to provide advantages that publicly available searches could not. That was recognised by Mr Honeywell in his 1999 email to Mr Pilton and his email to Mr McShane and Ms Weaver dated 17 May 2001. The advantage in C&L's case was that the most up-to-date residential addresses and previous addresses were available from credit reference searches, together with other restricted information, and that the full electoral roll could be accessed by that means.

42. The position is illustrated with clarity by investigations into the murder of Jill Dando in 1999. Her engagement on 31 January 1999 had been followed by what was described as "utility stalking" on 1 February 1999. Police investigations discovered that there had been numerous Equifax searches in Ms Dando's name on the day following her engagement party. Many of these were made by Mr Scott. Mr Scott was interviewed and explained to Police in a witness statement that these were searches commissioned by journalists, including Mr Chris Hughes of the Daily Mirror, who "wanted to obtain details of the voters for the address". The invoice schedule shows that on 1 February 1999 Mr Scott did an "Elect Roll" search for Jill Dando at 29 Gowan Avenue. This was clearly not an electoral roll search, which would have shown at best that, as at the last annual voter return date, Ms Dando was registered at the address given. MGN was not after such historic information. I reject the argument that Equifax was used by Mr Scott merely as a means of conducting searches of the edited electoral roll. No one who knew what Mr Scott was actually searching and what Elect Roll searches were came to give evidence about it. In the absence of evidence, Mr Munden and Mr Green produced documents said to show that one could use Equifax to do a lawful search of the edited electoral roll. That might or might not be so: I had no evidence about it.

43. Nevertheless, the obvious conclusion is that Elect Roll and Dbase Searc were used as anodyne terms to conceal full financial searches on the subject that would provide much more information, including an up-to-date residential address and other data, not just a (likely to be outdated) voter registration.

44. Mr Peter Jukes, who made a witness statement to explain the provenance and authenticity of the Operation Oxborrow documents to which I have referred, said that Mr Scott had been identified by the MPS as an identity blagger, but there is no allegation made in this claim to that effect.

45. It is clear from other emails that have been disclosed that financial (or credit) searches is exactly what C&L offered. There are 10 separate emails disclosed between journalists and editors at all three newspapers covering the period 2001-2009 that demonstrate that the searches done by C&L provide "financial traces" for addresses. In the interests of brevity, I refer to two only:

a) Email 17.8.04 from Caroline Waterston to David Jeffs re "Addresses": "Can you find me telephone numbers for: ROBBIE WILLIAMS girl London – Alison Gunn – possible address […..] Checked with Jackie Scott and Alison doesn't appear to have moved on financially from her parents home in Bearsden, Glasgow, although the above address is the only Alison Gunn in London ….". There is a C&L invoice for a search commissioned by Ms Waterstone of the same date, indicating both addresses, but described as "Elect. Roll".
b) Email 19.5.05 from Fiona Cummins to Anthony Harwood: "…It appears that they may then have split up because Scotts have then traced her to […..] where she was listed as Laura Frazer and lived with an Angus Frazer. She matched there financially until 2003 and then there is no trace of her …."

46. There are also emails disclosed from the parallel Mobile Telephone Voicemail Interception Litigation against News Group Newspapers Ltd which show that an assistant editor at The Sun considered that Scotts/Searchline/Andy Kyle "are all more reliable than our own methods because they use credit traces, which we cant for legal reasons", and that credit checks done on a subject by C&L were billed as "Dbase Searc".

47. Searches done by C&L on 18 March 2005 in connection with the Amanda Holden story for Fiona Cummings at the Mirror described as "DOB" enabled Ms Cummings to report to Mr Clements at the Mirror that Ms Holden and another person were "credit active" at the addresses identified at specific dates, as well as passing on their dates of birth. This demonstrates that full credit reference searches (at the flat rate of £30 each) were done to obtain the information that the journalists wanted.

48. The database searched would include the full unedited electoral roll as well as much other information, but a search of the edited electoral roll would not provide up-to-date information, which is obviously critical to journalists. There is an exchange of emails between Grant Hodgson and James Saville on 26.10.04, which shows that household composition at an address that had been checked on the full electoral roll was then checked with Jackie Scott, at Mr Saville's suggestion, when it was discovered that the subject of the enquiry had since moved on from the address searched, and an up to date address was obtained by the Scotts, for which an invoice was sent to Mr Buckley, naming Mr Hodgson as the originator, describing the search as "Trace". This suggests that a "trace" is a search to find a follow-on or previous address, which would self-evidently require something other than the edited electoral roll.

49. The way in which the product of the C&L searches was used is illustrated by an investigation David Brown and Ben Proctor of The People were conducting into a woman, X, in March 2004, apparently trying to find out whether she was living with a particular man, Y. C&L did searches for Mr Brown in both names, one was recorded as a "Trace" for Y and the other an "Elect Roll" for

X. Mr Brown passed on the results to Mr Proctor, saying "Here are [X]'s details which you might want to give ELI for further investigation" and confirmed that there were "financial traces" of Y at the address of X. He concluded, "I am trying with the Teviots for any further details on her parents". It was obviously intended that ELI, a hacker, blagger and/or information supplier that MGN admits did a substantial amount of UIG, would then use all the data obtained to find out whatever Mr Brown and Mr Proctor were investigating.

50. Similarly, in the Duke of Sussex's claim, C&L searches relating to those associated with the Rattlebone Inn were provided to Mr Evans, Mr Stretch, Mr Buckley and Mr Couzens, and in the days afterwards to Mr Hamilton; and there is a series of Elect Roll and Dbase Searc searches on 21.4.09 against Caroline Flack at various addresses, after the article about the Duke's date with her was published. In Ms Sanderson's claim, a DOB search was conducted on Paul Tierney by one of the bylines, Martin Coutts, and Elect Roll searches on the mother and stepfather of Mr Meakin. In the Wightman claim, there is a number of Elect Roll searches for Fiona and Paul Whitehouse in 2001, some time after it had become publicly known that they had separated.

51. Mr Harwood in cross-examination accepted that the managing editor of MGN decided that C&L should cease to be used because they were acting unlawfully:

Q. …this is what we see, what the Scotts are doing over and above the Cameo, they're doing credit reference checks to find out people's up-to-date addresses. That's what you paid them the money for. Isn't that right?
A. Well that's why they were later dropped, I gather.
Q. Dropped because you realised what they were doing was unlawful?
A. That's what the managing editor decided, yes."

It is fair to Mr Harwood to say that by 2011, when MGN discontinued the use of PIs who were acting unlawfully, he had left the company and had become the executive news editor at the Daily Mail. But in view of Mr Harwood's close involvement in the preparation of MGN's defence, I can take this to be an informed admission.

52. When MGN had to provide evidence to the Leveson Inquiry about its use of PIs and decide what to do about their continued use, it did not submit to the Inquiry the invoices showing the 33,000 instructions that were disclosed in the MNHL in 2020. Instead, it asked Mr Scott to provide a helpful statement of how C&L operated. This is provided in the form of a Memo headed "DPA Assurance" dated 21 July 2011 addressed to Eugene Duffy, the Group Managing Editor of TM plc. He says, at para 2:

(2) "Your request for DPA assurance (I imagine that is what you require) comes as no surprise at all and I'm more than happy to assist you. You have asked for a precis of our services but I feel I should give you a detailed explanation of what we do and most importantly, how we do it. This "memo" will outline the historical involvement with the media and will explain our procedures."

53. Mr Scott denies in the memo that his company has anything to do with the "dark arts" that the News of the World practised and says that it was not a company of private detectives. He says that it is interested in genealogy and tracing: it first started to work for The People in 1991 in tracing people. It is registered under the Data Protection Act. Mr Scott says that his company was given a clean bill of health from the MPS following his being interviewed in connection with Operation Oxborrow, but he does not say that the interview was in connection with use of Equifax to do a credit search against Ms Dando and her address and that he admitted doing so. Instead, the Memo says, untruthfully, that C&L does not access the full electoral roll or trace addresses provided by Equifax. Equifax was used for other purposes, normally director and Companies House searches, but (he emphasised with underlining) it was not used, nor was any equivalent system, to locate people using the trace address records – which is exceedingly expensive and can only be used for debt collection.

54. It is unclear whether Mr Scott's exculpatory explanation was given to the Inquiry. Had any reader of the Memo been provided with C&L's 33,000 invoices, they might have questioned the veracity of the statements made in it, but of course they were not. Instead, they were told that C&L has an excellent collection of old "Info" disks from the early 1990s, which contain phone numbers that people had before they went ex-directory, old Companies House records and old editions of the electoral roll, which are exempted from DPA compliance. Why a journalist in 2011 would be interested in historical lists of residents was not really explained. In sending Mr Duffy on 22 July 2011 a list of C&L's clients, Mr Scott emphasised that C&L are "media researchers not private detectives".

55. I decline to place any reliance on the assertions in Mr Scott's Memo, which is self-evidently a piece of inaccurate special pleading. Its purpose may have been to create a form of exoneration for MGN, for the Leveson Inquiry or more generally, or to justify not sending the 33,000 invoices to the Inquiry, or perhaps to provide justification for continuing to use C&L after 2011. Following the Memo (and a similar one written by Andy Kyle), Mr Duffy sent an instruction to all MGN journalists only to use certain "agencies", which had been approved: C&L, AJK Services, E-Trace, First Scottish, Companies House and Land Registry. But that was obviously later revoked because C&L ceased to be used after 2011.

56. Conclusions: it is reasonably clear to me that a substantial amount of the searches that C&L carried out for MGN were unlawful searches because they used the full electoral roll and/or were credit references searches (or "traces"). There will equally have been many searches that were lawful, such as many of the Companies House, Directors, Marriage, Birth and Death searches previously identified – though MGN's purpose in obtaining the results of these searches may well have been to send them to other PIs for further unlawful activities.

57. I also accept that there will have been a significant number of searches where MGN's journalist only wanted an address, so that someone could attend, or a telephone number so that the subject could be phoned. There were emails from Mr Buckley in 2004 and 2008 complaining that the Scotts were being used too much for searches that can be done on Cameo or at Companies House, which implies both that lawful searches were being done and that C&L were only to be used for searches that MGN staff could not lawfully do. It seems very probable, however, that the Scotts used the same search methodology for all inquiries, regardless of the intention or motive of the journalist in seeking them.

58. Mr Buckley's email specifically refers to using C&L for "follow on addresses" and comments that Andy Kyle is not as good as the Scotts on addresses. MGN journalists and editors would clearly have understood that the searches that C&L were properly to be used for were ones that they could not lawfully do themselves using publicly available databases.

59. As with the other PIs that MGN have admitted, I consider that the right conclusion is that a substantial amount – by which I mean well in excess of a half – of all the searches done by C&L for MGN were unlawful, and that journalists commissioning these kinds of search would have been aware of that.

Dan Hanks (aka Daniel J.Portley-Hanks) (Backstreet Investigations/British American News/Investigators Support Services) (1991-2011)

60. Mr Hanks was based at all times in the US. He is alleged to have acted as a **hacker, blagger and/or information supplier**. All the work that Mr Hanks did was in the US.

61. I have reviewed the evidence that he gave and expressed my conclusions at [144]-[147]. I review his disagreement with the evidence of Ms Witheridge at [212]-[213] of the judgment.

62. It is clear from Mr Hanks's evidence that he was doing work for MGN, directly (to a limited extent) and indirectly through agencies in the US, that would be illegal or at least unlawful in the UK. Mr Hanks admitted that what

he was doing was illegal in the US too (and that was plausible, based on his explanation of why it was illegal).

63. Mr Hanks said that in some cases where he was instructed indirectly, he knew to bill the end user (the English newspaper) directly.

64. What his evidence does establish is that MGN journalists would have known that, by using a US agency that would use someone like Mr Hanks, they were asking for was a service that (assuming US law to be comparable to English law) was unlawful. Although Mr Hanks accepted that he was "too lazy" to change the settings on his searches so that only low level information was obtained, I have already found, preferring Mr Hanks's evidence to Ms Witheridge's, that those instructing his searches were expecting the more detailed information that his searches provided (such as exact addresses and telephone numbers, as well as social security data, which Mr Hanks said were only disclosed in high level searches).

65. On Mr Hanks' own admission, the work that he was doing throughout this period was unlawful.

Frank Thorne (Boomerang Media) (1991-2011)

66. The allegation against Mr Thorne and his company is that from 1996 to 2011 he was a **freelancer/stringer**. The claimants contend (though there was no evidence) that he was a reporter at several 'Fleet Street' tabloids (including the Mirror and The People) until the early 1990s, when he moved to Australia and became freelance. They contend (though again there was no specific evidence) that Mr Thorne used PIs himself and other techniques to obtain information unlawfully. Again, however, the claimants did not address the issue of unlawfulness abroad and on what basis MGN would be liable for what is alleged.

67. MGN disclosed 1,426 CRs for Mr Thorne over the years 1996-2011. He was widely used by many journalists at all three titles. Mr Thorne had limited involvement in some of the articles about the Duke of Sussex but I have rejected the allegations of UIG in relation to them.

68. The evidence against Mr Thorne is really only that a number of the payment records refer to "specials", as in "Anthea Turner Special, Background Research" for £500 on 24.5.96 and "Ulrika Jonsson Special" for £3,300 on 28.3.99. And there are two emails that refer to having seen private medical records and "turning" mobile telephone numbers. Mr Harwood, on the other hand, had nothing adverse to say about Mr Thorne.

69. I am not persuaded that there is evidence of significant UIG in Mr Thorne's case, much less any instructions from MGN to use unlawful methods to obtain information. The claimants have failed to prove their case in relation to him.

Fraser Woodward (Jason Fraser) (1991-2011)

70. The allegation against Fraser Woodward is that, like Big Pictures, it was a **photographic agency**, as explained in the Introduction section above. It was run by Jason Fraser.

71. Unlike in the case of Big Pictures, MGN's case "not admits" that Fraser Woodward used unlawful methods to obtain pictures but denies that MGN instructed them to do so.

72. Like Big Pictures, Fraser Woodward was mentioned only fleetingly during the trial, and not in the evidence given by any witness. It is alleged that UIG was happening from 1995 to 2011
73. There are 1,708 payment records from all three newspapers between 1996 and 2011, but no relevant emails relating to the use of that agency were disclosed by MGN, despite there being 338 hits for search terms that were used. Fraser Woodward were regularly used by the editors and deputy editors of all three newspapers.

74. It is alleged that Mr Fraser used Mr Whittamore to provide unlawful information, such as vehicle owners and ex-directory numbers. One such incident, involving the editor of Private Eye, was reported by The Guardian on 31.8.09, who described Mr Fraser as "the notorious celebrity newspaper photographer"; and in another article in 2001 that it "was strange how well informed he is about the movement of celebrities around the world". He tracked Camilla Parker Bowles to a remote location and sold photographs of her to the Mirror for £22,500. It appears from anecdotal stories published that Mr Fraser's modus operandi was to try to travel with the celebrities and either persuade them to agree to photo shoots or follow them without their consent and take photographs: see description in Jessica Callan's memoirs, *Wicked Whispers*.

75. If that is right then it does not appear that Mr Fraser acted on commission but of his own initiative to obtain photographs to sell. The claimants have not pointed to any particular invoices or CRs that tend to show that he was commissioned by journalists to engage in UIG. He charged high prices which required authorisation at a high level within the newspapers, but there is no evidence to support a conclusion that MGN was responsible for the UIG.

76. It appears that there are some occasions on which UIG may have been used by Mr Woodward, but it is impossible to conclude that the majority of invoices fall into this category.

Gavin Whitfield (1999-2006)

77. The allegation made against Mr Whitfield is that he operated as a **stringer** during the *Gulati* period, though in closing submissions the claimants limited this to 2001-2005.

78. MGN admits that Mr Whitfield instructed ELI unlawfully to gather private information on 7 occasions, when MGN paid the invoice, but otherwise does not admit UIG or instruction by MGN to carry out UIG.

79. Mr Whitfield was only featured in the evidence of Mr Johnson, as the person who had introduced Mr Hawkes to the Sunday Mirror and who possibly benefited in connection with the hacked Hugh Grant emails.

80. He is said to have operated as a freelance journalist, and is named on 20 ELI invoices that were paid by the Sunday Mirror.. There are 102 CRs disclosed for him and 4 emails. One of the CRs was a payment for "Hugh Grant" a week before the payment of £150 to Mr Hawkes for "Computer Inq/Hugh Grant". Both payments were authorised by Mr Wallace. There is a further payment of £500 to Mr Whitfield for "Love Affair" on the date of the article published by the Sunday Mirror about Mr Grant providing emotional support to Eimear Montgomery, also authorised by Mr Wallace.

81. Clearly, Mr Whitfield had been involved in obtaining the storyline derived from confidential communications between Mr Grant and Mrs Montgomery, and on the basis of payment records to Mr Hawkes and Mr Whitfield may have been involved in "Ferguson Computer Investigation" in January 2004.

82. Beyond the above, however, there is no evidence of Mr Whitfield being involved in UIG. If he was involved in UIG using ELI on 7 occasions, it seems likely that he was involved using other means on more occasions, for which there is no documentary record. My conclusion is that he did provide unlawful services on occasions, but that it cannot be said that the majority of the work that he did was unlawful.

Gerard Couzens Media/TAG News Media (Tom Worden and Gerard Couzens) (1999-2011)

83. Gerard Couzens was a journalist with the Sunday Mirror until 2003, when he set up Gerard Couzens Media S.L. in Spain and became a freelance journalist based in southern Spain. He was one of the three journalists who were interviewed by the MPS under caution following Operation Glade in 2003, which led to further investigations into the activities of Mr Whittamore and his company, JJ Services (Operation Motorman), but no charges were brought against Mr Couzens. It is however clear that Mr Couzens used Mr Whittamore to a significant extent, and Mr Whittamore admitted that the majority of the work that he was instructed to do on behalf of MGN was unlawful. There is ample documentary evidence of Mr Couzens instructing

other PIs who carried out UIG, such as Chritine Hart and Jonathan Stafford, while he was at the Sunday Mirror.

84. Mr Tom Worden was a staff reporter at The Sun until about 2004, and he was deployed and moved to Madrid in that year to follow the career of David Beckham at C.F. Real Madrid. He too went freelance in Spain and became a co-director and co-owner of Gerard Couzens Media S.L. on 29 August 2005. That company changed its name to TAG News Media S.L. on 22 October 2009.

85. The allegations against the two men and their company made by the claimants is that from 2003-2011 they were **freelancers/stringers.** It is clear that Mr Couzens retained strong links with journalists employed by MGN, particularly Mr Saville and Mr Buckley. It is very likely that he had operated in the same way that they did while at the Sunday Mirror.
86. Although MGN had denied that any of the work done by this PI was unlawful, in its closing submissions it accepted that there are several emails sent by Mr Couzens and a CR that appear to evidence blagging being conducted and/or suggested by Mr Couzens.

87. The emails indicating that unlawful activity was taking place include an email from Mr Couzens to Mr Saville dated 29 November 2007, when he and Mr Worden were trying to locate someone in Barcelona, which proposes that Mr Worden could be sent there to find him – "*There's obviously the danger he's not around but I've tried to blag the info out of Metodo 3 and can't."* and an email of 28 September 2010 to Mr Buckley and Mr Worden relating to attempting to extract information about the location of Andrew Nulty from a company in Marbella from whom the subject hired cars. Both these emails demonstrate that, contrary to Mr Worden's assertion, he and Mr Couzens worked together, at least on some projects, and not entirely separately.

88. Emails in 2005 to Mr Buckley and Mr Saville include one relating to Mr Beckham and his ex-nanny in which Mr Couzens suggests "might be worth doing a 'special investigation' into Abi or Jonathan in a month or two's time to see if they are still in touch" and another in which he asks for payment of £100 for the mobile phone number of Ingrid Tarrant that he had provided for Mr Buckley. His suggestion of a "special investigation" supports my conclusion that this phrase was used at the suggestion of MGN journalists to conceal unlawful activity.

89. There is also a document that was brought into the public domain in the parallel News Group Newspapers litigation, an email from Mr Couzens to Mr Stenson at the News of the World, as follows: "That's 380 missing for the work, plus 170 expenses for the eight days, which included 70 quid for blag calls I had to get someone to make on the story that we'd agreed with Michael at the time and which I paid them out of my own pocket".

90. There is an incriminating CR for 3 May 2005 which incautiously says "Geldof mobile blag". This is likely to be Mr Couzens blagging a third party to obtain Mr Geldof's phone number. Another CR dated 3 August 2003 from The People is for "Amma's number asst", authorised by Mr Scott, which corresponds with a document relating to Mr Scott containing billing data, a mobile telephone number, date of birth, address and former address and "top ten numbers" for Amma Boatomaa Antwi-Agyei.

91. Mr Couzens was involved in information gathering relating to Prince Harry's visit to Argentina (see under Article 15 of the Duke of Sussex's claim in Part V below), for which services there are four CRs at that time, and in relation to the story about Ms Sanderson's father (see Article 7 of her claim in Part VII below), a "Coronation Street asst" for £1,000, which is likely to relate to information obtained about Ms Sanderson's father, who had lived in Spain with his fourth wife.

92. There is no evidence specifically about the extent to which Mr Couzens and Mr Worden were providing this kind of service as compared with legitimate freelance journalism. I cannot entirely rely on Mr Worden's evidence because he contended that the company was not engaged in UIG at any time while he was involved with it, and believed that Mr Couzens did not carry out any UIG or commission any during that time. Although the position under Spanish law is not in evidence, that was not the point that Mr Worden was seeking to make (save that he said that the Spanish equivalent of DVLA information was publicly available). He also sought to distance himself from Mr Couzens, both physically and in terms of knowledge of the company's business, but his contention that he knew nothing about how the company was making its money was not credible, and he was forced to accept, in answer to my questions, that as a director of the company he was familiar with its formal accounting documents.

93. Mr Worden gave a detailed description of the nature of lawful work that the company conducted, which I accept as partly true – I have no doubt that perfectly legitimate journalism was conducted, but equally no doubt that the unlawful methods that Mr Couzens had become familiar with at MGN were also used when he was working in Spain. Mr Worden accepted that the company did a lot of work for MGN newspapers, but also for "all the national newspapers". I accept that on occasions the company pitched stories to the news desks of various national newspapers simultaneously.

94. The conclusion that I reach is that a substantial part (but probably significantly less than half) of the work that the company, acting by Mr Couzens and Mr Worden, did would have been unlawful in England and Wales. There is no evidence that either of them personally hacked phones or did anything that was illegal in Spain.

Greg Miskiw (Mercury Press) (1999-2006)

95. Mr Miskiw and Mercury are alleged to have been **freelancers/stringers** and, specifically, that he sold stories (either himself or through Mercury) based on the unlawful activities of Mr Mulcaire to Gary Jones and the Mirror, Sarah Arnold at the Sunday Mirror (and previously at the News of the World) and Chris Bucktin at The People. These wrongs are alleged to have been conducted between 2005 and 2006 only, during which period there were 12 CRs for Miskiw personally and 253 to Mercury.

96. After leaving the News of the World in 2005, Mr Miskiw continued to use Mr Mulcaire as a blagger and phone hacker. Mr Miskiw himself pleaded guilty to phone hacking in 2014 and was sentenced to 6 months' imprisonment.

97. The evidence that the claimants rely upon is that of Mr Johnson, who spoke to Mr Miskiw after he had become a whistleblower, following his prison sentence. Mr Johnson said that Mr Miskiw (who died in 2021) sold stories to MGN first as a freelance, while on gardening leave from the News of the World; then when he was at Mercury, which was persuaded by Mr Miskiw to hire Mr Mulcaire to do phone hacking and blagging; and then, after Mr Miskiw left Mercury in January 2006, he worked to sell stories to former News of the World staff (Jones, Arnold and Bucktin).

98. Mr Miskiw as whistleblower made an affidavit for Mr Johnson, to attest to his story, which Mr Johnson produced during the trial, when it was put to him in cross-examination that he was lying about having got affidavits from such people. Para 16 of Mr Miskiw's affidavit states:
"I had specific contacts at certain papers that I knew from my time at the News of The World. Chris Anderson, the number three at the Mail on Sunday, was my contact there,... Gary Jones was my contact at the Daily Mirror, Sarah Arnold was my contact at the Sunday Mirror, Chris Bucktin was my contact at the People, and Geoff Webster at the Sun was my main contact there... All of these contacts knew that I sourced stories through the dark arts (and therefore unlawful means including blagging and voicemail interception) whether or not they knew about Glenn Mulcaire's specific role".

99. Call data shows that Mr Jones was in contact with Mr Miskiw during the period in question.

100. Although, as MGN points out, no CR refers to Ms Arnold, I am satisfied that the position was as Mr Johnson explained it and Mr Miskiw's affidavit states, and that Mr Jones and Mr Bucktin would have known that what Mr Miskiw was offering was unlawfully obtained material, for the most part.

IIG Europe /Assured Legal Investigations (Gavin Burrows/Angie Woodford) (1999-2006)

101. These companies controlled by Mr Burrows are alleged to have been **hackers, blaggers and/or information providers** in the period 2000 to 2004.
102. MGN does not admit the allegations save that it denies that Ms Woodford was concerned with UIG.
103. Mr Burrows is alleged to have been principally a blagger but also someone who carried out landline call and voicemail interception by subcontracting that work.
104. He was commissioned by Mr Weatherup, Mr Stretch, Mr Edmondson, Mr Scott, Mr Honeywell, Mr Thomas and Mr Wallis. There are 125 instructions of IIG between 2002 and 2004 and 31 instructions of Assured Legal between 2001 and 2002.
105. IIG's own website in 2004 advertised unlawful services that it could provide, including "Bank accounts traced", "telephone lines intercepted", "Mobile & GSM interception", "Bill analysis & call itemisation", "emails traced same day" and "vehicle & asset tracking". This overt advertisement of unlawful activity may have been because Mr Burrows was based abroad but carried out activities in the UK.
106. Mr Burrows made a witness statement in the MNHL but not a trial witness statement. It was used by the claimants to obtain permission to amend and expand their pleaded case. The witness statement was procured by Mr Johnson. Mr Burrows explains in his statement how he was introduced to Mr Weatherup and Mr Edmondson by Nigel ("Slippery of the Costas") Bowden and confesses to conducting interception of landline calls.
107. In view of what I was told about evidence and retractions that Mr Burrows made in other proceedings, and in view of Mr Johnson's evidence about Mr Burrows' dishonesty, I do not consider it safe to place reliance on any detail in Mr Burrow's statement, which he did not confirm in court and on which he was not cross-examined. However, the admissions made by the contents of the website, together with the fact of admission to some unlawful activities within the UK, are a sufficient basis on which to conclude that the majority of the work that IIG and Assured Legal did for MGN was unlawful.
108. I am satisfied that, on occasions, Mr Burrows or those instructed by him did phone call interceptions and VMI.

JJ Services (Steve Whittamore) (1991-2006)

109. The allegations against Mr Whittamore and his company, JJ Services, are that they were **search agents**, **hackers, blaggers and/or information providers**.

110. MGN admitted at the outset of the trial that a limited proportion of the instructions to him were to obtain private information unlawfully, but not that he engaged in call or voicemail interception or bugging or tracking.

111. I have referred to the evidence of Mr Whittamore in the judgment at [89]-[91]. He gave detailed evidence, which was accepted by MGN to be honest, and is agreed to have acted unlawfully. The only question is whether the majority of his work was unlawful. Stepping back from semantic arguments about what is unlawful or just "frowned upon", Mr Whittamore refused to accept from Mr Green that he was being too hard on himself and that in reality most of his work was perfectly lawful. Reading his evidence as a whole, rather than focusing on one sentence, that much is clear. Mr Whittamore's evidence about ex-directory numbers was that it was only rarely possible to obtain these by lawful means, thereby making it clear that that was not how he did it. That is important evidence from a witness accepted to be honest, and I rely on it in reaching my conclusion that the old fashioned way of finding ex-directory number would not be how it was generally done, particularly after the directories went online in the early 2000s.

112. Unlawfulness and illegality was also a view of Mr Whittamore's work shared by the Information Commissioner, when he published his reports. Operation Motorman, an investigation into the conduct of Mr Whittamore and others, was the basis for concern expressed about an illegal trade in private information, which was then particularised as involving 120 MGN journalists (and many from other newspapers) who had used Mr Whittamore's services.

113. MGN's submission that I should find that "no more than a limited number of the instructions to Mr Whittamore/JJ Services represent the obtaining of unlawfully gathered information" is far too optimistic, given the weight of the evidence.

114. However, there was a short time after Mr Whittamore's conviction in 2005 and before he stopped working, in 2006, when it is likely that the majority of – if not all – Mr Whittamore's work was lawful. Otherwise, I find that the majority of the work done was unlawful.

John Ross (1991-2011)

115. The allegation against Mr Ross is that he was a **hacker, blagger and/or information provider** during the period 1996-2009. Mr Ross was a former Metropolitan Police officer who was sacked and became a PI. The claimants allege that he had access to confidential Police and military records and databases, and provided criminal record checks and information about ongoing investigations, as well as vehicle registration information and medical and phone records.

116. Mr Haslam said that Mr Ross was a corrupt policeman, who left the force and specialised in selling information from other corrupt officers. He said that Ross had connections with Mr Rees and Southern Investigations, and sold information to a number of newspapers, including MGN newspapers.

117. Similar allegations were made by Mr Davies in "Hack Attack". The report of the Daniel Morgan Independent Panel published on 15.6.21 states that a Detective Constable gave evidence in another inquiry that Mr Ross knew DS Fillery in 1989 (Mr Fillery being the partner of Mr Rees in Southern Investigations).

118. There are 2 CRs to Mr Ross in 2005 for Prince Harry Sandhurst assists, which are likely to be payments for exploiting his sources in the Army, but not necessarily unlawfully.

119. However, other CR payments suggest use of illegally obtained inside Police information, e.g. about the Police wishing to interview Mr Gascoigne about an alleged assault, details about Ms Dando's fiancé's discussions with the Police about his safety, the fact of fingerprinting and DNA testing of a TV presenter in connection with a murder investigation, and details about previous convictions for drink-driving of a contestant on "Big Brother".

120. In my judgment, Mr Ross probably was providing a substantial amount of unlawfully obtained information to MGN journalists and it is likely that many or all among those commissioning him or authorising his invoices (including Mr Harwood, Mr Duffy, Mr Pilton, Mr Jones, Mr Thomas, Mr Bell, Mr Buckley, Mr Wallace, Ms Weaver, Mr Proctor, Mr Jeffs, Mr Edmondson. Mr Scott, Mr Weatherup, Mr Honeywell, Ms Bletchly and Mr Wallis) would have known about his particular specialities in providing information. The claimants do not however make out a sufficiently strong case for a conclusion that the majority of all work done over a 14 year period was UIG, though I consider it likely that the majority of the work done between 1996 and 2003 was unlawful.

Jonathan Stafford/Newsreel Ltd (1991-2011)

121. The allegation against Mr Stafford and then his company, Newsreel, is that he was a **hacker, blagger and/or information supplier** between 1996 and 2011 and that he continued to be used in that role (as Newsreel Ltd) right up to September 2011 (42 payments were made to him that year).

122. I have dealt with Mr Stafford and the integral part he played in creating stories for MGN to publish at [149]-[153] in particular and elsewhere in my judgment. I accept the evidence that Mr Evans gave, including that Mr Buckley told him that he had implemented steps to mitigate the risks of a paper trail of UIG being left by Mr Stafford's work. I consider those included the destruction of the schedules to his monthly invoices and the absence of written reports. I also accept the evidence of Mr Johnson that in 1998 he commissioned Mr Stafford to obtain itemised phone bills of a target. There is an admitted Stafford invoice in the Fiona Wightman case for obtaining ex-directory phone numbers, a trace and a pretext call.

123. Mr Stafford was working on a regular basis for all three titles. There are 274 invoices and 38 CRs from him personally – but each invoice is for a month's work for each newspaper, and the schedules show that this comprised between about 15 and 30 separate instructions per month. These are mainly for ex-directory numbers and telephone billing data, but there is also a significant amount of 'pretext' blagging. There are then 426 CRs for Newsreel for the Mirror and the Sunday Mirror from 2006 to 2011. The CRs do not disclose the nature of the work done, but I infer that it was for the same kind of work.

124. I have no doubt at all that the substantial majority of the instructions to him were for UIG that was in many cases preparatory to conducting VMI. The fact that MGN can point to one email in which Mr Stafford appears to have told a journalist about what he heard Rod Stewart's girlfriend say when sitting next to them in a hotel restaurant does not prove that a significant volume of Mr Stafford's work was legal. And there is no indication about how Mr Stafford came to be sitting there at the right time, or that he frequently attended celebrity haunts for this purpose.

125. The remaining schedules to his invoices give a strong flavour of the nature of the unlawful work, and emails passing between journalists show that they knew what Mr Stafford did, which included blagging bank statements, flight information and other matters that lawful searches could not achieve. They also show the large range of editors and journalists who commissioned him. On a single invoice schedule dated 20.12.02, there were instructions for various "pretexts" from Mr Stretch, 4 airline blags for Ms Boniface, a telephone schedule, ex-directory and pretext for Mr Couzens, 2 pretext holiday traces and a telephone schedule for Polly Graham and 2 pretexts and a trace for Mr Saville. The schedules also include commissions from those such as Mr Bell, Mr Buckwell, Mr Pisa and Mr Rice who went on to become freelancers. An email dated 8.4.09 from Simon Wright to Mr Hamilton, cc. Saville and Buckley, said "normal sesrch [sic] methods have now failed. Staffy might want to have a go". I have no doubt that those in MGN's offices who were instructing Mr Stafford knew exactly what he did (Mr O'Hanlon's contact list even had the prices for 'special' services next to the number for Mr Stafford: "40 for ex-d; 50 for ex and address; 150 for bill").

126. I reject the evidence of Mr Harwood and Ms Kerr to the contrary. Ms Kerr was quite unable to explain why she had instructed Mr Stafford in July 2000 to get two ex-directory phone numbers for a famous pop star at an address near Marble Arch. There may be exceptional cases in which the unlawful activity was justified on public interest grounds, but that will clearly be a small minority of cases and no actual example of that was given in evidence or argument. It is of course for MGN to prove public interest, not for the claimants to disprove it.

127. My conclusion is that the substantial majority of Mr Stafford and Newsreel work for MGN was UIG – applies for the whole of the period during which he was

active, which appears to extend from about 1995 to September 2011. There are various emails between MGN journalists during the period 2007 to late 2010 discussing their dependence on what Mr Stafford could achieve, and Mr Stafford was very much in Ms Weaver's mind in 2011 when she tried to explain to Mr Vickers that he was not a PI and so not banned by TM plc's prohibition of use of PIs. This demonstrates that the system for obtaining unlawfully private information for publication did not really change after 2006.

128. But there is no evidence that Mr Stafford himself carried out voicemail interception, nor was it distinctly pleaded.

Lee Harpin (1999-2006)

129. The allegation against Mr Harpin is that he was a **stringer**, though before this activity and after it he was an employee of MGN at The People and at the News of the World between 1999 and 2003. The period of the alleged UIG as a stringer is 2003-2005. He later became head of news at The People.

130. MGN does not admit the allegations against him. It has disclosed 76 CRs from all three titles for this period.

131. The claimants' case is that while a stringer Mr Harpin should be assumed to have continued to use all the UIG resources that he used while an employed journalist, in particular phone hacking. Mr Basham's sources in Fleet Street had described Mr Scott as the "king of news hacking" and Mr Harpin as the phone hacking "Dauphin". This is backed up by emails disclosed from 2004 and 2005 and call data.

132. An email dated 16.9.04 to Mr Proctor at The People states:

"Got your message re stories. Dunno if you wanna have a go at this? Not gonna lie, the Sunday Mirror have had it for about 5 weeks, but have been unable to get a pic which Tina Weaver is insisting on. Anyway, Jenny Powell's - Loose Women, Wheel Of Fortune etc - marriage is on the rocks. Constant arguing between the two of them up in Manchester where they live. Meanwhile Jenny has been spending a couple of days a week down in London filming Loose Women. My contact says she is now shagging a bloke called Jake Robinson, who has appeared in several BBC home improvement shows (look him up on BBC website). Scotty had a look at Jenny's phone record and it showed she was indeed calling Jake all of the time. Problem is they couldn't get a pic of them together. **At the same time there were also messages from Jenny's mates over her marriage problems. Basically trying to be supportive saying things like 'it'll all work out. Don't worry' etc etc**
Do you lot have any good ins with Jenny Powell??? I can't get anything more my end".

Mr Harpin was paid £100 for this by The People.

133. From 2006 to 2011, there were 2,523 calls and text messages from Mr Harpin's mobile to a number associated with Rob Palmer.

134. The obvious inference is that, as a stringer, Mr Harpin continued to hack phones and do other UIG, as he did before then and afterwards at The People. I am satisfied that the majority of his payments from MGN are likely to have been in respect of UIG. The fact that the odd tip or story can be identified which might have a legitimate source does not detract from this conclusion.

London Media Press (Andy Bucknell and Rick Hewett) (1999-2011)

135. The allegation against London Media Press ("LMP") is that it acted as a **freelancer/stringer** in conducting UIG. MGN disclosed about 720 CR's relating to LMP for the period 2002 to 2011, so it was heavily used as a freelancer.

136. It was not prominent (and neither were Mr Bucknell and Mr Hewett) in the evidence at trial, but it assumes greater prominence in the Episodes of the Duke of Sussex (see UIG Episodes Schedule).

137. Mr Hewett and Mr Bucknell were journalists at the Sunday Mirror until 2002, when they set up in business together. They were then commissioned not just by former colleagues at the Sunday Mirror intimately involved in phone hacking but also by senior journalists and editors at the Mirror and The People, including Messrs Harwood, Duffy, Jones, Mellor, Harpin, Embley, Thomas and Wallis.

138. I have found that episode 16 was an occasion of UIG by LMP and that other occasions might well have been, though the information gathering was not actionable by the Duke for other reasons on those occasions.

139. The claimants allege blagging and other UIG against LMP and rely on the history of Mr Buckwell and Mr Hewett at the Sunday Mirror, where they both frequently instructed C&L, Mr Stafford, Christine Hart and TDI.

140. Mr Bucknell continued to instruct C&L on two occasions at the expense of the Mirror after having left to work at LMP.

141. There is one occasion recorded in emails in 2006 where Mr Hewett told journalists at The Sun that he had an inside benefits agency source and passed the information on to ELI.

142. Mr Harwood and Ms Kerr both said that they used LMP as they used any freelancer and that as far as they were aware there was nothing suspicious about it and they were not using UIG.

143. Although there is very little hard evidence of UIG by LMP, it is likely, given the background and connections of Mr Bucknell and Mr Hewett, that they would have continued to use the "skills" that they had used at the Sunday Mirror working under Mr Thomas. All those closely involved at the highest level in phone hacking at that newspaper and at The People instructed LMP.

144. I therefore conclude that it is probable that a substantial proportion of LMP's work during the period in question was UIG, and that those commissioning LMP from MGN would have known that it was. However, there is also evidence, from some of the CRs, of apparently lawful journalistic activities and there is no reason to think that Mr Buckwell or Mr Hewett would have turned their back on such opportunities. It is therefore not possible to conclude, on the evidence before me, that a majority of their work was UIG.

Martin Coutts (1999-2011)

145. The allegation against Mr Coutts is that he acted as a **freelancer/stringer** . He was freelance during the period 2001-2011 except during the years 2004 and 2005 when he was contracted to the Sunday Mirror. When so employed, Mr Coutts used ELI on 21 occasions and other PIs to obtain information. He too, like LMP, was commissioned by many of those closely involved in phone hacking at MGN's newspapers.

146. MGN instructed Mr Coutts as a freelancer on 568 occasions between 2001 and 2011.

147. Emails disclosed show that Mr Coutts worked with Mr Buckley and Mr Saville. One shows that he had used C&L to do a credit reference check for Cristiano Ronaldo to try to locate his residential address. Another contains an instruction from Mr Saville to blag a holiday company. Another is a memo from Mr Coutts to Mr Buckley in which up-to-date mobile and landline numbers for Ryan Thomas and Tina O'Brien were provided. There are other emails, however, that are consistent with perfectly lawful journalistic activity.

148. As with LMP, the right conclusion is that a significant part of Mr Coutts' freelance work was probably UIG, but not a majority of that work.

Mike Behr (1999-2011)

149. The allegation against Mr Behr is that he acted as a **freelancer/stringer** providing information by UIG from 2003-2010. Mr Behr was based in South Africa and there is no evidence that he left there, except possibly to go to Mozambique in search of information about Chelsy Davy and her family.

150. Mr Behr only came into the evidential narrative of this trial at the time of the Duke of Sussex's holiday in Argentina in 2004. Ms Kerr said that she instructed

him for the first time in January 2005 to find information about the new romance between the Duke and Ms Davy and, as I have found, someone at the Mirror night news desk instructed Mr Behr in November 2004 to obtain evidence to confirm that the young, blonde woman who flew from Buenos Aires to Cape Town was Ms Davy.

151. The claimants allege that Mr Behr himself used PIs and blaggers to obtain information unlawfully which he then provided to commissioning journalists. That gives the claimants a problem in that whatever Mr Behr did in South Africa is governed by South African law, about which I can make no findings. It is only, possibly, if someone in England knowingly instructs Mr Behr to do something that is unlawful under English law, or if Mr Behr was MGN's agent, that I could find that MGN was a tortfeasor, such as to give rise to a claim for damages against MGN.

152. The claimants did not grapple with this difficulty. It is obvious from emails disclosed and made public in other litigation that Mr Behr was able to blag flight information relating to Ms Davy. He appeared to be the "go-to" PI in South Africa for any inquiry about Ms Davy over the following years, though in many cases whether he provided information by voicemail interception or blagging or lawful journalistic means is unclear.

153. The case in relation to Mr Behr is unproved even though some of what it is proved that he did would have been unlawful in England and Wales.

Rachel Barry (1991-2006)

154. Ms Barry is alleged to have been a **hacker, blagger and/or information supplier** from 1996-2006. There is a pleaded allegation that she continued to be used even after being convicted in 1997 for illegally obtaining private information.

155. MGN admits that a limited proportion of the work that Ms Barry did for MGN was unlawful. Why the admission is so limited, in the face of compelling evidence about her activities, from at least 1996 onwards (the earliest CR is dated 4.10.96) and a conviction in October 1997 for blagging mobile phone bills and obtaining ex-directory telephone numbers, is unclear. Ms Barry appeared in Mr Evans' Palm Pilot as "Rachel Blag" and also in Mr Buckley's Palm Pilot.

156. Ms Barry continued to be used by journalists such as Mr Jones, Mr Harpin, Mr Jeffs and Mr Thomas until 2006. Significant numbers of the invoices reference "health checks". Mr Harwood said that he never had any dealings with her and was not aware of her convictions; but he was then shown a Rachel Barry invoice for £240 that he had authorised for payment. He said he did not check who she was. I do not accept Mr Harwood was authorising payment of large sums to unknown providers simply because an administrative assistant, Louise Flood,

had provided the invoice for approval (he did not say that he delegated his responsibility to her but said that he felt that he could trust her).

157. There is, however, evidence that Ms Barry carried out legitimate work too. It does not appear, unsurprisingly, that Ms Barry set up in business to behave only illegally, and like many other PIs who were in practice in the mid 1990s she doubtless did many of the offline, physical searches at registries as part of her early work. Invoices from the 1990s include marriage checks, court checks, company checks and Land Registry checks, which are unlikely to be UIG. There are also many "address checks", which could be lawful or unlawful and many "checks". There is a marked lack of detail on many of the CRs and invoices. It does seem likely, however, that Ms Barry quickly developed a speciality of getting information out of people by deception. In March 1997, there is an invoice for "Eastenders mobile check" and from 1997 a substantial number of payment records for "health checks", and another "Chelsea Medical Centre" search. By the end of 1997 she had been convicted. But MGN journalists continued to use her.

158. In December 2001, there are 2 CRs relied on by the Duke of Sussex described as "Shand-Kydd assist" and "Shand-Kydd and Katie checks", presumably referring to the Duke's maternal grandmother and sister-in-law.

159. I find that, after the date of Ms Barry's conviction, the majority of the work that she did for MGN is likely to have been or been in connection with UIG.

Research Associates (Paul Hawkes) (1991-2011)

160. The allegation against Mr Hawkes and his company is that he was a **hacker, blagger and/or information provider**.

161. In their closing submissions, the claimants restricted themselves to the period 1999-2009 but said that the company was established in 1986, as Heatherdune Ltd. It operated under a series of aliases as well as Research Associates.

162. Mr Hawkes had been acting as a more traditional private investigator (tracer) since 1977, working for others.

163. MGN admitted that a limited number of the instructions to Research Associates were to obtain unlawfully private information, but Mr Hawkes denied that.

164. I have made detailed findings about Mr Hawkes in the judgment, in Part III at [226]-[234].

165. In the light of those, I accept the claimants' case that the majority of the work done by Research Associates during the period 1999-2009 was unlawful. A lot

of it appears to have been mundane, such as identifying owners of car registration numbers and using social security details to trace people.

166. Mr Hawkes seems to have specialised in obtaining information from inside public bodies, such as DVLA and the DSS. He accepted that he was the person described as "Blue" in Mr Davies' book "Hack Attack", though he called it a caricature of him. Mr Hawkes appears to operate with a network of contacts and workers, both within Research Associates and outside it.

167. Mr Hawkes was commissioned by Mr Brough, Mr Clements, Mr Duffy, Mr Johnson, Mr Wallace and Mr Buckley, among others. I find that they knew what kind of services Mr Hawkes was offering.

Searchline Ltd (Gwen Richardson aka Gwen Kent) (1991-2011)

168. The principal allegation against Searchline is that it was a **search agent**. The claimants' case is confined in closing written submissions to the years 1996-2010, but their submissions about activities done by Ms Kent extend beyond those done by search agents and include blagging of ex-directory phone numbers and call data, vehicle registration data and other matters. These were not distinctly pleaded against Searchline, though it is one of a significant number of PIs described in para 8.3(b)(ii) of the GenPoC as "other private investigators and blaggers". However, Searchline is not pleaded to be a **hacker, blagger and/or information provider** under para 8.3(fc).

169. In a summary of the generic finding sought in relation to Searchline, handed up on the last day of the trial, the claimants seek findings that payments to it other than for "BMD" were likely to be for the use of credit checks or other access to the full electoral roll, and that "special" checks were UIG, and that Ms Kent also used blagging for trace and telecoms. No elaboration of this was provided orally.

170. The origins of Searchline were in tracing hidden family history: it appears that Ms Richardson had a personal family experience that motivated her to desire to provide a service tracing family histories. However, Searchline then started to work for newspapers. By May 2001, Mr Honeywell had noted substantial payments to C&L, Gwen Richardson and J Stafford (£87,000 in the year to date) and that he realised that some of these "searches" were of a specialist nature. However, other work appeared to be regular: Ms Kent conducted detailed research into the family history of Ian Huntley, the murderer, however in relation to this she also billed for ex-directory numbers supplied and "follow-on addresses", which is suggestive of unlawful search methods.

171. Ms Kent had signed a witness statement but was not called to give evidence. I have explained in my judgment why, in such circumstances, I do not feel able to place reliance on the exculpatory content of the statement. The same applies

to the witness statement of Mr Rice. Mr Harwood and Mr Worden gave evidence that they believed that Ms Kent only did lawful work, and that she was very good at searching publicly available documents.

172. MGN relies on a copy of the 2006 website of Searchline, which focuses on the finding of lost family members and gives a registration number under the Data Protection Act 1998. That means that it acknowledges being a data controller that is processing personal information. They also rely on articles published in 1998 about the origins of the company, and two articles published in 2007 about families who have located missing family members, which mentions Searchline.

173. I am satisfied that a substantial part of Searchline's work was entirely lawful. Its origins were entirely lawful. However, there are documents that indicate that unlawful services were also provided, including to Fiona Cummins, Graham Brough, Andy Buckwell, Dan Evans, Doug Kempster, Emma Cox, Euan Stretch, Gerard Couzens, Matthew Bell, Polly Graham, Ben Proctor, Debbie Manley, Rachel Bletchly and others. I find that these probably started in about 1997 but were few at that early time.

174. Given that there are 1,553 separate invoices disclosed for Searchline, most of which are not indicative of UIG, it is not possible to conclude that the majority of such invoices were for UIG, though as I have indicated in the judgment, I reject the argument that a "special" was just a search that was billed at a higher rate. A substantial proportion, but not a majority, of the Searchline invoices were for UIG.

Severnside (Taff Jones) 1991-1999

175. The allegation against Severnside is that it was a **hacker, blagger and/or information supplier**. The claimants make clear in their closing submissions that they accept that Severnside itself was a company that provided lawful search results, such as company director searches, throughout the relevant period, but that between 1995 and 1999 a separate, unlawful service was provided through someone called Taff Jones. It is unclear whether Taff Jones was an employee of Severnside or someone to whom work was outsourced. What is alleged is that Mr Jones obtained private information, including ex-directory phone numbers and itemised phone records, phone numbers and subscriber details by blagging the network provider; and also vehicle registration details, by similar means.

176. Taff Jones's services were was used by many journalists at all three newspapers.

177. The best evidence is a legal department attendance note of a conference with Counsel on 3 October 2003, relating to Operation Motorman, which was investigating corruption of police officers and the provision of sensitive

information. The note purports to link Taff Jones with the blagger Mr Gunning and Mr Whittamore. As regards Mr Jones, it reads:

> 3. "With regard to Taff Jones he obtains B.T. ex-directory telephone numbers. He explained that Taff Jones is a biker and an ex-soldier. The method he uses is by ringing from mobile phone numbers which he changes every three months or so. There is one phone number with telephone billing contacting Whittamore and billing in reverse, Whittamore to Jones.
> 4. The evidence seized at Jones' house was found on scraps of paper.
> 5. It is clear however that he uses EIN numbers (an EIN number is a number given to a B.T. employee and has an 8 as the prefix) in order to pretend to be an engineer to provide this EIN number on which there are no checks made."

178. There are many Severnside invoices relating to Mr Jones's period of activity but none of them name him or have his initials as the reference. There are many references to "special investigation" and indeed to "special investigation plus". Mr Harwood remembered using Severnside for Companies House searches. However, some of the invoices imply a different and probably unlawful kind of search: e.g. "phones investigation", "tele no's x3 specials" and white Sierra (1x Special investigation plus", and "Helen S…. 3x (Special) numbers".

179. I conclude that the majority of the searches of this kind identified by the claimants during the period 1995 to 1999 are unlawful searches, but it cannot be assumed that Severnside invoices or CRs as a whole were probably unlawful. The use of the expressions "special investigation" and "special investigation plus" is a significant pointer to UIG. I do not accept that a substantial and reputable company acting lawfully would describe its work in such a way, and it is apparent from other invoices that legitimate invoices of Severnside were described quite differently.

Southern Investigations/Law & Commercial/Media Investigations (1991-1999)

180. The allegation against Mr Rees and Mr Fillery and their above-named companies is that they were **search agents** and **hackers, blaggers and/or information suppliers**. The claimants also specifically allege that MGN continued to use these companies after the conviction of Mr Rees in 2000.

181. In December 2014, MGN admitted, in relation to the period 2000 to 2006, that an unquantifiable but substantial number of inquiries made by Law & Commercial and Media Investigations were likely to have been to obtain private information that could not be obtained lawfully.

182. MGN now accepts that these names are aliases for Southern Investigations. There is clear evidence of involvement in UIG and criminal activities from Mr Haslam and Mr Johnson.

183. In 2000, Mr Rees was convicted and sentenced to a long period of imprisonment following Operation Two Bridges, which had involved the interview of Mr Kempster of MGN. Mr Campbell gave compelling evidence that pointed to the involvement of Southern Investigations in blagging his mortgage financial information. They were also clearly involved with the other financial "stings" that the Mirror was conducting in late 1999. Given what is known about Southern Investigations, it is very likely that each instruction of it (and its admitted aliases) was for UIG, save where the invoice describes something obviously innocuous, like a Companies House search. It is also likely that the activities of Southern, whether acting itself or though its subcontractors, such as Mr Gunning, who was involved in the Prince Michael story, were unlawful to the knowledge of those at MGN who were commissioning them, including in particular Mr Jones and Mr Thomas. Mr Fullagar, who was on Ex Com, was said to have had a long association with Mr Rees.

184. There is no specific evidence that Southern Investigations actually carried out voicemail interception or live bugging of calls, but I consider that in view of Mr Haslam's evidence it probably did happen on occasion; nor is there evidence of payments made by MGN to Southern Investigations' sub-contracted blaggers or to a firm called Mayfayre Associates.

Starbase/Celebrity Searcher ('Secret Steve' (Hampton)) (1991-2006)

185. The allegation against Starbase is that it was a **hacker, blagger and/or information supplier** from 1999-2006.

186. 'Secret Steve', as he was known, figured disproportionately large in the applications for disclosure made over many years, but in the event there was no evidence given about his activities at trial. It is therefore an inferential case that is made by the claimants.

187. His work was commissioned by Mr Stretch, Mr Proctor, Mr Jeffs, Mr Edmondson and Mr Weatherup, among others, and his invoices were authorised by Mr Wallace at the Mirror and Mr Thomas at The People, among others.

188. The claimants give a number of examples of invoices for "consultancy re" specified persons, including Lawson N, Deayton, Alcorn and Dowler M, which are suspicious, or in respect of telephone numbers, which it is to be inferred are for instructions to identify the owner of the number. Some of the CRs state "asst" or "TRACE".

189. One invoice in particular, which can be linked to an article about Liam Gallagher published by The People on 10.10.00 (byline: Sean Hoare), is strongly indicative of blagging activity. The article reveals that Mr Gallagher was allegedly paying £2,000 a month into a mother's bank account to support a secret love child. There is an invoice dated 6.4.01 but with a tax point of 5.12.00 headed "Consultancy Re: Gallagher L" for a sum of £1,000. The obvious inference is that in return for this large payment, Secret Steve had created the storyline by finding the bank details that revealed the payments, on the instructions of Mr Edmondson.

190. There are similarly large payments on the numerous CRs and invoices (449 invoices and 11 CRs), including £1,500 for work relating to John Leslie in November 2004, though most of the payments are for more modest amounts between £100 and £300.

191. Some of the work done by Starbase was probably lawful, but a significant proportion of it, particularly that commissioned by those named above, was probably unlawful. There is however insufficient evidence that the majority of all instructions were for unlawful work, so the claimants have to establish a case based on the particular facts of an individual invoice rather than fall back on a presumption of unlawfulness.

Tillen and Dove/Unique Pictures/Lenslife (Scott Tillen, Spencer Dove) (1991-2011)

192. The allegation against Tillen and Dove (in all their manifestations) is that they were **photographic agencies**, as described in the introduction to this PI Schedule, who themselves carried out UIG in order to obtain photographs. The period alleged is 1996-2011. It is specifically alleged that they continued to be used on numerous occasions between July and December 2011, notwithstanding the Leveson Inquiry hearings into phone hacking and the conduct of the Press at that time.

193. Unlike other picture agencies such as Big Pictures and Cruise Pictures, the claimants allege that Mr Tillen and Mr Dove were personally involved in unlawful activity to obtain information, including VMI and bugging, with a view to photographing what they found. It is alleged that they specialised in commissioned jobs (particularly from Mark Thomas) rather than taking and offering photographs to the media. They were certainly very heavily used by journalists at all three newspapers.

194. The case against them is not admitted rather than denied by MGN, though MGN denies that its journalists instructed Tillen and Dove to use unlawful means.

195. There is clear documentary evidence of a close relationship between Mr Mark Thomas of MGN and Mr Tillen, and Mr Tillen is in both Mr Scott's and Mr

Buckley's Palm Pilot. These are the particular emails on which the claimants rely:

a. email of 28.12.01 from Mr Thomas to Mr Tillen headed "I have a feeling you might need these details!!" and including a long and detailed list of landline and mobile numbers and addresses for various subjects of interest, with comments such as "Love pad?";
b. email of 27.7.02 from Mr Thomas to Mr Tillen headed "Re: Brum" which included another very long list of various landline and mobile numbers and addresses;
c. email of 21.6.03 from Mr Thomas to Mr Tillen forwarding a list of mobile phone numbers of famous footballer and media personality targets that Mr Scott had provided to him.

196. Some of the CRs for Tillen are indicative of the salacious nature of the material that he obtained for the Daily Mirror, e.g. one for £6,000 for "Eamonn Holmes & Mistress", which was authorised by Ms Weaver, Mr Pilton and Mr Morgan, and another for £6,000 for "Janus", authorised by Mr Thomas, Ms Weaver and Mr Morgan. The size of the payments and the authority required for payment tends to underline that this was "special" work that was being remunerated, not just a casual photograph taken and then sold.

197. The only live evidence about Tillen & Dove was given by Mr Johnson. He said that he was instructed by Mark Thomas to intercept the voicemails of Denise Welch so that a photographer could be sent to where she was. Mr Thomas's hacking beat Mr Johnson to it, and he told him that Ms Welch's hotel room was about to be bugged by photographers, and that these turned out to be Tillen and Dove. He said that they told him that they carried out illegal bugging *and VMI* themselves.

198. Mr Johnson expanded upon this in cross-examination, focusing principally on his own decision not to be involved in what he understood to be illegal bugging. I was not wholly persuaded by Mr Johnson's explanation of what was illegal and where in his mind (and the law) the line was drawn, or what was morally acceptable to him at the time and what was not. Mr Johnson had a tendency to minimise his own involvement in what he now considers to be scandalous and criminal activity. But there was no real challenge to what he said that Tillen and Dove told him except about whether they mentioned to him that they had hacked Ms Welch's voicemails, which Mr Johnson maintained that they did. He did not say that in his MPS interview. I am not persuaded that they told him they carried out VMI.

199. Otherwise, Mr Johnson's account – first given before disclosure in relation to Tillen and Dove – is borne out by invoices relating to that incident. It is sufficiently clear that Tillen and Dove were not just photographers, and there is ample documentary and anecdotal evidence of a close relationship with Mr

Thomas in particular (the exchange of target phone numbers and Mr Tillen proposing to Mr Thomas syndication of The People pictures with each of them sharing the income). I consider it very likely that Mr Thomas was using VMI to try to find the location of Ms Welch, and I accept Mr Johnson's evidence that Tillen and Dove had been engaged to bug Ms Welch's room as well as seek to obtain incriminating photographs. Mr Johnson was there to write up the story. There are CRs for this incident relating to both Mr Tillen and Mr Dove. Similar "mirror" payments are made on 27.1.02 (£1,750 each) relating to a separate occasion titled "Gregory help".

200. In total there are 129 CRs for Unique Pictures (Mr Tillen's company) that use the term "special" in the description of the commission. There are several 1997 and 1999 CRs that are suspicious and tend to indicate UIG. I have referred in the judgment to the evidence that shows that "special" was not a PI's reference to something that took extra work: it was a description requested by MGN for something that was best not openly acknowledged.

201. I do not however feel able to conclude that the majority of all payments made to Tillen and Dove and their companies were for UIG. That is because Tillen and Dove were ultimately photographic agencies and a lot of remunerated work would have been payment for photographs where no UIG was involved. UIG was in my view used to give them a distinct edge, on occasions, when chasing a particular picture-based story, and on occasions they were given a lead by Mr Thomas or others and sent off to do UIG to track down the subject. I therefore will not assume that in relation to every Tillen and Dove (or their companies') invoice or CR the work done was probably unlawful. A case has to be made for each individual invoice, though in so doing I would bear in mind the findings that I have made about the extent to which they were using unlawful techniques.

Warner News/Warner Detective Agency (Christine Hart) (1999-2011)

202. Ms Hart, through her companies, is alleged to have been a **hacker, blagger and/or information supplier** from 1996-2004, and there is a particular allegation that MGN made use of her skills to blag highly personal medical information from hospitals in the UK and the US. The allegation is that Ms Hart was regularly instructed from at least 1998 by Mr Kempster, Mr Bell, Mr Hyland, Mr Rice, Mr Buckwell, Mr Hamer, Mr Hoare, Mr Wooding, Mr Field and Mr Rowe.

203. MGN admits that a limited quantity of instructions to Warner were for UIG, in particular medical blagging, in which Ms Hart seemed to specialise. They admit that she was paid by all three national newspapers between 1995 and 2004. They also admit that three Warner invoices relating to Ms Wightman in 1998 and 2000 (Episodes 2 and 5) are for UIG, and do not admit that a further invoice relating to Ms Wightman is UIG. There are two invoices relating to Denise Welch that

Mr Johnson said were blags (his witness statement, para 12); these were on Mr Harwood's instructions. He accepted that the instructions could have been lawful although that was unlikely. Her name appears in Mr Buckley's Palm Pilot.

204. Graham Johnson gave evidence about her orally, in particular about bizarre events in which she appeared to sign an agreement to provide copies of invoices that she had sent, and she later signed an affidavit, but then sought to resile in such a way that the "memorandum of understanding" made between her, Dr Evan Harris and Mr Johnson was agreed to be unenforceable. Mr Johnson said that he had been threatened by Ms Hart, and that was why his trial witness statement did not deal with Warner, unlike many other PIs. The context was that Mr Johnson had been attempting for some time to secure Ms Hart's cooperation in providing evidence, either for publication on his website or for us in the litigation (though, as he said, his interest was very much in the former rather than the latter; it was Dr Harris who was more interested in evidence for the litigation).

205. Mr Johnson said that he met Ms Hart in 2015 or 2016, and that she admitted to him that she used her visits to The Priory (a rehabilitation clinic) to spy on celebrities there, including Ronnie Wood, and that she had also spied on him at other rehab organisations. Mr Johnson said that she told him how she used to blag medical information that she was paid by the Mirror and other newspapers to obtain. (Mr Johnson is in fact named on over 30 invoices between 1998 and 2000 for Warner, though for relatively small amounts.)

206. In 2017 the memorandum of understanding was made – and an admission relating to blagging medical treatment of celebrities was removed from the memorandum, by agreement. Mr Johnson said that having first admitted the blagging, she then denied it, and the agreement to provide large numbers of invoices was not performed. The memorandum included an indemnity provided by Mr Johnson against costs and damages in the event that Ms Hart was sued by a victim who had private data blagged by her and this became known as a result of Mr Johnson's publications.

207. Mr Johnson produced an affidavit that Ms Hart had signed, in which she said that she felt that journalists would never be able to displace her, because of her blagging skills, but that, in the event, that then happened because of phone hacking.

208. Ms Hart made a witness statement dated 2 February 2019 in an arbitration between Mr Rice and Byline Media, which said that Mr Johnson offered her money in 2016/2017 to assist with litigation against The Sun by lying about spying on celebrities in the Priory. Mr Johnson disagreed with that allegation and denied that he had put pressure on Ms Hart to produce documents.

209. I am insufficiently satisfied about the reliability of Mr Johnson's evidence about these extraordinary matters to place reliance on what Ms Hart told Mr Johnson at any time, or on what is said by Ms Hart in her various statements. Her account seems on any view wholly unreliable. I prefer instead to rely on the admissions that have been made and what documents show. These justify the conclusion that Ms Hart was an expert blagger who had previously done and still did other legitimate work. There are many opaque invoices that do not clearly identify the nature of the work done, but there are also CRs and invoices from 1997 to 2002 that show very clearly that Ms Hart was involved in blagging medical information. That is very clear from the description in the CR or invoice and the substantial fees charged. That conclusion also fits the clear evidence in the case of Ms Wightman about the attempt by Ms Hart to blag her confidential medical information in 1998 and again in 2000.

210. Some examples of invoices are:
    a. Sunday Mirror (Matthew Bell) 25.5.98 - Nicole Smith "doc searches" and "Full med"
    b. Sunday Mirror (Dennis Rice) 22.12.98 - Ruby Wax "Full M"
    c. The People (Ian Edmondson/James Weatherup) 21.6.01 - Nigella Lawson "Doc searches H-searches" and 31.7.01 "Nigella Lawson cancer enqs"
    d. The People (Ian Edmondson/James Weatherup) 17.10.01 "Tom Cruise Hotel Phone bill pull"
    e. The People (Ian Edmondson) 6.4.02 - Garry Flitcroft "hotel locate"

211. I conclude that it is likely that a significant majority of the instructions given to Warner were in connection with UIG, often blagging of highly sensitive information. But there is no evidence that Ms Hart herself hacked phones.

Part III: 'Generic-only' PIs

AJK Research (Andy Kyle) (1999-2011)

1. The allegations against Mr Kyle are in the **search agent** category. Mr Kyle is not involved in relation to any article claims or UIG Episodes alleged by the 4 individual claimants except for 3 Episodes in Ms Sanderson's claim (Episodes 3, 5 and 14). None of the invoices in those Episodes were obviously UIG.

2. The basis of the allegations against Mr Kyle in the generic claim are therefore unspecific and unclear, so far as the pleaded case is concerned.

3. The evidence against Mr Kyle is limited. Mr Kyle is described as freelance on Mr Whittamore's contact list and it is clear from a letter dated 17 December

2002 that Mr Kyle made use of Mr Whittamore's services on one occasion, but that is not the allegation that is pleaded in relation to him. The claimants rely on the email from Mr Clothier dated 11 November 2007 to the effect that Mr Kyle, C&L and Searchline were more reliable than in house methods "because they use credit traces, which we can't for legal reasons". There is also an email from Mr Saville dated 18 April 2007 suggesting that Andy Kyle could also be used with Jackie Scott.

4. Mr Kyle was clearly used by MGN journalists to do searches, but there is no direct evidence that these were unlawful; on the contrary, there is evidence that some of them seemed to be innocuous birth certificate searches. The majority of the searches shown on invoices are said to be BMD searches, and this is backed up by emails in 2004 to Grant Hodgson and Andy Lines referring to work on family trees and finding birth certificates. Although the claimants suggest that on occasions BMD was used euphemistically, there is no direct evidence of this, which seems only to assume what they seek to prove.

5. There is evidence that a search result from Mr Kyle was then used for another search by ELI, but that does not indicate that the first Kyle search was necessarily unlawful, and it is accepted that similar work done by the Teviots was not unlawful. There is no evidence of Mr Kyle using credit reference searches improperly other than Mr Clothier's view in one email that he did. Many other emails indicate that Mr Kyle was doing searches for bankruptcy, company directors and land registry, as well as other open sources.

6. In November 2011, Mr Duffy asked Mr Kyle to provide a description of the services that he provided and how he did that work. As with the similar colourable letter provided by Mr Scott of C&L, I do not feel able to rely on what the letter describes. As a result of the letter from Mr Kyle, when Mr Duffy gave an instruction to all MGN employees on 22 December 2011 about "agencies" that could be used, AJK Research was on the list.

7. My conclusion in relation to AJK Research is that there is no sufficient evidence for a conclusion that Mr Kyle did unlawful searches. There is no admission by Mr Kyle about use of credit reference searches, as there was in the case of Mr Scott of C&L, nor are there emails, as there were in that case, that are consistent only with carrying out credit reference searches. One email from Mr Clothier is an insufficient basis to make a finding of that nature against Mr Kyle.

Capitol Inc. (Ken Cummins) (1999-2011)

8. Capitol, a US agency, is alleged to have been a **hacker, blagger and/or information supplier**. The alleged period of activity is 2001-2009. 87 CRs and 96 invoices were disclosed.

9. The claimants allege that Mr Cummons made unlawful use of databases to which he had access and provided phone numbers, itemised phone records, mobile phone 'conversions' and social security numbers.

10. In support of their case, the claimants have given 4 examples in invoice narrative referring to telephone number research and tracing of social security number, both of which were invoiced to Mr Harwood.

11. Mr Johnson said that a confidential source told him that UK media clients used Mr Cummins as well as Mr Hanks, and did much work for them, and that Mr Hanks had confirmed that to him. Mr Hanks said that Mr Cummins would call him and they would talk about particular jobs, and if he couldn't do the job he could call Mr Hanks. His "speciality" was politicians and he did spoofing. Mr Harwood said that he did legitimate work with Mr Cummins.

12. On the basis of the limited evidence before me it appears likely that some of the work that Mr Cummins offered would be unlawful in the UK and, according to Mr Hanks, was unlawful in the US, but given the foreign law issue, the claimants have not proved their case that MGN acted unlawfully in instructing Mr Cummins.

Coleman Rayner (Mark Coleman and Jeff Rayner) (2007-2011)

13. Coleman and Rayner set up together in Los Angeles in 2009 and are alleged to have been a **photographic agency** during the period 2009-2011. There were 305 CRs disclosed relating to that period.

14. The allegation is that on certain occasions they used UIG, or used PIs who used UIG, to obtain information for articles and photographs.

15. The evidence was from Mr Hanks, and hearsay evidence of Mr Johnson based on what Mr Hanks told him, that like Big Apple News, Coleman Rayner used to instruct him to provide information to UK newspaper clients, including MGN. Mr Hanks was unable to remember any particular instructions that came from Mr Coleman. Mr Harwood and Ms Kerr both said that they used Mr Coleman and that they were not aware of any issue of unlawful activities.

16. The claimants point to two emails from Mr Coleman to journalists at the Mirror and the Sunday Mirror, one forwarding a report on one celebrity and pointing out that SSI numbers were included and the other referring to Mr Hanks "pulling up" ex-directory numbers for a famous LA actress.

17. There were 296 CRs to the firm Coleman Raynor and many more to the two partners individually before 2009. Many are for photographs and many are unsuspicious.

18. In my judgment, even apart from the foreign law issue, there is insufficient evidence to find that MGN instructed Coleman Rayner to carry out what would be UIG in this country or knowingly used the fruits of unlawful activity.

Cruise Pictures (Robin Kennedy and Lee Brooks) (1991=2011)

19. The allegation against Cruise Pictures is that it was both a **hacker, blagger and/or information supplier** and a **photographic agency**.

20. Cruise was the subject of considerable focus during disclosure applications made by the claimants leading towards this trial, but it played little if any part in the evidence heard at trial. It has no relevance to the claimant-specific claims of the four claimants.

21. In the event, whether designedly or by oversight, the claimants made no written (or oral) submissions about Cruise Pictures. MGN dealt with Cruise very briefly as part of its arguments on Big Pictures and Fraser Woodward, other freelance photography agencies. It submitted that the claimants had not proved their case and that the company and its proprietors were overseas in any event.

22. There is no evidence to prove the allegations made against Cruise Pictures and I dismiss that aspect of the generic claim.

Dennis Rice (2006-2011)

23. The allegation against Dennis Rice is that he was conducting UIG as a **freelancer/stringer** from 2008-2011.

24. Apart from the fact that Mr Rice made a witness statement but then did not give evidence, it is hard to see what relevance he has to this claim, other than when he was a reporter at the Sunday Mirror from 1996-97 and then, after a stint at the News of the World, the deputy news editor at the Sunday Mirror from 1998-99. In those roles, he frequently commissioned Mr Stafford, TDI and Ms Christine Hart, and Code 10 (UK).

25. After 1999, the only evidence against Mr Rice is that his phone number was on a contact list of Mr Whittamore dating from around 2007.

26. The claimants have not provided any evidence that Mr Rice was conducting UIG from 2008 to 2011, as they allege.

27. The allegation in respect of him as a freelancer therefore fails.

Franco Rey

28. As with Ms Paul, Mr Rey (who was based in Spain) is alleged to have been a **freelancer/stringer** conducting UIG, but was not pursued at the trial or in closing submissions.

29. Ms Kerr vouched for Mr Rey's journalistic integrity.

30. The claimants have failed to make out even an arguable case.

Globalnet News (Steve Grayson) (1999-2011)

31. The allegation against Globalnet News is that it was a **photographic agency** acting between 1997 and 2006 (though in its draft findings document, the

claimants sought a finding for the period 1999-2011). Globalnet News was a PI that MGN disclosed to the Leveson Inquiry (in redacted form) but not in the *Gulati* trial.

32. There was no evidence relating to Globalnet News other than documentary evidence, some of which related to the Duke of Sussex's case but appeared to be only invoices for photographs, albeit 14 of the invoices related to a short period of days so it was a particularly intense attempt to investigate something about the Duke in 2007.

33. The claimants allege that some of Globalnet's activities when commissioned by MGN involved UIG. The allegations are that it was involved in covert photography and surveillance and use of UIG such as tracking of targets. A number of invoices relate to the hire of equipment and an email dated 27.11.07 (to Mr Harwood) refers to hiring a GPS tracker from Mr Grayson, so there appears to be a surveillance element to the work that Mr Grayson did or facilitated. There are also invoices referring to audio or video bags, likely to be for covert recording.

34. There is a suspicious email from Mr Thomas to Mr Grayson on 2.5.06 in which he supplied addresses of 3 Coronation Street stars (not Ms Sanderson) and the date of birth and landline number of one of them. In an email dated 30.11.09, Mr Grayson assures Mr Harwood of his ability to obtain a sound recording in a legal way, to add to photographs already obtained, but in the context of obtaining a big story about a Conservative politician, where no doubt particular care was taken.

35. In my judgment, it is likely that on occasions Mr Grayson used unlawful methods to find and identify a subject, and it is likely that MGN knew that he operated in this way, but it is not possible to find that the majority of GlobalNet's activities were UIG.

Hogan International (Noel Hogan) (1999-2011)

36. Hogan is alleged to have been a **search agent**. Oddly, for one of the original PIs whose redacted payment records were disclosed to the Leveson Inquiry and in *Gulati*, it plays no part at all in the specific facts in issue in this trial. Neither did the claimants submit any closing written submissions or advert to it orally.

37. MGN disclosed 67 invoices and 10 CRs evidencing payments by the Daily Mirror between 2001 and 2010. These purport to attach a report detailing the work that was done for each instruction, but the reports were not scanned onto MGN's IT system. There are a few covering letters which suggest services that may well be lawful. The claimants have advanced no basis for concluding that Mr Hogan was using the full rather than the edited electoral roll for his searches.

38. The claimants have not proved their case in relation to Hogan.

Ian Sparks (1991-2011)

39. The allegation against Mr Sparks is that he was a **freelancer/stringer** and as such was involved in UIG between 1996 and 2011. It is common ground that Mr Sparks was based in France. 1,350 CRs were disclosed by MGN.

40. MGN does not admit that Mr Sparks used unlawful methods, save that it admits that he was instructed to carry out a blag in relation to a telephone number in August 2002, and that Mr Sparks conducted a blag call in 2006 and proposed a further blag in 2007, but it denies that he was within the court's jurisdiction at the time that the claimants allege that he acted unlawfully.

41. The claimants have identified 5 invoices in which the work is described as a "special". They also rely on 3 emails disclosed: in the first two, Mr Sparks himself refers to making blag calls, and in the third, passing between Mr Stretch and Mr Martin at the Sunday Mirror, it is stated that "sparks has blagged it but failed to find a proper address". These appear to be the instances that MGN admits.

42. Mr Harwood nevertheless suggested that Mr Sparks was the first port of call when calls in France were needed quickly but he had no reason to believe that he used UIG.

43. It is clear on the evidence that on a few occasions Mr Sparks was involved in blagging activity and that in one of these he was instructed to do so. But there is no case otherwise advanced by the claimants on the extent to which MGN knowingly used UIG conducted by Mr Sparks or on whether what he did in France was unlawful.

44. The claim in relation to him is therefore dismissed.

Jen Paul (Showbiz News)

45. This PI is alleged to have been a **freelancer/stringer**, but was not mentioned in the trial or the subject of any written closing submissions.

46. The claimants have failed to make out even an arguable case.

JS3 Journalist Support Services Scotland (Tyler Williams, Tyler Morgan, David Woodward, Susan-Lee Woodward) (1999-2006)

47. This group featured not at all in evidence at the trial and was only mentioned once by the claimants in their opening. They are alleged to be **search agents** and to have acted unlawfully over the period 1996-2006, though the draft findings document only covered the *Gulati* period. I am not even clear what the relationship between the individuals or bodies is, but note that in written closing submissions for the first time the claimants advanced a case that Mr Woodward founded Tyler Williams (therefore presumably a firm) in 1996 and JS3 in 2000.

48. There were 978 invoices disclosed for the group and 80 emails. Mr Woodward is said to be the key player in the group and to have provided information that enabled other PIs to crack mobile telephone PINs or blag confidential

information. There are examples of JS3 invoices being followed on the same day or very shortly afterwards by TDI/ELI invoices for the same journalist and subject.

49. It is clear from various invoices that Mr Woodward was adept at finding the subscriber details of a supposedly untraceable email account, and some invoices refer explicitly to doing credit checks for various addresses of a subject. There was however no evidence about accessing email account data. MGN has pointed to many invoices having a description of the work done that is completely innocuous.

50. Much of the work appears to have been done in Scotland.

51. I am unable to conclude on the evidence before me that there was anything other than possibly unlawful credit reference searches done by JS3 or Tyler Williams.

Legal Resource and Intelligence Research ("LRI") (John Boyall) (1999-2006)

52. LRI is alleged to have acted as a **hacker, blagger and/or information provider** during the period 2000 to 2002. MGN disclosed between 45 and 59 invoices (the number is not agreed) from LRI and two from a possibly connected company, showing that it was commissioned by Mr Harwood, Mr Duffy and Mr Bob Roberts from the Mirror, among others, but not by the Sunday Mirror or The People.

53. Mr Boyall is the proprietor of LRI and was convicted of Data Protection Act offences at the same time as Steven Whittamore, following Operation Glade. A police officer who made a witness statement for the Leveson Inquiry said that a person was conducting illegal PNC or CRO checks on behalf of Mr Boyall. Mr Boyall's number was on Mr Whittamore's contact list.

54. Glenn Mulcaire and Andy Gadd are both alleged to have worked for LRI between 1998 and 2001.

55. LRI is alleged by the claimants to have blagged telecoms data and accessed police databases unlawfully.

56. There was however no evidence of this activity, save for what was said in a witness statement to the Leveson Inquiry.

57. The claimants have not proved their case in relation to LRI.

Mark Hinchcliffe (MSH Security Ltd) (1999-2006)

58. The allegation against Mark Hinchcliffe is that he was a **hacker, blagger and/or information provider**. In closing submissions, the claimants submitted that the dates within which Mr Hinchliffe is alleged to have so acted are 2001-2008. He is alleged to have blagged - principally for Mr Thomas at the Sunday Mirror and

then at The People - itemised phone bills, phone numbers and mobile 'conversions'.

59. Most of the schedules attached to the invoices have not been retained by MGN, but a few that do survive have terminology such as "list" (which the claimants say is itemised billing), "cross check text", "locate mobile" and "RT" (which the claimants suggest is reversing a telephone number, i.e. identifying the subscriber).

60. Mr Evans addressed the activities of Mr Hinchcliffe in his witness statement and said that he carried out UIG and that he worked with him occasionally, including on helping to blag a well-known TV personality. He said that Ms Weaver told him that Mr Hinchcliffe was the "go to" blagger for Mr Thomas, and that he should stop using him because he might leak tips, stories or information to Mr Thomas.

61. Emails passing between Mr Thomas, Mr Buckley, Mr Edmonson and Mr Hinchcliffe make it clear that the latter was involved in UIG. One email from him to Mr Thomas dated 5.3.02, under the subject "Public Searches" states:

"When someone goes in on an account after someone has tried unsuccessfully earlier, this is very risky and will stand out, with come backs to all involved. Please be aware and careful on this issue …"

62. It is impossible to be certain what kind of public search Mr Hinchcliffe was warning Mr Thomas about, but it cannot have been a lawful search of a public register.

63. There was no focus on the dates of MSH's activities in the claimants' case, but there are emails that show that Mr Hinchcliffe was still acting and submitting large invoices in December 2005. My conclusion is that he was active, during the period in question, in the years 2001 to 2006, and was conducting a significant quantity of UIG for the Sunday Mirror and The People.

Mark Thomas (TM Media) (2006-2011)

64. Mr Thomas is alleged to have been a **freelancer/stringer**, after his career at the News of the World, The Mirror, the Sunday Mirror and The People.

65. While at MGN, Mr Thomas made much use of Southern Investigations, Rachel Barry, MSH Security and Tillen and Dove. He has already been found to have been a phone hacker.

66. The claimants case is no more that a (justified) assertion that Mr Thomas was in the thick of VMI and UIG while at MGN and so, presumably, did not "change his spots" when he went freelance.

67. That is an invitation to the court to speculate, which I am unwilling to do. There is no evidence to support a case against TM Media after 2007, however plausible it may be that Mr Thomas did not change his approach.

Nick Pisa (1999-2011)

68. Mr Pisa is alleged to have been a **freelancer/stringer** in the years 2001-2011. He is alleged to have been a reporter on the Sunday Mirror between 1995 and 2001, though MGN only admits between "at least 1998 and 2000". During that time he was a frequent user of the services of Mr Stafford, Ms Hart and TDI.

69. There are 1,992 CRs and 1 invoice for Mr Pisa but no evidence from the claimants was directed to his activities. Mr Harwood said that he recalled working with Mr Pisa who was a good, solid journalist and Ms Kerr also said that she used him in Italy.

70. The claimants rely on 5 invoices as examples of UIG by Mr Pisa, because they are substantial sums paid for a "Special" in relation to a well-known celebrity, 4 of them authorised by Mr Harwood. Other than them, there is no evidence relied on apart from what Mr Pisa did while employed by MGN.

71. The claimants do not tackle the issue arising from Mr Pisa's residence in Italy.

72. I am therefore unable to conclude that what Mr Pisa was doing was unlawful in Italy or that Mr Pisa was acting otherwise than as an independent person. The claimants have not proved their case as regards Mr Pisa's activities in the period 2001-2011.

Nigel Bowden (1991-2006)

73. The allegation against Mr Bowden, who died in 2004, is that he was a **freelancer/stringer** and the period of his alleged activities is stated to be 1996-2004.

74. The case against Mr Bowden (who is not involved in any of the specific allegations in the GenPoC or the Claimant-specific claims) is little more than reliance on his nickname "Slippery of the Costas", some unreliable written evidence of Mr Burrows in an interlocutory witness statement (he was not called to give evidence), a bald assertion by Mr Johnson that he was a "blagger" and a number of CR payments that are described as "specials" and authorised by some of those close to phone hacking.

75. Mr Bowden was also in Spain at all relevant times. There are 551 CRs for the MGN titles during the 8-years period that he worked in Spain, so he was obviously considered a valuable asset, but there is no sufficient evidence on the basis of which to conclude that he was carrying on UIG at the direction of MGN or that what he did in Spain was unlawful.

Paul Hardaker

76. The allegation against Mr Hardaker is that he was a **search agent** between 1999 and 2011.

77. His only relevance to the specific matters in issue in this trial is, first, a CR in 2011 relating to Episode 57 in the Duke of Sussex's case, but that appeared to be directed at Mike Tindall (or possibly his wife) rather than the Duke; and second, two CRs, also from 2011, evidencing payments to Mr Hardaker for background checks on two High Court Judges. Even with those searches, there is no evidence that the methods used were unlawful.

78. The payment records disclosed do not make out a clear case of UIG. The claimants had no evidence and made no submissions about Mr Hardaker in closing, and have failed to prove their case.

Paul Samrai (Topstories Ltd) (1999-2011)

79. Although the claimants pleaded a case that Mr Samrai was a **freelancer/stringer** , and Mr Johnson gave some evidence about him, the case was not pursued by the claimants at trial.

80. Mr Johnson referred to Mr Samrai in his book, *Hack*, and said in evidence that he was a regular supplier of tips for the Sunday Mirror between 1997 and 2005. He said that Mr Samrai had been involved in a case involving the Police National Computer, but that was when he was working for Kenrick Associates; in cross-examination, Mr Johnson accepted that Mr Samrai did conduct legitimate journalistic practices.

81. There was in fact on 1 CR and no email disclosed by MGN, so it appears that Mr Samrai was generally not used by MGN on his own account.

82. The claimants have failed to prove their case in relation to Mr Samrai.

Sean O'Brien (Austin O'Brien Communications Ltd) (1999-2011)

83. The allegation against Mr O'Brien and his company is that they were **freelancers/stringers** operating during the period 2005-2011. He was not mentioned in the trial at any stage.

84. Mr O'Brien was the showbiz editor at The People from 1999 or 2000 to 2005, when he went freelance to become more of a publicist, and acted for some famous people, such as Jade Goody. He was bylined on 4 admitted articles in *Gulati* and further 9 admitted articles in the MNHL

85. The claimants say that he was a prolific user of Avalon and TDI/ELI while with MGN and infer that he continued to use UIG after his departure, in order to sell stories to the MGN newspapers.

86. Again, without evidence to support the allegation that he continued to act in the same way after 2005, I am not willing to speculate that he did.

Simon Lloyd (1999-2006)

87. Mr Lloyd is alleged to be the second **bin-spinner**, not as well-known as Benji Pell, it seems, but 99 CRs covering the period 1999-2006 were disclosed. None of them refers expressly to bin-spinning. Payment pursuant to the CRs was authorised on occasions by Mark Thomas, Nick Buckley, Tina Weaver, Neil Wallis, Ben Proctor, David Jeffs, James Weatherup, Ian Edmondson, James Scott and Rachel Bletchly. Even quite small payments that would normally be authorised by more junior employees were authorised by these senior journalists and executives.

88. Mr Johnson gave evidence that he was told by a confidential source that Mr Lloyd worked like Mr Pell. The claimants submit that Mr Johnson's sources have been proved correct on every other occasions and so I should accept this anonymous hearsay evidence.

89. Mr Lloyd has 4 invoices that relate to the Duke of Sussex's claim but I have only been satisfied that one of them is probably for UIG, though not necessarily bin-spinning. It is difficult to see how Mr Lloyd might have had the opportunity to access Prince William's and the Duke's bins and that was not explained in closing submissions.

90. MGN says that Mr Johnson's assertion is unsupported by documentary evidence. But that is unsurprising, if it comes from a confidential source. In the event, I have found nothing more than a single payment that is suspicious and my findings cannot go beyond that, on the evidence that was adduced. Without some evidence to back up Mr Johnson's hearsay evidence, I do not reach a conclusion based on that alone.

91. There is therefore no evidence that Mr Lloyd was involved in UIG in more than a single case.

Splash News (1991-2011)

92. The allegation against Splash News is that it was a **photographic agency** between 1995 and 2011. About 12,000 CRs were disclosed. It is a large news and photographic agency based in California but with offices overseas (though no evidence was given about where).

93. The claimants allege that "on certain occasions" Splash used PIs who used UIG to obtain information for articles and photographs. Mr Hanks said that Kevin Smith, the owner, used to hire him to provide UIG for their media clients. As Splash said to Mr Jeffs in an email dated 10.4.06, "we have private detectives etc who can dig a little deeper if you want to spend the money". An email to Mr Buckley dated 10.8.05 said that Splash had commissioned a reverse-address search on a phone number so that they could attend at the billing address, and another reported that "credit details suggest that she is also paying for a Mercedes Benz on hire purchase". There are emails passing PI reports to Mr Buckley that include high level private information.

94. Mr Harwood had used Splash News and said that it was set up by two ex-Fleet Street journalists, and that it operated in the same way as Big Apple News. Ms

Kerr attested that she assumed that Splash did their investigations in the way that she would have done, and so she asked no questions.

95. Splash played a part in some of the Duke of Sussex UIG Episodes but in none of these was UIG clear (even ignoring the foreign law issue).

96. The difficulty for the claimants is that they only allege that UIG was conducted "on certain occasions". A lot of the Splash CRs are clearly for conventional picture agency work. It is certainly clear from the documentary evidence that Splash on occasions did things that would be unlawful in the UK and that MGN journalists knew what they were doing, but there is no case proved that MGN instructed Splash to act unlawfully in the US or elsewhere.

Trackers UK (Andy Gadd)

97. The allegation against Trackers is that it was a **hacker, blagger and/or information supplier** . It was one of the PIs disclosed in *Gulati* and in the light of the admissions made in that case MGN admits that an unquantifiable but substantial number of instructions represent UIG (though bugging and call interception are denied).

98. There were only 27 invoices disclosed, all in relation to The People.

99. In the event, the claimants made no submissions in support of their case that all or most of the Trackers instructions were in relation to UIG.

100. The claimants have not proved any wrongdoing involving Trackers beyond the admission made by MGN, which must be taken as an admission in relation to less than half of the total instructions.

Duke of Sussex and others v MGN Ltd

UIG EPISODES SCHEDULE

I. DUKE OF SUSSEX

Episode 1

1. Alleged surveillance of Princess Diana by the Mirror between 1995 and 1997. 3 payment records on the SAFS system are relied on: payments to Severnside in relation to Christopher Whalley dated 18.12.95, Hasnat Khan dated 25.5.96 and Steve Davies dated 23.9.96. No explanation is provided as to why these relate in any way to private information of the Duke.

2. Mr Sherborne said in opening that Steve Davies was a driver of the late Princess at the time of the DoS Article 1, when Princess Diana visited the Duke at school, but there was no evidence to that effect, or in relation to the other subjects of the Severnside work.

Episode 2

3. Alleged UIG/VMI of Princess Diana by the Sunday Mirror between 1995 and 1997 and two payments, one to Media Investigations and one to Christine Hart, are said to relate to her confidantes.

4. Despite the dubious practices of the PIs involved, there is no evidence to support any connection to Princess Diana let alone the Duke's private information.

Episode 3

5. Alleged UIG against the Duke by The People in 1996. It is a CR for payment of £1,000 to Fraser Woodward in respect of a publication on 6 April 1996, described as a "Prince Harry special", originating from The People Pics Features department. Fraser Woodward were only involved in UIG on some occasions and there is no proof that this was one. Presumably there was a photograph of the 11-year old Prince Harry published but why this should be considered to be UIG is not explained. This is no more than an attempt to presume UIG based on allegations against a picture agency. Not proved.

Episode 4

6. Alleged UIG/VMI of Prince Charles's household by the Sunday Mirror in 1997, and is a SAFS record of a payment of £90 for "Bolland Enquiry" to Media Investigations. Whatever may have been happening here, there is no evidence to link it with the Duke's private information.

Episode 5

7. Alleged UIG against the Duke by the Daily Mirror in 1997. There are 3 CRs for payments to Big Pictures, a picture agency alleged to have participated in UIG to obtain the opportunity to take photographs. The first is dated 18.7.97 for "prince harry sneeks picture 3 pie", the second and third dated 21.11.97 for "Harry and Beatrice anniversary" and "harry and Beatrice add pay".

8. The obvious inference is that these were payments for photographs, but how they involved misuse of the Duke's private information (aged 12/13) is not explained by the claimants. It is not sufficient on my findings to say that they involved Big Pictures. MGN however identifies the publication as an article about Queen Elizabeth II's 50th wedding anniversary, which is recorded as including a photograph of the 13-year old Duke laughing on the occasion.

9. This allegation is therefore not made out.

Episode 6

10. Alleged UIG against the Duke's "close circle" by the Mirror in 1997. There is one CR to Gerard Couzens dated 2.2.97 described as "Earl spencer assist" authorised by Eugene Duffy. However suspicious this may appear, there is no case established for misuse of the Duke's private information.

Episode 7

11. Alleged UIG/VMI of the Duke's "close circle" by the Mirror in 1998. There is one invoice showing payment to C&L for a £20 Elect Roll search of Alexandra Legge-Bourke at an address in London SW11. She was the Duke's nanny and the search (which would not itself have divulged any of the Duke's private information) may have been a preliminary to an attempt to extract more information about her. But this does not prove any UIG of the Duke's private information, much less any VMI of messages left by him for Ms Legge-Bourke.

12. This is purely speculative.

Episode 8

13. Alleged UIG/VMI of the Duke's "close circle" by the People in 1999. There is one invoice for £50 from Census Searches dated 30.1.99 "Re Earl Spencer". Census is accepted by the claimants not to have carried out UIG itself. There is no connected invoice.

Episode 9

14. Alleged UIG/VMI of the Duke's "close circle" by the Sunday Mirror in 2000. There are 3 C&L invoices for Elect Roll searches on 21.1.00 for Mr Legge-Bourke at different addresses and Mr (and Mrs) Michael Fawcett, a senior Palace employee. The Legge-Bourke searches were commissioned by Mr Stretch. It is difficult to imagine legitimate reasons for these searches, but nevertheless there is no evidence that any private information of the Duke was misused. He cannot bring a claim for UIG, much less VMI, relating to him solely on the basis of what may be a preliminary search for data on those who were close to him.

15. What followed the preliminary search is only speculation, as the claimants do not attempt to make out a case in this regard.

16. As part of the same episode there is then one CR for payment of £300 to Census Searches for "Prince William searches". As Census were accepted to be lawful genealogists, this work for the Mirror was not in itself unlawful and what if anything it led to is unknown. It does not, e.g., evidence actual phone hacking of Prince William's phone.

Episode 10

17. Alleged UIG of the Duke's "close circle" by the Daily Mirror in 2001. There are two invoices: one from Searchline, which was a nominal charge for failing to locate the current address of Peter Phillips and Elizabeth Lorio, and the second a (lawful) Census invoice for £70 for work on Catherine Middleton.

18. Neither of these remotely establishes UIG of the Duke's private information.

Episode 11

19. Alleged UIG of the Duke by The People in 2001. One CR for payment of £200 to Nigel Bowden ('Slippery of the Costas') on 22.7.01 for "Prince Harry/Nigel Martyn asst". The payment was authorised by Ian Edmondson.

20. The combination of Bowden and Edmondson is suspicious but there is no indication of what this work is or relates to – not even an explanation of Nigel Martyn, which is indicative of the lack of seriousness with which the claimants' legal team took these Episode allegations, despite the burden that they placed on others to deal with them. It seems that they expect to ride home on the back of findings about the PIs concerned, which in many cases were not supported by evidence.

21. Another matter that the claimants did not address in relation to any of the overseas stringers and PIs is how, in the absence of evidence of local law, I might safely conclude that things done overseas were unlawful or illegal.

Episode 12

22. Alleged UIG against the Duke by the Sunday Mirror in 2001. Two CRs in August 2001 by Nigel Bowden for £75 for "Harry in Sotogrande" and by Nick Pisa for £50 for "Prince Harry exam contact". Both were authorised by Mark Thomas, so that the combination of those involved is again suspicious, however there is no attempt to explain whether these are connected, and in what way the Duke's private information was misused. Nor, as above, is the overseas dimension addressed.

Episode 13

23. Alleged UIG/VMI of Frances Shand Kydd by the Sunday Mirror in 2001. Two CRs in December 2001 for Rachel Barry authorised by Mark Thomas, described as Shand-Kydd assist (£80) and Shand-Kydd and Katie checks (£200). Given those involved, I am confident that UIG was used, however there is no necessary or even probable connection with the Duke's private information. It is just speculation that whatever it was that Ms Barry blagged or obtained on those occasions contained private information of the Duke.

Episode 14

24. Alleged UIG/VMI of the Duke's "close circle" by the Mirror in 2002. These are six unconnected invoices of 4 different PIs relating to 5 different associates of the Duke. C&L invoices for Elect Roll searches for Natalie Pinkham, Guy Pelly and Michael and Debbie Fawcett are obviously likely only to have elicited their private data. The fact that that data may well then have been used to go on and elicit private information extending to others', possibly the Duke's, is irrelevant: it is only the later UIG that is actionable by the Duke, if proved.

25. A Census Searches search against 'Middleton' falls into the same category, particularly as what Census did is agreed to be lawful.

26. An invoice dated 28.8.02 for enquiries by TDI is however likely to be unlawful. However, the enquiries are about F Shand-Kydd, so it is speculation that this divulged private information of the Duke.

27. An invoice for a publication date of 19.9.02 for £200 from London Media Press is described as for "Finding Guy Pelly/AP". London Media Press did carry out substantial amounts of UIG but it was not a majority of its work. The 'AP' is not explained. There is no article of that date of which the Duke complains, only one dated 16 September 2002, "No Eton trifles for Harry, 18", which described him going by car from Highgrove to Eton on his birthday. It is therefore improbable that this work itself misused the Duke's private information, though doubtless the pursuit of Mr Pelly was with that possibility in mind. The next article written by the Mirror of which the Duke complains related to the death of a friend in December 2002, which is unconnected with this invoice.

Episode 15

28. Alleged UIG/VMI of the Duke's "close circle" by The People in 2002. These are 6 separate invoices relating to 7 different associates of the Duke spread over a 12-month period. An invoice from TDI dated 15.1.02 for £85 for enquiries into "Pettifer/Bourke", said to be the Duke's nanny, Tiggy Legge-Bourke. This was shortly after the media frenzy about the Duke's drug taking at the Rattlebone Inn. In my judgment, this was likely to have elicited call data or something of that kind, to see if the Duke had been in contact with his nanny. I consider it probable that this was UIG that involved the Duke's private information.

29. Payment of £50 to Assured Legal Investigations on 28.1.02 directed against Guy Pelly, commissioned by Ian Edmondson of The People. This was one of Gavin Burrows' companies, who openly traded as purveyors of UIG, and worse. It may have been part of the follow up to the drugs storyline, or work leading to the article "Harry Snubs the Queen's Jubilee to go to World Cup", which was published on 27.1.02. But the information unlawfully garnered by Assured Legal would very likely have been in relation to Mr Pelly himself, for Mr Edmondson then to exploit further. It is only speculation that Assured's UIG itself revealed the Duke's private information.

30. A C&L invoice dated 8.4.02 for Elect Roll for Catherine Middleton is only likely to have elicited her private information about her for further use by Mr Wright. Similarly, C&L invoices for Elect Rolls for Ms Pinkham in April 2002 and the Middleton family in December 2002. These were shortly before an article entitled "Plot to rob the DNA of Harry" (byline Dean Rousewell) published on 15.12.02, so it is quite likely that these searches were "targeted" at the Duke – but that does not mean that this UIG revealed his private information.

Episode 16

31. Alleged UIG directed at the Duke by the Sunday Mirror in 2002. These are 6 TDI invoices for "urgent enquiries" commissioned by Mr Hamilton and Mr Buckley in relation to Mr Pelly, his family and others associated with the Rattlebone Inn, in the immediate aftermath of the articles about drug taking there. The fees paid are substantial (aggregate £1,505) and I consider that at this level the information obtained is likely to have included some of the Duke's private information.

32. There is then a further, standalone CR for £1,000 in March 2002 for "harry exclusive",, payable to London Media Press ("LMP") by the Sunday Mirror. The principals of LMP were Rick Hewett and Andy Buckwell, journalists at the Sunday Mirror until 2002 when they set up as "freelance". They carried out some UIG and were commissioned on this occasion by Mark Thomas. I consider that this is very likely to have been UIG or VMI directed at the Duke.

Episode 17

33. Alleged UIG of the Duke's "close circle" by the Sunday Mirror in 2002. These are 6 invoices spread over 7 months relating to Michael Fawcett, Tiggy Legge-Bourke, Earl Spencer and Zara Phillips. A C&L invoice for an Elect Roll for Mr Fawcett leads to TDI extensive enquiries, both commissioned by Mr Weatherup and Mr Buckley. In my judgment this is likely to have led to intrusive data collection and some of this data might have been that of the Duke, but it is not possible to conclude that it probably was. It is not proximate and obviously connected to any article complained about.

34. A TDI enquiry in relation to Mr Pelly commissioned by Mr Stretch and Mr Buckley for £165 is likely to have been UIG and ultimately targeted at the Duke, but it is unknown whether any private information of the Duke was obtained. It is not possible to conclude that ELI invoices in relation to Earl Spencer and Ms Phillips were targeted at him, rather than related to them or another member of the Royal Family.

35. The C&L invoice in relation to Ms Legge-Bourke will have been with a view to finding out something about the Duke, but it is only an Elect Roll search for £20 so will not have elicited his private information.

Episode 18

36. Alleged UIG of the Duke by the Daily Mirror in 2002. These invoices and CRs are to Census (lawful) and Big Pictures, for photographs of the Duke smoking at Beaufort (£1,500 plus top up of £250). These is no basis on which to conclude that these photographs were the result of UIG of private information. No case is made out.

Episode 19

37. Alleged UIG/VMI of the Duke by The People in 2002: one CR for IIG Europe Ltd for £5,000 authorised by Neil Wallis and described as a "Prince Harry Special". IIG Europe is Mr Burrows' company. In view of the price and the identity of the PI, this is highly likely to be invasive UIG of one kind or another.

Episode 20

38. UIG/VMI of the Duke's "close circle" by The People in 2003. This is one invoice for Trackers UK for £500 dated 13.1.03 commissioned by Ian Edmondson, directed against Mr Fawcett. For the same reason as above, it is not possible to conclude that this is probably the obtaining of the Duke's private information . The Duke did not mention Mr Fawcett, and Mr Sherborne did not explain how this interest in Mr Fawcett in the invoices translates into obtaining the Duke's private information.

Episode 21

39. Alleged UIG/VMI of the Duke by The People in 2003. Two CRs for IIG Europe for "Prince Harry" (£1,000) and "MI6 Quiz Harry DNA rat" (£250, commissioned by James Scott). These are both in February 2003, but not proximate to any article complained of. Nevertheless, they are both likely to be UIG of the Duke's private information.

Episode 22

40. Alleged UIG/VMI of the Duke's close circle by the Sunday Mirror in 2003. These are 5 ELI invoices and 1 LMP CR relating to Mr Fawcett, with Mr Buckley, Mr Stretch and Ms Weaver prominently involved. However suspicious this combination is, it cannot on the balance of probabilities be linked to the Duke's rather than his father's or another member of the Royal Household's private information being obtained.

41. There are C&L Elect Roll searches in relation to Hugh Cutsem and William Cutsem, but these were not explained in evidence or in argument, though they are both named associates and close friends in the Duke's pleaded case.

Episode 23

42. Alleged UIG/VMI of the Duke's close circle by the Mirror in 2003. These are two C&L invoices for an Elect Roll search of Mr and Mrs Fawcett for Nathan Yates, and a DOB search on Mike Tindall for Lucy Turner. Again, there is nothing to link these preliminary searches done by C&L with UIG of the Duke's private information.

Episode 24

43. Alleged UIG of the Duke by The People in 2003. One CR for £293.75 for LMP, authorised by Mr Edmondson, for "Prince Harry and anti war Eton Mag". This relates to an article about which the Duke did not complain. It might be unlawful but there is no evidence that it involved the misuse of the Duke's private information.

Episode 25

44. Alleged UIG of the Duke by the Mirror in 2003. This episode comprises 4 CRs for Frank Thorne, an Australian stringer, which seem to relates to 3 different events in the Duke's life at the time during his gap year visit to Australia. The first is a club brawl that he saw, for which Mr Thorne was paid £50 and then another £100; a plea by Mr Burrell to the Duke on the radio, for £75, and a report on two days in the Queensland outback, for £400.

45. Although these pieces of work were clearly in relation to the Duke, there is nothing to suggest that UIG was involved or that any private information of the Duke was obtained. Articles resulted from the information that Mr Thorne provided but no complaint was made by the Duke about the articles.

Episode 26

46. Alleged UIG of the Duke by the Sunday Mirror in 2003. A further payment to Mr Thorne (£120) authorised by Ms Weaver, also relating to an article that was published but no complaint was made about it.

Episode 27

47. Alleged UIG of the Duke's close circle by the Sunday Mirror in 2004. There is one invoice for £45 from ELI relating to urgent enquiries on Mr Pelly, commissioned by Mr Saville on 11.2.04 and then a C&L Elect Roll search on Natalie Pinkham and an ELI invoice for urgent enquiries about her on the same day for £120. Finally, there is one invoice 9 months later for urgent enquiries carried out by ELI on M Tindall for £235 for Mr Stretch and Mr Buckley.

48. The invoices relating to Mr Pelly and Ms Pinkham can be assumed to be work done with a view to obtaining information relating to the Duke, but whether this objective was achieved or not is unclear. There can be no assumption that the enquiries on Mr Tindall were for the same purpose. The searches may have been

using unlawful methods but it cannot be assumed that private information belonging to the Duke was obtained. There are no proximate articles that give a clue about what if anything was obtained. The end of November 2004 was the time at which the news of the relationship with Chelsy Davy became public but Mr Tindall was not connected with that storyline.

Episode 28

49. Alleged UIG of the Duke's close circle by The People in 2004. These are invoices from PIs who did mostly unlawful work by individuals connected with phone hacking. An IIG Europe invoice for extensive enquiries about Prince William (£1,000) commissioned by Mr Edmonson is in my view very likely to have revealed private information of the Duke too. There is also a focus on Mark Dyer at the time, a Royal equerry and close friend of the Duke: a Warner invoice (£350) for "Mark Dyer story" commissioned by Mr Edmondson and an ELI invoices commissioned by Mr Jeffs. Another invoice from Avalon commissioned by Mr Edmondson is for "background enquiries made regarding Mark Dyer", and there are two ELI invoices at about the same time commissioned by Mr Proctor for trace and urgent enquiries relating to Ms Pinkham. Mr Simon Lloyd, an alleged 'bin spinner', is named in a CR in September 2004 for "Prince William Background", though the Duke does not rely on that CR as the basis for damages, just to show how much unlawful activity was going on at that time. A C&L invoice for a further Elect Roll on Catherine Middleton and her family would not have produced any private information of the Duke.

50. I find that the IIG Europe, Warner and ELI invoices are likely to have involved UIG and the Duke's private information being obtained to some extent.

Episode 29

51. Alleged UIG of the Duke by The People in 2004. It is unclear why these two invoices have been grouped as an episode as one is the admitted Avalon invoice in February 2004 relating to the Duke in Chinawhites and the other is a payment to TAG in November 2004 relating to "Harry Argentina asst".

52. Given my findings about the Duke in Argentina, I consider it likely that this invoice, commissioned by Mr Proctor, was for activities that were connected with the Duke's private information. But I cannot determine whether Mr Couzens acted contrary to Spanish law, or whether MGN instructed TAG to do something that would be unlawful under English law.

Episode 30

53. Alleged UIG of the Duke by the Sunday Mirror in 2004. The first CR is not on the schedule of payment records in the PoC and so is not pleaded. The second CR is for Jeff Rayner Photographer on 27.11.04 for "Prince Harry" and the third CR is for TAG, a "Harry Assist" (£200) authorised by Mr Buckley. These payment records are at the time of the Duke's holiday in Argentina and I consider that the

combination of Mr Buckley and Mr Couzens at that time and a price of £200 means that the assist is likely to be work that would be unlawful in England and Wales, but there is no evidence that it was unlawful in Spain or that TAG were instructed to act unlawfully. There is no evidence that the photographer was acting unlawfully.

Episode 31

54. Alleged UIG of the Duke's close circle by the Mirror in 2004. These are invoices in April 2004 for a C&L Elect Roll search and a Census search of Catherine Middleton, which would not have given up any private information of the Duke, and a CR for Mike Behr on 30.11.04 for "Cape Town Inquiry on Harry girl" for £150 which, as its title demonstrates, was in relation to the Duke's private information. There is no evidence of what was unlawful in South Africa, nor that James Mellor instructed Mr Behr to act unlawfully.

Episode 32

55. Alleged UIG of the Duke by the Mirror in 2004. These payment records are not an episode but a collection of payments made by the Mirror in 2004 relating to the Duke. The first five and the last are CRs for Big Pictures. It is not stated by the claimants whether these are payments for photographs or for information gathering, so I shall assume photographs.

56. The first is in relation to a 3am column about which the Duke has raised no complaint. The next two are similarly photographs for a front page trail and an inside story about which no substantive complaint has been made. The next two are wholly unexplained and it is not possible to work out to what they relate. The final Big Pictures CR is also unexplained and there is not reason to think that it is other than payment for a legitimate photograph on 22.12.04.

57. There are then two CRs for TAG in late November 2004, both in respect of "Prince Harry in Argentina". Both are likely to have been for work that would have been unlawful in England and Wales, but there is no evidence of unlawful activity in Spain.

58. The next is a CR for Nick Pisa dated 1.12.04 entitled "Harry flies home tip" for £350, commissioned by Mr Mellor on 30.11.04 and is therefore probably connected with the details or timing of the Duke's departure from Buenos Aires. MGN says that it relates to an article "Harry in 4-month army delay" (byline: Justine Smith) published by the Mirror on 1.12.04, which does refer to his return to England after 13 days rather than a scheduled 6-week stay. It is therefore evident that Mr Mellor had sought information about the arrangements for the Duke's return home, and what Mr Pisa was able to tell him may well have been used in Ms Smith's article. Given the price paid, I consider it probable that Mr Mellor instructed Mr Pisa to blag flight booking details and so the UIG was directed from London and amounts to unlawful conduct within England and Wales.

59. There is then another CR for Mike Behr a week later, for "Prince Harry and girlfriend inqs" and this is likely to be for further work done by Mr Behr identifying the Duke's new girlfriend. It is authorised by Lucy Turner and, given the modest charge of £100, I am not persuaded that on balance it is work that would have been unlawful if done in England and Wales.

Episode 33

60. Alleged UIG of the Duke's associates by the Sunday Mirror in 2005. Again, this episode is a collection of apparently unconnected invoices and CRs. The first, ELI (£190) for urgent extensive enquiries into Natalie Pinkham for James Saville. In view of those involved, this is likely to be in connection with actual or attempted phone hacking of one of the Duke's close friends, with a view to obtaining his private information.

61. There is an earlier CR for LMP (£350) authorised by Mr Buckley, "Tiggy defends Harry" directed against Ms Legge-Bourke, which relates to a non-complaint article dated 16.1.05, "Tiggy: he's not a bad egg" (bylines: Andrew Buckwell and Sara Nuwar) in which Ms Legge-Bourke is quoted as expressing views about the Afrika Korps outfit. Mr Buckwell is one of the proprietors of LMP and so this was a payment for an article that is not alleged to be a misuse of the Duke's private information. Indeed, however it was obtained, it contains only the opinions of Ms Legge-Bourke about the mistake that the Duke made and his character. Since the article is not complained about, I cannot conclude that this was UIG that misused the Duke's information.

62. There is an invoice from C&L for Elect Roll searches against Mr Lowther-Pinkerton and his wife, for Mr Buckley. These were shortly after the announcement of his appointment as the Duke's press secretary and would therefore probably have been with a view to trying to hack his mobile phone. But the C&L search itself would not have revealed any of the Duke's private information.

63. Finally there is a CR for Simon Lloyd for £750 described as "Harry and Chelsey [sic]", authorised by Ms Weaver. Mr Lloyd is alleged to have been a bin spinner and the amount paid suggests that some valuable material was obtained, containing or revealing the Duke's private information. MGN's defence and response to this invoice is to allege that the CR related to a published article about which the Duke did not complain, but the article is nowhere identified. I consider it likely that there was UIG that amounted to misuse of the Duke's private information.

Episode 34

64. Alleged UIG of the Duke by the Sunday Mirror in 2005. One CR for John Ross (£300) authorised by Mr Buckley, relating to "Harry Betting". Mr Ross was an ex-police officer who had connections with corrupt serving officers and did a substantial amount of UIG for MGN. MGN contends that this relates to a non-

complained of article, but that is not pleaded and the article not identified. I find that it is probably UIG of the Duke's private information.

65. Then there is another CR for Simon Lloyd (£150) for "Prince Harry asst". This too is said by MGN to relate to a non-complained article, but again it is not identified. There is insufficient here to justify a conclusion that this is likely to be UIG relating to the Duke's private information.

Episode 35

66. Alleged UIG of the Duke's associates by the Mirror in 2005. There are 3 apparently unconnected payment records. The first is an invoice from Census for a lawful search directed at Kate Middleton; the second a CR for Mike Behr (£175) for "Chelsy and Royals" authorised by James Mellor; and the third another Census search 6 months later against Kate Middleton. Without further context, I cannot be satisfied to the requisite standard that the Behr CR is for unlawful work knowingly commissioned by MGN.

Episode 36

67. Alleged UIG of the Duke by The People in 2005. This is a single CR for LMP (£50) on 8.5.05 with a heading "Prince Harry – of stunts". MGN submits that it relates to an article "Prince of PR stunts" (byline: David Brown) containing photos issued by Clarence House of the Duke on a charity expedition, which was not complained about. The commentary is not flattering but there is no suggestion that it misuses his private information.

Episode 37

68. Alleged UIG of the Duke by the Mirror in 2005. This too is a single CR for Simon Lloyd (£100) approved by Louise Flood on 26.7.05 entitled "Prince Harry asst 26/7". Again MGN pleads that this relates to a non-complained article but without identifying it. There is insufficient here to justify a conclusion that this is likely to be UIG of private information belonging to the Duke.

Episode 38

69. Alleged UIG of the Duke's associates by the Sunday Mirror in 2006. There are 4 C&L invoices, one relating to Guy Pelly for an Elect Roll search on 5.1.06 and three relating to Florence Brudenell-Bruce, two Elect Roll searches and one DOB search on 8.8.06, all commissioned by Michael Duffy. Whatever these may ultimately have led to, these searches would only have revealed private information of Mr Pelly and Ms Brudenell-Bruce. Any complaint by the Duke must be directed at the subsequent use, if any, that was made of the search results that enabled MGN to obtain *his* personal information.

70. The last invoice in this "episode" is an AJK invoice (£100) for a BMD search against Ms Brudenell-Bruce. Again, this will not have revealed the Duke's private

information and may well have been lawful in any event. My conclusion in relation to AJK was that the claimants have not proved their case about UIG.

Episode 39

71. Alleged UIG of the Duke by the Mirror in 2006. These are 4 CRs for Big Pictures and Splash News for photographs of the Duke. They relate to articles about the Duke playing polo on three separate occasions. There was no complaint about any of the articles and there is no case identified by the Duke as to why these photographs were obtained by the use of UIG. The claimants only alleged that "on certain occasions" Big Pictures and Splash News used UIG and there is nothing to establish a probability that these were such occasions.

Episode 40

72. Alleged UIG of the Duke's associate, Chelsy Davy, by the Mirror in 2006. This is a CR by Mike Behr for "Chelsy Watch" (£150) on 5.12.06. There is insufficient material to conclude that this was probably unlawful activity commissioned as such by MGN.

Episode 41

73. This episode comprises 8 assorted payment records relating to alleged UIG of the Duke's associates by the Sunday Mirror in 2007.

74. 2 relate to Thomas van Straubenzee: a C&L DBase Searc on 23.5.07 and an AJK search on 29.5.07, both for Mr Hamilton. The C&L search is likely only to provide information about the subject, not the Duke, and the AJK search is probably lawful.

75. The remaining records relate to Chelsy Davy. There is a CR for Newsreel (Mr Stafford) dated 28.1.07 for £500, authorised by Tina Weaver. This is likely to be UIG directed at the relationship of the Duke and Ms Davy and so amounted to misuse of his private information. An invoice from BDI to Mr Buckley on 6.7.07 for "Project South Africa" is similarly likely to be UIG relating to the Duke and Ms Davy.

76. On 7.9.07 there is a further BDI invoice for "James Scott Project Chelsy", and a further one with the same title on 5.10.07. Both of these are likely to be UIG directed at the couple's private information. On 30.9.07 there is a CR for Martin Coutts (by this time, a freelancer) in the sum of £750 for "Chelsy Davy", authorised by Mr Buckley. Given my conclusion on Mr Coutts, the amount of the payment and Mr Buckley's involvement, I consider that this too is likely to represent UIG of private information about the Duke's relationship with Ms Davy.

77. There is then a Newsreel invoice headed "Chelsy" for £500, which is also likely to be UIG directed at the Duke's and Ms Davy's private information.

Episode 42

78. Alleged UIG of the Duke by the Mirror in 2007. This episode comprises no fewer than 15 payment records, 14 of which are for Globalnews/GlobalNetNews and the other for Splash News. The claimants' case is only that "some of [its] activities when commissioned by MGN involved UIG. But since it is a picture agency, it is unclear which of the invoices relate to commissions and which do not, and which of the commissions involved UIG.

79. MGN's case in relation to these invoices is that some relate to non-complained articles and that many payments to GlobalNetNews relate to hire of equipment. They make no admission in respect of the remainder. Without these matters being explored in evidence or in oral submissions, it is impossible for me to resolve the claims based on these 14 invoices. Some of the descriptions (eg "Prince Harry investigation") look as if they are something more than a payment for a photograph, but that is not necessarily so and I cannot safely draw that conclusion when the PI in question is only alleged to have acted unlawfully some of the time. What is certainly true is that there appears to have been a huge appetite for pictures of the Duke from Globalnet News in March 2007, but that does not read across to any article about which the Duke is complaining in this action.

80. As for the Splash News record, the same conclusions apply, and there is the added difficulty for the Duke that because it is resident in California he would have to prove that MGN probably instructed Splash News to act unlawfully.

Episode 43

81. Alleged UIG of the Duke by the Sunday Mirror in 2007. These are one Newsreel CR for £600 in respect of "Harry The Drunk" on 25.3.07, authorised by Mr Buckley, and a BDI invoice for £200 dated 9.11.07 for Mike Hamilton, authorised by Mr Buckley, in respect of "Project Harry". Both these payment records are likely to relate to UIG carried out by those PIs in respect of the Duke's private information.

Episode 44

82. Alleged UIG of the Duke's associate, Natalie Pinkham, by The People in 2007. This is one C&L invoice for an Elect Roll search and so will not have revealed any of the Duke's private information.

Episode 45

83. Alleged UIG of the Duke's associate, Catherine Middleton, by The People in 2008. This is one C&L invoice for an Elect Roll search and the same conclusion applies.

Episode 46

84. Alleged UIG of the Duke's associates by The Sunday Mirror in 2008. This episode comprises 4 C&L invoices for Elect Roll and DBase searches for Florence Brudenell-Bruce and Eric McBean and two AJK invoices for BMD searches on Mark Dyer and Ben McBean. For reasons previously given, none of these searches proves any unlawful gathering of the Duke's private information.

Episode 47

85. Alleged UIG of the Duke by the Mirror in 2008. Two CRs for Big Pictures for photographs. MGN argues that the first relates to an article about Paris Hilton which is not alleged to have contained the Duke's private information, and that the second may not relate to the Duke at all, as there is no proximate article.

86. There is insufficient information provided about these photographs for me to conclude that there was probably UIG associated with their provision.

Episode 48

87. Alleged UIG of the Duke by the Sunday Mirror in 2008. This is one CR to LMP described as "Harry tip" for £100. Despite the suspicious combination of LMP and Mr Buckley, who authorised payment, there is no sufficient basis to conclude that the tip was the product of UIG.

Episode 49

88. Alleged UIG of the Duke's associates by the Sunday Mirror in 2009. This episode comprises 6 C&L invoices for DBase searches of Mr Dyer, Ms Brudenell-Bruce, Caroline Flack and a family member, and 2 AJK invoices relating to searches of Mark Dyer and Ms Flack. For reasons previously given, none of these searches will have revealed any of the Duke's private information. It is notable that the Sunday Mirror did not appear to pursue the Caroline Flack story until June 2009.

Episode 50

89. Alleged UIG of the Duke's associates by The People in 2009. These are 3 basic C&L searches against Ms Flack in April 2009 and one C&L Elect Roll search on Natalie Pinkham in January 2009. These searches will not have revealed the Duke's private information.

Episode 51

90. Alleged UIG of the Duke by the Mirror in 2009. One CR for Mike Behr for £100 for "*BR Harry & Chelsea" dated 25.1.09. This was one day before the "Chelsy break up was on cards" article published by the Mirror, about which the Duke complains. That being so, it is unclear why it is being included as a separate Episode. On that basis I decline to deal with it.

Episode 52

91. Alleged UIG of the Duke's associates by the Mirror in 2009. There are 4 C&L invoices for Elect Roll, DBase Searc, and Birth searches directed at Astrid Harbord for John Peacock on 7.3.09 and 4 C&L invoices for Ms Flack and a family member for Martin Fricker on 8.6.09. For reasons previously given, none of these will have divulged the Duke's private information.

Episode 53

92. Alleged UIG of the Duke by The People in 2009. One CR for Rob Palmer (£350) for enquiries requested by Senga Irving on 2.8.09 for "Wills and Harry and darts". MGN says that this relates to an article (unidentified) that was published but about which no complaint was made by the Duke. There is insufficient evidence to support a conclusion that what Mr Palmer did involved a misuse of the Duke's private information on this occasion.

93. A second CR for Frank Thorne (£300) for "Harry lookalike". Mr Thorne was based in Australia. The Duke does not identify who commissioned the work and so it is impossible to conclude that someone knowingly instructed Mr Thorne to do unlawful work.

Episode 54

94. Alleged UIG of the Duke by the Mirror in 2010. One CR for Splash News for £580 for "Prince Harry in Barbados – 2days-ian". It seems likely from the invoice that someone on behalf of Splash News spent 2 days finding the Duke in Barbados and taking a photograph of him. Although the claimants alleged that Splash News "on certain occasions" used UIG, it is resident in California and there is no evidence that this is an occasion on which MGN knowingly instructed Splash News to use unlawful methods to obtain the Duke's private information.

Episode 55

95. Alleged UIG of the Duke by the Sunday Mirror in 2010. Two CRs for payment of US$500 each to Annette Witheridge, both authorised by Mr Buckley. Both these payments are entitled "Harry sneaks off to watch footie (p6)" and are said by MGN to relate to a small article (no byline) which is not alleged to contain the Duke's private information. Ms Witheridge was based in New York at the time and there is no evidence that this piece was commissioned rather than having been elicited by Ms Witheridge and then supplied to the Sunday Mirror.

96. However suspicious I may be about how Ms Witheridge obtained such personal information, I am unable to conclude that there was misuse of the Duke's private information within the jurisdiction.

Episode 56

97. Alleged UIG of the Duke's associate, Catherine Middleton, by the Sunday Mirror in 2010. This is a C&L Elect Roll search so will not have revealed the Duke's private information, as previously explained.

Episode 57

98. Alleged UIG of the Duke's associates by the Mirror in 2011. There is one C&L invoice for an Elect Roll search against Hugh van Cutsem dated 30.4.11, and a C&L "DBase searc" and "Birth" search for Florence Brudenell-Bruce. None of these will have provided the Duke's private information.

99. There is one CR for Paul Hardaker dated 15.6.11, whose description is "15/6 LT Mike Tindall inqs" for £120. MGN said that this was in relation to an article about which the Duke did not complain, but the article is not identified. Given the conclusion that I have reached about Mr Hardaker, and given that the CR is not directly connected to the Duke, I am unable to find that this amounted to UIG in relation to his private information.

100. There is then a CR for Big Pictures dated 6.7.11 for "6/7 Ord CM D'step Prince Harry's girlfriend's parents", which seems to be something more than merely a photograph but it is not clear what, or what was revealed. MGN points out that these parents were not the Duke's associates in any event. I am unable to conclude that this involved UIG of the Duke's private information.

Episode 58

101. Alleged UIG of the Duke by the Sunday Mirror in 2011. This episode comprises one CR for LMP on 4.9.11 relating to "Prince Harry and Florence" for £500. There does not appear to be an article about the two of them of that date, though there is one on 3.7.11 which has a non-posed photograph of them at a party, with a credit to London Media. It is impossible to reach a conclusion that the photo opportunity was probably obtained by UIG. There are also two CRs for Coleman-Rayner LLC dated 24.11.11 and 25.11.11, each for US$500 and authorised by Mr Scott. The case against Coleman Rayner is that it used UIG "on certain occasions", but I have not found any case proved against them.

Episode 59

102. Alleged UIG of the Duke's associates by The People in 2011. This episode comprises C&L "DBase searcs" against Mike Tindall and Ms Brudenell-Bruce, and 2 Elect Roll and DBase searcs against Ms Flack. These will not themselves have elicited private information of the Duke, though the searches are likely to have been unlawful.

Episode 60

103. Alleged UIG of the Duke by the Mirror in 2011. This episode is a collection of CRs for photograph agencies: 3 Splash News payments in April 2011, one in May 2011 and another in December 2011, and 1 Big Pictures CR in December 2011 under the heading "3am Harry/Caroline lead split (ST)".. Two of the Splash News CRs are said by MGN to relate to a non-complaint article. There is no credible case established by the Duke in relation to any of the Splash News CRs that they involved UIG of his private information. Although the Big Pictures payment is more suspicious, there is nothing to prove that this was UIG.

Episode 61

104. UIG of the Duke's associates by the Sunday Mirror in 2011. These are two C&L Elect Roll searches in the name Hugh van Cutsem on 4.10.11 and 5.10.11. For reasons previously given, these do not establish UIG in relation to the Duke's private information.

II. NIKKI SANDERSON

Episode 1

105. This turns on one invoice dated 30 March 1999 from Southern Investigations to Mark Thomas in relation to a telephone number written on the invoice as "**** *** 027". The last three digits coincide with one of Ms Sanderson's phone numbers. But she was only 15 at the time, and had not yet started to film Coronation Street (though she had acted in *Children's Ward*). Ms Sanderson's number was known to Debbie Manley in November 2004, but I cannot easily imagine a reason why Mr Thomas, the Mirror features editor, would be using a contact like Mr Rees to investigate a 15-year old. This date is 4 years before the first article she complains of. I am not persuaded that this is anything to do with Ms Sanderson.

Episode 2

106. This is merely an exchange of emails on 31 October 2002 between Tina Weaver and The People's picture editor, Mike Sharp, about a story being offered by a Manchester freelancer about Ms Sanderson taking her mother to Barcelona for the weekend. Ms Weaver's reply suggests sending a writer. I am unable to see how this proves UIG on the part of MGN.

Episode 3

107. Alleged UIG of Ms Sanderson and her associates by The Sunday Mirror news desk in 2003. This relates to the period November/December 2003, which is said to be a period of intense scrutiny of Ms Sanderson and her associates led by Mr Buckley at the Sunday Mirror.

108. Mr Buckley had the phone number of Ms Sanderson and her address in his Palm Pilot, together with those of Tina O'Brien and Samia Ghadie.

109. There is a series of invoices in November and December 2003, all commissioned by Mr Buckley, Mr Stretch or Mr Coutts. As an example of the type of use made of PIs, with C&L searches preceding ELI "enquiries", I set them out below:

    a. 4.11.03 – C&L – DOB search and Elect Roll search for Ms O'Brien (Coutts)

    b. 7.11.03 – AJK Research for "BMD: Samia Ghadie, Corrie St" (Buckley)

    c. 12.11.03 – ELI "extensive urgent enquiries" for T O'Brien (Stretch)

    d. 13.11.03 – C&L Trace search for Samia Ghadie (Coutts)

    e. 17.11.03 – ELI "urgent trace enquiries" foor S Ghadia (Stretch)

    f. 16.12.03 – C&L DOB search for Ryan Thomas (Coutts)

    g. 17.12.03 – ELI "urgent enquiries – T O'Brien/R Thomas (Buckley)

    h. 19.12.03 – C&L Elect Rolls searches for Ryan Thomas and Bruno Langley and a DOB search for Bruno Langley (Coutts)

    i. 19.12.03 – ELI urgent enquiries made for R Thomas (Buckley)

    j. 26.12.03 – C&L DOB search for Bruno Langley (Coutts)

110. This series of invoices certainly established a pattern of activity that, given those involved in it, is very likely to involve UIG. Mr Evans' landline is recorded as making a number of calls to the mobile phones of Ms Ghadie, Ms O'Brien and Mr Thomas during that period. I consider it very likely that VMI was being attempted in relation to these individuals at that time. There was however no significant article written about Ms Sanderson (just a short 3am photo commentary: article 2).

111. A conclusion that Ms Sanderson's private information was misused as a result of this activity depends on proving that some of her associates' voicemails were intercepted and that she had left voicemails for them, or that her private information was otherwise obtained. There is no evidence relating to Mr Thomas, Mr Langley or Ms Ghadie, except that Ms Sanderson said that it was Ms O'Brien

and Ms Ghadie that the press seemed more interested in, and that Ms O'Brien and Mr Thomas were of interest because they had a baby together. There is no evidence of any articles published about any of these associates at the time, but Ms O'Brien did say that when she brought and settled a phone hacking claim against MGN in 2016 nothing came up relating to Ms Sanderson. The settlement of that claim by MGN is an indication that it accepted that it hacked Ms O'Brien's phone at some point – but when that started is unclear.

112. Without any such evidence, the claim in this Episode is largely speculative so far as Ms Sanderson's private information is concerned, even though UIG in relation to the associates is established. There is no attempt by Ms Sanderson's legal team to explain why the intense activity at this time was an attempt to obtain information about her or that she was communicating with her associates about particular matters at that time. Further, Ms Sanderson did not say that any of those targeted other than Ms O'Brien was a confidante of hers.

113. I am satisfied only that some voicemails left for Ms O'Brien are likely to have been intercepted by Sunday Mirror journalists from about November 2003. I consider that that is the likely time from when Ms O'Brien's phone was successfully hacked. There is no specific evidence that Ms Sanderson left voicemails for Ms O'Brien at about this time, but I can accept her evidence that she and Ms O'Brien did communicate by phone and would have left messages on occasions. I consider that it is only likely to have been low level private information about day-to-day personal matters that was intercepted.

Episode 4

114. Alleged UIG aimed at Ms Sanderson and her associates by The People in early 2004. In January 2004, The People seems to have continued the frenzied excitement about Coronation Street that the Sunday Mirror had created during the previous months. The focus of the excitement however is Ms Ghadie, Ms O'Brien, Mr Thomas, Mr Langley and Ms Hudson rather than Ms Sanderson. There were no articles published about which Ms Sanderson complains at this time.

115. Again, there is a series of invoices commissioned by various people including Sean O'Brien and Steve Myles, as well as Mr Scott, Mr Proctor, Mr Jeffs and Mr Edmondson. Most of the invoices are ELI invoices; some are C&L searches. There is only one ELI invoice relating to Ms O'Brien.

116. Ms Sanderson's case is that, given the "relentless level of unlawful activity" directed at the associates, it is "inconceivable" that her communications with them were not intercepted or targeted.

117. I am certainly not persuaded that Ms Sanderson's communications were targeted: The People seemed to have little interest in Ms Sanderson until October 2004, when work on the "Love Rat" article was being done. (There is an admitted occasion of UIG conducted by Avalon on 25.10.04 in relation to that article.) All

of these invoices precede that time, however. I am satisfied that some of the activity directed against the associates will have involved VMI but, other than in relation to Ms O'Brien, there is no evidential basis for concluding that Ms Sanderson probably left voicemails on their phones during this period that were intercepted.

118. I am however satisfied that by this time The People was hacking Ms O'Brien's voicemails and so anyone doing so is likely, on occasions, to have heard voicemails left by Ms Sanderson. In the absence of some evidence suggesting otherwise, I conclude that this is only likely to be low level private information about day-to-day personal matters.

119. There is also an admitted ELI invoice dated 25.11.04 for an investigation into Ms Sanderson commissioned by Debbie Manley. What it was about is not explained by the claimants, or by MGN, but it seems likely to relate to obtaining access to Ms Sanderson's voicemails because Ms Manley had passed Ms Sanderson's phone and date of birth details to Mr Bucktin by email of 16.11.04.

Episode 5

120. Alleged UIG of Ms Sanderson by the Sunday Mirror news desk in January 2005. The Sunday Mirror was attempting on 18.1.05 to find out where Ms Sanderson and Mr Young were on holiday in the Caribbean. Mr Coutts, by that time a freelancer, was assisting Mr Buckley and it is clear that UIG was being used to identify the location.

121. (There is admitted UIG by ELI on behalf of the Sunday Mirror on 22/23.6.04, so it can be inferred that it had some useful data about Ms Sanderson by this time.)

122. Attention then shifted to Mr Young's mother, Mrs Woolley, on 19.1.05 and AJK provided some information. At about the same time there is an ELI invoice for Mr Buckley for urgent enquiries about "D Young". On the same days there are 6 calls from Mr Buckley's extension to Ms Sanderson and Mr Young's mobile phones. I find that their phones were hacked on this occasion in an attempt to find out where they were, so that they could be photographed on the beach. It is unclear whether Mrs Woolley's phone was hacked. The People published photographs of Ms Sanderson and Mr Young in St Lucia on 13.3.05 (article 17), so it appears that it was unsuccessful in obtaining photographs at the time as a result of its UIG.

123. 3 days later, Mr Game asked Mr Scott to blag the return flight details so that a photographer could be at the right terminal in Manchester Airport. It is unclear whether the details were obtained and no photographs of the return appear to have been published.

124. The loss suffered by Ms Sanderson from the UIG was therefore unconnected with the photographs.

Episode 6

125. Alleged UIG of Ms Sanderson by The People in January 2005. This is not in truth an occasion of UIG, but just an occasion on which Mr Thomas was seeking to get hold of Ms Sanderson's and others' mobile numbers and Ms Manley provided what she had (which was Ms Sanderson's number and Ms O'Brien's number).

Episode 7

126. Alleged UIG of Ms Sanderson and her associates by The People in 2005.

127. There is one admitted UIG invoice here: dated 28.6.05 from Avalon, commissioned by Mr Jeffs ("Enquiries made regarding N Sanderson"). It was preceded by a C&L Elect Roll search on the same day, which in view of the findings I have made is likely to have been an unlawful full roll search.

128. Before this, in April 2005, there were ELI invoices commissioned by Ms Manley for Ms O'Brien (1) and Mr Thomas (2). Since Ms Manley already had Ms O'Brien's phone number, this invoice is unlikely to be to facilitate hacking, but was searching for other information, possibly about the child that Mr Thomas had fathered. I do not consider these were targeted at Ms Sanderson, nor was a C&L search of Ms Ghadie on 27.5.05.

129. There were two further ELI invoices in relation to Mr Thomas in July and August 2005, but, as I have previously found, there is insufficient evidence that these were likely to have provided access to voicemails of Ms Sanderson.

130. There were further ELI invoices for enquiries about Ms O'Brien and Mr Thomas in October 2005, commissioned by other journalists. It is not established that this was connected with hacking of Ms O'Brien's phone.

Episode 8

131. Alleged UIG of Ms Sanderson's associates by The People in 2006. These activities are principally concerned with Mr Thomas, but there are also ELI invoices in relation to Ms O'Brien (29.1.06 – "Research 2X Trace" for Melanie Swan and 2.5.06 – "extensive urgent enquiries" for Ms Manley).

132. In the absence of some context (which is not advanced) it is not possible to conclude that these were either targeted at Ms Sanderson or were in connection with listening to Ms O'Brien's voicemails that would have revealed Ms Sanderson's private information. This was a time after Ms Sanderson had left Coronation Street, so the context is somewhat different.

133. There is one ELI invoice dated 2.3.06 where Tom Carlin commissioned enquiries about Mr Meakin, Ms Sanderson's former boyfriend. I accept that this is likely to have been targeted at Ms Sanderson, but there is no reason to think, four months after the two had split up, that Ms Sanderson was leaving messages for Mr Meakin that would have been intercepted as a result of this UIG.

134. The remaining invoices and schedule of call data relate to Mr Thomas. It is said that these evidence VMI attempts. Ms Sanderson's case is that her communications with him will have been intercepted, but no evidential basis is made for any such communications at this time (or indeed at any other time in relation to Mr Thomas).

Episode 9

135. Alleged UIG in relation to Ms O'Brien by the Sunday Mirror in 2007. This is a single CR from Newsreel (Mr Stafford) for £400 for a publication on 26.8.07. It is authorised by Mr Buckley. Given the nature of Mr Stafford's activities and that Mr Buckley had Ms O'Brien's phone number already, this is unlikely to be connected with Ms Sanderson's private information.

Episode 10

136. This is further alleged UIG in relation to Mr Thomas and Ms O'Brien by The People in 2007. There are two C&L DBase searcs for Mr Thomas at different addresses on 19.4.07 and 26.4.07 and a C&L DBase searc for Ms O'Brien, which will not have revealed any of Ms Sanderson's private information; and a CR for payment of £200 to Mr Coutts dated 26.8.07 in relation to Ms O'Brien, which is unexplained. I cannot simply infer that whatever Mr Coutts did in relation to Ms O'Brien amounted to a misuse of Ms Sanderson's private information.

Episode 11

137. This is an invoice of C&L which includes, among others, a DBase Searc on Ms O'Brien dated 2.4.08 and a DBase Searc on Mr Thomas of the same date, both for Mr Hamilton. These searches will not have revealed any private information of Ms Sanderson.

Episode 12

138. Alleged UIG of Ms Sanderson's associates by The People in 2008. These invoices are a C&L invoice dated 12.2.08 for Elect Roll and DBase Searc on Mr Thomas and a DBase Searc on Ms O'Brien and a further C&L invoice dated 25.4.08 for an Elect Roll search on Adam Thomas and Ryan Thomas. None of these will have revealed Ms Sanderson's private information.

139. I am unable to make anything of some unexplained call data relied on in relation to this episode, which is of Ms Ghadie's and Ms Hudson's phones. The connection with Ms Sanderson in 2008 is unexplained.

Episode 13

140. Alleged UIG of Mr Thomas by the Sunday Mirror in 2008. Two C&L DBase Searcs for Mr Thomas in November and December 2008, commissioned by Mr Hamilton and Mr Buckley. Nothing is thereby proved other than that those journalists still had a desire to find out something about Mr Thomas.

Episode 14

141. Alleged UIG of Ms Sanderson's associates by The People in December 2009. This comprises an AJK search on "Danny Young's Family + Father's Victim David Lilley", which relates to an unsavoury story about Mr Young's father's conviction, and a C&L DBase Searc for Mr Young. Ms Sanderson and Mr Young had been separated for almost a year by this time and Mr Young was famous in his own right. Nothing revealed by these searches is likely to have been connected with Ms Sanderson.

Episode 15

142. States simply that "the claimant will rely on the following call data in relation to her associates on 12 December 2009". There is one Null call to Mr Thomas's mobile and one call of 4:28 to Ms O'Brien's phone. Nothing of relevance to Ms Sanderson can be made of this.