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Case No: HC12A04144, HC12A04145,
HC12A04146, HC12A04147

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Rolls Building, 7 Rolls Buildings
Fetter Lane, London EC4A 1NL

Date: 06/11/2013

Before :

MR JUSTICE MANN

- -

Between :

(1) Shobna Gulati
(2) Abbie Gibson
(3) Sven Goran-Eriksson
(4) Garry Flitcroft **Claimants**

- and –

MGN Limited **Defendant**

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- -

Mr David Sherborne and **Mr Jeremy Reed** (instructed by **Taylor Hampton Solicitors Ltd)** for the **Claimants**
Desmond Browne QC and **Matthew Nicklin QC** (instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendant**

Hearing dates: 24th & 25th October 2013

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Approved Judgment – Public judgment with redactions

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

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MR JUSTICE MANN

Mr Justice Mann :

Introduction

1. In the present 4 actions the defendants (MGN) have applied for summary judgment on two of them (the Gibson and Flitcroft actions, using the names of the claimants as descriptors) and have further applied to strike out parts of the Particulars of Claim in all four. The defendant has also sought to vary a costs order made by Vos J on the occasion of the first hearing of these applications. This judgment deals with the summary judgment and strike-out applications only.

The background to these actions and the applications.

2. MGN is a newspaper proprietor whose titles include the Daily Mirror, the Sunday Mirror and the Sunday People. These actions involve claims that the claimants' mobile phones were hacked by journalists employed by the newspapers, or by third parties acting for the newspapers, the hacking taking the form of listening to voicemail messages in the voicemail boxes without the consent (or knowledge) of the respective claimants, with the result that on occasions newspapers were able to publish stories about the private lives of the claimants or others which they would otherwise not have found out about or been able to verify. It is said that that activity infringes the privacy rights of the various claimants. I set out the details of the various claims, so far as relevant, below.

3. The actions were all started on 22nd October 2012. The applications in this case were made in notices dated 26th February 2013 and first came on before Vos J in April 2013. On that occasion it was adjourned for reasons that are in dispute in this application (the dispute is said to go to the costs order which should be made in relation to that hearing) and was to come back in July. There was a problem with counsels' availability in July, and it was adjourned over to this month (October 2013). Service of the Particulars of Claim is all that has happened in these cases; they have got no farther than that, and in particular Defences have not been served.

The nature of the 4 claims

4. All 4 claims are based on claims that mobile phones of the respective claimants were hacked by persons working for the defendants. The cases all rely on articles that are said to have been published as a result of the hacking, both as evidence of the hacking (it is said that hacking is the most likely source of the story and therefore demonstrates that it occurred in relation to the claimant's phone) and as material on which damages should be based (at least in part). However, none of them pleads direct evidence of hacking in their particular cases in the sense of direct first hand evidence or records of particular hacking events. Instead, the Particulars of Claim propound a claim based on inference from

various "generic" facts", that is to say various pleaded facts which are said to evidence a pattern of phone hacking in the tabloid industry generally, and the Mirror Group in particular, and each case also relies on the specific facts of the other three as part of the material from which it is said to be justifiable to infer that there was hacking in the individual case in question. The Particulars of Claim are therefore virtually the same in each case, since each case is pleaded in the other.

5. The structure of each Particulars of Claim is as follows:

(i) The first three paragraphs set out the identities of the parties, and cross-refer to the story about the claimant on the basis of which the hacking is alleged.

(ii) Paragraph 4 contains a general allegation that journalists on the defendant's newspapers habitually used techniques such as phone hacking or call data blagging (essentially getting information out of a data holder by misrepresentations) to obtain or verify stories. Paragraph 5 contains some averments described as "generic". They are allegations said to go to the allegation of phone hacking but which are general in their character and not, of themselves, confined to wrongdoing in relation to the claimants' phones. Paragraphs 4 and 5 are set out in the Appendix 1 to this judgment; it is a regrettable necessity that such an extensive part of the pleading has to be set out, but the case of the defendant requires it. Part of paragraph 5 is redacted in the publicly available version of this judgment because it relates to material emanating from a Mr David Brown in respect of which there are reporting restrictions because of certain criminal proceedings, and because it is said to carry its own confidentiality. However, I shall refer in general terms to the nature of this evidence later on. The basis of the redactions is the reason why my reference to that material is more oblique than would otherwise have been the case.

(iii) Paragraph 6 cross-refers to the first schedule. That schedule sets out details of the stories that appeared in the press in relation to each of the 4 claimants and says that the best particulars that the claimants can presently give appear in that schedule, and says that the claimants will rely on the habitual use of blagged or hacked material appearing in paragraph 5.

(iv) Paragraphs 7 to 12 contain allegations of duties owed, and breach based on the material previously referred to. Paragraphs 13 to 17 contain the relief claimed.

(v) Schedule 1 (as foreshadowed above) contains the details of the hacking affecting each claimant, so far as the claimant has those details. Schedule 2 contains the material cross-referred to in paragraph 5n.

(vi) Schedule 3 contains confidential material moved from the position of the redactions into a confidential schedule.

(vii) Paragraphs 4 and 5 contain a key to anonymised individuals referred to elsewhere in

the pleading.

The general principles applicable to applications for defendants' summary judgment applications and applications to strike out

6. Many of these were not in dispute, and I can summarise them as follows. In relation to summary judgment applications the position is as follows.

> (i) The usual way of trying disputes is to have a trial after the "normal processes" of disclosure and interrogatories have been gone through, though there are exceptions to that. One such exemption is that summary judgment may be given against a claimant if it is "clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based" (*Three Rivers v Bank of England* (No 3) [2003] 2 AC 1 at para 95, per Lord Hope of Craighead).
> (ii) The simpler the case, the easier it will be to take that view. "But more complex cases are unlikely to be capable of being resolved in that way without conducting a mini-trial on the documents, without discovery and without oral evidence. As Lord Woolf said in *Swain v Hillman* [2001] 1 All ER 91 at p95, that is not the object of the rule [CPR 24]. It is designed to deal with cases that are not fit for trial at all." So there should not be mini-trial.
> (iii) Judgment may be given against the claim if it has "no real prospect of succeeding". "The word "real" distinguishes fanciful prospect of success … they direct the court to the need to see whether there is a "realistic" as opposed to a "fanciful" prospect of success." (*Swain v Hillman* at page 92j).
> (iv) The prohibition on mini-trials does not mean that everything that is said has to be accepted at face value. "In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporary documents. If so, issues which are dependent on those factual assertions may be susceptible of disposal at an early stage so as to save the costs and delay of trying an issue the outcome of which is inevitable." (*ED&F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472 at para 10, per Potter LJ).

7. Mr Desmond Browne QC, for MGN, submitted that a case should not be allowed to go for trial simply because it is asserted that some further evidence may turn up. In support of this submission he relied on *ICI Chemicals v TTE Training* [2007] EWCA Cv 725 at paras 12 to 14. He is right that a view to that effect was expressed by Moore-Bick LJ in that case but care must be taken in applying that view to a case such as the present. In that case Moore-Bick LJ was dealing with an argument that further facts might turn up which would affect the construction of a commercial document. He expressed the view that a submission that something might emerge should be treated "with caution", not that it should be rejected out of hand. Paragraph 14 of his judgment makes it clear that he is seeking to distinguish between real and fanciful prospects of success. That is the real distinction, in my view. He was also not dealing with the familiar case in which a claimant makes an ostensibly sustainable allegation but acknowledges that the process of

disclosure is necessary to make the case stronger or to have it investigated properly. It is a familiar state of affairs that a claimant is ultimately reliant on disclosure from the other side in order to bring his case home, particularly in cases where the nature of the wrong is such that the defendant's activities were covert so that, if the case is good, the defendant is likely to have a substantial amount of material in its hands with no equivalent in the hands of the claimant. Unless the prospects of getting disclosure are "fanciful", the claimant is generally entitled to maintain its case in those circumstances. That is not to say that claimants are entitled to embark on speculative cases in the hope that disclosure will throw up something useful. The claimant must have more than that to start with, but the inability to make a full case without disclosure is not, in my view, a bar to starting the litigation in the first place.

8. The true position is reflected in Doncaster Pharmaceuticals v The Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63:

> "17. It is well settled by the authorities that the court should exercise caution in granting summary judgment in certain kinds of case. The classic instance is where there are conflicts of fact on relevant issues, which have to be resolved before a judgment can be given (see Civil Procedure Vol 1 24.2.5). A mini-trial on the facts conducted under CPR Pt 24 without having gone through normal pre-trial procedures must be avoided, as it runs a real risk of producing summary injustice.
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> 18. In my judgment, the court should also hesitate about making a final decision without a trial where, even though there is no obvious conflict of fact at the time of the application, reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case."

9. The present cases are capable of falling into the category of cases which require full investigation. Provided that there is enough to prevent them falling into the category of the purely speculative, the nature of the wrong or alleged is such that the claimants will or may have little knowledge and evidence of their own at this stage and will need the benefits of pre-trial procedures in order to add to their case. There is nothing wrong with this. It is what disclosure (among other steps) is for. The alleged activities in this case were covert and, of their very nature, would be activities of which the victims would know little or nothing. Better evidence of what happened would lie with the defendant. There is nothing wrong with pleading a starting point, on an appropriate basis, and then

expecting the case to become clearer after pleading and disclosure (if not the extraction of further information pursuant to a request).

10. So far as the striking out of specific parts of the Particulars of Claim is concerned, Mr Browne relies on the material as disclosing no reasonable grounds for bringing the claim, an averment that they are an abuse of the process, and says that there is no real prospect of succeeding on the allegations in question. That is the wording of the rule (CPR 3.4(2)). He seeks to apply these principles to the pleaded claim in the manner identified below. However, in the course of so doing he also relies on principles applicable to proof of matters relating to dishonesty and criminality. He points to the well-known principle that the more serious the allegation, the stronger evidence required to prove it (*Re H (Minors)* [1996] AC 563) and goes on to say that those principles should apply where the case relied on involves criminality (which in this case it does, or may). He relies on Lord Hobhouse's speech in *Three Rivers* at paragraphs 160-161 in which he reflects on the case that has to be established, and pleaded, if there are allegations of dishonesty. Mr Browne relies on what is said there in support of a series of propositions which he says apply in the present case - where an allegation of dishonesty or criminality (my emphasis) is made, there must be a proper basis of making the allegation; a party alleging dishonesty must be prepared to particularise the case; the pleaded case must be more consistent with the existence of dishonesty or criminality than with its non-existence; the party making the allegation of dishonesty must be prepared to particularise it; and the allegation of dishonesty made in the pleading must be made on the basis of evidence which will be admissible at trial.

11. Those propositions are not all justified by what Lord Hobhouse said, and they are not all applicable to the present case. Lord Hobhouse was referring to cases where dishonesty was alleged as part of the cause of action. The present action is not such a case. Mr Browne equates a case of criminality with cases of dishonesty. That is not a necessary equation. The present case is not one in which the cause of action is couched in dishonesty, or is one which involves a particular state of mind. It is based on acts which are said to be a civil wrong, and which also happen to be a criminal offence. It is not appropriate to impose the strict requirements applicable to fraud cases to all cases involving criminality. It is the quality of the allegation that is important, not whether or not it is also criminal. Furthermore, nothing that Lord Hobhouse said requires the approach of Mr Browne, which was to look at each piece of pleading in this case separately and consider whether, as a separate piece of pleading, the facts were no more consistent with the conduct ultimately complained of being wrongful than its being lawful. Whatever may be the case in cases involving a dishonest (or malicious) state of mind, it is appropriate to plead matters which might separately be insufficient to prove a given state of mind and invite the court to view the evidence in its totality as proving what the pleader sets out to prove. Various pieces of evidence have (or may have) to be viewed in the light of, and not entirely separate from, other pieces of evidence for these purposes.

12. Mr Browne also relied on *Telnikoff v Matusevich* [1992] AC 102 as justifying his approach of dissecting, scrutinising and discarding until there is nothing left. That was a case which considered the proof of malice in a libel case. Whatever might be appropriate in cases of this sort, the present case is not one of those cases. The question is whether phone messages were listened to by unauthorised people. Malice, or a dishonest state of mind, is not relevant. It is a question of fact.

13. Other legal points raised by the parties will be dealt with in the context in which they arise.

The striking-out point - paragraph 5 of the Particulars of Claim

14. This point also concerns paragraph 4, but the real thrust of it is aimed at paragraph 5.

15. This point is important to all 4 claims. It is said they should stand or fall on their own merits, on the basis of their own particularly pleaded facts, without the contents of paragraph 5. Mr Browne mounted a detailed and general attack on all the paragraphs of Schedule 5, and certain additional matters relied on in evidence served in answer to the application, saying that those matters ought not to be pleaded and could not be relied on at trial. Putting the matter shortly his attacks were as follows:

> (i) The allegations are all general and do not have any relation to the particular incidents alleged.
> (ii) The liability alleged is vicarious; yet no employee or agent is identified as the perpetrator of any of the alleged wrongs.
> (iii) Knowledge of various individuals cannot be aggregated to produce liability based on state of mind. Any relevant state of mind must be present in a perpetrating employee - reliance was placed on *Broadway Approvals Ltd v Odhams Press Ltd (No 2)* [1965] 1 WLR 805.
> (iv) The allegations ignore the fact that the newpapers of the MGN stable are separately edited and staffed. The paragraph treats them as if that distinction is irrelevant and as if the wrongdoing referred to is somehow attributed to all of them though perpetrated by only one.
> (v) The allegations are hearsay, often culled from the press.
> (vi) Named sources are unreliable. David Brown was a dismissed journalist seeking compensation for unfair dismissal. James Hipwell was dismissed and jailed for his part in a City scandal, and must have been disbelieved by the jury at his trial.
> (vii) The pleading seeks to transfer the burden of proof on to the defendant. Reliance is placed on a letter from the one of the claimant's solicitors which invited

the defendant to indicate any sources other than phone hacking from which the relevant stories were derived. That is said to be a wrong approach.
(viii) The evidence served in oppostion to the application refers to arrests of Mirror Group journalists or executives. In relying on arrests (particularly where one arrested person has been told he will not be charged), the claimants were ignoring the presumption of innocence. Arrests are not evidence of anything useful, and should not be relied on.
(ix) The allegations are of no probative value in relation to the particular acts of phone hacking relied on in relation to each of the four individual claimants. It is therefore irrelevant to plead them.
(x) The criminality of the conduct alleged required the application of a special degree of vigour to an assessment of whether the pleading was sufficient or relevant.
(xi) The facts pleaded were as consistent with innocence as they were with guilt. As such they were not probative and were irrelevant.
(xii) The facts cannot be relied on as similar facts for evidential purposes, because that begs the question of whether there is any similarity between this generic material and the particular material relied on by the particular claimants.
(xiii) A proper pleading had to be confined to matters that could be adduced in evidence at the trial. Much of what was pleaded could not be adduced in evidence. By way of example Mr Browne referred to the report referred to in paragraph 5q. The claimants did not have a copy (they only knew what the Independent had said about it) and MGN said it did not have a copy.
(xiv) The pleaded facts faced the defendants with the unfair task of trying to prove a negative - that there was no wholesale practice of hacking or blagging at the titles in question. That was quite unreasonable and contrary to principle.
(xv) The evidence of Mr Heath, the claimants' solicitor who filed witness statements in these applications, shows that the position of the claimants was that they hoped something would turn up.

This is a formidable catalogue of complaints when set out like that, but they can be distilled under various heads. I shall seek to do so.

16. The first head gathers together complaints which are essentially complaints about relevance and admissibility - this encapsulates matters (i), (v), (ix), (xi), and (xii). This head depends on looking at the quality of the material and, in essence, saying that the facts pleaded add nothing relevant or probative to the particular claims of the claimants. In particular it is said that the pleading of a general pattern of behaviour is of no relevance when assessing whether phone hacking occurred in the particular cases. In those cases the court will be faced with an inquiry as to what actually happened in those cases, and whether the source of the stories of which complaint is made was phone messages left on the claimants' phones or some other source. What might or might not have happened in other instances is irrelevant to that.

17. I disagree with that analysis. This is a point about similar fact evidence. In *O'Brien v Chief Constable of South Wales Police* [2005] 2 AC 534 the House of Lords considered the admissibility of material described as similar fact evidence in that it was instances of improper behaviour on the part of police officers said to be similar to the actual behaviour of which complaint was actually made. There are plain parallels with paragraph 5 in the present case. Lord Bingham considered similar fact evidence generally and said:

> "4. That evidence of what happened on an earlier occasion may make the occurrence of what happened on the occasion in question more or less probable can scarcely be denied. If an accident investigator, an insurance assessor, a doctor or a consulting engineer were called in to ascertain the cause of a disputed recent event, any of them would, as a matter of course, enquire into the background history so far as it appeared to be relevant. And if those engaged in the recent event had in the past been involved in events of an apparently similar character, attention would be paid to those events as perhaps throwing light on and helping to explain the event which is the subject of the current enquiry. To regard evidence of such earlier events as potentially probative is a process of thought which is an entirely rational, objective and fair-minded person might, depending on the facts, follow. If such a person would, or might, attach importance to evidence such as this, it would require good reasons to deny a judicial decision-maker the opportunity to consider it. For while there is a need for some special rules to protect the integrity of judicial decision-making on matters of fact, such as the burden and standard of proof, it is on the whole and desirable that the process of judicial decision-making on issues of fact should not diverge more than it need from the process followed by rational, objective and fair-minded people called upon to decide questions of fact in other contexts where reaching the right answer matters. Thus in a civil case such as this the question of admissibility turns, and turns only, on whether the evidence which it is sought to adduce, assuming it (provisionally) to be true, is in Lord Simon's sense probative. If so, the evidence is legally admissible. That is the first stage of the enquiry.
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> 5. The second stage of the enquiry requires the case management judge or the trial judge to make what will often be a very difficult and sometimes a finely balanced judgment: whether evidence or some of it (and if so which parts of it), which ex hypothesi is legally admissible, should be admitted. ..."

He goes on to consider various case management-related matters which might go to allowing or rejecting the evidence. At paragraph 52 he rejected the idea that in civil litigation there should be any test based on whether the evidence is sufficiently probative (applicable in criminal proceedings) and at paragraph 53 said:

> "To do so [ie to apply the "sufficiently probative" test] would build into our civil procedure an inflexibility which is inappropriate and undesirable. I would simply apply the test of relevance as the test of admissibility of similar fact evidence in a civil suit. Such evidence is admissible if it is potentially probative of an issue in the action."

Those are the principles which are applicable to the present case.

18. Applying them to the criticisms that are made of paragraph 5, and viewing the pleadings as relating to evidence that would in due course be sought to be led, it is immediately clear that the criticisms are, on the whole, ill-founded. Many of the criticised paragraphs relate to matters which are plainly capable of being relevant to the particular hacking claims relied on by the individual claimants. Most of the sub-paragraphs are references to the knowledge in the industry (and some in Mirror Group titles) of the ability and propensity to hack phones, some sub-paragraphs actually referring to listening to messages. Indications by an editor that that has gone on in some cases would seem to me to be relevant to a claim that it had gone on in different case. Any "rational, objective and fair-minded person" might come to the conclusion that it is relevant to any particular cases that this sort of conduct has gone on in relation to others. It does not prove it in any particular cases, of course, but it would be wrong to exclude evidence of those similar fact matters (which is in substance what Mr Browne invites me to do), at least at this stage in the action.

19. Weight is, of course, a different matter. So is case management of the issue. One point touched on in argument was how disclosure was to be handled in the face of broad-based allegations of phone hacking in a lot of other cases. That is an important point. For example, at first blush it would seem to be excessive to order disclosure in relation to all stories about private lives of celebrities to see how many involved phone hacking sources. Some controls would have to be put on that exercise. But that is a case management issue, not a relevance or admissibility issue.

20. The attack based on the evidence being inadmissible similar fact evidence therefore fails. In addition, point (ix) fails to acknowledge the legitimacy, in a fact finding inquiry, of

considering a number of pieces of evidence in the round in order to consider their overall impact. As to (v), hearsay evidence is admissible, though its weight has to be considered carefully. It cannot be determined at this stage that the point at (v) makes certain items worthless. So far as (xii) is concerned, the degree of similarity should be judged at the trial, and not now. The material is not so obviously dissimilar as to make it worthless as part of the background against which to draw inferences about the particular claimants' cases.

21. Points (ii) and (iii) are no reason for striking out these paragraphs. It is not of the essence of a claim based on vicarious liability that the individual perpetrator has to be indentified at a trial, much less at the pleading stage. A claimant who is run over by a van whose owner can be identified does not necessarily have to identify the precise driver. Thus the identity of the actual perpetrator of the phone hacking exercise in the present case (assuming there to be one) does not have to be identified at this, or perhaps any, stage, though of course the inability to identify one may go to the weight of the evidence that there was any hacking at all. Nor does the pleading raise an insuperable difficulty of attribution of knowledge where it may be split across several individuals rather than being present in one. Those considerations are relevant to such elements of a claim as malice or dishonesty, but those are not elements of the claim in the present case.

22. There is nothing in (iv). The pleading relies on the movement of journalists between titles (inside and outside the Mirror group) and the transfer of knowledge and use of skills on various papers. That is plainly potentially relevant.

23. (vi) is an attempt to discredit a witness, or a piece of hearsay material, at far too early a stage in the action. It may be that there are reasons for challenging the credit of some of the individuals referred to in the pleading, but that sort of consideration has to await a trial. It is inappropriate to apply that sort of attack to a pleading of particulars in Particulars of Claim. In any event, this is a pleading, not a witness statement. What is important is that it is an indication of material that indicates wrongdoing. It is a perfectly acceptable form of pleading.

24. (vii) relies on correspondence to make it good, as appears from the description of the point. There is nothing express in the pleading which seeks to reverse a burden of proof, and nothing implicit either. The letter to which I have referred offers a challenge, but does not reflect any shift in the burden of proof, which plainly lies with the claimants. Of course, a failure to proffer an alternative source when challenged may, or may not, be significant in evidential terms, but even if it is significant it does not amount to some sort of shift in the burden of proof.

25. As to (x), criminality may mean that the conduct alleged acquires an even greater degree of seriousness when considering whether the allegation in question has been proved, though the allegations in this case are already pretty serious. However, that consideration arises in considering the weight of evidence at the end of the day, not the weight of a pleading. It may be that one might have a case which is so thinly pleaded in an area of dishonesty that an attack on it might be supported by the principles in *Re H*, but if it is possible to have such a case the present case is not an example. The point has nothing useful to say on the sustainability of the present pleading.

26. Part of the impact of point (xiii) is dealt with already in considering the "similar fact evidence" point above. All the material seems to me to be potentially relevant, though weight is another matter. Furthermore, one has to bear in mind that at the stage of pleading a claimant is giving such particulars as can be given at that stage. Under any given head the evidence may improve. So far as the pleading refers to documentary evidence which cannot presently be produced, one has to wait and see what evidence is in fact available at the trial. So in relation to the report that is referred to in paragraph 5(q), that report may become available in due course. If not, then the quality of the newspaper report about it may have to be considered if it is introduced in evidence. It is far too premature to be considering such questions of admissibility and weight at this stage and in this context.

27. (xiv) is an inaccurate description of the task set by the pleading. It does not require the proof of a negative. It is an averment of a positive the burden of which is on the claimants. The defendant may or may not seek to meet this point at trial by its own evidence that there was no such practice as alleged, but that does not mean that it has to prove its absence.

28. Last there is the criticism under head (xv). In opposition to the application Mr Heath, the claimants' solicitor, filed evidence about further inquiries, on-going police investigations and further disclosure that might become available from police investigations. *Norwich Pharmacal* disclosure is being obtained from the Metropolitan Police Service, which is known to have commenced an investigation into activities at Mirror Group newspapers. Mr Browne characterises this evidence as an indication that the claimants hope that something will turn up to support their cases, and says that that is not a proper approach to litigation. I agree that a hopelessly pleaded case can probably not be rescued by a mere hope that something will turn up on an investigation. But that description mischaracterises both the nature of the pleaded case and the nature of Mr Heath's evidence. The present case is sustainable as a pleading, and Mr Heath's references to developments since the pleading, and potential future developments,

indicate that it might get better. If he is right then the claimants' position will be improved. If he is wrong then it will not be improved, but they still have their respective cases which, so far as this part of the attack is concerned, are sustainable enough to survive this attempt to strike out.

29. That leaves (viii). This does not relate to a pleaded matter, so it does not really have to be dealt with, but I would merely observe that in this respect the defendant has a point. The arrest of journalists or company officers is not evidence of anything relevant to the present case. It does not improve the case that is pleaded, because it does not provide any evidence of anything useful. If such matters had been pleaded I doubt if I would have allowed them to stand, but they are not so the point does not arise.

30. It follows from the above that the strike-out attack on paragraphs 4 and 5 of each of the Particulars of Claim fails.

The Flitcroft case

31. The attack on the Flitcroft case is a summary judgment application mounted on the footing that there is sufficient evidence to demonstrate that this case has no real prospect of success.

32. Mr Flitcroft's pleaded case is shortly expressed, and its expression is short enough to enable it to be conveniently set out in Appendix 2 to this judgment. It will be seen that it starts with the publication of an article in The People about a relationship that Mr Flitcroft had with a Miss James, pleading that at the time the defendant said that it had encountered Miss James through normal investigative journalism. However, based on the pleaded material Mr Flitcroft's case is that it is be inferred that in fact it tracked down Miss James through phone hacking (it "encountered Miss James through a process involving phone hacking"), not "normal" investigative journalism. Thus the publication of the article is said to be both evidence of phone hacking and at least some of the damage.

33. The defendant's attack on this case at this stage is evidence-based, and it prompted an evidential response. The elements of the evidence are as follows:

(i) Mr Flitcroft gave evidence about his case to the Leveson inquiry. In that evidence he describes obtaining an injunction against the People to restrain publication of a story on 27th April 2001. The anticipated story at that stage was

about his relationship with a Miss Hammond. In his evidence Mr Flitcroft told the inquiry that the newspaper then started "dirt digging" which led to the discovery of his affair with Miss James. The newspaper contacted Miss James and asked her to sell them her story. She, in turn, rang Mr Flitcroft and, as he then put it, asked for £5,000 not to sell her story. He said he could not think how the newspaper could have found out about Miss James, because Miss James and Miss Hammond did not know each other, no-one else knew and Miss James could not have known that Miss Hammond had sold her story to the paper. He therefore strongly suspected that the newspaper had found out about Miss James through hacking his phone (listening to messages).

(ii) His prior evidence in injunction proceedings in 2001 tells a different story. In a witness statement signed on 26th April 2001 he said he had told Miss Hammond about Miss James, and that Miss Hammond had passed on her details to The People. Miss James rang Mr Flitcroft to warn him that she had been contacted by the Sunday People and she had been offered £5000 for her story, but that she would not take it and would not go to the papers. This contact would have been around 21st April 2001.

(iii) Those two chronologies and versions do not fit. The one version says that Miss Hammond cannot have told the paper about Miss James because she did not know about her. The other says the she did pass on details, pre-supposing that she did know. The one says that dirt-digging (and the discovery of Miss James) post-dated the injunction (on 27th April); the other demonstrates that Miss James had already been contacted by the paper by 21st April.

(iv) In this action the newspaper has produced some information as to its dealings with Miss James. Mr Partington, Deputy Company Secretary and Group Legal Director of Trinity Mirror Group, has produced one page of a multi-page memo said to have been produced by the reporter named in the pleading (Miss Cock) at the time of the injunction for the purpose of the company's lawyers (privilege is expressly waived in relation to that page of the memo only – whether it is in fact thereby waived for the rest of it does not arise on this application). The memo is dated 30th April 2001, and says that Miss James was a contact of Miss Cock since 1999, and that Miss James contacted her on 18th April 2001 and said she had been sleeping with Mr Flitcroft for over a year and was telling her story because she was now engaged to someone else and was about to leave to live in Australia. Mr Partington produces a short form of agreement between the newspaper and Miss James dated 23rd April 2001.

(v) Not surprisingly, this is relied on as evidence undermining the idea that The People only found out about Miss James by listening to Mr Flitcroft's voicemail messages.

(vi) In the injunction proceedings Miss James produced a witness statement on 18th May 2001. She explained she had known Miss Cock for 2 years, and that she had

been told by Miss Cock that another girl had come forward with a story that she had had a sexual relationship with Mr Flitcroft. She then gives an account of the conversation that Mr Flitcroft referred to in his evidence (see above). She was furious and wanted to know what was going on, and said "I'll tell you what, I'm going to sell a story on you …", and when he said she wouldn't she said he should give her £5,000 for her story. This explanation was given to refute the suggestion that she was blackmailing him. In the next paragraph she said that she subsequently sent him a text message saying she was not going to do the story on him.

(vii) In these proceedings Mr Flitcroft has provided a witness statement which points out that in the witness statement referred to above, and in a later statement that he produced in his injunction proceedings, he records that Miss James said that the paper had approached her, not that she approached the newspaper. He also points out that on analysis the newspaper's case involves the two women both approaching the newspaper with their stories within 24 hours of each other, and suggests that that is too much of a coincidence. He considers the discrepancies between his evidence to the inquiry and his earlier evidence and seeks to explain it by saying that his evidence to the inquiry was prepared in a rush and without reference to his earlier material, and was (he regrets to say) partially wrong. Having reflected on the matter further, he considers that his evidence in 2001 that it was Miss Hammond who told The People about Miss James was wrong too. He did not identify Miss James to Miss Hammond at the time, so Miss Hammond cannot have told the newspaper about Miss James. In her own witness statement of 27th April 2001, Miss Hammond herself said that she did not know the identity of Miss James until "today" (ie 27th April). His evidence at the time of the injunction about who contacted whom and in what order was based to a significant extent on assumptions which he now thinks are wrong.

34. Based on that material, Mr Browne says that the case of Mr Flitcroft is fundamentally flawed. The newspaper has demonstrated, with documentary evidence, how it came into contact with Miss James, and how it discovered the Flitcroft story from her. Phone hacking had no part to play in the story, and there is no evidence of it. Mr Flitcroft's versions of events are riddled with inconsistencies. His early evidence was inconsistent with information acquired through hacking, and his later attempts to save the position should be regarded as worthless. His inconsistencies doom his case. Furthermore, unlike some claimants (including Mr Eriksson and Ms Gulati) Mr Flitcroft has not been approached by the Metropolitan Police with an indication that he might have been the victim of hacking. All in all his case has no real prospects of success.

35. I have already identified the authorities which indicate that the court should not conduct a mini-trial on applications such as this. It will be apparent from the evidential narrative above that on one view that is what has happened. But the label to be applied to the exercise is not as significant as the result. If as a result of the material deployed by the

defendant, taking into account the counter-material deployed by the claimant, it is apparent that the claim has no real prospects of success then the court should strike it out.

36. I agree that some significant blows have been landed on Mr Flitcroft's case but I do not agree that they have destroyed it to such an extent that his case has no reasonable or real prospects of success, or that he has no reasonable or real claim, for the purposes of summary judgment. His evidence has been inconsistent, but not to the point where it can be judged now to be worthless. Evidence given at a time when phone hacking was not known about as a source of information may be based on assumptions which are different from those which would be made now. There remain indications from the women themselves which are consistent with Mr Flitcroft's present case - Miss James said the newspaper contacted her about the relationship and not the other way round, and Miss Hammond gave evidence inconsistent with the suggestion that she identified Miss James to The People. Even if it is the case that Miss James was in contact with Miss Cock for two years before the story was broken it does not follow that Miss James informed Miss Cock about the relationship unprompted. On any footing she kept it from the paper for some time, and the real question is what prompted her to speak about it. If the point did not originate from her then from where did it come? On the current evidence Miss Hammond cannot have been the prompt - her evidence at the time was that she did not know Miss James's identity. Miss Cock's note suggests it was indeed Miss James who raised the topic, but that is not so compelling that it has to be accepted as true at this stage. This question is one to which the answer is not clear, or clear enough for the defendant's purposes, on the paper evidence that I have seen. Mr Flitcroft has a real prospect of establishing that phone hacking played its part, perhaps by being a prompt which led Miss Cock to raise the point with Miss James. More than that cannot be said, but it is enough. The case will be clarified by disclosure and other pre-trial processes, and in the end may well turn on cross-examination in the normal way.

37. This summary judgment claim therefore fails.

The Gibson case

38. Miss Gibson was formerly the nanny to David and Victoria Beckham, a well-known celebrity couple in whom the tabloid press have shown huge interest over the years. She was dismissed by them in 2005 and not long after that she gave a story to the newspapers revealing details of the Beckhams' private lives. They commenced proceedings against her based on duties of confidentiality and obtained interim obtained injunctive relief. On 12th July 2005 the People published a story to the effect that David Beckham had been plaguing Miss Gibson with a series of abusive messages left on the voicemail on her mobile phone. Miss Gibson's case in this litigation is that that story was published as a result of someone on behalf of the newspaper listening to the messages on her voicemail without her consent or knowledge. She sues accordingly. Her pleading relies on a

conversation that she had with a People journalist before the publication in which he told her that he knew they had left messages. The pleading appears in Appendix 3 to this judgment.

39. The defendant seeks summary judgment on this claim on the footing that it has no real prospect of success when one looks at the available evidence. The main thrust of the attack is based on statements made in open court to settle litigation. When the article was published David Beckham denied the claims and immediately threatened libel proceedings. The matter was settled quickly (Mr Sherborne, who appears for the claimants, submits it was astonishingly quickly) and on 3rd August 2005 a joint statement was read in open court. In that statement the newspaper acknowledged the untruth of the story. It said that David Beckham had not made any telephone call of the sort described in the article and had not spoken to Miss Gibson since she had resigned her employment.

40. The breach of confidence proceedings against Miss Gibson were settled in July 2009, on which occasion the Beckham's solicitor made a statement in open court. He said:

> "On 10 July 2005 The People newspaper published an article entitled "Exclusive - Beckham's Hate Calls to Nanny" which falsely stated that David Beckham had made a number of insulting and threatening telephone calls to Abbie Gibson. The People have already apologised for making this false and defamatory claim and have paid damages to David Beckham. Ms Gibson is happy to confirm that David Beckham did not at any stage make any such telephone calls to her. She apologises if anything she said to The People gave them a false impression that such calls had been made."

41. Via her lawyer, Miss Gibson confirmed in a statement in court that she

> " … wishes to use this opportunity to confirm that Mr Beckham has not made any rude or threatening telephone calls to her."

This material is relied on by the defendant as establishing that Miss Gibson plainly did not receive any calls from Mr Beckham, so the source for the story in the paper cannot have been messages left on her phone; therefore there was no phone hacking and that crucial evidential link in Miss Gibson's case is missing.

42. So far as the effect of the statements in open court go, Mr Browne relies on *Adelson v Associated Newspapers* [2008] EWHC 278 in support of his position. In that case a tension arose in a libel action between a pleaded, and maintained, case of justification on the one hand and an offer of a statement in open court, as part of settlement proposals, on the other, where the statement professed a belief that the defamatory remarks were false. In the context of considering a stay application Tugendhat J had to consider whether the court would allow the statement to be read. He concluded that it would not (on the facts of that case):

> "69. The court will normally give permission for the Statement to be read ... It may be that on occasions in the past parties have made Statements in Open Court which one (or even both) do not believe to be true, or know to be false. If that fact does not come to the attention of the judge before the Statement is read, then he will be likely to grant permission. No case has been cited to me where the judge had to consider a statement by a party which that party was asserting to be false.
>
> 70. In my judgment the judge will not give permission for a Statement in Open Court to be read if, before the Statement is read, he is informed by one of the parties that that party proposing [sic] to join in the making of a statement which he believes to be false. It is one thing for the court to be unable to guarantee that all its judgments or verdicts are the whole truth. It is quite another for the court to permit itself to be used for the making of a statement that the maker is at the same time declaring he believes to be true."

43. Mr Browne does not use that case to found some sort of estoppel against Miss Gibson, but he submitted that it came as close to estoppel as made no difference when it came to credibility. In other words, he was submitting that the making of the statement is so strong a blow as to Miss Gibson's credibility that she cannot succeed were she to seek to say, at a trial, that there were indeed offensive messages in her voicemail box.

44. Further evidence is relied on.

> (i) Miss Gibson now says that she did not actually listen to any such messages, and so she cannot establish that they existed at all. The defendant has put in evidence the transcript of a telephone call made by a People journalist, Mr Lee Harpin, to Miss Gibson shortly before the relevant article was published. (A recording of the call

was also made available to me but I gleaned nothing additional from listening to that call over and above what the transcript reveals.) In that call the following exchange took place:

> "H. Sorry to trouble you, all it is that, we've got this story right that we've heard that Posh and Becks are still being pretty horrible to you and have been calling you up and stuff and they are a bit nasty.
>
> G. Oh really.
>
> H. Yeh, have you, is this something you are, like to comment on at all?
>
> G. No, I really can't at the minute for legal reasons....
>
> H. Yes, why, why are they still ringing you, off the record, it seems a bit weird do you think they still sort of [inaudible] because basically you walked out on them and they are sort of still angry with you or?
>
> G. I really don't know, I really wouldn't like to comment because I don't know.
>
> H. How many times have they called, quite a lot?
>
> G. Honestly I can't because I'm actually not in a position, I can't comment.
>
> H. Yeh I know we're not going to quote you we wanna do [inaudible] saying they out of control and they are taking it too far er, but we won't quite you in it at all, we've got a source, coz we know it's true. How long's it been going on for?

G. Well, however long that I've not been there.

H. Right and they just keep ringing you with nasty messages?

G. Erm but they wouldn't leave me, if you think about it, it would be silly if they left voicemail messages because then there'd be proof of it and then I could go and sell my story to a paper or something like I did before so they probably ...

H. So they're just ringing up and then doing what? They're just saying, they're just being a bit horrid aren't they?

G. I can't, I'm not, I'm not do this if you got a source that knows, that's heard it, then fine.

H. Yeh, yeh, we have, yeh. We are gonna run it anyway but we're not, quote you so don't worry.

G. Well, you haven't heard it from me anyway so that's fine ...

H. I know, I know ...

G .. . If you can pay someone to give that information, so...

H. OK

G ... might as well get what you can out of them."

45. This conversation is said to be inconsistent with the evidential case which Miss Gibson now advances, to which I now turn.

46. Miss Gibson's case, put forward in witness statements, is to the following effect.

> When her own story was published in the News of the World she received a lot of abuse from those connected with the Beckhams and other individuals who knew her. She received a very unpleasant voicemail message from a former employer and it was so terrible that she could not finish listening to the message. She stopped listening to her messages or picking up calls. In a witness statement which she signed before the above transcript was made available she gave a short account of the telephone call. She describes Mr Harpin as saying that he knew that Mr Beckham had been leaving "voicemail messages" or "abusive voicemail messages" (she could not remember which) and was surprised that he knew. He said that he did know. He was definite that such messages had been left on her answerphone. She could not understand how he would know that. She said that she did not confirm that messages were left. She did notice from time to time that her phone would show an indication of the presence of a message, but there was no message there when she rang to retrieve it, and she now infers they were listened to and deleted.

47. She explains the statement in open court as being something she was prepared to give because she regarded it as literally true - she had never listened to voicemail messages from David Beckham and so considered that he did not make calls to her that she would regard as insulting or threatening. She was prepared to say what she said, and was motivated by a desire to settle her case.

48. In a second witness statement she refers to a telephone call that she had with her solicitor (and exhibits the attendance note) at the time of the call from Mr Harpin in which she told him that The People was going to run the story the next day and she was not the source. Her solicitor spoke to Mr Harpin who confirmed that his source was not Miss Gibson, "nor was it from someone who had obtained the information from Abbie either directly or indirectly".

49. Mr Browne points to what he says are the inconsistencies in Miss Gibson's account. She did not say to Mr Harpin that she had stopped listening to voicemails, but did not contradict Mr Harpin, thereby confirming his story, as she also did later in the

conversation. Then she rejected the idea that she had received abusive telephone calls. There was equivocation as to whether she did or did not receive calls, as opposed to messages, and in the telephone conversation she herself pointed out the unlikelihood of the Beckhams leaving voicemail messages whose content could be used against them.

50. Looking at all the evidence, and taking into account the fact that as with Mr Flitcroft Miss Gibson has not been told by the police that there is evidence of hacking, Mr Browne submits that her case is so fatally flawed evidentially that it cannot be said to have any real prospect of success. If the matter were to go to trial Mr Beckham would be required to give evidence and he would clearly say he made no calls, and there would be no basis to challenge that evidence. If (when) it was not challenged the only evidential link that Miss Gibson has to phone hacking would be destroyed, and she would have no case. She herself would not be able to say that there ever were any voicemail messages.

51. Last, since she never listened to the voicemails (on her own evidence) no damage has been sustained.

52. Mr Sherborne disputed this analysis. He points out that the evidence demonstrates clearly that she was not the source of the story. That is her evidence; Mr Harpin said they had another source, and it is plain that the newspaper already had the story before Mr Harpin called her. He already knew about nasty messages and appeared confident about his source (as indeed he must have been if he was going to publish without her confirmation). She did not herself give a clear confirmation - she was being cagey (she was the subject of a confidentiality injunction at the time). It is therefore quite plain that the newspaper considered it had a solid source. It is striking that in this instance (contrast the Flitcroft case) the newspaper has not even said in these proceedings that it had a source other than phone hacking. There was evidence of suspicious activity in relation to Miss Gibson's voicemails and the statement in open court was literally true and its impact was a question of credibility and not determinative as to whether she would be believed at the trial. *Adelson* is about a different point. It does not require the court to assume, for present purposes, that the contents are true in a manner which binds Miss Gibson now. In his material Mr David Brown had given strong indications which supported Miss Gibson's case, including a suggestion as to the reasons for the very speedy settlement of the Beckham's claim. The pleading of general practices about phone hacking was material in assessing the probabilities of hacking being a source. If there was hacking there was real damage, and Mr Sherborne pointed to *Mosley v Newsgroup Newspapers Ltd* [2008] EWHC 1777 (QB).

53. Again, it might appear from the above argument that there was something of a mini-trial on this point, but again the label is not so important as the result of the debate. If it can in

fact be demonstrated on undisputable evidence that the claim is factually hopeless, or so weak as to have no real prospect of success, then it might well be appropriate to give summary judgment to the defendant. However, as with Mr Flitcroft, while there appear to be real problems with Miss Gibson's case, I have come to the conclusion that it is not so holed as to mean it has no real prospect of success, and it would be wrong to grant summary judgment to the defendant. I will not conduct a detailed and extensive review of the evidence but the following points emerge.

(i) Mr Browne certainly has a point on the weakness of her case. The material which gives rise to the allegation of phone hacking is the content of the messages which are said to have been listened to. However, unlike other phone hacking cases where there is a similar dependency, in this case the claimant is unable to say that there were ever any such messages with the relevant quality. She says she was not listening to her messages at that time, though this conflicts with her evidence about the apparent deletion of messages. That is potentially a key weakness.

(ii) On its face her statement in open court would support the case that there were no such messages. Her riposte that the statement was one she could make because she believed it to be literally true is not wholly convincing - it is not easy to see how the statement, in its normally understood sense, is consistent with her present version of events.

(iii) However, that statement is at most something that gives rise to questions of credibility. There is no quasi-estoppel operating, and if her present factual case is inconsistent with it then she is not debarred from running that case, or from having it tested in the normal way. It does not automatically have to be treated as false. *Adelson* deals with what the court will do if it is aware, before the statement is given, that it contains an untruth. The court is unlikely to allow such statement to be made. It does not have the effect that a statement, once made, is vested with such huge significance that it cannot be resiled from. It is plausible that she would be prepared to give the statement she gave in order to settle the litigation against her, even if she did not really believe the statement that was read out to be true.

(iv) Mr Brown provides some real material for supposing that phone hacking was the source of the story. It cannot be ignored, despite Mr Browne QC's attempts to downplay its significance as a result of a later statement made by Mr Brown which explains his sources of information (or lack of them), and his attempt to downplay Mr Brown's credibility as a disgruntled former employee bringing Employment Tribunal proceedings for unfair dismissal. He remains clear in his evidence which specifically refers to this case.

(v) It is quite plain that the newspaper had some source other than Miss Gibson, or someone to whom she provided the information, and that at the time of publication it had confidence in that source. It is plausible that that source was phone hacking, given the alleged general practice (assuming such practice to exist - this is a summary judgment action and I do not have to make findings about it at this stage)

and given Mr Brown's material.

(vi) I take into account that in this case the defendant has not denied that the source was phone hacking. It has chosen not to identify the actual source, and given that it is a newspaper that is not surprising and does not have the same evidential significance that a failure to reveal possible defences would have in other cases. However, it has not even issued a bare denial, or sought to say that the source was a human source. Mr Browne said that a bare denial would not be very useful, and newspapers will not (generally) reveal sources, but that misses the point. The absence of even a bare denial is, for the purposes of the present application, of some significance, and the alternative disclosure would not require the identification of a source. It would simply require that the source be identified as human (or of some other nature that would exclude phone hacking). That has not been done. Of course, the newspaper is not obliged to do that, but its failure to do so cannot be ignored.

(vii) The absence of damage point is not necessarily a good one. The claim is based on infringement of Miss Gibson's privacy rights. The fact that Miss Gibson did not listen to her voicemail messages does not mean that her privacy was not infringed when her messages were listened to by others (if they were); and in fact the action may even reveal that more messages were listened to than those which led to the published story, which would be a further infringement or infringements. A failure to listen to messages would not necessarily mean that her privacy rights were not infringed.

54. I therefore find that, while weakened, the case of Miss Gibson is not so impoverished as to require me to say that it has no real prospect of success. The normal processes of the action, and in particular disclosure, will reveal a fuller and more reliable picture. This does not mean that the claim of Miss Gibson is based on impermissible Micawberism. It means that she has an apparent case with real (certainly not fanciful) prospects of success; like other phone hacking cases, it is a case which in its initial phase is one based on inference because the real relevant material is more likely to be in the hands of the defendant (because of the nature of the complaint) and which it is right should be allowed to proceed so that the full material can be made to emerge. It is not a case built on hopeless inference or hopeless speculation and such difficulties as are apparent in the case (which are, admittedly, significant) are not so serious as to require the conclusion that it is doomed to failure. In the words of the authorities, the case is not one of "no real substance", and it is not "inevitable" that it will fail.

Conclusion

55. It follows that the applications by the defendant to strike out, or for summary judgment, fail.

Appendix 1 – redacted to remove material potentially prejudicial to criminal proceedings

4. It is the Claimant's case that journalists employed to work on the Defendant's newspapers:

   a. Habitually used phone hacking techniques and call data blagging to obtain or to verify the accuracy of stories for publication in the Defendant's newspapers, and

   b. Made use of such techniques in the course of obtaining or verifying the accuracy of the story referred to in paragraph §3 above.

5. Pending disclosure and the provision of Further Information, the Claimant will rely upon the following facts and matters in support of the general allegation that the Defendant habitually used phone hacking techniques and call data blagging to obtain or to verify the accuracy of stories for publication in the Defendant's newspapers:

   a. Journalists had been unlawfully making use of the opportunities created by mobile phone technology to obtain or verify stories at least as long ago as 1989 when the "Camillagate" tapes were made, recording a conversation between the Prince of Wales and the then Mrs. Parker Bowles. The advent of digital mobile phones was thought to have made such direct tapping of phone conversations more difficult (though this turned out to be possible by the use of devices such as IMSI-catchers), but the system adopted nevertheless contained loopholes which enabled journalists, or private investigators engaged by newspapers, to listen to the contents of voicemail messages left on mobile phones, and to capture the telephone numbers of those leaving messages. Such practices are hereinafter compendiously referred to as "phone hacking" or "phone hacking techniques".

   b. Journalists, or private investigators engaged by newspapers, were able to obtain information (by deception) as to the phone numbers dialled by a mobile phone, the phone numbers calling a mobile phone, together with the time, date and duration of each such call. The same information could be obtained in respect of SMS messages (more usually called text messages) that were sent or received. Such practices are hereinafter compendiously referred to as "call data blagging".

   c. The Defendant employed various journalists, as set out in the table below, who were at other times working for the *News of the World* and/or the *Sun* newspapers and some of whom are alleged to have been involved in the use of phone hacking techniques and/or call data blagging while working there. It is to be inferred that they brought with them a familiarity with such techniques when they came to work for the Defendant. It is further to be inferred from all the facts and matters set out below that they made use of such techniques for the benefit of the Defendant's newspapers, or encouraged or caused others to do so, when they worked for the Defendant.

Name	**Dates of employment by the *News of the World* and/or the *Sun***	**Dates of employment by MGN**

Name	**Dates of employment by the *News of the World* and/or the *Sun***	**Dates of employment by MGN**
Senior Journalist T	See Confidential Fifth Schedule	See Confidential Fifth Schedule
Journalist B	See Confidential Fifth Schedule	See Confidential Fifth Schedule
Senior Journalist U	See Confidential Fifth Schedule	See Confidential Fifth Schedule
Journalist G	See Confidential Fifth Schedule	See Confidential Fifth Schedule
Journalist D	See Confidential Fifth Schedule	See Confidential Fifth Schedule

d. In 1998 the Defendant was paying a private detective agency called "Southern Investigations" for various information about potential subjects of stories. In the course of the various enquiries into the murder of one of the partners in the Agency, Daniel Morgan, the Metropolitan Police compiled a dossier of work done by the Agency for various newspapers, including the Defendant's newspapers. Some of such work included finding out potential subjects' mobile phone numbers. For example, on 26 August 1998, the Agency performed (or submitted an invoice for) an item of work for Journalist Q which was described in a Metropolitan Police spread-sheet as "Details and pin number **** ****987". It is to be inferred that Southern Investigations had procured for Journalist Q the details and PIN of a mobile phone whose number ended in 987. Further, the said spread-sheet contains numerous entries for "Itemised billing" or "Telephone number and billing" which, it is to be inferred, relate to wrongful phone blagging.

e. The First Schedule hereto is a list of stories, including that complained of in this Action, which the Claimant asserts were obtained by the Defendant's phone hacking techniques and/or call data blagging, for the particular reasons stated in relation to each such story. The Claimant relies on all the allegations made in the First Schedule hereto in support of the general allegation that journalists employed to work on the Defendant's newspapers habitually used phone hacking techniques and call data blagging to obtain or to verify the accuracy of stories for publication in the Defendant's newspapers.

f. On or about 28 August 1999 Steven Nott informed Oonagh Blackman, a journalist (special projects editor) at the *Daily Mirror*, that the Vodafone voicemail platform was not secure, and that voicemails could be accessed by ringing the mobile phone, waiting until it diverted to voicemail, and then entering the default PIN. Mr Nott intended that the story be published. Ms Blackman informed Mr Nott that it would be a front page story. Mr Nott repeatedly contacted Ms Blackman over the course of about a fortnight in

relation to the publication of the story, but eventually Ms Blackman told him that the *Daily Mirror* was no longer interested in publishing the story. Mr Nott accused the *Daily Mirror* of keeping the voicemail interception methodology to use for their own purposes. The journalist threatened Mr Nott with court action if he told anybody that he had explained to her how to intercept mobile phone voicemail messages. The Defendant paid Mr Nott the sum of £100 for his information by invoice dated 20 September 1999 (Order Number AAN1120446) with the description "MOBILE PHONE SCANDAL", but the Defendant did not publish the story.

g. At a dinner attended by numerous journalists on 31 April 2002 (the "SHAFTA Awards" dinner), which was co-presented by Dominic Mohan (then showbusiness editor of the *Sun*) and Piers Morgan (then editor of the *Daily Mirror*), Mr Mohan commented that it was "*Vodafone's lack of security*" which had led to the *Mirror's* showbusiness exclusives. According to a report in the Guardian newspaper, this prompted the biggest laugh of the evening. It is to be inferred that many or most of those present were aware of the fact that the Defendant was using phone hacking techniques in the course of researching stories about showbusiness personalities.

h. On 20 September 2002, at a luncheon party hosted by the Defendant's parent company and its Chairman, Sir Victor Blank, and attended by Jeremy Paxman and Ulrika Jonsson (amongst others), Piers Morgan described how voicemail interception was done, and told Mr. Paxman that he would be a fool not to change the PIN number on his mobile phone message facility. Mr Morgan stated to Ms Jonsson that he knew what had happened in conversations between her and Sven Goran Eriksson. Mr Eriksson had not provided any such information to Mr Morgan, and it is self-evident that Ms Jonsson had not provided any such information to Mr Morgan otherwise he would not have teased Ms Jonsson about the same. It is to be inferred that Mr Morgan has listened to recordings of voicemail messages that Mr Eriksson had left for Ms Jonsson, and *vice versa*. Pending disclosure, the Claimant will rely upon Mr Paxman's affirmed oral evidence to the Leveson Inquiry on 23 May 2012.

i. In 2003, in an interview with Charlotte Church (the well-known singer), Piers Morgan stated:

> *"There was a spate of stories that came out because of mobile phones. When they first came out, mobile phones, journalists found out that if the celebrity hadn't changed their pin code … you can access their voicemail just by tapping in a number.*
>
> *Now, are you really telling me that journalists aren't going to do that?*
>
> *If they know they can ring up Charlotte Church's mobile phone, listen to all her messages."*

j. On 16 May 2007 one David Brown, a *People* journalist from 1995 until he was sacked in 2006, signed a witness statement in proceedings against the Defendant for unfair dismissal. In paragraphs 21, 22, 23, 24, 29, 31 and 32 of that witness statement he made the statements ~~said~~ (the Claimant contends truthfully) as set out in the Confidential Third Schedule hereto.

[Redacted material]

k. In an interview published on 22 July 2011[1] in the newspaper *The Australian*, James Hipwell, (one of the *Mirror* journalists jailed over the City Slickers scandal), said (the Claimant contends truthfully):

> *"I used to see it* [phone hacking] *going on around me all the time when I worked at the Daily Mirror.*
>
> *I sat right next to the show business desk and there were some show biz reporters who did it as a matter of course, as a basic part of their working day.*
>
> *One of their bosses would wander up and instruct a reporter to 'trawl the usual suspects', which meant going through the voice messages of celebrities and celebrity PR agents.*
>
> *For everyone to pretend that this is some isolated activity found only at the News of the World is ridiculous, it's just a lie."*

l. Further, Mr Hipwell (who was a journalist at the *Daily Mirror* from 1998 to 2000) stated in a witness statement dated 31 October 2011 provided to the Leveson Inquiry (the Claimant contents truthfully):

> *"… Another example of the lack of corporate governance at the Mirror was the unfettered activities of its Showbusiness team. I sat next to the Mirror's Showbusiness journalists on the 22nd floor of Canary Wharf Tower and so was able to see at close hand how they operated. I witnessed journalists carrying out repeated privacy infringements, using what has now become a well-known technique to hack in to the voicemail systems of celebrities, their friends, publicists, and public relations executives. The openness and frequency of their hacking activities gave me the impression that hacking was considered a bog-standard journalistic tool for gathering information. For example, I would on occasion hear two or more members of the Showbusiness team discussing what they had heard on voicemails openly across their desks. One of the reporters showed me the technique, giving me a demonstration of how to hack in to voicemails. The practice seemed to be common on other newspapers as well – journalists at the Mirror appeared to know that their counterparts from the Sun were also listening to voicemail messages, because on one occasion, I heard members of the Mirror team joking about having deleted a message from a celebrity's voicemail in order to ensure that no journalists from the Sun would get the same scoop by hacking in and hearing it themselves.*
>
> *During my disciplinary proceedings with Trinity Mirror, one of the Showbusiness journalists who felt I was being treated unfairly by management, offered to hack into Mr Morgan's voicemail on my behalf to try to find out any information that*

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[1] http://www.heraldsun.com.au/news/more-news/james-murdoch-has-been-accused-of-misleading-british-parliament-over-the-extent-of-the-tabloid-hacking-scandal/story-fn7x8me2-1226100025277

would help my case against Trinity Mirror. It seemed to me that phone hacking was widespread on the showbusiness desk at the Mirror. …"

m. Richard Wallace joined the *Daily Mirror* as a show-business reporter in 1990, became the showbusiness editor in 1999 until October 2000 when he was promoted to Head of News, was the Deputy Editor of the *Daily Mirror* from 2003 to 2004, and was the Editor of the *Daily Mirror* from 2004 to 2012. In Mr Wallace's evidence to the Leveson Enquiry on 16 January 2012, he was asked about the assertions referred to above in Mr Hipwell's witness statement. When Mr Wallace was asked whether phone hacking was going on amongst the showbusiness team he responded "*No, not to my knowledge*", but when asked "*Can I take it therefore that this was going on but being hidden from you?"* he replied: "*Might well have been.*"

n. Some stories published by the Defendant's newspapers were of such a nature that it is virtually inconceivable that they were not obtained by a process of phone hacking. Two examples are set out in the Second Schedule to these Particulars of Claim.

o. The Metropolitan Police Service has obtained evidence that a senior Mirror Group journalist regularly paid a private-investigations firm up to £125 a time for mobile-phone numbers and private-access codes at least two years before phone hacking is known to have become a routine practice at the *News of the World*. Pending disclosure and further information, the Claimant relies upon a story entitled "*Was the Mirror Group hacking phones before News of the World?*" published in the Independent newspaper on 24 October 2012 under the by-lines of James Cusick, Cahal Milmo and Martin Hickman.

p. An anonymous former Trinity Mirror journalist corroborated the allegations made by James Hipwell to the Leveson Inquiry (referred to in subparagraph l above), in the course of disclosures made to James Cusick and/or Cahal Milmo and/or Martin Hickman, journalists on the *Independent* newspaper. Pending disclosure and further information, the Claimant relies upon the story published in the *Independent* on 24 October 2012 referred to above. The said former Trinity Mirror journalist is further said in the article to have alleged that it was common knowledge that its journalists were carrying out voicemail interception, and that it took place from the 1990s well into the 2000s.

q. In a report prepared for investors in the Defendant's parent company, which included evidence from former senior *Mirror* reporters, it was asserted that information about the Ulrika Jonsson and Sven-Goran Eriksson affair was obtained by voicemail interception. Pending disclosure of the report and further information, the Claimant relies upon a story entitled "*Mirror hacking probe names six reporters*" published in the *Independent on Sunday* on 28 October 2012.

r. The Defendant's journalists frequently purchased confidential personal information from private investigators that has been unlawfully and/or illegally obtained. The Claimant relies *inter alia* upon the findings of the Information Commissioner pursuant to Operation Motorman, as set out in the report entitled "*What price privacy? The unlawful trade in confidential personal information*" published in May 2006, and the follow-up report entitled "*What price privacy now? The first six months progress in*

halting the unlawful trade in confidential personal information" published in December 2006. The Claimant will rely upon the whole of the reports, including the findings that:

i. Newspapers, and in particular tabloid newspapers, have a voracious demand for personal information, and that substantial payments are made for illegally obtained confidential personal information.

ii. One private investigator, Mr Steve Whittamore, had supplied personal information to 305 named journalists. 120 of those 305 journalists were the Defendant's journalists (in contrast to which just 27 journalists were from the *News of the World* and the *Sun*), comprising 50 from the *Sunday People*, 45 from the *Daily Mirror* and 25 from the *Sunday Mirror*. Those 120 Defendant's journalists engaged in 1,626 positively identified transactions concerning the acquisition of confidential personal information from that single private investigator (as compared to 252 for the *News of the World* and the *Sun*), comprising 802 transactions for the *Sunday People*, 681 transactions for the *Daily Mirror*, and 143 transactions for the *Sunday Mirror*. Pending disclosure from the Defendant and/or the Information Commissioner, the Claimant is unable to give further particulars. The Claimant will aver that the aforesaid personal information was obtained illegally and/or unlawfully.

Appendix 2 - Flitcroft

Garry Flitcroft

1. Around April 2001, journalists on the Defendant's *People* newspaper became aware of a story involving a sexual liaison between Garry Flitcroft, a married man and Captain of Blackburn Rovers football team, and one Helen Hammonds. Around the time that it became aware of that story, it made contact with one Pamela James, a lap dancer practising in Manchester, who had also had an affair with Garry Flitcroft, and who was persuaded to tell her story in salacious detail to the *People*. At the time the Defendant contended that it had encountered Miss James through normal investigative journalism conducted by one Miss Cock, the People's lap-dancing correspondent. It is to be inferred from the following facts and matters, however, that in fact it encountered Miss James through a process involving phone hacking:

    a. Miss James and Mr. Flitcroft had had many communications by telephone and text message, and had left messages on each other's phones.

    b. Phone hacking would have been a normal technique at the time for verifying the story involving Mr. Flitcroft and Miss Hammonds, and would have thrown up Miss James' phone number and possibly some of her messages as well.

    c. Miss Cock did not at the time give any explanation of how she had been able to find Miss James.

    d. It is too much of a co-incidence to suppose that Miss Cock would have tracked down Miss James without the aid of data obtained by phone hacking.

Appendix 3 – Gibson

Abbie Gibson

2. Abbie Gibson had been in 2005 a nanny to the children of David and Victoria Beckham. On 10 July 2005 the *People* published an article entitled "*Beckham's Hate Calls to Nanny*". The story appeared shortly after an injunction had been granted against her in favour of the Beckhams, on the basis of alleged disclosure of private information about the Beckhams. A *People* journalist called Lee Harpin telephoned Miss Gibson and told her that he knew that the Beckhams had been leaving messages on Miss Gibson's mobile phone. Miss Gibson did not respond substantively because she was concerned about the possibility of breaching the injunction against her if she said anything of substance. She did not tell Mr. Harpin that the Beckhams' messages had been threatening or abusive. In due course the relevant story appeared in the *People*. According to the witness statement of David Brown referred to above, Miss Gibson was one of the people whose phones he knew had been hacked. The Claimant asserts, therefore, that the reason why Mr. Harpin knew that the Beckhams had been leaving messages on Miss Gibson's phone was that he (or someone else acting on behalf of the *People*) had been hacking into her phone messages and listening to them.