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Case No: Various

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

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

Date: 28/04/2016

Before :

MR JUSTICE MANN

- -

Between :

Various Claimants	**Claimants**
- and -	
News Group Newspapers	**Defendant**

- -
- -

Mr David Sherborne and **Mr Julian Santos** (instructed by **Hamlins LLP**) for the **Claimants**
Mr Antony White QC, Mr Antony Hudson QC and **Mr Ben Silverstone** (instructed by **Linklaters LLP**) for the **Defendant**

Hearing dates: 13th & 14th April 2016

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Approved Judgment

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. These are two partially matching applications relating to some of the claims made against the defendant (NGN) alleging phone hacking and other unlawful activities in relation to several claimants, though the impact of the applications is capable of being felt in an unknown number of cases which might be launched in the future. Putting the matter shortly, the position is as follows. Like many other claimants before them, 4 claimants seek to make claims about such activities against NGN as proprietor of the former News of the World newspaper. There is no problem about that in these applications, though I have previously ruled on whether they are entitled to plead the full extent of wrongdoing that they sought to rely on. They also seek to make claims against the Sun newspaper, of which NGN is also the proprietor. In order to advance their claims they seek to amend generic Particulars of Claim to elaborate the claim against the Sun. Their application to do so is one of the applications before me. It is resisted. One of the claimants (Mr Clegg) has pleaded claims against the Sun in his claimant-specific Particulars of Claim, as well as claims against the News of the World, and the defendant seeks to strike out those Sun-related claims.

2. The sort of activities which are complained of are the same sort of activities as are the subject of my prior judgment in other litigation against Mirror Group newspapers. That judgment (*Gulati and others v Mirror Group Newspapers Ltd* [2015] EWHC 1482 (Ch)) describes the sort of activities concerned, and I do not propose to repeat that detail here. Reference can be made to that judgment for a fuller description of the nature of the activities (though that case, of course, involved a different newspaper group). It is sufficient to say that phone hacking involves an unauthorised listening to voicemail messages left for a victim, or an associate of the victim, and unlawful information gathering includes (but is not restricted to) "blagging" to obtain copies of telephone bills from which numbers called can be seen and the sending of text messages can be identified. In the litigation against NGN unlawful activities carried out by the News of the World have been admitted, but none have been generally and expressly admitted in relation to the Sun (there is a question as to the extent to which the settlement of one claim involves an admission, a point to which I will come). It is at the heart of NGN's case that the News of the World and the Sun were two different newspapers, separately run and who did not share journalistic resources.

3. Large numbers of claims have been made against NGN and settled – over 800 so far. They have been settled after litigation was started, within a compensation arbitration scheme set up by NGN and in correspondence outside either of those structures. Some cases, however, are still in the litigation pipeline. All involve claims against the News of the World, and some involve cases against the Sun as well. Some are set for trial in June; all but two of those do not involve claims against the Sun, and all but those two are not affected by the issues that arise in the present application. The present application concerns only cases where there are claims against the Sun.

The nature of the cases and the pleadings

4. Because there were so many cases with an apparently common background, the technique of having generic and claimant-specific pleadings has evolved in these cases. Generic Particulars of Claim ("GPOC") exist which are intended to set out background which each claimant will, or is likely, to want to rely on. The GPOC have paragraphs which cross-refer to Claimant-Specific Particulars of Claim ("CSPOC") which contain (as their name suggests) the particular facts which a given claimant wishes to rely on in relation to his or her particular claims. In particular, particular publications said to have resulted from illegal information gathering are pleaded there, as are matters such as particular numbers said to have been hacked.

5. In the matters before me the claims all use a form of GPOC which is headed "Generic Particulars of Claim - Operation Pinetree Claims". "Operation Pinetree" was a police investigation which centres on the activities of a journalist called Dan Evans and the activities of the Features Desk at the News of the World. Before some amendments which I allowed in January, the pleaded claims were heavily focused on those activities. As a result of those amendments the subject activities have been widened, but are still activities at NGN.

6. There are currently two references to the Sun in the Pinetree GPOC. Paragraph 2 pleads that NGN is the proprietor of the Sun, and paragraph 11 pleads that NGN operated a series of arrangements for gathering private information "with a view to the preparation and publication of stories in the News of the World and/or the Sun". Despite that reference to the Sun, what follows is centred around the News of the World.

7. One of the claimants is a Mr Simon Clegg. He is the former Chief Executive of the British Olympic Association, and because of the publicity issues surrounding the Olympics he was a person of interest to the press. He claims he has been the victim of phone hacking and other illegal information gathering on the part of NGN and started proceedings in 2015. His CSPOC of 15th February 2015 pleads claims not only against the News of the World but also against the Sun. I shall come to the detail of this claim in due course, but for the present it is sufficient to note that his pleading says that at least 8 articles in the Sun were manifestations of, and/or the fruits of, illegal information gathering. In November 2015 the defendant issued an application in which it sought (inter alia) to strike out those parts of the CSPOC which complained about Sun articles, or alternatively sought summary judgment against Mr Clegg in relation to those Sun articles on the basis appearing below. As well as resisting that application on its merits (or lack of them) Mr Clegg and other claimants issued their own application to amend the GPOC to introduce what is said to be generic material in order to provide a clearer background to claims made against the Sun in the CSPOCs.

8. Thus there are the two applications before me - the defendant's strike-out application/summary judgment application against Mr Clegg on the footing that the case against the Sun is, for various reasons, bound to fail, and the application of various claimants for amendment of the GPOC to make clear that claims are being made against the Sun and to bolster (NGN would say, with some justification, to plead properly for the first time) those claims. Before me the parties took the amendment point first, and then the strike-out point in relation to Mr Clegg's case. I shall do the same, but will set out some relevant law first.

The law on amendment

9. NGN says that the amendments proposed are "late" amendments. At the previous hearing in January I adopted the summary of Carr J in *Quah Su-Ling v Goldman Sachs International* [2015] EWHC 759 (Comm) in relation to such amendments, and I do the same again:

> "38. Drawing these authorities together, the relevant principles can be stated simply as follows :
>
> a) whether to allow an amendment is a matter for the discretion of the court. In exercising that discretion, the overriding objective is of the greatest importance. Applications always involve the court striking a balance between injustice to the applicant if the amendment is refused, and injustice to the opposing party and other litigants in general, if the amendment is permitted;
>
> b) where a very late application to amend is made the correct approach is not that the amendments ought, in general, to be allowed so that the real dispute between the parties can be adjudicated upon. Rather, a heavy burden lies on a party seeking a very late amendment to show the strength of the new case and why justice to him, his opponent and other court users requires him to be able to pursue it. The risk to a trial date may mean that the lateness of the application to amend will of itself cause the balance to be loaded heavily against the grant of permission;
>
> c) a very late amendment is one made when the trial date has been fixed and where permitting the amendments would cause the trial date to be lost. Parties and the court have a legitimate expectation that trial fixtures will be kept;
>
> d) lateness is not an absolute, but a relative concept. It depends on a review of the nature of the proposed amendment, the quality of the explanation for its timing, and a fair appreciation of the consequences in terms of work wasted and consequential work to be done;
>
> e) gone are the days when it was sufficient for the amending party to argue that no prejudice had been suffered, save as to costs. In the modern era it is more readily recognised that the payment of costs may not be adequate compensation;

> f) it is incumbent on a party seeking the indulgence of the court to be allowed to raise a late claim to provide a good explanation for the delay;
>
> g) a much stricter view is taken nowadays of non-compliance with the Civil Procedure Rules and directions of the Court. The achievement of justice means something different now. Parties can no longer expect indulgence if they fail to comply with their procedural obligations because those obligations not only serve the purpose of ensuring that they conduct the litigation proportionately in order to ensure their own costs are kept within proportionate bounds but also the wider public interest of ensuring that other litigants can obtain justice efficiently and proportionately, and that the courts enable them to do so."

10. At the same time, the need to allow true and full cases to be raised, where appropriate, is still to be acknowledged. In addition, it may be appropriate to consider the merits of the proposed new case, because:

> "34. An application to amend will be refused if it is clear that the proposed amendment has no real prospect of success. The test to be applied is the same as that for summary judgment under CPR Part 24. Thus the applicant has to have a case which is better than merely arguable. The court may reject an amendment seeking to raise a version of the facts of the case which is inherently implausible, self-contradictory or is not supported by contemporaneous documentation." (*Quah Su-Ling*).

I shall apply those principles.

11. There was no material dispute about the principles to be applied in the strike-out and summary judgment application. They are now well enough known not to require extensive citation of authority. I can set them out briefly:

> (a) The critical factor is the overriding objective.
> (b) The court should not strike out a claim in a developing area of jurisprudence since it will usually be appropriate to develop the law in the light of actual, not assumed, facts. Although this point was made by Mr Clegg, it does not really arise in this case.
> (c) To defeat a summary judgment application it is sufficient for the claimant to show some real prospect of success, in the sense that fanciful or imaginary prospects are not sufficient. Even a weak case may be sufficient.
> (d) A summary judgment application should not be made the occasion of a mini-trial (see in particular Lord Hobhouse in *Three Rivers DC v Bank of England (No 3)* [2002] 2 AC 1 at para 58).

(e) That does not mean that there should be no real investigation of the facts relied on. If it can be demonstrated, by a proper analysis of the facts, that there is no sufficiently strong prospect of succeeding on the claim, then the summary judgment application should succeed. Not every proper examination of the facts involves a mini-trial even if it cannot be done a short time. It is the quality of the exercise which will determine whether it is a mini-trial or not.
(f) In carrying out the assessment of the strength of the claim, due regard must be paid, in an appropriate case, to the fact that the respondent's case may depend on evidence which is largely in the hands of the other party and it may be appropriate (or even necessary) to allow the case to develop through the usual processes of disclosure. I accept that the present cases fall into that category. If there were activities of the kind alleged by the claimant then a large part of the evidence will lie in the hands of the defendant, simply because of the nature of the activities involved. The court will be slower to find a respondent to a summary judgment or striking out application has no claim or defence, as the case may be, in that sort of case because it is understandable that the claimant would not be able to advance a particularly full evidential case in that type of situation. To take that into account is not to allow cases to go forward on the basis of pure hope or speculation; there must usually be some material to justify the pleaded claim in the first place. But in cases of that nature a plea of "insufficient evidence" must be measured against an assessment of where much of that evidence is likely to be (if it is anywhere at all).
(g) The parties did not suggest that any different approach should be applied to the strike-out application.

The amendment application

12. I have described in general terms the contents of the Pinetree GPOC, and the fact that it is principally directed at activities on the News of the World. It contains "generic" material in relation to such a case, which has two purposes. First, as a matter of convenience of pleading it is useful for material common to many cases to be set out in one generalised document. That way there is a guaranteed consistency of approach and no need to plead common facts in every (possibly hundreds of) Particulars of Claim. The defendant can therefore (as here) plead its defence accordingly in one document common to lots of cases.

13. However, parts of the generic case have a significance going beyond commonly pleaded items. Historically speaking, the victims of phone hacking have sought to rely not just on specific material which they have available to them in respect of individual acts of privacy invasion which are particular to each of them. They have also relied on a generic case in order to strengthen their own particular evidential cases. Thus typically they have pleaded that there was a general pattern of conduct of phone hacking at the newspaper going beyond their individual cases so as to enhance the inference that they were themselves a victim in their particular cases, possibly beyond acts relating to particular published articles. I commented on, and relied on, a generic case in the trial which I conducted last year in *Gulati v Mirror Group*

Newspapers (*supra*) - see paragraph 16. The claimants have already relied on a generic case in this litigation, in that the GPOC pleads such a case in relation to the News of the World.

14. Mr Sherborne applies for permission to amend the GPOC to add a generic case against the Sun. This not only introduces such a case; it provides a pleading background which removes an inconsistency between CSPOCs which already make a claim against the Sun and the current form of GPOC which does not really provide for it (save for the two very general references which I have identified). It appears in a new paragraph 35A, which is set out in the Annex to this judgment. As can be seen, it makes a generalised allegation of unlawful information gathering (including phone hacking) against Sun journalists, and then gives some particulars. There are some consequential amendments to later paragraphs which add the Sun's name to general points made hitherto just in relation to the News of the World.

15. The amendments in paragraph 35A largely speak for themselves. By way of elaboration the following should be added:

(i) The "Mulcaire Arrangement" referred to in paragraph 35A.1 is a previously pleaded arrangement under which Mr Mulcaire was said to have arranged with the News Department of the News of the World to carry out information-gathering activities for them. This amendment now extends that arrangement to the Sun.

(ii) Although awkwardly phrased for these purposes, the paragraph is obviously intended to provide the best case that can be provided "Pending disclosure and/or the provision of further information by the Defendant". This is not surprising for an allegation of this nature. It reflects the fact that insofar as the allegation is a good one, its full scope will only become apparent at those later stages. This is a familiar and, generally speaking, acceptable pleading technique.

The issues arising on the amendment application

16. Mr Sherborne's starting point is that the amendment is necessary to make clear his clients' case against the Sun. It is in effect advanced in relation to the four current cases which already plead against the Sun in the CSPOCs, potentially arises in relation to 2 of 12 advanced cases which are candidates for trial in June this year, and will arise in other cases yet to come, of which there are 5 "in the wings" and potentially others in the pipeline. Those claimants are claimants who wish to pursue the Sun, and they wish to advance a generic case for the reasons set out above. Mr Sherborne submits that the convenient and proper way to advance common (generic) issues in this litigation is via the GPOC. On the evidence the factual case is far from merely fanciful, and amply fulfils the merits requirement of an application to amend, and he adduced and elaborated evidence to demonstrate that fact. It is not a "late"

amendment when put in its proper context. He draws a parallel with my previous decision in the Mirror Group litigation (*Gulati v MGN Ltd* [2013] EWHC 3392 (Civ)) in which a similar attack was said to have been made by the defendant and failed.

17. Mr White said that this amendment should, in the circumstances, be treated as a late amendment for the purposes of Carr J's analysis in *Quah Su-Ling*. That means that the court should embark on an assessment of the strength of the case to an extent that would otherwise not be necessary or appropriate, and it can be seen that the case is not sufficiently strong when one analyses what is being said and what the real evidence is. Furthermore, bearing in mind the numbers of cases involved, and the allegations made in them, it was unnecessary and inappropriate to create the large "superstructure" of a generic case, with all that that entailed particularly in the realms of disclosure, on which the defendant had already spent six figure sums. This was not a case like previous litigation based on Operation Weeting (another police operation centred on the the activities of Mr Mulcaire vis-a-vis the News of the World) where there was a sound general basis in the form of the evidence from Mr Mulcaire's notebook, or on Operation Pinetree where there was a sound general basis in the form of Mr Evans' evidence about his activities in the News of the World. Paragraph 35A did not introduce a sufficient common narrative. He adduced evidence from reporters as to how they obtained the particular stories referred to in pagagraph 35A.2 in an attempt to demonstrate that phone hacking cannot have played a part in those stories, and went through those matters in some detail. He also sought to demonstrate the weakness of the effect of the other specifically pleaded instances to demonstrate their poverty. His invited conclusion was that there is an insufficient evidential foundation for the introduction of a generic case at this late stage. He accepted that some elements of the pleading might be justifiable as pleadings in individual cases, but not as a general background to every claim.

Lateness

18. Mr White submitted that these proposed amendments qualified as very late amendments because they caused the trial date for these cases to be lost. The application first came before me in January this year, along with other amendments which I allowed, and on that occasion, when deciding which cases would go forward for trial, I determined that cases with an active pleading against the Sun should not be in the next trial tranche. At the time the next trial tranche was April, but in fact no cases were ready for trial then anyway. However, a new date was fixed for June, and the four Sun cases were not in the cases for which directions were given for trial. Accordingly, Mr White submitted that the amendments to introduce the Sun cases were "very late" for the purposes of applying the principles in *Quah Su-Ling*, which brought in the need to consider closely the merits of the case which was sought to be introduced.

19. There was also another sense of lateness which was relied on. At a hearing on 7th February 2014 the general and brief references to the Sun which then appeared in the

GPOC (the short references referred to above) were referred to because objection had been taken to their inclusion at that stage. An exchange took place between counsel and me as to what the parties should do, because the defendant took the view that it need not and would not plead to the generic pleading in relation to the Sun because it was so generalised and the focus appeared to be elsewhere. Mr Tomlinson QC, the claimants' counsel at the time, indicated that they understood that position and would consider it when it became necessary to clarify it, and any difficulties would be placed before me for resolution. He added: ".. it may be that we will simply say fine, we will just park that." Mr White, appearing then as now for the defendant, said:

> "I don't think there is actually anything between Mr Tomlinson and myself. We are happy to say which paragraphs we object to and which in particular we don't accept should lead to any disclosure obligation, this is really all about disclosure. .... So if we make our position clear, if we disagree then there be a need to trouble my Lord with further submissions."

20. I then indicated I was content with the holding regime that the parties proposed and added

> "But I will say this: if it is going to generate a fuss then you will have to generate that fuss in some appropriate way earlier rather than later because you don't want it arising when you get their list of documents and they haven't disclosed anything because they say it is all irrelevant."

21. That sentence is particularly relied on by Mr White at this hearing. Mr Tomlinson went on:

> "Mr White is absolutely right. If they indicate on the face of their defence that they are not pleading to a paragraph, we will know that that doesn't give rise to disclosure obligations and we can then make our decision about what to do about it and we also think there should be a direction for admissions as well because it proved very helpful in the last round that we had a background of admissions."

22. Mr White points out that the point which the claimants now seek to run by way of amendment is the same sort of point that was debated at that time and which I said needed sorting out sooner rather than later, and this is now very much later. This point is said to emphasise the staleness of the allegations.

23. This lateness point is not dissimilar to a lateness point that I had to consider in relation to amendments to the GPOC in which the claimants sought to expand the timeframe for alleged hacking outside the period of Mr Evans' employment at the News of the World (see my judgment on the point delivered on 18th January 2016), but its background is not quite the same. I have, however, come to the same conclusion, namely that this application does not fall to be treated as a late application of the kind referred to by Carr J in *Quah Su-Ling*. In that context a "late" application is one made at a time when it would force the abandonment of a trial date if granted. That is not really the case here. It is true that the Sun cases were taken out of the list of those destined for trial, but it was not inevitable that these cases would have been tried anyway. The cases which will be tried will be those chosen closer to the date (at the PTR) out of the cohort of cases apparently ready for trial. In the typical "late application" case the court is usually faced with a choice - allow the amendment and at the same time vacate the trial date, or keep the trial date and disallow the amendment. The nature of the phone hacking litigation is such that that was not the case in January, when this matter first arose. There were other cases going to trial which could be tried, and no particular reason why Sun-related cases would otherwise be likely to have been given any priority in the choice of cases to be tried at the PTR which will be held close to trial. By the time this point was argued the case was taken out of that cohort because there were plenty of other cases which were candidates in any event.

24. This is therefore not a typically late case in relation to most of the cases in which the point is taken, though it may become so in relation to two of them. Two of the cases currently destined for trial in June are cases in which I am told the claimants will wish to add Sun claims if the amendments to the GPOC are allowed, and there is a risk that they would have to be pulled from the trial list in that event. This was not a point which was dwelt on at the hearing, and is not of great significance. Those two cases will have to be addressed if and when any application to amend the CSPOCs is made.

25. Nor is the application rendered late (for these purposes) by what happened at the February 2014 hearing. It is true that I indicated that points arising out of the resisted attempt to introduce the Sun into the firing line would have to be dealt with sooner rather than later, but that was not in the context of Mr Clegg's case or (so far as I am aware) any other case with which I am now concerned. It was in the context of a batch of cases which has by now been dealt with. My remarks were intended to make sure that the proper progress of any cases in which the point was going to matter was not going to be held up to an undesirable extent and, to a degree, to make sure that the point was raised in a correct procedural context. It was not intended to debar all future claimants from relying on the Sun point raised via the GPOC.

26. In that context it is relevant to repeat a point that I made in my previous judgment. At paragraph 11 I reflected on the fact that barring a case by refusing an amendment

would not prevent the same point being taken in a new pleading in a new case. New litigants would therefore have an opportunity of running a case denied to the present claimants. As before, that does not mean that it is not (and perhaps never can be) too late for these litigants, but I have to bear in mind the anomalies that would be created if these applications were characterised as "very late" with all the consequences that that is said to have when other cases would not be dealt with in the same way.

27. In the circumstances I do not consider that these applications fall into the category of the "very late". The relevant consequence of that is not that they will be allowed; it is that the scrutiny of the merits that is required may require a lower hurdle. I still have to consider the merits, because Mr White says they are insufficient in any event.

The quality of the factual case

28. This particular point has generated a considerable amount of evidence because of the attempt by NGN to say that there is insufficient evidence to justify the amendments. This is particularly so of the allegations in paragraphs 35A.1 and 35A.2. Those paragraphs make a generalised allegation and then list specific stories which are said to have involved unlawful activities and NGN served a large number of witness statements from reporters involved in those stories in order to seek to demonstrate that the source of those stories did not involve unlawful information gathering (and in particular phone hacking). The claimants have put in evidence which seeks to demonstrate the arguability of their case that they did. I do not propose to set out the nature of each witness statement. A summary and conclusion will suffice for present purposes.

29. The claimants' case starts with some evidence from Mr Mulcaire. He gives some general evidence to the effect that articles published in the Sun contained information obtained through voicemail interception, and he then gives examples. They are the examples listed in paragraph 35A.2(a) and (c). In the case of the Rooney articles he has the benefit of a page in one of his notebooks which is said to relate his research. It has the word "Sun" and a reference to a sum of money which he says is his fee. It lists, amongst other things, an address which is the same address as one which turned out to be important to the researching activities of reporters (and their photographer) who published the story. Mr Greg Miskiw, a News of the World journalist from 2001 to 2005, when he left to go to a news agency, has provided evidence that as well as tasking Mr Mulcaire to carry out activities for the News of the World, he also tasked him with activities for the Sun. NGN has countered with detailed witness statements of reporters and the photographer, some of which suggest alternative sources of the story, or elements of it. The overall effect of this evidence is that there is some evidence of Mr Mulcaire's involvement, and of phone hacking being involved, and of Mr Mulcaire carrying out his activities for the Sun. The evidence of the reporters is

not necessarily inconsistent with this and it is not possible to say that the claimants' case is unsustainable, which is the relevant test.

30. Next there are the Hoare, McGreavy and Excell stories identified in sub-paragraph (c). The overall pattern of evidence is the same. Mr Mulcaire gives some evidence about being instructed to undertake some researches, and reporters counter by giving their accounts of their activities which do not, apparently, involve Mr Mulcaire, and which in some cases provide alternative sources. In the case of the McGreavy story, Mr Miskiw produces a page from Mr Mulcaire's notebook which purports to demonstrate activities carried out by him in relation to Mr McGreavy, but it does not identify the Sun as the commissioning paper. Mr Miskiw takes the opportunity, in some reply evidence, to implicate the then editor of the Sun, Ms Rebekkah Brooks, in knowledge of phone hacking as a source of stories. On the basis of the totality of the evidence it is not possible to rule out the involvement of Mr Mulcaire in obtaining some material. It all depends on what he did, when he did it and for whom he did it. It can, however, be said that as it stands, these particular instances are only very weak evidence in support of the key allegation, which is that Sun journalists routinely hacked phones and engaged in other unlawful information activities.

31. The Jude Law story is different. There is no attempt in the evidence to attribute the Jude Law story to information obtained from the Mulcaire arrangement (which is what the pleading is) via evidence from Mr Mulcaire or any journalist. Instead Mr Sherborne points to the pleading of a case brought by Mr Law in 2001 in which he makes claims that the benefits of the Mulcaire arrangement extended to the Sun, and that senior executives of the Sun moved from News of the World, where hacking also went on, and brought knowledge of the practices to the Sun. (This pleading, ironically, was exhibited by NGN, not the claimant.). Mr Sherborne also relied on the settlement of this case. This does not work particularly well for him because the agreed statement in open court admits unlawful activity by News of the World, but not by the Sun - it merely notes the claim and accepts that the publication of articles was a misuse of private information, with no admissions as to source. Some of the significance of the pleaded case is obscured by the fact that the copy pleading does not contain confidential schedules which might go to the attribution of responsibility, but even allowing for that, it has to be said that a pleading is not evidence of anything in this context. In evidential terms this Jude Law instance is very weak.

32. The overall effect of this analysis is that the particular instances of the extension of the Mulcaire arrangement which are pleaded are overall weak, but cannot be totally dismissed. But they are not the only material which is relied on.

33. The next pleaded element is the publication of stories which have express reference to mobile phone communications which demonstrate hacking. They are listed in paragraph 35A.3. I was shown copies of the articles. I will provide two examples:

34. The relevant part of the article referred to in sub-paragraph (a) reads:

> "They had a stream of fierce rows over the phone while Liam was on the road."

The relevant part of the article referred to in sub-paragraph (d) reads:

> "Their relationship is obviously something special because they have been talking on the phone as often as they can since the girls left Los Angeles."

The former extract is said to be the sort of information that comes from phone-hacking; the latter is said to be the sort of information that comes from blagging of call data. That this latter activity went on in relation to the Bizarre column is supported by a witness statement from Emma Jones, who was for a time the deputy editor of that column and who says that she engaged the private investigators who have since been demonstrated to have obtained that sort of information. One of the articles which features in another case (not before me) involving celebrities Ms Holden and Mr Morrissey contains references to phone calls which could be the product of such activities. She also implicates more senior management (including her column editor Mr Mohan) in knowledge of that sort of activity because they will have approved the expenditure. It is also right to observe that she says in terms that she did not know how to hack phones and did not know it went on at the time (if it did). However, that does not detract from her evidence about private investigators who are known to have gathered information unlawfully.

35. Mr White invoked the fact that these articles were put to Mr Dominic Mohan (former editor of the Bizarre column and mentioned in the next sub-paragraph of the pleading) at the Leveson Inquiry. He is recorded by Sir Brian Leveson as having denied that they were procured by phone hacking and "there is no evidence to contradict him". Mr White says that reliance on these articles is merely re-hashing something that had been dealt with without adding anything new. I regard Mr White's point on this as being of no weight. Sir Brian's finding on this point (see paragraph 3.35 of his report) was obviously justified on the material that he had, but there was no cross-examination of Mr Mohan on the point, and Sir Brian was doing no more than making a finding on the material he had. He did not conduct an investigation into particular instances with the benefit of prior disclosure and with the sort of investigation of witnesses that one gets at a trial. That was not the function of that part of his inquiry. His determination that there was "no evidence", in its context, is of no assistance to me or Mr White.

36. Mr White also relied on the late evidence of Victoria Newton, who worked on the Bizarre column for various relevant periods. She did not actually know how the 6 articles were sourced, but gave evidence of the general journalistic techniques used to get them, which did involve phone hacking, which she did not carry out, authorise or know of as going on at the Sun. Her evidence does not rule out at least unlawful information gathering, and while it is plainly relevant it does not amount to, or contribute materially to, a knock-out blow against the allegations made about the 6 articles, which is what Mr White needs.

37. It is not necessary to set out more extracts or to say anything more about this part of paragraph 35A. I find that taking the above material into account the case that has been made is capable of supporting the allegation of unlawful information gathering (including phone hacking) at the Sun.

38. The next pleaded point concerns the joke made by Mr Mohan at the SHAFTAS Awards (paragraph 35A.4). Mr Mohan was asked about this at the Leveson Inquiry and he said it was a joke based on rumours that hacking could be done and was done elsewhere. Sir Brian records his evidence on the point at paragraph 3.35 of his report. Having commented that it was not possible to regard what Mr Piers Morgan had said about something as a joke, Sir Brian says:

> "3.39. It is not possible to reach similar critical conclusions about Mr Mohan's evidence, although aspects of it gave cause for concern."

39. I think that Mr White relies on this as being some sort of encouraging finding about Mr Mohan's evidence. If that is his case I do not agree. Sir Brian apparently had doubts about his credibility, but did not go so far as to make findings about it. He certainly did not endorse his evidence. Again, it is significant that Mr Mohan was not actually cross-examined at the inquiry. There are some very obvious questions which would arise in relation to Mr Mohan's explanation and denials of involvement in hacking, and they can only be asked at a trial. This is material which Mr Sherborne is entitled to rely on and which supports his case.

40. The next two subparagraphs (35A.5 and 35A.6) can be taken together. They are an assertion that journalists did it on other newspapers before they arrived at the Sun and are likely to have taken their tools with them, and used them. Certain journalists are identified. In fairness to those whose names are about to appear I make it clear at this stage of this judgment that where allegations are made against journalists they are no more than that - allegations. I am merely recounting the state of the pleadings and limited evidence, not making any findings.

41. This is an allegation which can prima facie be substantiated on the available evidence. Dealing briefly with the individuals concerned:

> (i) Mr McMullan was employed by the News of the World, but did some freelance work at the Sun between the mid-1990s and 2007, and he admits to hacking himself. The amount and extent of that work is uncertain from his witness statements, which tend to concentrate on the News of the World. His statement clearly implicates News of the World journalists in the exercises of phone hacking and information blagging, and he gives some evidence indicating that Ms Brooks knew about those "dark arts" while she was at the News of the World, from which (if true) it is possible to infer that she took her knowledge and

her willingness to contemplate their deployment when she became editor of the Sun. Mr Mohan is identified by him as another journalist who moved from the News of the World to the Sun, impliedly stating that he took his blagging and/or hacking skills with him. Mr McMullan gave evidence to the Leveson Inquiry, and Mr White pointed to what he said were adverse findings there about his credibility. I repeat the remarks that I made about this credibility point in paragraph 45 of my judgment of 18th January 2016 - his evidence was not rejected in its entirety, and since that Inquiry Mr McMullan has had access to one or two of his papers that he did not have at the time of the Inquiry which he says supports his overall evidence. I decline to reject Mr McMullan's witness statements at this stage of the proceedings.

(ii) Mr Sean Hoare was a reporter who worked at the Sun (and other News International titles) for a period or periods between 1990 and 2001. He was, for a time, a journalist on the Bizarre show business column. He died in July 2011, but before he died he spoke more than once to his brother Stuart about working at the newspapers and said that hacking was a daily occurrence at (inter alia) the Sun. Mr Stuart Hoare has given a witness statement to this effect. Mr Mohan was one of those particularly identified as one who hacked phones. Stuart Hoare gave evidence to the Leveson Inquiry, and it is apparent that Sir Brian was reluctant to give a lot of weight to his hearsay evidence. However, once again he did not completely reject it and, significantly, he did not have the benefit of a draft manuscript witness statement in the hand of Sean Hoare (it is not signed) prepared before he died, which I have now seen. This witness statement makes clear statements to the effect that phone hacking occurred at the Sun, and implicates journalists including Mr Andy Coulson. Recently the claimants' solicitor has had access to some of Mr Hoare's private emails, and some are exhibited. Some of them refer to phone hacking, and some seem to be irrelevant. It is not possible at the moment to relate them clearly to hacking at the Sun, but they may be consistent with it. Overall it is impossible to dismiss all this evidence as having no substance.

(ii) While on the topic of journalists who worked for the Sun having knowledge of phone hacking and using it, Mr Miskiw gives evidence of his being asked to continue to listen to the voicemail messages of Heather Mills by Mr Geoff Webster (Associate Editor of the Sun, which I was told meant that he was effectively No. 3 in the editorial chain of command) in April 2006. He corroborates this with an email exchange he had with Mr Webster, which on the face of it could well be an instruction from Mr Webster to continue to hack her phone.

(iii) Three other names are mentioned as being examples of movement of journalists - Mr Scott, Ms Cox and Ms Simpson. There is clear evidence implicating Mr Scott in phone hacking whilst at the Mirror (see my judgment of May 2015 para 46 and other references, and Mr Hoare describes him as making a career of it in an email in 2010), but he left the Sun in 1999. One cannot necessarily draw the inference that he was already doing at the Sun what he apparently did at his next newspaper, and he is not a particularly good instance (though he cannot be ruled out). However, Ms Simpson and Ms Cox went the other way, from the Mirror to the Sun, and they were, ostensibly, linked with

unlawful information gathering (including potential voicemail interception), as Mr White accepted. He said that the point was no more than "marginal". I disagree - I think that it is, for the purposes of justifying a pleaded case, significant (that is to say, farther along the spectrum from hopeless to very strong). "Significance" is all that Mr Sherborne really requires to justify a pleaded case. I accept that there is (for these purposes) a sufficient likelihood that a journalist who has acquired a useful skill (or knowledge of it) in one newspaper will seek to use it at another so as to allow the allegation to be justifiably pleaded.

(iv) Paragraph 35A.7 pleads the findings of an Information Commissioner inquiry which reached conclusions about the general appetite of tabloids for confidential information and their acquisition of it. Mr White criticised reliance on this as being reliance on old news which could not be evidence of a generic claim. Otherwise it could be pleaded as background in every case. In my view its age does not detract from such impact as it has as a pleading. It does not, by itself, prove a generic case against the Sun, but that does not prevent its being part of a jigsaw pleading which seeks to plead a sufficiently justifiable case as a pleading. It does not prove much in any individual case, but it is capable of adding a bit of lustre to other material (if available).

(v) Paragraph 35A.8 refers to the settlement of claims made against the Sun. It is the case that claims which involved complaints against the News of the World and the Sun have been settled, but little can be gleaned from that by way of an inference of admission because hacking by the News of the World has been admitted by NGN and that may explain all settlements of that kind of action. There has (according to what I was told) been one case of a Sun-only piece of litigation which has settled (the claim of Mr Jude Law, referred to above) but the statement in open court that was made contains an express admission of unlawful activity on the part of News of the World and does little more than note the claim against the Sun. This particular paragraph, even in the context of a pleading, gives little support to the generic case, though I would not forbid its entry into the pleading.

42. The conclusion from this exercise of considering the evidential strength of the pleaded case to see if there is an evidential case which can justify the amendment is that there is, both in terms of what is pleaded and in other matter which is not (such as the Webster email). To that evidence can be added some potentially suspicious phone calling activity in another case at an early stage in which the claimant is a Mr Mullord. It is true that Mr White has produced a number of witness statements which depose to the fact that some journalists were not aware of hacking at the Sun, but all that does is introduce a dispute on the evidence which cannot be resolved at this stage. It does not detract from the fact that, in terms of sufficient material to justify the pleading of a case, and in terms of demonstrating a case which is sufficiently strong to justify an amendment to an existing case, the claimants have enough material and the defendants have not produced material which nullifies its effect.

43. In reaching this conclusion I take into account the nature of a case such as this. As I have had occasion to observe elsewhere, the activity which is alleged to have happened was covert. It is an activity which, by its very nature, would not have been known to the victims. The major part of the evidence which goes to the allegation (if true) lies with the defendant, not with the claimant. The case lies in the class of cases in which disclosure by the defendant is very important, and the claimant is justified in saying that it cannot plead particularly fully at the outset. In other sections of the overall phone hacking litigation the claimants' cases had benefited from the fact that those involved were exposed by themselves (Mr Evans and his statements concerning the Mirror) or were forced to expose themselves (Mr Mulcaire and his notebooks concerning, at that stage, the News of the World). Until then the newspapers had not admitted to doing anything wrong. That does not mean to say that all denials are not to be believed, but it does demonstrate the dilemma of a claimant who does not have the benefit of such revelations. It demonstrates the covert nature of the activity, and explains why initially a claimant may not have a lot to go on. The court must bear that in mind if it is necessary to form an early assessment of the strength of the evidential case. That does not allow the claimant to plead any old case then say they need to get to disclosure in order fairly to dispose of the action. There must be some material which justifies getting the case off the ground, or justifying an amendment to an appropriate degree, but the significance of that material has to be assessed against the background of what, inevitably, the claimant would not know if he or she were right in their claims.

The appropriateness of pleading a generic case in the GPOC

44. Mr White took a different (though in my view related) point about the appropriateness of allowing the introduction of a generic case into the GPOC. He accepted that it might be appropriate for individual claimants to incorporate some of the pleaded material into their particular claims, but that would only apply to limited parts and would not open up the whole generic case with all the serious and undesirable consequences that that would entail. It was not necessary to do that for individual cases.

45. The serious consequences to which Mr White referred were the steps that would be necessary to deal with an allegation of a generic case. Such a case would potentially involve a large scale investigation across the whole newspaper. He has in mind disclosure in particular. The Sun (unlike the News of the World, where large enough costs had already been incurred) was a daily newspaper. The potential range of inquiries was vast. It was said to be of significance that no Sun journalist had ever been charged, or even arrested, in the now considerable police investigations into tabloid phone hacking. The Metropolitan Police Service had publicly acknowledged the co-operation of the internal NGN newspaper committee tasked with dealing with phone hacking consequences. The "common narrative" provided by Mr Evans in relation to the Mirror group and the Mulcaire notebooks (and Mr Mulcaire himself) in relation the News of the World was missing.

46. Mr White's submissions can be broken down under 3 heads, which in my view have to be understood separately though their operation is linked. His first point is probably a relevance point - a generic point is not relevant to particular cases, or at least the particular cases which have been pleaded so far. The second is a proportionality point - even if relevant it would be disproportionate to allow in the "overblown superstructure" (his words) of a large-scale generic case to the individually pleaded cases which can and should (in proportionality terms) stand or fall by themselves. The third is an evidential case - the evidence is too weak to justify the introduction of a large-scale generic case. This factor feeds into proportionality.

47. So far as relevance is concerned, I do not consider Mr White to be correct. I have dealt above with the significance of a generic case. The generic case is highly relevant to the individual cases of the claimants for the reasons appearing there. It is capable of bolstering inferences as to what activities were conducted in relation to the claimants, and it is perhaps capable of generating more direct evidence on the way. The defendant's case is likely to be based on an averment that Sun journalists did not do that sort of thing (one can see that coming out in the witness statements provided in this application), and the generic case would go to that. But even if that is not the Sun's positive case, the carrying on of unlawful activities across the newspaper goes to the likelihood of its having been done in relation to the individuals, and the scale of what was done (which might not always have resulted in articles - see the facts of the Mirror Group case). This is, to a limited extent, impliedly accepted by Mr White's own acceptance that some of the specifically pleaded generic material might be capable of being fairly incorporated into the individual CSPOC cases of at least some claimants.

48. One can test the point in this way. Suppose the matter had been pleaded at the outset, or even pleaded in individual cases. Would the claim have been strikeable on the grounds of irrelevance? I find that the answer is clearly: No. That being the case, and since the case could have been made in individual pleadings, it is far more convenient for all concerned that it be made in a generic pleading, so there is just one version of the claimants' cases on the point, and one version of the defence to it. The pleadings would otherwise be potentially extremely messy and conceivably inconsistent.

49. The next point is proportionality. I think that Mr White's point involves him saying that the claimants have their own cases on their own articles, and those claims, in relation to those articles, or perhaps in relation to what the newspaper may have done in relation to them whether it resulted in articles or not, can be adequately investigated in the context of a particularised case and it would be disproportionate to allow a huge generic case into the proceedings. I think that this has to be considered along with his third point, which is the weakness of the apparent case. That third point has, to a degree, been considered above in the previous section of this judgment. The pleaded case has some sort of real factual backing, but a proportionality case involves some

sort of assessment of the likelihood of its getting better to a sufficient degree to make the running of the case worthwhile. I do not consider that it is sufficiently weak to justify a conclusion that the prospects of success, or the prospects of building it up further, are dim to the extent of materially impacting on the proportionality of allowing a generic case to be run. I have already made remarks about the extent to which the claimants do not, at this stage, necessarily have evidence of covert activity in their own hands. If hacking (or other unlawful activity) went on it is not surprising that they do not have much evidence of their own at this stage. The fact that no Sun journalist has been arrested or charged is only of significance if it can be demonstrated that they were actively investigated and cleared, and even then it does not necessarily prove much. In fact such an investigation has not been demonstrated. All that has been shown is that the MPS could have investigated if they wanted to, and would have had the cooperation of NGN if they had. That does not help. The same applies to the acknowledgement of cooperation given by the MPS. That is only potentially relevant if they investigated activities at the Sun, and it is not apparent that they did. In fact it would not be surprising if their investigations did not go that far, bearing in mind that the major investigations which have been given names and publicity (Weeting, Pinetree, Golding and Elveden) did not involve that sort of investigation.

50. Accordingly, although Mr White is entitled to point to the state of the evidence, it is not sufficient to allow a conclusion that investigation of a generic case would be an exercise which is so speculative as to make it disproportionate to conduct it.

51. With that in mind I turn back to the other proportionality aspect, namely whether given the individual claimants' claims and the likely course of their conduct it is disproportionate to bring in the potentially extensive inquiry as to a generic case. In this context one has to distinguish two things - first, whether it is disproportionate to allow the claim to be made in the first place, and second, whether any given method of conducting it is disproportionate. At this point I am considering the first of those points, though the second feeds into it. I do not consider that it is disproportionate. Once again the significance of the generic case appears above. For an example of its significance in practice I point to the Mirror Group litigation. It is far from disproportionate to seek to run such a case in the circumstances of the present claims.

52. Each side urged numbers on me. Mr White said the numbers of cases were small. Mr Sherborne said they were not. There were already over 10 potential cases, with about 100 articles between them, and potentially more behind those. I do not consider that that level of cases makes a generic case disproportionate.

53. I have also stood back and reflected on all these proportionality points together, to assess the overall picture. My conclusion is the same. To introduce a properly articulated generic case is not overall disproportionate or otherwise unfair.

54. That does not mean to say that there should be no proportionality constraints on the way the case is run. The most expensive, difficult and intrusive part of the case is likely to be disclosure, and that must be carefully policed. The claimants are not entitled to insist on the inspection and turning over of every stone to see whether what is under it is material supporting a generic case. There will have to be limits. It may be that practicalities mean that the scope of the generic case investigations are much more limited than the claimants would hope for (but of course I make no ruling on that sort of thing at this stage). But that is where proportionality is correctly applied. Applying proper controls will be for me, as the managing judge, to decide (insofar as the parties cannot agree).

Conclusion on the amendment application

55. Taking all the above matters into account, I consider that it would be right to allow the amendment to the GPOC in the cases in which it has already been incorporated. On the assumption that future cases will want to take advantage of the new form of GPOC (if the claimants have Sun claims) the amended form will be the correct form for those future cases. The parties will have to investigate whether the existing form is somehow enshrined in one of the previous case management orders, and if so a variation to that order will have to be made.

The strike-out/summary judgment application in relation to Mr Clegg

56. This application turns on the averment of NGN that the case can be seen at this stage to be evidentially bad, and irredeemably so.

57. Mr Clegg's pleaded case relies on a fully pleaded case against the News of the World in relation to some articles and no issue arises on the present application in relation to those. The issue arises in relation to 8 articles which appeared in the Sun. The bulk of the detail of the basis of the allegation that they resulted from hacking is targeted at the News of the World (and in particular the activities of Mr Evans). There is no similar background material pleaded against the Sun apart from the new generic material which I have just allowed in by amendment to the GPOC.

58. The defendant probed Mr Clegg's pleading by a Request for Further Information. The request, and the answer, were as follows:

> **"Under paragraph 5**
>
> Of: "*During the relevant period, the Claimant experienced a significant amount of suspicious activity as regards not only the use of his mobile telephone and missing messages, but also the*

fact that private information was appearing in the media for which there was no legitimate explanation."

..,

Request no. 6

"Please provide proper particulars of all instances in which "*private information [appeared] in the media for which there was no legitimate explanation*" including:

(a) the nature of the information;

(b) the identity of any individuals who, so far as the Claimant is aware, knew this information; and

(c) the date(s) on which, and the publication(s) in which, such information appeared in the media."

Response

…

"The Claimant will elaborate on his case that the articles he has identified were derived from or based on or sought to be corroborated by material through accessing his voicemails in his witness statement, and following the provision of proper disclosure and/or further information by the Defendant. However, the Claimant recalls that much of the following further information that can be given at this stage was known only to a tight-know [sic] group of high-profile individuals, including the Claimant.

…

(ii) In relation to "*Blair in Pounds 300m Olympic gamble*" published in The Sun on 15 May 2003, the information that the Bid would be announced. The Claimant recalls that a couple of days prior to the announcement, he had been told to report himself to the House of Commons to hear the announcement. The article also reveals that the Bid would be funded by a new Lotto game. The Claimant recalls that the article aligned with was aware of this private and confidential issue and was deeply involved in all issues relating to funding.

…

(v) In relation to "*Pin's top job – Rowing*" published in The Sun on 30 November 2004, the revelation that Mr Matthew Pinsent was in contention to succeed Craig Reedie as chairman of the British Olympic Association.

> (vi) In relation to "*Princess fights for Games*" published in The Sun on 9 June 2005, the revelation of Princess Anne's involvement with the Bid, specifically that she was active in lobbying, a highly unusual stance for a member of the British Royal family.
>
> (vii) In relation to "*Cherie is leading race for Games*" published in The Sun on 2 July 2005, the revelation of Ms Cherie Blair's involvement in the Bid and would participate in lobbying the electorate.
>
> (viii) In relation to "*Our stars are shot to Brits – Exclusive*" published in The Sun on 12 January 2008, the revelation that the Aldershot had been chosen as the preferred location for the British Olympic Team's preparation for the 2012 Olympic Games.
>
> (ix) In relation to "*Olympic ban lifts*" published in The Sun on 11 February 2008, the revelation of the information that the British Olympic Association had countenanced a contract which would have the effect of silencing athletes from discussing China's human rights record.
>
> (x) In relation to "*Hypocrites – Exclusive*" published in The Sun on 26 February 2008, the revelation of the information that the British Olympic Association invited Mr Linford Christie to their annual Gold Ball gala, despite his Olympic ban."

59. The defendant's attack on this part of the case turns almost entirely on the averment that "much of the following further information that can be given at this stage was known only to a tight known group of high-profile individuals, including the claimant" and the subsequent listing of the information. The attack is based on the fact that the information relied on in this respect was in fact already in the public domain, and the defendant has produced a number of articles said to include the same information which demonstrates that. Relying on that material the defendant then says that the very important part of the claimant's case which relies on the fact that the defendant knew information which was only known to a small number of people cannot be sustained. Accordingly, it is said, there is no material for inferring that information was obtained by voice-hacking (or other unlawful information gathering). In addition, NGN has in several cases obtained witness statements from the journalists involved in obtaining the story. In some cases the journalist in question has a recollection which enables him or her to propose an alternative source; in other cases the journalist suggests a likely source which he cannot, however, actually recall (usually a briefing, with a recollection based on general practice). In his submissions Mr White drew attention to the fact that when dealing with his evidence-based attack on these claims Mr Clegg did not respond to all of them.

60. Mr Sherborne's riposte to this evidence-based attack is to go to the actual articles that Mr Clegg complains of and point out aspects of each article which go beyond the content of the earlier article which Mr White says demonstrates that the material cannot have been private material known to a few individuals. Mr Clegg gave two examples in his witness statement evidence, and Mr Sherborne went through the articles giving others.

61. I deal with them all briefly, using the same numbering as above. In what follows I do not generally recite the evidence (which is usually surmise rather than direct evidence) appearing in witness statements of some of the journalists involved in the stories. That is material for a trial. I concentrate on the material which it was said put the stories in the public domain before the articles, because the content of other articles is incontestable for present purposes.

(a) Article (ii) (involving the Blairs) was an article about the announcement of the London Olympic bid. The preceding articles refer to plan to make a bid, but it is said that the difference is that the Sun article says that the bid will be announced "today", which makes it more immediate. The earlier articles merely refer to a future intention, though Mr Sherborne did accept that one of the earlier articles referred to lottery funding. I agree that there is that difference and it is capable of supporting Mr Clegg's case that the story was acquired from listening to his voicemail traffic.

(b) The article at (v) referred to the prospects of Mr Matthew Pinsent being the next chairman of the British Olympic Association. It quoted a "senior Olympic movement figure" saying he is "the obvious choice". Mr Clegg says that those were indeed his own views, expressed only to about 3 other people. NGN offers up 2 articles, only one of which actually preceded the Sun article. The first article was attributed to a non-existent journalist - the explanation volunteered by one of NGN's witnesses is that that might have been done because it came from an agency or to protect a source. It refers to the possible aspiration of Mr Pinsent in that respect and does not reflect that he was viewed as a front-runner within the organisation. I agree that there is that difference, which means that a material part cannot be attributed to material in the public domain.

(c) The article at (vi) was effectively conceded by Mr Clegg, and I need say nothing about it other than to say that it will have to fall out of the picture.

(d) The Article at (vii) is said to differ from the preceding article in that it does, but the earlier article does not, have a reference to what the British Olympic Association thought about Mrs Blair's participation - they thought it would swing voters in favour of the bid. It also refers to the participation of Mr David Beckham (unlike the earlier articles), which is said to have been known only to a handful of people, though it is right to observe that 2 articles published on the same day as the Sun article also refer to him. That, again, is a material difference on which Mr Clegg is entitled to rely.

(e) Article (viii) refers to the prospects of Aldershot being used as a training base for British Olympic athletes, and describes itself as an "Exclusive". A preceding article in the mainstream press refers to this as a prospect; Mr Sherborne distinguishes the Sun article as referring to Aldershot as a "front runner". That is about the only difference. NGN's researches have also thrown up an article in "Horticulture Week", two days before the Sun article, which refers to the fact that Aldershot would be used as the Olympic base. With all due respect to that publication, it was not suggested that they managed to get a remarkable scoop on the point and that thereafter it became common knowledge. At present it would seem to me more likely that the Horticulture Week accidentally mis-stated the generally known position. The real question is whether the distinction between "front runner" and being in the running is capable of being a material difference so as to give grounds for attributing the article to phone hacking. I do not rule it out at present, though it is probably not Mr Clegg's best instance.

(f) Article (ix) relates to Olympic officials backing down on a suggested restriction on statements made by Olympic athletes. The article in question says that the officials have backed down; the prior article relied on by NGN refers to the proposals for a restriction. They are obviously different, and the earlier does not anticipate the latter. NGN points to two articles of the same date as the Sun article which refer to the climb-down, but being of the same date they obviously do not demonstrate prior public knowledge. There is, for once, some call data which shows a call made to Mr Clegg's phone 2 days prior to the publication of this article which is said to be suspicious , being made from NGN at 10pm on a Saturday night, and which may reflect a hacking of his phone.

(g) Article (x) refers to the suggested hypocrisy of inviting Mr Christie to events when it suited the BOA but excluding him from carrying the Olympic flame. It tends to attribute the ban to Lord Moynihan (Mr Clegg opposed it). Mr Clegg suggests that the reference to hypocrisy, which is attributed to a "pal" of Mr Christie, could well have come from a message left on either his phone or Lord Moynihan's. NGN's riposte to this article does not rely on a prior article, but on evidence given to a journalist (Ms Orvice) who refers to the ban being public knowledge and who says that she got the material from the article from Mr Christie's team. The dispute on this article involves a conflict of evidence which I cannot resolve on this application. I would not strike out this article.

(h) There is one further article which is pleaded in the CSPOC but does not figure in the Further Information. It is an article dated 19th July 2008 under the headline "Dwain quits" and contains a story about Mr Dwain Chambers planning to retire from athletics after a judgment upholding a drugs ban. Most of the article refers to the ban and the attitude of others to it. Mr Clegg thinks it is "definitely possible" that he knew that Mr Chambers would retire if he lost the case, and "possible" that quotes attributed to a "close pal" could have been voicemails left by Mr Chambers' coach or athletic officials. This way of putting the matter is at odds with the nature of Mr Clegg's case on the articles. He relies on the articles as evidence of hacking because they contain material which he says only he a few select others would have known. That does not lie with what he says in his evidence about this article. He merely refers to "possibilities", which I think means that he surmises. The suggestion that the quotes (which I

have not set out) arose from voicemail messages is not at all plausible. I do not think that there is a real case for saying that this article supports Mr Clegg's thesis, and I would strike this one out.

62. In reaching these conclusions I have borne in mind, and again remind myself of, the relevant test. Mr Clegg's case should be struck out, or summary judgment ordered against him, only if his case is fanciful. The result of this exercise is that two of the articles (those referred at (c) and (h)) fail as being material which is capable of demonstrating phone hacking (or, less likely, other information gathering), but the rest do not. The case based on the surviving articles is not fanciful.

63. That deals with the evidential position, but there is a pleading point which has to be considered. The Request for Further Information sought particulars of "the nature of the information" that was said to be private, that private information being information "for which there was no legitimate explanation". The response (set out above) summarises the thrust of the articles, and does not particularise the "private" elements which had been teased out by the end of the evidence and the hearing before me. What Mr Clegg now seems to be relying on is not so much the stories in the articles, but elements of them. Strictly, he has not pleaded that.

64. However, I find that that is not fatal to his case. What has happened in this case is that Mr Clegg, doing the best he can without disclosure and avowing a lack of detailed recollection at this stage (as appears from an earlier part of his Further Information) has specified the articles but not dissected them. When challenged (in a manner which would have been more appropriate at a trial) he has had to refine his case, but refine it he has and it would be wrong to ignore that on a pleadings basis.

65. I therefore find that the summary judgment and strike-out application against Mr Clegg fails save to the extent of striking out reliance on two articles, in relation to which it succeeds.

Conclusion

66. I therefore:

(a) Allow the amendments to the Pinetree GPOC; and
(b) Dismiss the summary judgment and strike-out applications save to the extent of the two articles.

Annex - the amendment to the GPOC - paragraph 35A

[Unlawful Information Gathering Activities: the sun

35A. Pending disclosure and/or the provision of further information by the Defendant, the Claimant will contend that journalists working for the Defendant were also engaged in or used information obtained from the same voicemail interception and/or unlawful obtaining of private information activities for the purposes of preparing and publishing stories in The Sun newspaper from at least 2000 onwards. In support of this contention, the Claimant will rely upon the following facts and matters:

35A.1 Information obtained through the Mulcaire Arrangement was also used for the preparation or publication of stories in The Sun.

35A.2 This included, by way of example only:

a. (a) in relation to Wayne Rooney (who is admitted to have been a victim of voicemail interception by the Defendant) and his alleged association with prostitute Patricia Tierney.

b. (b) in relation to Jude Law (who is admitted to have been a victim of voicemail interception by the Defendant).

c. (c) In relation to articles published about Iorworth Hoare (a convicted rapist) in September 2005 and January 2006, David McGreavey (a convicted murderer) in January 2006 and Robert Excell (a convicted paedophile) in February 2006.

35A.3 The Claimant will rely by way of further example to a number of articles which appeared in the Bizarre showbiz column of The Sun which referred explicitly to mobile phone communications, including:

a. (a) an article dated 9 April 1998 which was written by Sean Hoare about private telephone communications between musician Liam Gallagher and his then actress wife Patsy Kensit relating to problems in their marriage (both of whom were victims of voicemail interception).

b. (b) an article dated 17 July 1998 which was written by Sean Hoare about private telephone communications between actress Martine McCutcheon and musician Mark Baron relating to their relationship.

c. (c) an article dated [*insert date*] about private telephone communications between actor Sid Owen and his girlfriend Lucie Braybrook.

d. (d) an article dated [*insert date*] which was written by Sean Hoare about private telephone communications between popstar Mel Chisholm and musician Anthony Kiedis.

e. (e) an article dated 18 April 2000 about private telephone communications between the model Caprice and pop singer J (from the boyband 5ive).

f. (f) an article dated 4 August 2001 about private telephone communications between a well-known Manchester United footballer and a model.

35A.4 The Claimant will also refer to the fact that a dinner attended by numerous journalists on 31 April 2002 (the "SHAFTAS 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 led to the Mirror's showbusiness exclusives, which received an enormous laugh. It is to be inferred that many or most of those present (in particular, Mr Mohan) were well aware of the use of phone hacking techniques in the course of researching stories about the extensive showbusiness personalities.

35A.5 Journalists and/or senior executives frequently moved between newspapers where these unlawful activities were widely practised, such as between the News of the World and The Sun (for example, Sean Hoare, Paul McMullan and Rebekah Brooks) or the MGN titles and The Sun (such as James Scott, Emma Cox and Eva Simpson).

35A.6 The Claimant will contend that it is highly likely that such journalists would employ these same methods in the pursuit of the same type of celebrity or gossip stories about the same or similar well-known individuals when working for any of these tabloid titles, not least given (a) the success of these activities in providing stories (b) the widespread use of them at such newspapers and (c) the knowledge and/or approval of such methods by senior executives at the time. The Claimant will refer to the commercial pressure which both these newspapers, and the journalists and executives who worked for them, were under in order to obtain such stories, mostly at the expense of their rivals in this highly competitive market.

35A.7 The Defendant's journalists working for The Sun (as well as the News of the World) frequently purchased confidential personal information from private investigators that had been unlawfully and/or illegally obtained, as the Defendant knew or ought to have known. 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 now? The unlawful trade in confidential 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 refer to the whole of the report including the findings that newspapers, and in particular tabloid newspapers, had a voracious demand for personal information and that substantial payments were made for illegally obtained confidential personal information. In particular, one private investigator, Steve Whittamore, supplied a substantial amount of illegally or unlawfully obtained personal information to a number of journalists working for The Sun between the period 2000 and 2003 (including ex-directory numbers).

35A.8 The Claimant will further rely upon the fact that the Defendant has admitted and/or paid compensation in relation to similar claims of voicemail interception brought against the Defendant by other victims which included the publication of information through such unlawful means in articles appearing in The Sun (as well as the News of the World).]