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Case Nos: KB-2022-003316
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KB-2022-003404

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 November 2023

Before :

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between :

(1) Baroness Lawrence of Clarendon OBE
(2) Elizabeth Hurley
(3) Sir Elton John CH CBE
(4) David Furnish
(5) Sir Simon Hughes
(6) Prince Harry, The Duke of Sussex
(7) Sadie Frost Law **Claimants**

- and -

Associated Newspapers Limited **Defendant**

- -

David Sherborne, Julian Santos, Ben Hamer and **Luke Browne** instructed by
Gunnercooke LLP for the **First, Second, Third and Fourth Claimants**,
Thomson Heath & Associates for the **Fifth Claimant** and
Hamlins LLP for the **Sixth and Seventh Claimants**
Adrian Beltrami KC, Jonathan Nash KC, Catrin Evans KC, Sarah Palin, Nathaniel Bird and **Claire Overman** instructed by **Baker McKenzie LLP** for the **Defendant**

Hearing dates: 27-30 March 2023

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Approved Judgment

This judgment was handed down by the Judge remotely by circulation to the parties and their representatives by email and by release on www.judiciary.uk and to The National Archives. The date and time for hand-down is deemed to be 10:00am on 10 November 2023.

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The Honourable Mr Justice Nicklin :

1. This judgment is divided into the following sections:

A: Parties and background

2. These seven Claimants have brought six separate claims. In summary, they allege that each of them has been the subject of unlawful information gathering by the Defendant ("Associated"). They claim that Associated has obtained their private and/or confidential information using techniques such as interception of voicemail messages, listening into live telephone calls, obtaining of information by deception, and the use of private investigators ("Unlawful Information Gathering"). Once obtained, the Claimants allege that Associated has used this information to publish articles in the *Daily Mail*, *The Mail on Sunday* and *Mail Online*. The Claimants seek remedies for misuse of private information. Associated denies the Claimants' allegations.

3. The Claimants are all notable public figures who probably need no introduction. Baroness Lawrence is the mother of Stephen Lawrence, who was murdered in a racist attack in London. She is a member of the House of Lords. Ms Hurley is an actress and businesswoman. Sir Elton John is an internationally acclaimed recording artist and Mr Furnish, his husband, a well-known film producer and director. Sir Simon Hughes is a former Liberal Democrat politician, who was Minister of State for Civil Justice and Civil Liberties between 2013-2015. Prince Harry, the Duke of Sussex is a member of the Royal Family. Finally, Ms Frost Law is an actress, director, producer, businesswoman and fashion designer.

4. Associated is the publisher of the national newspapers, *The Daily Mail* and *The Mail on Sunday*, and of the global website *MailOnline*. Articles published by Associated, whether in the print editions of its newspapers or online, will be read by millions of people within this jurisdiction and beyond.

B: The Claims

5. The Claim Form in each action was issued on 6 October 2022. Details of the Claimants' claims are set out in Particulars of Claim in each action. Under the heading "*Overview of the Claimant's claim*", each Claimant pleads as follows:

"3. The Claimant's case is that through its journalists and/or private investigators, blaggers or other third parties instructed on its behalf:

(a) Associated widely and habitually carried out or commissioned illegal or unlawful information gathering activities for the purposes of obtaining, preparing or furthering the publication of articles in its newspapers … ("the Unlawful Acts"), and

(b) Associated carried out or commissioned the same Unlawful Act for the purposes of targeting the Claimant, as set out in paragraphs … below, exploiting or misusing the information it obtained in relation to [him/her] as the product or direct result of these unlawful activities in stories which it then published as articles in its newspapers. The articles which the Claimant relies upon are set out in [a] Schedule… to these Particulars of Claim ("the Unlawful Articles").

4. The Unlawful Acts which Associated commissioned or carried out included the following: the illegal interception of voicemail messages ("phone hacking"), the listening to and/or recording of live landline or analogue mobile telephone calls ("phone tapping"), the obtaining of private information through deception (such as telephone subscriber details, billing information, confidential mobile phone numbers and ex-directory landline numbers, bank or financial information and confidential medical information ("blagging"), the use or instruction of private investigators (also known as "search agents"), blaggers or other similar third parties or agents ("private investigators") to commit these and other such unlawful information gathering acts ("private investigator work") and the commissioning of burglaries or the breaking [into] and entering of private property in order to obtain private information ("burglary to order").

5. As referred to throughout these Particulars of Claim, the Unlawful Acts were carried out on Associated's behalf by a large number of private investigators, many of whom are now well-known for carrying out the same unlawful acts for other newspaper groups such as News Group Newspapers and Mirror Group Newspapers… These private investigators were instructed by *Daily Mail* and *Mail on Sunday* journalists, as well as commissioned or approved of by editorial executives and desk or department heads, many of whom are still employed by or working for Associated in senior positions. Unlawful Acts (such as blagging or phone-hacking) were also carried out by the journalists themselves.

6. Further, Associated deliberately concealed or covered up these Unlawful Acts both at the time (through the covert way in which they were carried out, the use of euphemistic language in payment requests and other documents, and the misleading presentation of 'sources' in the Articles) and then subsequently (including through false public denials by senior executives on its behalf at the Leveson Inquiry who are still employed by Associated) in order to avoid its wrongdoing being publicly exposed and to intentionally deprive the Claimant (and other victims) of knowledge of facts relevant to [his/her] rights or causes of action against Associated ("the Deliberate Concealment").

> 7. If and insofar as necessary, the Claimant will rely upon this Deliberate Concealment, and such loss or destruction or relevant documents which has inevitably occurred during the period, or been caused by an intentional step in the Deliberate Concealment (as will be fully revealed upon disclosure), in support of [his/her] case that she is not and should not be statute barred from bringing [his/her] claims under section 32(1) of the Limitation Act 1980."

6. Thereafter, the structure of each Particulars of Claim is similar, with the core allegations being made, in the same terms, in each Particulars of Claim.

   (1) First, each Claimant advances a case alleging that Associated's use of Unlawful Acts was both "*habitual and widespread*". Particulars are given of Associated's alleged use of various identified private investigators, both individuals and firms.

   (2) Second, each Claimant alleges that these private investigators were instructed by "*a large number of different journalists at both the Daily Mail and the Mail on Sunday, as well as desks or departments and their respective heads*". The Claimants identify the individuals alleged to have given these instructions to private investigators, some of whom are said to have worked previously for other newspaper publishers (including News Group Newspapers ("NGN") and Mirror Group Newspapers ("MGN")) where it is alleged similar unlawful information gathering activities were "*widely and habitually*" practised to obtain similar types of information for publication.

   (3) The third section of the Particulars of Claim sets out the Claimants' contention that Associated deliberately concealed the alleged wrongdoing from them.

   (4) The fourth section of the Particulars of Claim, which is specific to each individual Claimant, sets out that Claimant's case as to his/her alleged targeting by Associated.

   (5) The Unlawful Articles (as defined in Paragraph 3(b) of the Particulars of Claim), said to have resulted from the Unlawful Acts, are identified in a Schedule to each Particulars of Claim.

7. In broad terms, each Claimant advances a generic case (common to all Claimants) as to the use of Unlawful Acts to gather information for publication and relies on a largely (but not exclusively) inferential case that the identified articles represent the fruits of Unlawful Information Gathering. The Claimants seek common remedies against Associated of damages and an injunction. In support of this, each Claimant contends that s/he "*has suffered considerable distress and harm, as well as the loss of [his/her] dignity or standing and [his/her] personal autonomy through the Unlawful Acts, its resultant invasions of [his/her] privacy, and its deliberate exploitation and/or misuse of [his/her] unlawfully or illegally obtained information in the Unlawful Articles*".

C: Associated's response to the claims

8. Associated has not yet filed a Defence to the claim. It has not, even, filed an Acknowledgement of Service. Instead, on 4 November 2022, Associated issued an Application Notice seeking orders that no copy of the Particulars of Claim should

be provided (or made available) from the Court File to a non-party, and that the time for Associated to file an Acknowledgement of Service should be extended until further order of the Court. In ordinary course, once an Acknowledgement of Service has been filed, a statement of case (which would include the Claim Form and Particulars of Claim) would become open to public inspection on the Court File: CPR 5.4C(3). The parties had largely agreed that the Court should make an order in these terms because it was Associated's intention to make an application challenging the claims brought against it, principally on the grounds that parts of the Particulars of Claim in each action included material that had come from documents from the Leveson Inquiry that were the subject of continuing restrictions.

9. I made an Order, on 8 November 2022, which restricted non-party access to the Particulars of Claim pending an application by Associated to challenge the Particulars of Claim. I set a timetable for the issuing of any application and gave directions for the parties to file any evidence upon which they wanted to rely. The order made clear that any application by Associated must include all bases on which Associated sought to challenge the Particulars of Claim. It was clear from pre-action correspondence that Associated had raised limitation as a ground on which it would seek to challenge the Claimants' claims.

D: The applications before the Court

10. Associated issued an Application Notice on 5 December 2022 ("the Restriction Order Application"). It sought the following orders:

> "1. Unless the Claimants apply to the Ministers within [14] days of the court's order and on notice to the Defendant to vary the restriction orders of The Right Honourable Lord Justice Leveson, chairman of The Leveson Inquiry, dated 26 April 2012 and 29 November 2012 made pursuant to s.19(2)(b) of the Inquiries Act 2005 ("the Restrictions Orders"), the parts of the Particulars of Claim identified in the Confidential Schedule to the Witness Statement of Nadia Banno dated 5 December 2022 as being in breach of the Restriction Orders shall be struck out without further order.
>
> 2. In the event that the Claimants apply to the Ministers to vary the Restriction Orders as aforesaid, time for filing and service of the Acknowledgement of Service and Defence herein be extended until further order of the Court."

11. In the supporting witness statement, Ms Banno indicated that Associated intended to issue a further application seeking summary judgment on the Claimants' claims on the grounds of limitation. It was apparent that Associated had envisaged there being two hearings. First a hearing concerning the alleged breach of the Restriction Orders and then, subsequently, a further hearing to determine Associated's further summary judgment application.

12. The suggestion of two hearings was not sensible. It risked delay and potentially two appeals to the Court of Appeal. On 20 December 2022, having considered the written representations of the parties, I made an order that required Associated to issue the summary judgment application by 20 January 2023 and gave directions for a 4-day hearing to be fixed to deal with both applications. This hearing was ultimately fixed for 27 March 2023.

13. Associated duly issued a further Application Notice, on 20 January 2023, seeking orders: (1) striking out the Particulars of Claim pursuant to CPR 3.4(2)(a) and/or CPR 3.4(2)(b) on the grounds that "*because the claim is time-barred pursuant to section 2 of the Limitation Act 1980, the statements of case disclose no reasonable grounds for bringing the claim and/or that they are an abuse of the court's process or are otherwise likely to obstruct the just disposal of the proceedings*"; and/or (2) granting summary judgment in favour of Associated on the grounds that, because of the limitation defence, the Claimants had no real prospect of succeeding with the claim and that there was no other reason why the matter should be disposed of at trial ("the Limitation Application").

14. Broadly, therefore, the challenges made by Associated to the claims are on the grounds (1) that the acts complained of by the Claimants are now time-barred and the Claimants have no real prospect of defeating the limitation defence; and (2) that the Claimants have breached restrictions imposed by the Leveson Inquiry by using documents the subject of restrictions – the Ledgers (see [34] below) – to plead their Particulars of Claim.

15. Separately, by a further Application Notice dated 20 January 2023, Associated sought the following orders restricting the information that was made publicly available in the proceedings and corresponding reporting restrictions ("the Reporting Restriction Application"):

    (1) pursuant to CPR 1.1, 3.1(2)(m) and/or s.6 Human Rights Act 1998, an order that the sections of the Particulars of Claim in each action, which are the subject of the Restriction Order Application, should not be referred to or disclosed at the hearing;

    (2) pursuant to CPR 39.2(4), an order withholding from proceedings in open court (a) the names of various current and former journalists (and editorial executives) of Associated who have been named in the Claimants' Particulars of Claim ("the Anonymised Journalists"); and (b) the name of the Online Publisher; and

    (3) pursuant to s.11 Contempt of Court Act 1981, reporting restrictions prohibiting the publication in any report of, or otherwise in connection with, these proceedings the names of the Anonymised Journalists and the Online Publisher and the parts of the Particulars of Claim that were the subject of the Restriction Order Application.

16. After hearing representations at the hearing of these applications, including submissions on behalf of several media organisations and from the Online Publisher, on 27 March 2023, the first day of the hearing, I imposed temporary reporting restrictions. I gave a short *extempore* judgment summarising my reasons. In Section I of this judgment, I set out the basis of my decision (see [319]-[333] below). The material parts of the Order provided as follows:

    > "1. Pursuant to CPR 1.1, 3.1(2)(m) and/or s.6 of the Human Rights Act 1998 and/or the Court's inherent jurisdiction, until further order to be made on the date of judgment hand-down on the Restriction Order Application and the Limitation Application ("judgment hand-down"), the following information shall not be referred to or disclosed during or in connection with the hearing

of the Restriction Order Application and Limitation Application listed for 27-30 March 2023 (otherwise than in documents marked "Confidential" which would be for the eyes of the parties and Court only):

a. the information in the paragraphs of the Particulars of Claim identified in Part A of the Confidential Schedule to this Order ("the Restricted Paragraphs"); and

b. the name of the Online Publisher, which is set out also in Part A of the Confidential Schedule to this Order, or any matter likely to lead to its identification in connection with these proceedings.

2. Pursuant to CPR 39.2(4), the names of the [Anonymised Journalists] or any of them, or any matter likely to lead to their identification in connection with these proceedings, are to be withheld from the public at the hearing on 27-30 March 2023 and are not to be disclosed or published until further order to be made on the date of judgment hand-down.

3. Pursuant to s.11 Contempt of Court Act 1981, until further order to be made on the date of judgment hand-down, there shall be no publication in any report of, or otherwise in connection with, these proceedings of:

a. the information in the Restricted Paragraphs and the name of the Online Publisher, or any matter likely to lead to its identification in connection with these proceedings, as withheld under paragraph 1 of this Order; or

b. the names of the individuals or any of them or of any matter likely to lead to their identification in connection with these proceedings as withheld under paragraph 2 of this Order; or

c. the Confidential Schedule to this Order

SAVE THAT nothing in this Order shall prevent the publication of:

(1) Any information contained in any public judgment of the Court in these proceedings.

(2) Any information contained in any documents on the Court file which are open to public inspection without an order of the Court.

4. The parties, the Online Publisher and any media third parties are at liberty to apply to discharge or vary this Order, but any Application must be made by Application Notice.

…

6. There shall be a further hearing on the Reporting Restriction Application on the date of judgment hand-down."

17. As a result, in this public judgment, the names of the Anonymised Journalists, referred to in the evidence, have been replaced with a cipher (JXX, where XX is a number). For similar reasons, although I have imposed no further reporting restriction order,

I have omitted (or used further ciphers for) the names of various other third parties in this judgment. I have done so, reflecting a basic principle of fairness, because these third parties (about whom allegations have been made) have had no fair opportunity to defend themselves. It would not be right, in a public judgment at this very early stage, when the Court is not adjudicating on the truth or otherwise of various allegations, to name people alleged of wrongdoing. I fully anticipate that, subject to any future applications that may be made, the names of those who have been omitted from this judgment will enter the public domain at some point if this action goes further. Even where I have named people – for example because they have voluntarily provided witness statements – it must be understood that the Court is dealing only at this stage with allegations. The Court is not adjudicating upon the truth of any of the allegations made against various individuals at this stage.

18. In order fully to understand the arguments made by the parties in relation to the two substantive applications made by Associated, it is necessary for me to set out some of the relevant history, including events up to and including the Leveson Inquiry. It is part of Associated's case on limitation that the widespread use of private investigators by various newspaper publishers was well-known well before the Leveson Inquiry.

E: Pre-Leveson events

(1) Operation Motorman and the Information Commissioner

19. In 2003, investigations by the Information Commissioner's Office ("the ICO") and the police, under the title "*Operation Motorman*", led to a raid on the premises of an enquiry agent, Steve Whittamore. In April 2005, at Blackfriars Crown Court, Mr Whittamore pleaded guilty to obtaining personal data, contrary to s.55 Data Protection Act 1998. The prosecution's case was that he had passed personal information to journalists, including information obtained from the police national computer. Mr Whittamore was given a 2-year conditional discharge. At the time, the maximum penalty for the offence was a fine. Media reports claimed that Mr Whittamore had been used by several newspapers, including Associated titles.

20. Subsequently, in 2006, the ICO published two reports. The first – "*What Price Privacy? The unlawful trade in confidential personal information*" – was published on 10 May 2006. The following paragraph, from the executive summary, gives a flavour of the ICO's findings:

> "This report reveals evidence of systematic breaches in personal privacy that amount to an unlawful trade in confidential personal information. Putting a stop to this trade is its primary purpose."

21. Dealing with the print media's role in what was described as this "*unlawful trade*", the ICO reported:

> "Journalists have a voracious demand for personal information, especially at the popular end of the market. The more information they reveal about celebrities or anyone remotely in the public eye, the more newspapers they can sell. The primary documentation seized at the premises of the Hampshire private detective [Mr Whittamore] consisted largely of correspondence (reports, invoices, settlement of bills etc.) between the detective and many of the better-known national newspapers – tabloid and broadsheet – and magazines. In almost every

> case, the individual journalist seeking the information was named, and invoices and payment slips identified leading media groups. Some of these even referred explicitly to 'confidential information'.
>
> The information which the detective supplied to the newspapers included details of criminal records, registered keepers of vehicles, driving licence details, ex-directory telephone numbers, itemised telephone billing and mobile phone records, and details of 'Friends & Family' telephone numbers.
>
> … This mass of evidence documented literally thousands of section 55 offences and added many more identifiable reporters supplied with information, bringing the total to some 305 named journalists".

22. The second ICO report – "*What price privacy now?*" – was published on 13 December 2006. It contained further information derived from documents seized during "Operation Motorman". The report included a table showing the number of transactions that the ICO had positively identified as having involved newspapers and magazines. Associated topped the table, with 952 transactions involving 58 journalists. The ICO noted, however, that, "*some of these cases may have raised public interest or similar issues*". In other words, that it was not possible, on the available evidence, to determine whether (and if so, to what extent) any breaches of the Data Protection Act 1998 had been committed. The ICO evidence also did not demonstrate whether the relevant newspaper or journalist was aware that the information had been obtained unlawfully.

(2) Phone-hacking

23. On 26 January 2007, Clive Goodman, the royal editor of the *News of the World* newspaper, and Glenn Mulcaire, a private investigator, pleaded guilty to conspiring to intercept voicemail messages. They were given sentences of imprisonment. The then editor of the *News of the World*, Andy Coulson resigned. He was subsequently arrested on suspicion of phone-hacking on 8 July 2011. In June 2014, Mr Coulson was found guilty of conspiring to intercept voicemails and sentenced to 18 months' imprisonment.

24. Civil proceedings for phone-hacking were commenced in April 2011. On 10 July 2011, engulfed by the scandal of phone-hacking, NGN closed down the *News of the World*. Further civil proceedings, alleging phone-hacking, were brought against MGN, the publisher of various *Mirror* titles. A lead action – of the claims of 8 claimants – was tried between 2-25 March 2015. MGN had admitted liability in the claims. The judgment on damages was handed down on 21 May 2015: ***Gulati -v- MGN Ltd* [2016] FSR 12**.

F: The Leveson Inquiry

(1) Establishment of the Inquiry

25. Responding to public concern about phone-hacking, on 13 July 2011, the then Prime Minister, David Cameron, announced that the Right Honourable Sir Brian Leveson (then a Judge of the Court of Appeal) would be appointed to chair a public inquiry, under the Inquiries Act 2005 ("the Inquiry"). Draft terms of reference of the Inquiry were published at the same time and finalised on 20 July 2011. On 28 July 2011, Sir Brian was formally appointed as chair of the Inquiry, jointly, by then Secretary of

State for Culture, Olympics, Media and Sport, Jeremy Hunt MP, and Home Secretary, Theresa May MP.

26. The Inquiry was intended to have two phases.

    (1) Part 1 of the Inquiry concerned the culture, practices, and ethics of the press, including contacts between the press and politicians and the press and the police. It was to consider the extent to which the regulatory regime at the time had failed and whether there had been a failure to act on any previous warnings about media misconduct. The Inquiry was required to make recommendations for the future and, in particular, whether there should be a new regulatory regime and if so in what form. As made clear by Sir Brian Leveson at the outset of the Inquiry, Part 1 was "*not concerned with the apportionment of personal or corporate responsibility*".

    (2) Part 2 of the Inquiry was to concern the extent of unlawful or improper conduct within NGN, other media organisations or other organisations. It was to consider the extent to which any relevant police force had investigated allegations relating to NGN, and whether the police received corrupt payments or were otherwise complicit in misconduct. In Part 2, the Inquiry was also expected to consider recommendations for the future.

27. Sir Brian Leveson decided that Part 1 of the Inquiry would be split into four separate modules (although he recognised that there was likely to be some overlap): (1) the Press and the Public; (2) the Press and the Police; (3) the Press and Politicians; and (4) the Future.

28. Under the terms of reference, Part 1 of the Inquiry would address:

> "… the culture, practices and ethics of the press, including contacts between the press and politicians and the press and the police; it is to consider the extent to which the current regulatory regime has failed and whether there has been a failure to act upon any previous warnings about media misconduct."

    It was intended that Part 2 of the Leveson would examine:

> "… the extent of unlawful or improper conduct within News International, other media organisations or other organisations. It will also consider the extent to which any relevant police force investigated allegations relating to News International, and whether the police received corrupt payments or were otherwise complicit in misconduct."

    (Part 2 of the Leveson Inquiry was delayed pending the outcome of various criminal proceedings, but was ultimately abandoned by the Government on 1 March 2018.)

29. Several individuals and organisations were designated as Core Participants for various stages of the Inquiry (pursuant to s.41 Inquiries Act 2005). Those included Sir Simon Hughes, one of the present Claimants, and Associated.

30. On 26 September 2011, the Inquiry circulated what became the Inquiry Protocol relating to the receipt and handling of documents, including redaction ("the Protocol"). The Protocol noted that there was a presumption (under s.18 Inquiries Act 2005 –

see [266] below) that all relevant documents received by the Inquiry would be made public. "*This will occur at the appropriate time, having regard to the Inquiry timetable and ongoing criminal investigation*" (§11). Until any documents were made public, all information received by the Inquiry was required to be treated as confidential. Before any information was disclosed to any third party, or published, the Inquiry would inform the provider of the information and discuss any amendments, redactions, or summaries of the information (§13). Paragraph 14 provided:

> "In due course documents received by the Inquiry will be uploaded to the Inquiry's Document Management System ("DMS") and each page shall be given a unique reference number ("URN"). The URNs will be provided to those, who are subject to the terms of suitable confidentiality undertakings, with authorised access to the DMS…"

If the provider of information considered that any document (or part thereof) provided to the Inquiry should be kept confidential or otherwise not made public, s/he was required to provide written reasons to the Inquiry Solicitor and the chairman of the Inquiry would consider those representations (§16).

(2) Initial evidence gathering by the Inquiry: s.21 Notices

31. In August 2011, as part of its initial evidence gathering, the Inquiry sent notices under s.21 Inquiries Act 2005 ("s.21 Notices") to various individuals and organisations, requiring witness statements and/or the production of documents. (The legal framework governing the Inquiry is set out later in the judgment (see Section H(4) [265]-[270] below)).

32. On 8 August 2011, several individuals at Associated were sent s.21 Notices requiring provision of a witness statement and/or various documents. Those to whom s.21 Notices were sent included Paul Dacre, the then editor of *The Daily Mail*; Peter Wright, the then editor of *The Mail on Sunday*; Elizabeth Hartley, Head of Editorial Legal Services; Kevin Beatty, the then Group Managing Director of Associated; James Welsh, the then Group Finance Director of Associated; Marcus Rich, the then Managing Director of *The Daily Mail*, and Guy Zitter, the then Managing Director of *The Mail on Sunday*. Of those individuals, Mr Rich and Mr Zitter were required to produce only identified documents, not a witness statement. One category of documents required to be produced was:

> "Any documents recording or relating to fees or expenses paid to private investigators, police, public officials, mobile phone companies or other with access to the same … in the period from 1 January 2005 up to the date of this notice."

33. The s.21 Notices sent to Mr Dacre, Ms Hartley and Mr Wright required that his/her witness statement should cover:

> "… whether, to the best of your knowledge, your newspaper used, paid or had any connection with private investigators in order to source stories or information and/or paid or received payment in kind for such information from the police, public officials, mobile phone companies or others with access to the same; if so, please provide details of the numbers of occasions on which such investigators or other external providers of information. were used and or the amounts paid to them (NB. You are not required to identify individuals, either within your newspaper or

> otherwise)… If such investigators or other external providers of information were used, what policy/protocol, if any, was used to facilitate the use of such investigators or other external providers of information (for example, in relation to how they were identified, how they were chosen, how they were paid, their remit, how they were told to check sources, what methods they were told to or permitted to employ in order to obtain the information and so on)…"

34. On 25 October 2011, Associated submitted the witness statements and documents that it had been required to produce to the Inquiry pursuant to the s.21 Notices. The documents that Associated provided included ledger cards, recording payments to private investigators or other external providers of information, for both *The Daily Mail* and *The Mail on Sunday* ("the Ledgers"). In accordance with the Protocol, the Ledgers were assigned the following URNs: *The Daily Mail*: MOD100021713-MOD100021793 and *The Mail on Sunday*: MOD100021683-MOD100021712.

(3) Confidentiality undertaking given by the Core Participants

35. On 1 November 2011, the Inquiry sent a confidentiality undertaking that each Core Participant was required to sign ("the CP Undertaking"). The CP Undertaking was in the following terms:

> "I ACKNOWLEDGE that all material provided to me by the Leveson Inquiry ("the Inquiry") is confidential and, in consideration of the provision of that material to me, agree to take all necessary steps to preserve that confidentiality. I acknowledge that the material is provided to me solely for the purposes of assisting me in relation to my participation in the Inquiry and no other purpose.
>
> I UNDERTAKE to the Inquiry not to disclose, publish or pass on to any third party any document, witness statement, draft witness statement or other material supplied to me by the Inquiry or any of the information contained within that material, save with permission of the Inquiry.
>
> I FURTHER UNDERTAKE to keep all material supplied to me by the Inquiry in a secure place and to prevent access to it by any person not authorised by the Inquiry.
>
> I FURTHER UNDERTAKE to ensure that material and information supplied to me by the Inquiry is used solely for the purpose for the Inquiry and, at the conclusion of the Inquiry, or earlier if requested by the Inquiry, to return all the material and any copies of it to the Inquiry.
>
> I UNDERSTAND that this undertaking shall cease to apply to such material as may later be placed in the public domain by the Inquiry or which is lawfully placed into the public domain by a third party."

36. It is common ground that Sir Simon Hughes, David Sherborne, Counsel, and Mark Thomson, Solicitor, each signed the CP Undertaking.

(4) Evidence to the Inquiry

37. Paul Dacre, the then editor of the *Daily Mail* and editor-in-chief at Associated, provided a witness statement to the Inquiry, dated 25 October 2011. He stated that, as chairman of the Editors' Code of Practice Committee of the Press Complaints Commission,

he was "*committed to upholding the Editors' Code [of Practice]*" and that "*adherence to both the letter and spirit of the Editors' Code is mandatory and all journalists employed by [Associated] are contractually obliged to comply with the Code.*" He detailed, in his statement, the methods used by Associated to ensure that its journalists "*rigorously observe the highest professional and ethical standards, and comply with the Editors' Code and the law, including the Data Protection Act 1998 and the Bribery Act 2010*". "*High professional standards*", were, he said, "*the key to the success of our newspapers*".

38. As to the use of inquiry agents, Mr Dacre said that, in April 2007, following consideration of the ICO's reports in 2006, he imposed a ban on using inquiry agents. He asked the managing editors to write to all editorial staff and freelancers to inform them that the use of all external agencies for research and information was prohibited and to obtain a signed statement that they understood and would comply with the new policy, but doubted that journalists were responsible for breaches of the Data Protection Act 1998:

> "The Information Commissioner's 2006 reports noted that virtually all newspapers, in common with banks, insurance companies, local authorities and solicitors, used the services of inquiry agents to obtain personal data and that steps needed to be taken to ensure that these services were being lawfully performed. For journalists, I believe the purpose of using these agencies was mainly to get hold of addresses and phone numbers quickly so that they could contact people with a view to checking facts, or providing the opportunity to comment, in accordance with their duties as responsible journalists. Until the Information Commissioner's 2006 reports I was not personally aware of the extent to which our journalists were using search agencies…
>
> In anticipation of questions that would be raised by this Inquiry (and have been raised in the s.21 notice addressed to myself and others), ANL has attempted to find out how extensive the use of inquiry agents was in the period prior to the ban and in particular the nature and extent of our relationship with Steve Whittamore, who was the subject of the Information Commissioner's Operation Motorman investigation in 2003. Our findings are set out in the witness statement of Liz Hartley…"

39. In an apparent endorsement and defence of self-regulation of the print media, in his witness statement, Mr Dacre said:

> "I am disgusted by the revelations of phone hacking at the *News of the World*. By hacking into the mobile phones of Milly Dowler and the families of victims of crime, those responsible showed a disregard for the most basic standards of human conduct. Such actions, if proved, are flagrantly against the law. I unequivocally condemn the bribing of police and use of phone hacking, and I support sensible moves to ensure that such malpractices never occur again. But there is a danger of throwing out the baby with the bathwater. Self-regulation has been a success story. The *News of the World*'s activities should not be allowed to besmirch the whole British newspaper industry."

He continued:

> "To the best of my knowledge no journalist employed by [Associated] has ever hacked into voicemail messages or intercepted phone calls, nor have they ever 'computer hacked'… I have received assurances from my heads of department and managing editors that we do not pay police officers. On occasions we pay public officials for stories, although usually they will have left public service. It is not something I have or would rule out, provided I was satisfied that we were operating within the Editors' Code and the law."

40. Peter Wright, at the time the editor of *The Mail on Sunday*, also gave a witness statement to the Inquiry. He stated that, in early 2004, Associated had learned, from Operation Motorman, that Mr Whittamore had been providing regular services to its journalists. An instruction was issued that inquiry agents were not to be used without clearance from department heads, who were required to be satisfied that other means of obtaining information had been exhausted. Mr Wright stated that, "*inquiry agents such as Mr Whittamore possessed CD-Roms containing databases of public records and were adept at searching them.*" He concluded:

> "Although the [inquiry] agencies assured us they acted within the law, Motorman demonstrated that we could not always rely on such assurances. For that reason, [Mr Dacre] the Editor in Chief banned all use of external search agencies in April 2007 with immediate effect. Since 2007 we have approved the use of two subscription tracing services… and *The Mail on Sunday* also uses a researcher to support *The Mail on Sunday*'s two staff reporters based in the US. As far as I am aware the rules we imposed have always been observed on *The Mail on Sunday*."

41. Ms Hartley, Associated's Head of Editorial Legal Services, also provided a witness statement to the Inquiry, dated 25 October 2011. As to phone-hacking, she stated:

> "I have never been asked to advise on the legality of phone hacking or computer hacking. I would be very surprised indeed if any of our editorial staff had any doubts about the illegality of such activity.
>
> I am not aware of any phone hacking activity having taken place within [Associated] and no such allegations have been made by any person. Heads of editorial departments and key journalists have denied any knowledge of phone hacking.
>
> Nonetheless, in view of the public concern about phone hacking by the *News of the World*, we decided to search our financial records for any mention of names of companies and individuals such as Glenn Mulcaire who have been linked with allegations of phone hacking. Our accounts department has confirmed that no such record exists of any payments having been made to such persons."

42. Ms Hartley joined Associated in January 2009, as Group Legal Advisor, became head of Editorial Legal Services for Associated in 2010 and, since 2020, has been the Group Editorial Legal Director. Ms Hartley therefore joined Associated after the implementation of the ban on the use of inquiry agents in 2007. In relation to Operation Motorman, Ms Hartley stated, in her witness statement to the Inquiry, that representatives of Associated had, on 17 August 2011, attended the ICO's offices to see and discuss the evidence that had underpinned the "*What price privacy now?*" report. Based on that meeting, and consideration of the evidence provided by the ICO, Ms Hartley stated:

"On the basis of our current state of knowledge, I can summarise the position regarding [Associated's] dealings with Mr Whittamore as follows:

(1) Until August 2011 ANL had no access to the data that formed the basis of the ICO's statement that journalists working for ANL were among those journalists 'driving the illegal trade in confidential personal information' (*What Price Privacy Now?*, page 8)

(2) The data that has now been supplied by the ICO has been limited to spreadsheets prepared by the ICO which purport to show what information is contained in certain documents. We have no way of assessing the accuracy and reliability of those spreadsheets without access to the underlying documents. With some very small exceptions, we have been denied that access.

(3) On the basis of the documents we have seen, we have serious reservations about the reliability of the spreadsheets. For one thing, we have been supplied with three different versions of the spreadsheets, on each occasion being informed by the ICO that the version in question is accurate and up-to-date. For another, we have noted that the spreadsheets do not accurately reflect even the limited number of underlying documents we have been permitted to see.

(4) It would appear from the documents we have seen, and from our own interviews with such of our journalists as once had dealings with Mr Whittamore, that ANL journalists used Mr Whittamore primarily to obtain addresses and telephone numbers that he could obtain more quickly and reliably than they were able to.

(5) We have seen no evidence to suggest that any of the information Mr Whittamore may have obtained for our journalists was illegally obtained or that any of our journalists ever asked Mr Whittamore to do anything illegal or were aware that he might be obtaining information from them in an illegal manner. (The ICO has itself said it had no evidence that any journalist had ever asked Mr Whittamore to use illegal methods to obtain information for them).

(6) *The Mail on Sunday* has not used Mr Whittamore since 2005; *The Daily Mail* has not used him since early 2007; and all [Associated] journalists are now banned from using inquiry agents.

(7) We have been unable to verify the figures for [Associated] titles in the table published in *What Price Privacy Now?* Even if the figures are accurate, it seems to me that they are likely mainly to reflect inquiries that did not involve illegal activity (or, if illegal activity was involved, such activity was not the result of any request by [Associated] journalists).

43. As to the evidence, contained in documents from the ICO, suggesting that Associated journalists had used Mr Whittamore to 'blag' information, Ms Hartley said in her witness statement to the Inquiry:

"To the extent that ANL journalists who have been named in any of the documents we have been shown by the ICO are still employed by [Associated], I have

> arranged for Mr Young [an in-house solicitor at Associated] to meet them to see if they are in a position to confirm whether or not they instructed Mr Whittamore to 'blag' any information they were seeking to obtain and what the purpose of getting the information was. At the time of preparing this witness statement, that process is ongoing, but the evidence so far strongly suggests that the reference to 'blags' in Mr Whittamore's notes should be treated with considerable caution. One of the journalists to whom Mr Young has spoken and who is said to have requested a 'blag' has told him that she only ever used Mr Whittamore to obtain addresses and telephone numbers; that she never asked him to use subterfuge and never expected him to do so; that he never suggested to her that he had used such methods or intended to do so; and that she remembers that he used to press her to buy other pieces of information from him which he had already obtained for other clients. Similar accounts have been provided to Mr Young by other journalists."

44. Lord Rothermere, Executive Chairman of the Daily Mail & General Trust (the owner of Associated) ("DMGT"), provided a statement to the Inquiry dated 3 May 2012. He confirmed that he was aware of Mr Mulcaire's arrest and conviction. He said Mr Dacre, as Editor-in-Chief of Associated's newspapers, gave him (and the board of DMGT) an assurance that "*to the best of his knowledge voicemail messages had not been intercepted by [Associated] journalists*". Lord Rothermere also stated that, in 2011, Mr Dacre had tasked Ms Hartley to lead an internal review of Associated's editorial policies and procedures and that it had concluded that there was "*no evidence to suggest that any phone hacking had taken place within our newspaper division.*"

45. Hugh Grant provided a witness statement to the Inquiry, dated 3 November 2011, and gave oral evidence on 21 November 2011. He faintly suggested, in his evidence, that an article, published in *The Mail on Sunday* on 18 February 2007, which made a false allegation that he was having an affair, could have been the product of phone hacking. Mr Grant accepted a suggestion by Robert Jay QC, Counsel for the Inquiry, that any claim that the story may have been obtained by phone-hacking was "*speculation*", but added "*I'd love to hear what* The Daily Mail*'s or the* Sunday Mail*'s explanation for that article is, what that source was, if it wasn't phone hacking"*. Very shortly after Mr Grant had finished giving his evidence, Associated issued a public statement which included the following ("the 'Mendacious smears' Statement"):

> "The *Mail on Sunday* utterly refutes Hugh Grant's claim that they got any story as a result of phone hacking. In fact in the case of the story Mr Grant refers to the information came from a freelance journalist who had been told by a source who was regularly speaking to Jemima Khan. Mr Grant's allegations are mendacious smears driven by his hatred of the media."

46. The following day, Associated published an article and leader concerning Mr Grant's evidence to the Inquiry. The article, which quoted the 'Mendacious smears' Statement, from the previous day, contained the following:

> "Hugh Grant made extraordinary claims yesterday that the *Mail on Sunday* may have hacked his phone to obtain a story about his relationship with Jemima Khan.
>
> Last night the newspaper 'utterly refuted' the allegations made by the actor during two-and-a half-hours of evidence to the Leveson Inquiry."

The leader included the following:

> "Yesterday's appearance before the Leveson inquiry by millionaire actor Hugh Grant – who throughout his career has been represented by publicity experts promoting his life and times – revealed him to be a man consumed by hatred for a media which over the years, as well as carrying flattering articles on him, has also reported on his colourful and, many say, unedifying love life.
>
> There are two important things which this paper's readers need to know about Mr Grant's utterly specious allegations. One: *The Mail* papers do NOT hack phones and our sister paper, *The Mail on Sunday*, has unequivocally refuted his claim that they secured a story about him as a result of this practice…"

47. Jemima Khan provided a witness statement to the Inquiry, dated 27 November 2011. Referring to the 'Mendacious smears' Statement, she said:

> "I wish to make clear that this explanation given by *The Mail on Sunday* cannot be correct since the first I heard about any 'plummy voiced' woman calling Hugh, or anything similar, was when I read it in the *Mail on Sunday*. I therefore could not have spoken to anyone about such matters prior to the article, because I knew nothing about it."

48. Ms Hartley provided a supplemental witness statement to the Inquiry, dated 6 January 2012, on behalf of Associated. In it, Ms Hartley stated that the source of the story about Mr Grant had been "*a confidential contact of a freelance journalist who often works with [a journalist]. That contact provided the information contained in the story… Both the [freelance journalist] and [the journalist] have emphatically denied that the story was based on or derived from voicemail messages.*" Ms Hartley's witness statement no longer suggested that Ms Khan had been the ultimate source of the story.

49. Ms Hartley gave oral evidence to the Inquiry on 11 January 2012. A report of her evidence appeared the following day in *The Daily Mail*, which included the following:

> "After Mr Grant voiced the phone-hacking allegation in November, *The Mail on Sunday* issued a statement describing it as 'mendacious smears'.
>
> Miss Hartley told Lord Justice Leveson: 'I think if you are going to make a serious allegation and you're leading a campaign against the media, which Mr Grant is doing, you should take care over what you say.'
>
> I think if you're going to make what are going to be widely published allegations you ought to be careful. And if you choose to make allegations, which he's perfectly entitled to do, it should come as no surprise when those are very robustly defended.
>
> Miss Hartley told the inquiry that she had warned the actor after he publicly accused Associated Newspapers of being involved in phone-hacking several months before he gave evidence to the inquiry.
>
> 'In an endeavour to be of assistance and helpful and to avoid mistakes being made with serious consequences. I spoke to his representative and explained our position to him and followed it up with an email' she said."

In context, many may well have understood Ms Hartley's reported "*warning*" to Mr Grant as a threat of legal action were he to repeat the allegation of phone-hacking.

50. Mr Dacre gave oral evidence to the Inquiry on 6 February 2012. He was questioned about the use of inquiry agents, and specifically the use of Mr Whittamore. Asked whether he admitted the possibility that at least some of the inquiries made by Mr Whittamore were breaches of the Data Protection Act, he responded:

> "... I don't want to bore you, but I do want to stress that this was ten years ago and it was a system being used by everybody. But from what we know now, I would accept there was a prima facie case that Whittamore could have been acting illegally. I don't accept that this is evidence that our journalists were actively behaving illegally. We have to know the facts, what it related to and whether it actually was provided, whether the information was actually provided."

51. As to the suggestion that there had been any phone hacking at Associated, Mr Dacre was forthright and direct:

> "… let me say as clearly and slowly as I can: I have never placed a story in *The Daily Mail* as a result of phone hacking that I knew came from phone hacking. I know of no cases of phone hacking. Having conducted a major internal enquiry, I'm as confident as I can be that there's no phone hacking on *The Daily Mail*. I don't make that statement lightly, and no editor, the editor of *The Guardian* or *The Independent*, could say otherwise.
>
> … I can be as confident as any editor, having made extensive inquiries into this newspaper's practices and held an inquiry, that phone hacking was not practised by *The Daily Mail* or *The Mail on Sunday*. You know that because I gave my unequivocal, unequivocal assurances earlier this week."

Mr Jay QC asked Mr Dacre whether he could be confident that freelance journalists had not practised phone hacking. Mr Dacre answered:

> "Yes, I can be very confident because these journalists are journalists of integrity, we've used them in our group for years … I am not going to speak for other newspapers. I will speak for [Associated] and I've told this Inquiry, I cannot be any more unequivocal, that all my enquiries and all the evidence I received, and having spoken to the editor of my group: our group did not hack phones, and I rather resent your continued insinuations that we did."

52. Mr Dacre was questioned about the 'Mendacious smears' Statement. It was suggested to him that it had been an overreaction to Mr Grant's evidence. Mr Dacre's response was:

> "…the 4 o'clock news came on the BBC and the headline was as follows: 'Another major newspaper group has been dragged into the phone hacking scandal. Actor Hugh Grant has accused *The Mail on Sunday* – Associated Newspapers' *Mail on Sunday* of hacking phones.' It was a terrible smear on a company I love. We had to do something about it. I discussed it with *The Mail on Sunday*'s editor what our response was. A long, convoluted press statement was being prepared. I was deeply aware – and he was deeply aware – that you had to rebut such a damaging allegation… and we agreed on a form of words: '*It was a mendacious smear*'. Let me explain why I feel it was a mendacious smear. You will have read – you have already interviewed [Ms Hartley] on this for a considerable amount of time. Our witness statements have made clear that Associated is not involved in

> phone hacking and we've denied phone hacking in this instance, anyway, specifically."

53. In her oral evidence to the Inquiry, Ms Hartley was asked about her searches for records relating to payments to companies and individuals. She answered as follows:

> "… what we decided to do was to interrogate our financial systems by conducting a search for payments made either to Mr Mulcaire or his company, or indeed to anybody who had been named in conjunction with phone hacking or associated with him or any other names he may have used, to see whether we had records of payments to them as a good way of trying to double-check that what we were being told was accurate. And those searches resulted in confirmation that no payments to those people had been made and that's been a continuing process."

She also confirmed that, since the ban in 2007, "*[Associated] don't use private investigators or inquiry agents*".

54. The (former) Information Commissioner, Richard Thomas, gave a witness statement to the Inquiry, in which he challenged Ms Hartley's conclusion that the transactions, where Associated had paid Mr Whittamore for information, were "*likely to reflect inquiries that did not involve illegal activity*" (see [42] above). Mr Thomas stated that the total sum, paid to Mr Whittamore by three newspapers, including *The Daily Mail*, "*seems high if all that information was obtained legitimately*". In his evidence to the Inquiry, Mr Thomas expressed his view that it was highly unlikely that ex-directory numbers had been obtained legally.

55. It was outside the remit of the Inquiry to investigate specific alleged breaches of the law, or "*who did what to whom*" as Sir Brian Leveson put it. During the Inquiry, Associated objected to the Inquiry's approach to evidence regarding Operation Motorman, and the conclusions that could be drawn from it. In submissions at the conclusion of Module 1 of the Inquiry, Associated argued that 50% of the transactions undertaken by Mr Whittamore were 'area and occupancy' searches, which could be conducted using data available for purchase from commercial sources. In consequence, journalists would have had no reason to doubt that they were carried out lawfully. Ex-directory and 'conversion searches' had amounted to 28% of the transactions and were also available from commercially available databases. As for the remaining 22%, Associated argued that no assessment had been made of whether a public interest defence might have been available to defend the relevant inquiry. Ultimately, the issue was the subject of a ruling by the Inquiry on 10 July 2012. An agreed position was reached by the Core Participants, including Associated – reflected in the final Report (see [63] below) – that the Motorman evidence provided *prima facie* evidence that journalists did act in breach of s.55 by obtaining information which, *prima facie*, could not be justified in the public interest.

(5) The final phases of the Inquiry and publication of documents

56. On 17 August 2012, the Inquiry sent an email to Associated's solicitors:

> "As you may be aware, the Inquiry is now in the process of publishing outstanding exhibits on the website.

> I have attached a list of documents that the Inquiry intends to publish and I note that your letter of 25 October states that you had redacted these prior to providing them. I have not seen any further requests for redactions or s.19 applications in relation to these documents. However, I would be grateful if you could confirm that you are content for these to now be published."

The Ledgers were included within the list of documents.

57. Associated's solicitors responded, on 13 September 2012, claiming that, with certain identified exceptions, the documents the Inquiry proposed to publish, including the Ledgers, were "*confidential and/or commercially sensitive*" and Associated objected to their publication on the Inquiry website.

58. The Inquiry responded promptly, on 13 September 2012:

> "I note your comments regarding the remaining documents, however the Inquiry is unable to agree to a blanket request that these be withheld pursuant to s.19. The Inquiry will consider applications pursuant to s.19 for individual documents and I would therefore be grateful if you could set out an individual request for each document that you wish to be withheld and the reason for this…
>
> The Inquiry may then consider each document on an individual basis..."

59. Associated's solicitors sent a response, on 18 September 2012, making further submissions. As to the proposed publication of the Ledgers, Associated objected to publication on the grounds that they contained information that was confidential and commercially sensitive: "*They contain information relating to ANL's business and financial operations and procedures which its competitors could use to their advantage.*" There was no substantive response from the Inquiry to Associated's further submissions.

(6) Publication of the Final Report

60. The final Inquiry Report was published on 29 November 2012.

61. The Report dealt with the use of private investigators in several chapters. Part E, Chapter 3, dealt with Operation Motorman and the ICO Reports ("*What price privacy?*" and "*What price privacy now?*"). The Report included the table from the second ICO Report showing the number of transactions between Mr Whittamore and journalists for various newspapers and magazines, including Associated (see [22] above).

62. Consideration of whether individual journalists had sought and obtained private information in breach of the Data Protection Act 1998 was outside the scope of the Inquiry. The Inquiry Report noted, in Chapter 3, paragraph 3.3, in respect of the evidence from Operation Motorman, that the Core Participants (including Associated):

> "… conceded … that [the Inquiry] could proceed on the basis that no positive case was to be mounted by them that the Motorman material did not reveal *prima facie* evidence of breaches by journalists of the DPA …"

63. The Inquiry's conclusions on what Operation Motorman had demonstrated were (footnotes omitted):

> "6.1 … ICO investigation officers and an in-house lawyer analysed the source material collated as part of Operation Motorman. They documented some 13,343 transactions, or individual requests for information made of Mr Whittamore. These transactions were segregated by staff of the ICO into three separate categories in terms of their evidential value. Of these, the ICO took the view that some 5,025 were actively investigated as part of Operation Motorman and positively known to constitute a breach of the DPA. More specifically, and put somewhat more carefully, it was the view of a lawyer employed by the ICO with extensive involvement in the prosecutions that the evidence in these cases would have been sufficient to lead to conviction. A number of the requests in this category included PNC requests, friends and family requests and some ex-directory requests.
>
> 6.2 A further 6,330 requests represented occupancy searches and are thought to have been information obtained from telephone service providers. The ICO considered that the obtaining of this information was likely to amount to breaches of the DPA; however, the nature of the transactions was not sufficiently known or understood for these to be characterised as a positive breach of the DPA, rather than probably illicit transactions. Some 1,988 of the transactions were considered to lack sufficient identification or understanding of how the information had been obtained to determine whether they represented illicit transactions. The first category of transactions only was included with the Parliamentary Reports.
>
> 6.3 Overall, it is not surprising that the Core Participants made the concessions recorded under paragraph 3.3 above: a detailed examination of many individual examples would, in my judgment, undeniably have established that this was the very lowest at which it could be put. For reasons which I well understand, the ICO would argue that the concession does not go far enough. Without condemning any journalist (none of whom were ever even interviewed by the ICO), it is sufficient for me to conclude that, at least in part, what has been revealed by some of the Operation Motorman evidence demonstrates an attitude to compliance with the law relating to data protection which can only be described as cavalier, if not worse: it is certainly revealing of what, at that time at least, were the practices of parts of the press…"

64. It was also outside the remit of the Inquiry to reach conclusions as to individual incidents of alleged phone-hacking or other illegal activity. Nevertheless, Sir Brian Leveson did include several "*Case Studies*", one of which concerned the 'Mendacious smear' Statement (Part F, Chapter 5, Section 6). His conclusions were:

> "6.9 [Associated]… placed before the Inquiry material which sought to indicate that Mr Grant's speculations were both illogical and without evidential basis…. For reasons discussed below, I do not accept the propositions advanced by [Associated] but it is very important also to make it clear that neither do I conclude that *The Mail on Sunday* or any journalist employed by it knowingly used material for this story which had been sourced by phone hacking...
>
> …

> 6.11 … I make it clear that I accept Mr Dacre's evidence that he never placed a story in *The Daily Mail* (or permitted one to be placed) which he knew came from phone hacking…"

Nevertheless, Sir Brian found that the 'Mendacious smears' Statement "*went too far*" by wrongly accusing Mr Grant of lying in his evidence to the Inquiry (§6.12).

(7) Restriction orders imposed by the Inquiry

65. During the Inquiry, several restriction orders were made under s.19 Inquiries Act 2005.

66. On 7 December 2011, Sir Brian Leveson made a restriction order ("the First Restriction Order"). As recorded in the order itself, the order was made after a confidential witness statement, provided to the Inquiry by a prospective witness, had been published on the Internet before the relevant witness had given oral evidence. The First Restriction Order provided:

> "No witness statement provided to the Inquiry whether voluntarily or under compulsion, nor any exhibit to any such statement, nor any other document provided to the Inquiry as part of the evidence of the witness (not otherwise previously in the public domain) shall be published or disclosed, whether in whole or in part, outside the confidentiality circle comprising the Chairman, his assessors, the Inquiry Team, the Core Participants and their legal representative prior to the maker of the statement giving oral evidence to the Inquiry or the statement being read into evidence, or summarised into evidence by a member of the Inquiry Team as the case may be without the express permission of the Chairman…"

67. A further restriction order was made on 26 April 2012 ("the Second Restriction Order"), in the following terms:

> "Prior to its publication on the Inquiry website, no witness statement provided to the Inquiry whether voluntarily or under compulsion, nor any exhibit to any such statement, nor any other document provided to the Inquiry as part of the evidence of the witness (not otherwise previously in the public domain) shall be published or disclosed whether in whole or in part, outside the confidentiality circle comprising of the Chairman, his assessors, the Inquiry Team, the Core Participants and their legal representatives…"

68. In a subsequent ruling on 14 May 2012, concerning a further leak of evidence prior to a witness giving evidence, Sir Brian Leveson explained the purpose and effect of the Restriction Orders as follows:

> "3. The reason for the Order is not an unjustified exercise of power, intended to control the operation of a free press; it is described in the fourth recital to the order as a consequence of the view that without express permission:
>
> > '… it is conducive to the fulfilment of [my] terms of reference and in the public interest that witness statements provided to the Inquiry should not be published before they are put into evidence by their maker at the Inquiry, or read into evidence, or summarised into evidence by a member of the Inquiry team as the case may be…'

4. Why is that so? It is important that the Inquiry obtain the benefit of the views of core participants as to questions that should be asked of witnesses for which purpose it is critical that they have advance sight of the statements. To allow a core participant to take advantage of early sight of the statements would be unfair to those who are not core participants. Furthermore, the effect of disclosure in breach of the Order will be to generate a public debate about what the witness intends to say, doubtless with critical comment and unstructured assertion. That disrupts the fair presentation of the evidence and is unfair to the witness who is likely to find him or herself responding to the press before having had the chance to explain the evidence in public to the Inquiry. Neither is very much being required of those who have had sight of the statements. Usually, it is only a matter of days or perhaps a week before the witness is due to given evidence that the evidence will be published to core participants. As soon as the evidence has been given, the statement is published and it is then open to whomsoever wishes to say whatever they wish about it. The modest restriction covering the days between disclosure and presentation of evidence is, in my judgment, a fair balance which does not represent an unreasonable restriction on the press."

69. On 29 November 2012, the same day that the Inquiry Report was published, Sir Brian Leveson imposed a further, and (as it was to turn out) final, restriction order ("the Final Restriction Order"). The Final Restriction Order was headed, "*General Restriction Order in relation to redactions made to evidence and documents, and evidence and documents withheld by the Inquiry"*, and provided:

"Restrictions on access to information in evidence and documents which the Chairman considers to be conducive to the Inquiry fulfilling its terms of reference or to be necessary in the public interest under section 19(3)(b) of the 2005 Act ('the Act') have been made in the following ways:

1. Personal information in evidence and documents has been redacted from published material. This is also in compliance with responsibilities under the Data Protection Act 1998. This information includes names and contact details of all officials (excluding Special Advisors) believed to be below Senior Civil Servant (SCS) grade. Where redactions of personal information are the only redactions made to evidence or a document, these do not appear in the Schedule.

2. The Inquiry has restricted access to other information in disclosed and published material by redacting such information as the Chairman considers appropriate under s.19(3)(b) having regard in particular to

   (a) any risk of harm or damage, including potential prejudice to criminal investigations and prosecutions and damage caused by disclosure of commercially sensitive information, that could be avoided or reduced by any such redaction;

   (b) any conditions as to confidentiality subject to which a person acquired information given to the Inquiry;

   (c) the extent to which not making any particular redaction would be likely:

(i) to cause delay or to impair the efficiency or effectiveness of the Inquiry; or

(ii) otherwise to result in additional cost (whether to public funds or to witnesses or others);

3. The Inquiry has withheld in their entirety such material as the Chairman considers appropriate under s.19(3)(b) having regard to

(a) any risk of harm or damage, including potential prejudice to criminal investigations and prosecutions and damage caused by disclosure of commercially sensitive information, that could be avoided or reduced by withholding the material;

(b) any conditions as to confidentiality subject to which a person acquired information given to the Inquiry;

(c) the extent to which not making any particular redaction would be likely:

(i) to cause delay or to impair the efficiency or effectiveness of the Inquiry; or

(ii) otherwise to result in additional cost (whether to public funds or to witnesses or others);

IT IS ORDERED that until further order or Ministerial variation or revocation:

(1) There shall not be any disclosure or publication of any of the redacted material within the evidence or documents disclosed or published by the Inquiry, or of the withheld material. This includes personal information referred to in paragraph 1 above and the material set out in the Schedule annexed to this Order.

(2) This Order is made under s.19(2)(b) of the Act and binds:

(1) all persons including all witnesses and core participants to the Inquiry and their legal representatives;

(2) all companies

whether acting by themselves or their servants, agents, directors, officers, or in any other way.

(3) Any person affected by this order may apply in accordance with section 20 of the Act to vary this Order."

70. The Schedule to the Order identified, by URN, the documents referred to in Paragraph (1) of the Final Restriction Order. There is no dispute that the Ledgers were not included in the Schedule. The Schedule contained the following:

> "**Also withheld:**
>
> Various documents and other material without reference numbers, including but not limited to, confidential documents and other confidential and sensitive information."

71. Equally, there is no dispute that the Ledgers were not published by the Inquiry on its website or otherwise.

G: Limitation Application

(1) Legal principles

72. The Limitation Application is brought on two bases: (1) striking out under CPR 3.4(2)(a) and (b); and (2) a summary judgment application under CPR Part 24.

(a) Striking out

73. CPR 3.4(2) provides:

> "The court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings …"

74. Limitation operates as a defence to a civil claim. It must therefore be raised by a defendant in answer to the claim. As such, even an unanswerable limitation defence does not lead to the conclusion that an otherwise viable case does not disclose reasonable grounds for bringing the claim. For that reason, if limitation is the sole basis for an application to strike out under CPR 3.4(2)(a), the application will be dismissed. In ***Ronex Properties Ltd -v- John Laing Construction Ltd*** **[1983] QB 398, 404D-E**, Donaldson LJ explained:

> "… [It] is trite law that the English Limitation Acts bar the remedy and not the right; and, furthermore, that they do not even have this effect unless and until pleaded. Even when pleaded, they are subject to various exceptions, such as acknowledgment of a debt or concealed fraud, which can be raised by way of reply."

75. ***Ronex*** recognises, at least in theory, that, if the claimant has no answer to an obviously well-founded limitation defence, the Court has jurisdiction to strike out the claim under what is now CPR 3.4(2)(b), but the more obvious route of challenge is a summary judgment application under CPR Part 24. I find it difficult to imagine circumstances in which a challenge based on limitation would have a different outcome depending on whether it was made under CPR 3.4(2)(b) or Part 24. If anything, the hurdle for striking out is higher than Part 24. That is because, to succeed with a strike out under CPR 3.4(2)(b), the defendant must satisfy the Court that the claim is an abuse of process. If the objection is based solely on limitation, the only way of doing so is to satisfy the Court that the claim is bound to fail on the issue of limitation and therefore

that it is wasteful of the resources of the parties and the Court to let the claim continue. Looked at through the prism of Part 24, the test is whether there is no real prospect that the limitation defence will fail.

76. In his oral submissions, Mr Beltrami KC did not press the CPR 3.4(2)(b) application on behalf of Associated. He concentrated on the Part 24 application. For the reasons I have explained above, in my judgment he was right to do so.

(b) Summary judgment

77. The principles to be applied on Part 24 applications are well established and were not in dispute between the parties: see ***EasyAir Ltd -v- Opal Telecom Ltd*** **[2009] EWHC 339 (Ch)** [15]; ***AC Ward & Sons Ltd -v- Catlin (Five) Ltd*** **[2010] Lloyd's Rep I.R. 301** [24]; ***Global Asset Capital -v- Aabar Block*** **[2017] 4 WLR 163** [27]. The principles were summarised in ***Daniels -v- Lloyds Bank*** **[2018] EWHC 660 (Comm)** [49]:

> "(i) The burden of proof is on the applicant for summary judgment;
>
> (ii) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success: ***Swain -v- Hillman*** **[2001] 1 All ER 91**;
>
> (iii) The criterion 'real' within CPR 24.2 (a) is not one of probability, it is the absence of reality: Lord Hobhouse in ***Three Rivers DC -v- Bank of England (No.3)*** **[2003] 2 AC 1** [158];
>
> (iv) At the same time, a 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: ***ED & F Man Liquid Products -v- Patel*** **[2003] EWCA Civ 472** [8];
>
> (v) The court must be astute to avoid the perils of a mini-trial but is not precluded from analysing the statements made by the party resisting the application for summary judgment and weighing them against contemporaneous documents (*ibid*);
>
> (vi) However disputed facts must generally be assumed in the claimant's favour: ***James-Bowen -v- Commissioner of Police for the Metropolis*** **[2015] EWHC 1249** [3];
>
> (vii) An application for summary judgment is not appropriate to resolve a complex question of law and fact, the determination of which necessitates a trial of the issue having regard to all the evidence: ***Apovdedo NV -v- Collins*** **[2008] EWHC 775 (Ch)**;
>
> (viii) If there is a short point of law or construction and, the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it: ***ICI Chemicals & Polymers Ltd -v- TTE Training Ltd*** **[2007] EWCA Civ 725**;
>
> (ix) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial. The court should hesitate about making a final

> decision without a trial, even where there is no obvious conflict of fact at the time of the application, where 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: ***Royal Brompton Hospital NHS Trust -v- Hammond (No.5)*** **[2001] EWCA Civ 550**; ***Doncaster Pharmaceuticals Group Ltd -v- Bolton Pharmaceutical Co 100 Ltd*** **[2007] FSR 63**;
>
> (x) The same point applies to an extent to difficult questions of law, particularly those in developing areas, which tend to be better decided against actual rather than assumed facts: ***TFL Management Services -v- Lloyds TSB Bank*** **[2014] 1 WLR 2006** [27].

78. As to the last point, Mr Sherborne, for the Claimants, also referred to the judgment of Lord Collins in ***AK Investments CJSC -v- Kyrgyz Mobil Tel Limited*** **[2012] 1 WLR 1804** [84].

79. There are numerous authorities in which appellate courts have emphasised the warning that the Court should not conduct a 'mini-trial', on the basis of written evidence and without the usual phases of disclosure and witnesses being cross-examined at trial: see e.g. ***Alpha Rocks Solicitors -v- Alade*** **[2015] 1 WLR 4534** [25]-[27]; ***Allied Fort Insurance Services Ltd -v- Ahmed*** **[2015] EWCA Civ 841** [80], [89], [91]-[104]; ***Three Rivers*** [94]-[96].

80. In my judgment, these authorities demonstrate the important distinction between the assessment, or evaluation, of the evidence (either undisputed or taken at its highest for the defendant) and fact-finding, particularly resolution of material disputed facts. A judge assessing a summary judgment application may carry out the former exercise (if s/he is satisfied that there is no real prospect that the available evidence will materially alter by trial); it is the latter that is prohibited: ***Three Rivers*** [158]. A party cannot avoid summary disposal of a claim or issue simply by making it appear complicated or to involve the consideration of lots of evidence. If, on analysis, the Court is satisfied that there is no substance to the claim or issue, and there is no real prospect that there ever will be, summary judgment may be appropriate: ***Three Rivers*** [156].

81. I would respectfully adopt the summary given by Cockerill J in ***King -v- Stiefel*** **[2021] EWHC 1045 (Comm)** [21] (approved by the Court of Appeal in ***Trafalgar Multi Asset Trading Company Limited -v- Hadley*** **[2022] EWCA Civ 1639** [38]):

> "The authorities therefore make clear that in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the Court will be entitled to draw a line and say that - even bearing well in mind all of those points - it would be contrary to principle for a case to proceed to trial."

82. In the MGN litigation, Fancourt J refused an application for summary judgment, on the grounds of limitation, substantially on the ground that the relevant facts would have to

be determined at trial: **[2022] EWHC 1222 (Ch)** [180]-[183]. In refusing permission to appeal against his decision, Andrews LJ noted:

> "The question whether a claimant has sufficient information to know that they have a worthwhile claim, in this case a worthwhile [Unlawful Information Gathering] claim, is dependent upon a factual investigation which is quintessentially inapposite for summary judgment. So too is the issue of reasonable diligence, which requires a two-stage enquiry as to whether there was anything to put a claimant on notice of a need to investigate and, if so, what a reasonably diligent claimant would have discovered upon some investigation."

(c) s.32 Limitation Act 1980

83. It is common ground that all the acts complained of by the Claimants are alleged to have occurred over 6 years ago. As such, Associated would have a defence of limitation in respect of the claims for misuse of private information under s.2 Limitation Act 1980.

84. However, pursuant to s.32 Limitation Act 1980, a period of limitation may be postponed in cases of fraud, concealment or mistake. The material part of s.32 provides:

> "(1) … where in the case of any action for which a period of limitation is prescribed by this Act, either—
>
> (a) the action is based upon the fraud of the defendant; or
>
> (b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or
>
> (c) the action is for relief from the consequences of a mistake;
>
> the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.
>
> References in this subsection to the defendant include references to the defendant's agent and to any person through whom the defendant claims and his agent."

85. Each Claimant alleges that Associated did deliberately conceal the Unlawful Acts about which complaint is made, both at the time they were committed and subsequently (see §6 Particulars of Claim – [5] above), and relies upon s.32(1)(b) to postpone the running of the 6-year period of limitation. The statutory defence of limitation reflects a policy decision that there must be finality to litigation. Section 32 (and other exceptions provided in the Act) operates to mitigate the potential unfairness of an otherwise hard-edged rule.

86. In ***Bilta (UK) Ltd -v- SBS Securities plc*** **[2022] BCC 833** [31], Marcus Smith J summarised the principles derived from the extensive case law on s.32, as follows (emphasis in the original):

> "(1) Section 32 constitutes a limited exception to the fundamental purpose of limitation, which is to set a time limit for the bringing of claims, not merely to prevent delay, dilatoriness and the belated resurrection of old claims, but

to bring about a certain end to litigation: ***FII Group Test Claimants -v- HMRC*** **[2022] AC 1** [155]; ***OT Computers -v- Infineon Technologies AG*** **[2021] QB 1183** [23] .

(2) The purpose of section 32 is to create a postponement to when time begins to run which is later than when the cause of action accrues. The purpose of that postponement is to ensure that a claimant is not disadvantaged, so far as limitation is concerned, by reason of being unaware of the circumstances giving rise to his or her cause of action as a result of fraud, concealment or mistake: ***FII Group*** [193]; ***OT Computers*** [24], [25].

…

(4) Section 32 provides, exceptionally, that in cases of fraud, concealment or mistake, time does not begin to run until either:

(a) the claimant has discovered the fraud, concealment or mistake (as the case may be); or

(b) could with reasonable diligence have discovered it.

As is clear, the first limb of this test turns on the actual knowledge of the claimant, however diligent or alert that claimant may or may not have been. In practice, this first limb acts to accelerate the point at which time begins to run. The alert and diligent claimant, who discovered the fraud, concealment or mistake before a claimant, with reasonable diligence could have discovered it, will not be permitted to contend that time began to run later than the date of the claimant's actual knowledge. The 'reasonable diligence' test thus acts as something of a long-stop.

(5) It is worth noting that this regime is (rightly) claimant-friendly. Time begins to run on discovery or discoverability (as the case may be), and the claimant will then have six years in which to bring a claim.

(6) Since section 32 constitutes an exception to the ordinary regime, the burden of proof is on the claimant wishing to avail him or herself of section 32: ***Paragon Finance -v- Thakerar*** **[1999] 1 All ER 400, 418**.

(7) As to the meaning of 'reasonable diligence':

(a) In ***Gresport Finance -v-. Battalagia*** **[2018] EWCA Civ 540** [41], Henderson LJ approved Millett LJ's statement in ***Paragon Finance***:

> 'The question is not whether the plaintiffs *should* have discovered the fraud sooner, but whether they *could* with reasonable diligence have done so. The burden of proof is on them. They must establish that they *could not* have discovered the fraud without exceptional measures which they could not reasonably have been expected to take. In this context the length of the applicable limitation period is irrelevant. In the course of argument, May LJ observed that reasonable diligence must be measured against some standard, but that the six-year limitation period did not provide the relevant standard. He suggested that the test was how a person carrying

> on a business of the relevant kind would act if he had adequate but not unlimited staff and resources and were motivated by a reasonable but not excessive sense of urgency. I respectfully agree.'

(b) It is inherent in the section 32 schema that there is an assumption that the claimant desires to discover whether or not a fraud has been committed, and that there must therefore be an anterior 'something' to put a claimant on notice of the need to investigate if there has been a fraud, concealment or mistake: ***Law Society -v- Sephton*** **[2005] QB 1013** [116]; ***Gresport Finance*** [41].

(c) This distinction between (i) whether there is anything to put the claimant on notice of the need to investigate and (ii) what a reasonably diligent investigation would then reveal is a helpful analytical structure (which I will adopt), but it is important to note that this is not the statutory test. In ***OT Computers*** [47], Males LJ said this:

> '…although the question what reasonable diligence requires may have to be asked at two distinct stages, (1) whether there is anything to put the claimant on notice of a need to investigate and (2) what a reasonably diligent investigation would then reveal, there is a single statutory issue, which is whether the claimant could with reasonable diligence have discovered (in this case) the concealment. Although some of the cases have spoken in terms of reasonable diligence only being required once the claimant is on notice that there is something to investigate (the 'trigger'), it is more accurate to say that the requirement of reasonable diligence applies throughout. At the first stage the claimant must be reasonably attentive so that he becomes aware (or is treated as becoming aware) of the things which a reasonably attentive person in his position would learn. At the second stage, he is taken to know those things which a reasonably diligent investigation would then reveal. Both questions are questions of fact and will depend on the evidence. To that extent, an element of uncertainty is inherent in the section.'

(d) The words '*could with reasonable diligence*' obviously refer to an objective standard (i.e., what the claimant could have learned/done, not merely what he or she in fact did learn/do). The objective standard is informed by the position of the actual claimant, and not by reference to some hypothetical claimant: ***OT Computers*** [48] .

(e) Reasonable diligence can require a claimant to undertake investigatory measures, including instituting legal proceedings to obtain disclosure. In ***Chodiev -v- Stein*** **[2015] EWHC 1428 (Comm)**, Burton J held that reasonable measures would have included seeking a disclosure order out of the jurisdiction ([49]); and in ***Libyan Investment Authority -v- JP Morgan Markets*** **[2019] EWHC 1452 (Comm)**, Bryan J held that reasonable measures would have included applying for *Norwich Pharmacal* relief (at [53] and [57])…

(f) It is trite that a statement of case in no way proves or establishes the claim asserted: it merely articulates, to a relatively low standard, the claim that the claimant wishes to vindicate before the courts. It follows that the test as to when the claimant has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered the same must be referable to what is needed properly to plead out the claim. That is the test that appears to be prevalent, particularly where fraud is involved: see ***Peconic Industrial Development Ltd -v- Lau Kwok Fai*** **[2009] HKCFA 17**; **[2009] WTLR 999** [56]; ***FII Group*** [184]-[192]. What is required is an ability in the claimant to plead a complete cause of action: ***Arcadia Group Brands -v- Visa*** **[2015] Bus LR 1362** [48]-[49]. By this is meant an ability to plead a viable claim, that is, one that will not be struck out because a necessary element of the cause of action cannot be asserted or because the necessary particularity cannot be pleaded. A viable claim does not require the claimant to need to know or have been able to discover all of the evidence which it later decides to plead. But it does require the putative claimant to be able to plead the precise case that is ultimately alleged: ***Barnstaple Boat Co -v- Jones*** **[2008] 1 All ER 1124**. In a case of fraud… discovery of the alleged fraud means knowledge of the '*essential facts constituting the alleged fraud*': ***Cunningham -v- Ellis*** **[2018] EWHC 3188 (Comm)** [87].

(g) I pause to observe that this test is a favourable one to the putative claimant. Ordinarily, when a cause of action accrues, the claimant will (whilst time is running against him or her) have to gain the necessary confidence to justify embarking on the preliminaries to the issue of a claim form, such as submitting a claim to the proposed defendant, taking advice and collecting evidence. To loosely quote Lord Nicholls in ***Howard -v- Fawcetts*** **[2006] 1 WLR** [9]. If the test is the ability to plead a viable statement of case, then the putative claimant is actually in a better position under section 32 than he or she would be under the 'ordinary' rules.

(h) There is scope for an argument that time ought to begin to run rather sooner than this, e.g. when the putative claimant is in a position to recognise that he or she 'has a worthwhile case… to pursue a claim'. See, e.g. ***FII Group*** [185]. It seems to me, particularly in cases of fraud or dishonesty, that such a lower standard is redolent with difficulty, because what is 'worthwhile' to pursue is a somewhat uncertain and rather subjective standard, whereas what is or is not a pleadable statement of case is clearly understood, even where that case involves allegations of fraud or dishonesty. Accordingly, I make clear that it is the latter test that I am applying, and Mr Scorey, QC did not seek to persuade me from doing otherwise. I also recognise that where the claim involves allegations of fraud or dishonesty, a pleader has professional obligations which must be satisfied before it can sensibly be said that a statement of case is 'viable' to plead.

(i) I lay some stress on this, because (in closing) Mr Parker QC, suggested that a 'worthwhile' case involved something more than the putative claimant being able to plead a 'viable' statement of case, as I have

> described it. He contended that – at least in cases of fraud or dishonesty – a putative claimant was entitled to consider the extent to which the claim would succeed…. I do not consider that this proposition accords with the law as it stands. In ***FII Group***, the 'worthwhile' test represented a less generous standard to the putative claimant than the 'viable statement of case' test, whereas Mr Parker QC, was contending for a test even more favourable to the putative claimant. The problems with the sort of test propounded by Mr Parker QC are threefold: (i) it is a test that is unsupported by authority; (ii) it is a test that is extremely uncertain, even subjective, in nature; and (iii) it is unnecessarily generous, given that the putative claimant who is able to plead a viable statement of case will then have six years to improve it and decide whether or not in fact to bring a claim.
>
> I will apply what I have described as the 'viable statement of case' test.

87. It is perhaps of some importance to note that ***Bilta*** was a decision made *after* trial. The fact-sensitive nature of the inquiry under s.32 was emphasised in ***OT Computers*** [27]:

> "… there will be cases… where discovery of the relevant facts involves a process over a period of time as pieces of information become available. In such cases it may be difficult to identify the precise point of time at which a claimant exercising reasonable diligence could have discovered enough, either to plead a claim or (as the case may be) to begin embarking on the preliminaries to the issue of proceedings. In some cases identification of that point of time may be critical. In others, such as the present, it may be unnecessary to identify it with precision. Nevertheless the uncertainty to which this exercise may give rise is inherent in the section."

88. Associated bases its Limitation Application, in substantial part, on the availability of material in the public domain of which, Associated contends, each Claimant could, with reasonable diligence, have been aware. As such, it is perhaps important to note the observations of the Court of Appeal in ***DSG Retail Ltd -v- Mastercard Inc*** **[2020] Bus LR 1360**:

> [69] … The question of whether there was something to put the claimants on notice had to be determined on an objective basis, but as Lord Hoffmann explained in ***Peconic*** that "*leaves open to argument the extent to which the personal characteristics of the plaintiff are to be taken into account in deciding what diligence he could reasonably have been expected to have shown*". As Henderson LJ agreed in ***Gresport Finance***, whether the claimant could with reasonable diligence have discovered the relevant concealment is a question of fact in each case.
>
> [70] In this case, the Tribunal considered some of the things that the claimants might have known about the alleged infringement, but did not ask itself what precisely had put the claimants on notice of the need to investigate a potential claim against Mastercard. … The Tribunal wrongly assumed that the claimants were aware of important press articles as I have already

> explained. As it seems to me, the question of whether or not the claimants in this case had reason to investigate and whether they could with reasonable diligence have discovered the relevant concealment requires disclosure and factual evidence to be fairly determined. In particular, I think Mr Pickford was right to point out that, in an internet age, huge numbers of documents are in the public domain; it does not follow that, even objectively judged, a potential claimant was on notice of a particular claim, or that it could with reasonable diligence have seen particular documents.

In this context, I also consider that the judgment of Males LJ in ***OT Computers*** [47], [58]-[59] is instructive on the nature of the factual assessment that the Court must make under s.32(1).

89. As to the interpretation of the words "*deliberate concealment*" in the section, Males LJ said this, in ***Canada Square Operations Ltd -v- Potter*** **[2022] QB 1** [164] (emphasis added):

> "[They] are ordinary English words, which ought to be capable of being interpreted according to their natural and ordinary meaning in their context and in the light of the statutory purposes, which is to extend the primary limitation period in cases where the defendant's conduct has prevented the claimant from realising that she has a claim. A judge ought to be able, having ascertained the facts, to decide whether there is a relevant fact which has been deliberately concealed. That ought not to be a complicated question."

90. The "*relevant facts*" for these purposes are those facts without which the cause of action is incomplete. On the authorities, this issue should be interpreted narrowly. Limitation does not cease to run because the relevant claimant does not have certainty that the claim will succeed; a reasonable belief that s/he has a worthwhile claim will suffice: ***Gemalto Holdings BV -v- Infineon Technologies AG*** **[2023] Ch 169** [45]-[47], [65]. In that case, the Master of the Rolls held [45]:

> "… limitation begins to run in a deliberate concealment case when the claimant recognises that it has a worthwhile claim, and that a worthwhile claim arises when a reasonable person could have a reasonable belief that (in a case of this kind) there had been a [wrong]…"

91. ***Gemalto*** was a cartel case. In such cases, the wrongdoing is typically deliberately concealed. The Master of the Rolls explained the nature of the concealment that had to be discovered:

> [46] … the ***FII*** test makes clear that the claimant is not entitled to delay the start of the limitation period until it has any certainty about its claim succeeding. So, whilst in a fraud case, if there were an essential fact about the fraud that the claimant had not discovered, without which there would have been no fraud, it would make sense to say that the claimant had not discovered the fraud. But in concealment, what needs to have been discovered is just that, the concealment. Once the claimant knows objectively that a cartel has been concealed, it does not need to have certainty about its existence or about the details of that cartel. That is why the Supreme Court made clear that the claimant needs only sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the

> proposed defendant, taking advice and collecting evidence. The term "*worthwhile claim*" is also not to be construed as a deed. It requires a common-sense application. A claim in respect of a concealed event would not be a worthwhile one if it were pure speculation, but it would be if, as in this case, an authoritative regulator had thought it sufficiently serious, having investigated all the evidence available, to lay charges or issue a statement of objections.
>
> [47] … [The] test adumbrated by the Supreme Court must be intended to operate in all situations in which there has been mistake, fraud or concealment, and to be consistent with the Limitation Act more generally. It would make no sense for the limitation period for a road traffic accident to start running when it happens (at which point the victim may know nothing about the circumstances of the accident that, for example, rendered them unconscious), but for section 32 to allow a claimant a lengthy period of investigation before it is said to have "discovered" that the facts relating to its claim have been concealed. The person who is run down knows that they have a worthwhile claim, even if they may eventually be shown to have been responsible for the accident by running in front of the vehicle. The claimant cannot postpone the start of the limitation period until it has had the time to investigate the details of the claim and the possible defences and to evaluate its prospects, any more than the road traffic victim is able to do so. That is what the 6-year limitation period is for. The question of whether a claim is worthwhile is not a complex balance of the chance of success as Mr Turner suggested. The limitation period is not postponed until the claimant can show that it is more likely than not to succeed. Of course, if the putative claim would be struck out as not disclosing a cause of action, it would be right to say that the claimant had not discovered that it had a worthwhile claim (see the comparisons with ***Earl Beatty***, ***Paragon***, ***Sephton*** and ***Molloy*** above at [37]). That is why I say that I am far from sure that there is a real difference between the statement of claim test and the ***FII*** test so far as concealment cases are concerned.

92. If a claimant can plead a viable – or worthwhile – claim without needing to know the facts in question, there is no good reason why the primary limitation period should not apply: ***Canada Square*** [167]. Males LJ, added, however: "*But it does not necessarily follow that the section as a whole should be narrowly interpreted. It should be given its natural and ordinary meaning without a predisposition to interpret it either narrowly or broadly.*"

93. As to whether the Claimants could, with reasonable diligence, have discovered the concealment:

    (1) see ***Bilta (UK) Ltd*** [31(7)] (quoted in [86] above);

    (2) the test is objective informed by the position of the actual claimant, not by reference to some hypothetical claimant: ***OT Computers*** [48];

    (3) the requirement of reasonable diligence applies throughout, but it may often be helpful to consider whether there has been something to put the claimant on notice of a need to investigate, and then what a reasonably diligent investigation would have revealed. At the first stage, the claimant must be "*reasonably*

attentive"; at the second stage the claimant is taken to know those things that a reasonably diligent investigation would have revealed: ***OT Computers*** [47];

(4) a claimant may be put on notice where they know that something has gone wrong, or has suffered an injury sufficient to prompt the claimant to ask 'why?' It is not necessary to know that there is, or might be, a legal claim: ***Kyla Shipping Co Ltd -v- Freight Trading Ltd*** **[2022] EWHC 1625 (Comm)** [332]; ***Gemalto*** [47]; and

(5) nevertheless, if there is no relevant trigger for an investigation, the obligation to investigate with reasonable diligence does not arise: ***J. D. Wetherspoon plc -v- Van de Berg & Co Ltd*** **[2007] PNLR 28** [42] *per* Lewison J.

94. In ***Various Claimants -v- MGN Ltd*** **[2022] EWHC 1222 (Ch)**, having considered the relevant authorities, Fancourt J summarised how the requirement of reasonable diligence should be applied as follows:

> [71] … the objective test in s.32(1) requires both a standard of reasonable general awareness and self-interest to be attributed to a claimant, when considering the question of whether a claimant was on notice of the need to investigate, and an objective assessment of the inquiries that a reasonable person in the position of the claimant would carry out, exercising reasonable but not exceptional diligence. Further, the objective standard must be applied to the claimant themselves – in other words, a person circumstanced as the claimant actually was at the relevant time(s), but that individual character traits that may have affected the nature of the claimant's response, or desire to investigate, should be disregarded, to ensure that like cases are treated alike, rather than careless or inattentive claimants being favoured by the law. This in my judgment is consistent with the equitable origins of the statutory provision now found in s.32 of the 1980 Act, where equity relieved against the consequences of mistake and applied the early statutory provisions by analogy, but did not do so in favour of those who failed to act promptly once the claim could with reasonable diligence have been discovered: see paras [103] to [128] of ***FII***.

95. Fancourt J returned to consider the same point in ***Duke of Sussex -v- NGN Ltd*** **[2023] EMLR 21** [21] and held:

> "… the legal test to be applied as regards s.32(1), following the decision of the Court of Appeal in ***Gemalto***…, is whether before the Applicable Date the Duke knew facts, or could with reasonable diligence have known facts, that would have led a reasonable person to conclude that there was a worthwhile claim, in the sense that such a person would have confidence to embark on the preliminaries to issuing a claim. It is not necessary to have confidence that the claim would succeed, to have the evidence to prove it, or even necessarily to be able to plead it at that stage, before further investigation. It is not necessary for every essential fact that has been concealed to have been discovered. However, if the claim that could be brought would then be struck out, it was not a worthwhile claim."

96. In my view, in an appropriate case, there may be scope for overlap – on the facts – between the issue of concealment and whether the concealed facts could have been discovered with reasonable diligence. The fact that a defendant simply disputes an

element of the cause of action does not mean that commencement of the limitation period is further postponed: ***Various Claimants -v- MGN Ltd*** [57]. But if a defendant is also responsible for misleading a claimant that s/he has no claim, those facts may be relevant to the issue of whether the concealment could with reasonable diligence have been discovered. For example, if the defendant took steps to put the claimant "*off the scent*" that may be relevant both to the factual issue of concealment and also to whether that concealment could with reasonable diligence have been discovered: ***J. D. Wetherspoon plc -v- Van de Berg & Co Ltd*** **[2007] EHWC 1044 (Ch)** [44]; ***Various Claimants -v- MGN Ltd*** [120]-[121], [143], [170]. Put shortly, the more extensive and effective the efforts to conceal the alleged wrongdoing, the more difficult it may be to discover, even with reasonable diligence.

97. As the authorities I have set out have made clear, it is important, when considering this issue, to analyse carefully the nature of the claim that each Claimant has now advanced.

98. In that respect, Mr Sherborne did argue that, when considering the Limitation Application, the Court was required to approach the matter on the basis that each Claimant is bringing a claim that relies upon multiple individual causes of action, that would have to be considered separately. This argument principally relied upon the Court of Appeal's decision in ***The Kriti Palm*** **[2007] 1 Lloyd's Rep 555**; **[2007] 2 CLC 223**. In my judgment, interesting though Mr Sherborne's argument is, I do not need to consider it further for two reasons.

99. First, the argument was advanced to, and rejected by, Fancourt J in ***Various Claimants -v- MGN*** [78]-[94]. Mr Sherborne submitted to me that Fancourt J was wrong in his analysis. As a matter of precedent, I am required to follow Fancourt J's decision unless I consider it to be plainly wrong. I do not. Indeed, to my mind, the Judge's reasoning is correct.

100. Second, and in any event, my decision on the other points that I must decide means that it is not necessary for me to resolve this issue.

(d) Claims for misuse of private information

101. Broadly stated, the claims advanced by the Claimants are for the tort of misuse of private information. As such, at the first stage, each claimant must establish that s/he has a reasonable expectation of privacy in relation to information. If s/he does, the second stage is to consider whether that expectation of privacy is outweighed by a countervailing right/interest, typically the right of freedom of expression: ***ZXC -v- Bloomberg LP*** **[2022] AC 1158** [47]-[50]. At the first stage, the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. Several common factors were identified by the Court of Appeal in ***Murray -v- Express Newspapers plc*** **[2009] Ch 481** [36].

102. In a typical Unlawful Information Gathering claim, the publication of an article which contains private information of the relevant Claimant is, it is submitted, the tip of the iceberg. Whilst the published article may have been in plain view to everyone, including the relevant Claimant, any anterior Unlawful Acts used to obtain the information were not. Those acts, the Claimants contend, were concealed from them by Associated (or those for whom it is responsible) and could not have been discovered by them,

with reasonable diligence, before 6 October 2016 (6 years before the claims were commenced).

103. What is a claimant in a misuse of private information claim required to plead in his/her statement of case? In compliance with CPR PD 53B §8.1, a claimant must specify in his/her Particulars of Claim:

(1) the facts and matters upon which the claimant relies in support of the contention that s/he had (or has) a reasonable expectation of privacy (§8.1(2));

(2) the use (or threatened use) of the information by the defendant which the claimant contends was (or would be) a misuse (§8.1(3)); and

(3) any facts and matters upon which the claimant relies in support of his/her contention that his/her rights not to have the specified information used by the defendant in the way alleged outweighed (or outweigh) any rights of the defendant to use the information in that manner (§8.1(4)).

104. Typically, the tort of misuse of private information has tended to concern the actual (or threatened) publication of the private information. But publication is not the only way that personal information can be misused under the tort. Obtaining information – without any subsequent publication of it – in circumstances in which the claimant has a reasonable expectation of privacy can be sufficient; c.f. Alan Yentob's claim in ***Gulati -v- MGN*** **[2016] FSR 12**, and see Lord Neuberger's observations in ***Frost -v- MGN Ltd*** **[2017] 1 WLR 1415** [60]-[61].

105. Confronted with a similar situation, in litigation against MGN (the publishers of various *Mirror* newspapers), Fancourt J held that, whilst a misuse of private information claim, based solely on publication of an article, was barred by limitation, a separate and materially different claim, based on alleged anterior Unlawful Information Gathering, was not: ***Various Claimants -v- MGN Ltd*** [105], [124]. The position is very similar here, but the Claimants submit that they are in a materially stronger position than the claimants in the MGN litigation because of the history of Associated's steadfast denials that it, or its journalists/agents, had engaged in Unlawful Acts to obtain and publish information in its newspapers and online.

(2) Evidence

106. In support of the Limitation Application, the principal evidence relied upon by Associated has been provided in the witness statement of Francesca Richmond, a solicitor at Baker & McKenzie, dated 20 January 2023. The statement itself is substantial, but it also exhibits a very large number of further documents. The purpose of this evidence is, principally, to demonstrate that the Claimants have no real prospect of demonstrating that they could not, with reasonable diligence, have discovered the facts they needed to bring a claim until after October 2016. Principally, Ms Richmond's evidence is directed at seeking to demonstrate the point at which, as Associated contends, each Claimant could with reasonable diligence have discovered the facts relevant to his/her cause of action. Ms Richmond recognises that the Court must consider the claim of each Claimant separately.

107. The Limitation Application has been made prior to (1) a Defence, in which Associated raised a limitation defence; (2) a Reply in which each Claimant would (it can reasonably be anticipated) set out his/her case on deliberate concealment (under s.32(1)(b)) in answer to any limitation defence raised by Associated; (3) a Rejoinder, setting out Associated's case in response on s.32; and (4) the usual civil litigation phases of disclosure and witness evidence at trial.

108. In answer to the Limitation Application, each Claimant has filed a witness statement. The Claimants have also relied upon witness statements from: (1) Callum Galbraith, solicitor at Hamlins LLP; (2) Imran Khan KC, a barrister, described by Baroness Lawrence as her "*long standing counsel*"; (3) Daniel Portley-Hanks, a private investigator who worked for *The Daily Mail* and *The Mail on Sunday* between 1999 and 2013; (4) Steve Whittamore, the private investigator whose activities were at the centre of Operation Motorman (see [19]-[22] above) and whose services, the Claimants allege, were used by Associated between 1998 and 2007; (5) Hugh Grant, the actor; and (6) Michael Ward, an individual who claims that he was the subject of Unlawful Activities of Associated's journalists, including burglary of his home.

109. Associated has filed evidence in reply from Ms Hartley, Gavin Burrows (dated 8 March 2023), and a second witness statement of Ms Richmond. The statement of Mr Burrows, filed by Associated, led to the Claimants filing a further witness statement from Mr Galbraith which exhibited a witness statement provided by Mr Burrows, dated 16 August 2021. I deal with the rather stark contrast between Mr Burrows' two statements in more detail below (see [138]-[146]).

110. In her witness statement, dated 10 March 2023, Ms Hartley rejected Mr Galbraith's assertion that Associated had withheld from the Inquiry evidence relating to the use of private investigators. Ms Hartley confirmed that when the Ledgers were provided in response to the s.21 Notices that had been served on Associated, it was made clear that the underlying invoices had not been provided because they were kept in storage and were difficult to search. However, it was indicated that if the Inquiry had further questions in relation to these documents, Associated would be happy to provide further information. The use of private investigators had also been explored with Associated's witnesses during the Inquiry. The entirety of Associated's evidence, including the Ledgers had been available to the Core Participants, their solicitors and counsel on the Inquiry's document management system, where all evidence submitted to the Inquiry was uploaded.

111. I do not intend to attempt to summarise all the evidence contained in (or exhibited to) the substantial witness statements and exhibits that have been filed by the parties. Both Mr Beltrami KC and Mr Sherborne were sensibly selective in their submissions, and I intend to do likewise in this judgment. This is a summary judgment application. If Associated cannot deliver a 'knockout' blow, in any particular claim, with its best evidence, the position is not going to be improved by poring over the detail of all the rest of the material. If such an exercise is ultimately required, the proper place at which to carry out a detailed consideration of the totality of the evidence is at a trial.

(a) The Claimants' general evidence

112. Before turning to consider the evidence in relation to each Claimant, there is some evidence, relied upon by the Claimants, which is advanced to support their general case that Unlawful Information Gathering was widely practised at Associated.

113. The claim advanced by the Claimants relies on evidence provided by, or in relation to, a large number of people. In his witness statement, Mr Galbraith has identified these individuals and confirmed when the Claimants received relevant evidence from, or regarding, each of them. Some of those individuals have subsequently provided witness statements to the Claimants. From the Claimants' perspective, the most important evidence has been provided by private investigators who have either claimed to have carried out themselves Unlawful Acts on behalf of Associated or that such acts were carried out by others. Several of these key individuals, identified by Mr Galbraith, are referred to in this judgment, but it is important to note that there are many other individuals identified in Mr Galbraith's evidence and in the Particulars of Claim whom the Claimants allege were also engaged in, or facilitated, Unlawful Acts on behalf of Associated. The key evidence received by the Claimants was as follows:

(1) The Claimants were provided with information concerning Mr Burrows from Christmas 2020, and he subsequently provided them with a witness statement in 2021.

(2) Mr Mulcaire assisted the Claimants in 2021.

(3) Mr Whittamore came forward to assist the Claimants in mid-2021. He provided a witness statement in February 2023.

(4) PI1 was a private investigator, working with PI2, who is alleged to have carried out Unlawful Acts including phone-hacking, phone tapping, computer hacking, blagging or obtaining of medical records and other financial information, telephone billing and subscriber records, bribing police officers, commissioning burglaries and placing listening devices inside private property. The Claimants were provided with information relating to PI1 and PI2 in late 2021.

(5) PI3 was a private investigator who, through various corporate aliases, is alleged to have carried out Unlawful Acts, including the blagging of medical information, utility records, bank and other financial information, phone records and other private information. The Claimants were provided with information regarding PI3 between 2021 and 2022.

(6) Derek Haslam began helping the Claimants in 2022. He provided information to the Claimants about the alleged activities of PI1, PI2 and PI4 and gave a witness statement in February 2023.

(7) PI4 was a private investigator who had previously been a police officer. He is alleged to have specialised in selling information to journalists at Associated (and other newspapers) obtained from corrupt serving police officers. Information about his activities was provided by Mr Haslam.

(8) The Claimants were provided with information concerning Mr Portley-Hanks in 2022 and he provided a witness statement in February 2023.

114. Mr Whittamore, the main focus of Operation Motorman, has given a statement to the Claimants, dated 23 February 2023. He states that journalists from Associated first started to use his services from mid-1998 and that, by 2007, "*they were [his] best customers*". As to his provision of information to the Claimants he states:

> "In around mid-2021, I came forward to provide assistance to the Claimants who are bringing these claims by explaining the types of work I did for the *Mail* titles, the journalists who instructed me and their targets. This includes the information which I understand is referred to in their Particulars of Claim about the work that I did…
>
> It irked me to watch the Leveson Inquiry and hear executives and senior figures from the *Daily Mail* and *Mail on Sunday* deny that their reporters and editors knew what they were asking me to do was unlawful. I know they did. A number of those journalists who used my services, and who knew only too well that the information I provided for their stories had been obtained unlawfully…"

115. The Claimants have relied upon a witness statement from Derek Haslam. Mr Haslam is a retired police officer. He says that, whilst a serving police officer, acting as an undercover operative, he infiltrated an organisation run by PI1, between 1997 and 2006. Mr Haslam states that he began to help the Claimants, in 2022, by providing them with information about the activities of certain private investigators, including PI1, PI2 and PI4. In his witness statement, he said this:

> "During my time as an undercover operative, I heard [PI1] boast about the unlawful work he did for *The Mail* newspapers. This involved phone tapping (meaning the interception of live telephone calls), computer and phone hacking, bribing police officers and a whole range of other unlawful activities, including burglaries to order. [PI1] liked to boast about the information he could get. '*We can get the Queen's medical records*', he once said. From what I saw of his operations I firmly believed that nothing in terms of private information was beyond [PI1] and [his organisation's] reach using illegal means.
>
> [PI1] and his business partner [PI2] admitted to me frequently that they did work for *The Daily Mail* and *Mail on Sunday*. By work, I mean selling to *Mail* title journalists their regular PI services such as hacking and blagging, as well as tips and story leads which they got hold of using their usual methods. [PI1] boasted that he also carried out landline tapping and burglaries to get information for the *Mail* titles. I also remember him talking about doing electronic surveillance and paying police officers for the *Mail* titles…
>
> I also know about [PI4] a corrupt policeman who left the force and became a private investigator. Like [PI1], he specialised in selling information to the *Mail* and other newspapers from corrupt, serving officers… I got to know [PI4] during this period. I believe, from my recollection of conversations with [PI1] and [PI2], that [PI4] also targeted Doreen Lawrence and the investigations into her son's murder.

> I began to help these Claimants in 2022 by providing them with the information I have mentioned about the activities which [PI1] (and [PI4]) carried out for the *Mail* titles. I did this because I have always believed that [PI1's] corrupt relationship with *The Mail* titles, involving the police, was a key element which has never been properly investigated. I raised [PI1's] work for newspapers with my police handlers three times, and it was covered up."

116. The Claimants have filed a witness statement from Mr Portley-Hanks, dated 22 February 2023. In his statement, Mr Portley-Hanks is direct in his claims:

> "I was a private investigator working for the *Daily Mail* and *Mail on Sunday* for over 20 years, from the early 1990s until at least 2013. From around 1999 onwards, most of the stuff that I did was illegal. Over this time, I estimate, based on my knowledge of my sources of income, that I was paid around $1m in total (or several hundred thousand pounds in sterling), to target hundreds of people directly by *Daily Mail* and *Mail on Sunday* journalists…
>
> I carried out work for both the *Daily Mail* and the *Mail on Sunday* being primarily commissioned or instructed by the journalists [J13] and [J65] at the *Mail on Sunday* and [J24] at the *Daily Mail*…"

117. Explaining when and why he had decided to provide his evidence to the Claimants, Mr Portley-Hanks states:

> "I came forward to help this group of Claimants in 2021 by providing information about the types of work I did for the *Daily Mail* and *The Mail on Sunday*, and who I did it for and some of the people that I targeted for them. Some of this is in these Claimants' court pleadings. I am seventy-six years old with [health conditions]. I am coming forward now in an effort to do the right thing."

(b) Baroness Lawrence

118. In her witness statement, Baroness Lawrence states that she was contacted in January 2022 by a group that was investigating potential claims against Associated. At a meeting, she was told that two private investigators – Mr Burrows and PI1 – had recently confessed "*to carrying out a wide range of criminal activities aimed at secretly stealing and exploiting information from victims on the instruction of* The Mail *newspapers*". She was told that both she, and the investigation into her son's murder, had been a specific target, and that one of the investigators had been tasked to monitor her telephone bills and bank accounts, and her private communications for several years. One reason, she was told, why she had been subjected to this surveillance was to check that she was not receiving 'buy up' money from other newspapers.

119. During 2022, Baroness Lawrence said that she worked with the lawyers to investigate the matter further. She was told the name of a journalist at *The Daily Mail* who, it was claimed, had instructed PI1 to target her for 'internal security'. Baroness Lawrence described being "*numb with anger*" on learning this. She described what she learned from PI1 in the following terms:

> "[PI1] confirmed that he had done more things for *The Daily Mail* and [J66] aimed at secretly stealing information about me and the investigations into Stephen's murder. My landlines had been tapped, my voicemails hacked, my phone bills

> illegally extracted using deception which I now understand is called blagging, covert electronic surveillance was put on me including at a café that I used to go to when I wanted to talk to people privately, and corrupt payments had been made to police officers… For the first time I learnt that these men and other corrupt police officers had received payments from *The Daily Mail* both directly through [J66] and other journalists and indirectly through [PI1] and his private investigator company for information about Stephen's murder. I could not believe what I was hearing and that *The Daily Mail* and [J66] were mixed up in all of this. It was an idea that was so far removed from my thinking."

120. Relevant to Baroness Lawrence's case is specific evidence provided by Mr Haslam (see [115] above). In his witness statement, Mr Haslam stated:

> "[PI1] was obsessed with the Stephen Lawrence murder, and the police investigation into it throughout the entire time I was undercover, and he spoke about it frequently. *The Mail* titles wanted information about it and about Doreen Lawrence herself and so it was good business for him. [PI1] was also obsessed with finding out if Doreen Lawrence had been infiltrated by left-wing groups and used his 'research services' and payments to his corrupt police officers to find out as much as he could. Information like that was of interest to *The Mail.* [PI1] discussed his targeting of Doreen Lawrence, her family and the murder investigation with me many times in face-to-face meetings in his office…
>
> I know that he used his clearly unlawful 'research services' – such as phone tapping, obtaining phone bills, accessing bank accounts, car registration details, corrupt payments to cops and other confidential data unlawfully gathered – as part of operations against the Lawrence family. [PI1] used his 'research services' either when specifically commissioned by *The Mail*, or in order to obtain fresh tips or leads to sell to them…
>
> I also know about [PI3], a corrupt policeman who left the force and became a private investigator. Like [PI1], he specialised in selling information to *The Mail* and other newspapers from corrupt, serving police officers. [PI3] was a well-known figure within the police community whilst I was a serving police officer. I got to know [PI3] during this period. I believe, from my recollection of conversations with [PI1] and [PI2], that [PI3] also targeted Doreen Lawrence and the investigations into her son's murder."

121. Further evidence that had come to light, following the revelations of Mr Burrows and PI1, is also identified and relied upon by Baroness Lawrence in her witness statement. Before these revelations, Baroness Lawrence states that she had no knowledge of, or even a suspicion, that she had been the target of Unlawful Information Gathering.

122. Baroness Lawrence does not dispute that she was aware of the four Unlawful Articles, complained of in her claim, when they were originally published. In her witness statement she states that she believed at the time that those articles were the result of leaks from the police. In a pre-action letter, it was stated that Baroness Lawrence had become "*deeply paranoid by strange things happening around her, and by the unexplained disclosure of her private information as well as information relating to Stephen's murder investigation in* The Daily Mail *throughout the relevant period… [N]either the police nor the CPS had any reason for information published in [the Articles] to be disclosed*" and were part of a "*familiar pattern*" of "*unexplained*

disclosures" in *The Daily Mail*, which "*at the time she… assumed must have come from some legitimate source (as opposed to illegal activity)*".

123. Baroness Lawrence does not deny awareness of the phone hacking scandal generally, though she says that she "*did not pay it much attention*" as she did not believe it would have anything to do with her. Similarly, Mr Khan KC states that he and Baroness Lawrence "*were aware of stories of hacking by the* News of the World *around the time of the scandal surrounding that newspaper*" but that they did not *"think it would have anything to do with Doreen or* The Mail". Baroness Lawrence states that she did not watch or follow the Inquiry, was unaware of the various police investigations into phone-hacking, and was not informed by the police that she may have been the subject of Unlawful Information Gathering.

124. Associated contends that Baroness Lawrence was generally aware of the issue of corruption in the police and had discovered, in 2013, that she had been the target of police surveillance. Indeed, she blamed the police for leaking information to the media when the Unlawful Articles were published. In her witness statement, Baroness Lawrence describes her sense of betrayal at being told of the alleged involvement of Associated. Although she had long suspected that there had been police corruption in the investigation of her son's murder, she said it had:

> "… never once occurred to me that a newspaper might be involved, that they had links and relationships with such men, that they were spying on me and stealing my information, accessing my bank accounts, invading my privacy, that they were seeking information about Stephen to sell and not because they cared, and that it was [J66] and *The Daily Mail* who kept us so close, and who we thought were our friends."

125. Associated relies on evidence that Detective Chief Inspector Clive Driscoll, the senior investigating officer in the 2006 re-investigation of the murder of Stephen Lawrence, believed that the fourth Unlawful Article relied on by Baroness Lawrence (dated 8 November 2007) could have been the product of phone hacking. DCI Driscoll made this allegation in a book, "*In Pursuit of the Truth*", published in July 2015, for which Baroness Lawrence wrote a foreword stating that "*Reading this book throws light on some of the problems that happened in my own case*". This is what DCI Driscoll said in one passage in the 400-page book:

> "She's not the enemy, I reminded myself. She's a victim. Whatever she has said about the Met was probably justified. As long as I didn't let her down, I figured it would be OK. This was my investigation. I was in complete control.
>
> When I saw a record of our meeting splashed all over the *Daily Mail* the following day, I realised I was in control of nothing.
>
> It took about 15 minutes from that newspaper arriving on front door steps all over the country before we got a call from one of the lawyers acting for the family.
>
> 'Same old Met, leaking everything to make yourselves look good'.
>
> I was horrified that Mrs Lawrence thought I'd have done something like that… Now this had happened, she had to think I was as full of hot air as the rest. How was I going to prove otherwise? I was also shocked because the *Mail* had printed secret

> information. On reflection, we could have been victims of the phone hacking scandal but I had no idea how such information could have leaked at the time…"

126. Associated relied upon this evidence as demonstrating that Baroness Lawrence must therefore have been aware of DCI Driscoll's suspicions of phone-hacking.

(c) Elizabeth Hurley

127. In her witness statement, Ms Hurley explains when she became aware of alleged illegal activities against her by Associated:

> "The first I had any knowledge of [Associated's] illegal activities against me was just before Christmas 2020. A whistle-blower called Gavin Burrows had come forward confessing to the terrible things he had done on the instruction of *The Mail on Sunday* newspaper. I spoke to my former boyfriend, Hugh Grant, and told him I was instructing lawyers to find out more about what could be done.
>
> I first got involved in Hugh's world of exploring hacking and dark crimes committed in the shadows of British journalism in 2015. He told me around January that year that there was proof that the *Mirror* had hacked me and that I should consider taking action. At that time, I was filming and very busy with my personal life and business life. I didn't have time, which is always a scarce thing for me. But I realised that it was important to him. That was the first conversation I had with Hugh about hacking in relation to me and my first involvement with anything to do with it. It was all about the *Mirror* and nothing at all to do with *The Mail*... I sued the *Mirror* shortly after that first conversation with Hugh. They settled my claim in November 2016…"

128. Ms Hurley does not deny contemporaneous knowledge of the Unlawful Articles on which she relies. She confirms in her evidence that she "*was aware at the time that information about me was finding itself into the media*". In a pre-action letter, it was stated that Ms Hurley *"became deeply paranoid and suspicious by unexplained disclosures of her private information in [Associated's] publications, even where measures were taken to protect her privacy. [She] began to believe there were leaks within her camp. She felt perpetually unable to know who to trust and profoundly vulnerable in what she perceived as her inability to protect her son. This feeling of paranoia remains with her today.*"

129. Associated has relied upon evidence that Ms Hurley was identified as an early and high-profile victim of phone hacking at an even earlier stage. In July 2011, BBC's *Newsnight* broadcast an eyewitness account of Ms Hurley's phone being hacked and an MGN journalist noting down her voicemails. In December 2011, she was identified at the Inquiry as having been a target of Mr Whittamore, which was also widely reported.

130. Relying upon that, Associated submitted:

> "It is therefore somewhat surprising that Ms Hurley now states [in her witness statement] that she was only '*aware of vague rumblings of foul play by journalists at Murdoch's papers*' before 2015 and that while she had been contacted by the police about phone hacking in 2011, they informed her that '*my name was not on*

> *the list and that no action was required*' and she believed '*none of it had anything to do with me*'."

131. Ms Hurley states that, in 2017, she instructed a lawyer to make a subject access request, under the Data Protection Act 1998, to the ICO for information relating to her from Operation Motorman. She received one document in response, which she said "*revealed more Murdoch commissioned intrusion into my life*" by a named journalist. However, "*it showed nothing about* The Mail *and had I caught a scent of any of the things I now know about earlier, I would have done something earlier…*"

132. Then, during 2021, Ms Hurley states that she learned from Mr Burrows the extent to which, he alleged, she had been the target of Unlawful Information Gathering:

> "We worked hard and slowly but surely and throughout the course of 2021, details began to emerge of the litany of crimes Mr Burrows had committed on *The Mail*'s behalf. And it was then, during those investigations, that I discovered the landlines of my home phones had been tapped and tape recordings taken of my live telephone conversations for *The Mail on Sunday*. I was devastated."

133. The detail of the information that Ms Hurley says that Mr Burrows provided to her in 2021 is perhaps of importance:

> "It transpired that landline tapping was Mr Burrows' unique trade selling point and that it was a routine and essential part of the service he offered to *The Mail on Sunday* from a menu of unwholesome things. He had a former military and British Telecom phone man on his payroll fulltime, who engineered the weekly landline taps on his victims. This man would use cassette recorders and insert them into the landline cables of green BT junction box cabinets on the street. Sometimes he also put them in manholes. The cassette recorders were always hidden and carefully and deliberately concealed to evade any sweeps ordered by suspicious victims. Mr Burrows confirmed that not one cassette recorder or landline tap was ever found or identified by *The Mail on Sunday*'s quarry and that he and his accomplice had laughed every time a suspecting victim ordered a sweep, found nothing and had thought it safe to talk. Hugh and I, and many others, were victims of this and I thought about the time I had asked BT to sweep my lines and they had confirmed everything was fine and I had thought my phone was safe and secure to talk. I felt sickened when I heard how Mr Burrows knew details of my private conversations and how they had been recorded and put on tapes that were then biked back to [Associated's] newspaper for £2,000 plus, in cash, hidden in an envelope.
>
> But there was more. I learnt that Mr Burrows had placed a sticky window mic on my home window to record my conversations inside my London house. I learnt that he had hacked, taped and bugged me a huge number of times. That he had also stolen my financial information, my travel information, and my medical information when I was pregnant with Damian between 2001 and 2002 and that I was a target of focus at this time because of issues with Damian's father. All at the behest of people at [Associated's] newspapers."

134. Finally, in relation to Ms Hurley, there is a witness statement from Hugh Grant. Mr Grant denies the suggestion, made in Ms Richmond's witness statement, that he had informed Ms Hurley that he had evidence that Associated was guilty of hacking her phone or other unlawful activities towards her. He denies both telling Ms Hurley this,

or having such evidence, and that was the case for Sir Elton John, David Furnish and Sir Simon Hughes. He had not spoken to or met Prince Harry or, he believed, Baroness Lawrence or Sadie Frost.

135. Mr Grant added that, whatever his suspicions, he was well aware of the "*frequent, often ferocious, denials issued by Associated*". He sets out the history of the 'Mendacious smears' Statement at the Inquiry and concludes:

> "The cumulative effect of this episode was to leave me in no doubt that Associated denied phone hacking or any other unlawful information gathering vociferously. Given Associated's denials, and Lord Leveson's report, I did not have any basis to take the matter further and without waiving privilege, I was told the same by my lawyer."

136. In 2012, Mr Grant made a subject access request to the ICO for any information relating to him from Operation Motorman. The information he received showed that he had been targeted by Mr Whittamore, but the evidence connected his inquiries with journalists who worked for the *News of the World* and the *Sunday People*, not any Associated titles.

137. In relation to Ms Hurley, Associated contends that she could, with reasonable diligence, have discovered the following facts:

(1) First, Associated suggests that the fact that Ms Hurley had been subjected to Unlawful Information Gathering by Mr Whittamore received considerable public attention in 2011/12. Associated argues that, although Ms Hurley says that she did not know who Mr Whittamore was, or learn about Operation Motorman, until 2017, she has provided no explanation why she could not have discovered the media coverage about Mr Whittamore's targeting of her before 6 October 2016; nor why she could not have discovered that the Operation Motorman material seized by the ICO disclosed that she was the subject of searches by a journalist employed by *The Mail on Sunday* (a point made by Ms Hurley in her letter of claim) .

(2) Second, Associated relies upon Mr Grant's allegations that Unlawful Information Gathering was widespread in the press and that Associated had engaged in the practice. Ms Hurley and Mr Grant have a close relationship and it was Mr Grant who informed Ms Hurley that she had a claim against *The Mirror*. Mr Beltrami KC submitted that, in her witness statement, Ms Hurley seemed to suggest that she was unaware of Mr Grant's allegations until relatively recently, though he suggested that Mr Grant's witness statement "*carefully avoids denying that he informed Ms Hurley of his suspicions that Associated had engaged in [Unlawful Information Gathering] prior to October 2016*". In any event, Associated contends, Ms Hurley was well aware of Mr Grant's founding role in *Hacked Off* and could easily have asked him, before October 2016, whether he believed that the information contained in the Unlawful Articles could have been obtained using Unlawful Information Gathering or if he believed it was likely that Associated had targeted her with Unlawful Information Gathering. Mr Grant does not suggest that he would have withheld his beliefs and suspicions from Ms Hurley if asked.

(3) Finally, Associated argues that the Unlawful Articles were written by journalists who had previously worked for NGN/MGN or had been publicly implicated in Unlawful Information Gathering before October 2016. It is submitted that Ms Hurley gives no explanation as to why she could not have discovered the names of the journalists who wrote the articles and, from that, identified that (a) four of those journalists had previously worked for NGN; and (b) evidence at the Inquiry suggested that two of those journalists were involved in Unlawful Information Gathering.

138. Although I am, in this section of the judgment, considering the evidence concerning Ms Hurley, it is convenient here to consider the evidence of two of the private investigators: Mr Burrows and Mr Whittamore. Their evidence is relied upon by all Claimants. (I deal with the evidence of Mr Portley-Hanks elsewhere in the judgment (see [116]-[117] above and [153] below)).

139. In the litigation, allegations concerning Mr Burrows' activities appeared first in the Particulars of Claim. However, his first witness statement, dated 8 March 2023, was filed by Associated in response to the Claimant's evidence on the Limitation Application, including the evidence of Ms Hurley. This statement is in, perhaps, unconventional terms – even more so when compared against an earlier statement he had provided to the Claimants' solicitors (see [142] below). After explaining shortly his background, Mr Burrows states:

> "I am aware that the Particulars of Claims in these six claims allege that [Associated] instructed or commissioned me and/or my various companies (such as Intelligence Europe, Rhodes Associates, Assured Legal Investigations) to conduct unlawful information gathering on [Associated's] behalf. This is false. I set out below the relevant paragraphs of the Particulars of Claim that I have discussed with the solicitors for the Defendant and my response to them."

140. Mr Burrows then goes through the relevant paragraphs of the Particulars of Claim in each action, in which he is named, and sets out his response. For example:

> "(a) 9.7.4 Mr Burrows carried out work for *The Mail on Sunday* from about 2000 to 2007, being primarily commissioned by [J53] of *The Mail on Sunday*, but whose unlawfully obtained information was provided to other *Mail on Sunday* journalists for use in articles, as well as *The Daily Mail.* During the course of his work, he was asked to target a number of high-profile individuals such as Hugh Grant, Carole Middleton (for private information about Prince William and her daughter, Kate), Elizabeth Hurley, Ken Livingstone (whilst Mayor of London), Peter Mandelson (the Labour peer and former Secretary of State), Brian Paddick (former Deputy Assistant MPS Commissioner) and Simon Bates (the former BBC Radio 1 DJ).'
>
> (i) This is false. I was never instructed or commissioned by [J53], *The Mail on Sunday* or *The Daily Mail* to conduct unlawful information gathering on their behalf. I was also never asked to target or conduct unlawful information gathering on any of the high profile individuals listed above by [J53], *The Mail on Sunday* or *The Daily Mail*.

(b) 9.7.5 As part of providing such services for *The Mail on Sunday*, Mr Burrows also sub-contracted Unlawful Acts to several other private investigators, blaggers or similar third parties: for example specialist blaggers called [name redacted] (whose specialism was blagging financial information) and [name redacted] (whose specialism was obtaining private telephone numbers), various others for medical blagging, and a former BT and army officer (whose specialism was hardwire landline tapping or live landline interception and recording).

(i) This is false. I was not instructed or commissioned by *The Mail on Sunday* or *The Daily Mail* to conduct any unlawful information gathering and therefore I did not sub-contract such work to others.

(c) 9.7.6 The Claimant will refer to the fact that Mr Burrows was regularly paid by [J53] and *The Mail on Sunday* (especially for landline tapping and vehicle bugging) in cash, which was left at a drop-off location in Regent's Street in London, but sometimes through bank transfer or bankers' draft to one of Mr Burrows' corporate aliases.

(i) This is false. I repeat my answers above and therefore, neither I nor my companies received payment in cash, bank transfer or bankers' draft from [J53], *The Mail on Sunday* or *The Daily Mail*."

141. In respect of each of the Claimants, Mr Burrows repeats the same phrase:

> "I was not instructed or commissioned by [J53], *The Mail on Sunday* or *The Daily Mail* to conduct unlawful information gathering on [Claimant's name] or his/her associates."

142. The structure, brevity, and precision of language of this witness statement would have struck me as odd, even without seeing the statement of Mr Burrows, filed by the Claimants, in response to Associated's evidence. That statement is dated 16 August 2021 (so around 17 months earlier). Two things immediately stand out from this statement, in contrast to the later statement provided to Associated; first, it adopts a conventional narrative format; second, the abundance of detail.

143. In the statement he gave to the Claimants, Mr Burrows explains how he first met J53, in 2000, when he was engaged to work on a story, with J53, for *The Mail on Sunday*. He then describes the work that he did for *The Mail on Sunday* in the following terms:

> "Between 2000 to 2005, when [J53] left *The Mail on Sunday* to work for [name redacted], I pretty much always had something on the go with him and *The Mail on Sunday*.
>
> As I've already said, [J53] would instruct me at least once a month. Each job would usually be big, a 'case story' and go on for a while. He'd call me and say, 'Can you do your thing?' By that he'd be expecting hardwire tapping of landline telephone lines and the tapes of live tapped phone calls, voicemail hacking of mobiles and landline answering services, itemised bills of telephone numbers (mobile or landline), credit card bills, financial checks, medical checks, restaurant bookings,

> travel arrangements (flights/hotels were always top on the agenda), people's birthdays ([J53] was always interested in those – the full works on whatever or whoever he was interested in. He rarely called for just an ex-directory number. He always typically wants a full-on case enquiry.
>
> [J53] and I always communicated by phone – mobile or landline. My reports to him were always faxed (with my invoice attached to the front). If I was on a job for him, we would touch base every day by phone. Whenever I changed my phone number, which I did once every couple of months for security, I would phone [J53] and leave him a voice message with my new contact details. On the odd occasions when I couldn't get hold of [J53], because he was out of the office, [J53] would tell me to leave a voice message with someone else, but it was always brief. I remember dealing with a guy maybe called [J47] who ran the [redacted] at *The Mail on Sunday*, but again that was brief. [J53] introduced us over a lunch in a pub in Chelsea. The purpose of the lunch had been to pitch for business, but it never came of anything as he left the paper shortly afterwards…
>
> My main contact at *The Mail on Sunday* was always [J53]. Although I can't see how other people wouldn't have known about me and what I did for him. [J53] would have had to explain sources for stories he instructed me on to the Editor and what the cash and other payments to me were for."

144. What follows, over some 31 paragraphs, presents a detailed account of what Mr Burrows claims to have done, how, with whom and for what reward. He sets out the prices he says he charged and the way in which he was paid. As I say, the detail is striking. Whether the contents of this statement are true, would be a matter to be determined on another occasion.

145. Mr Burrows then turns, in his statement, to identify the targets of his Unlawful Information Gathering. Of the current Claimants, he identifies Prince Harry, Elizabeth Hurley, Sir Elton John, David Furnish and Sadie Frost as targets of his activities. As I am presently dealing with the evidence relating to Ms Hurley, I will set out what he says about his activities against her:

> "I did a lot on Liz Hurley for [J53]. Lots of landline taps on her home phone and voicemail hacking. Also lots of financial checks, travel blagging and medicals when she was having her baby. That was big news at the time because of all the stuff with her ex, Steve Bing. Everybody including [J53] wanted a piece of her. I recently read through some Liz Hurley articles in *The Daily Mail* and *Mail on Sunday* and recognised some of them to have hacked product in that was done by me, especially around this time. There's one article in *The Daily Mail* about Liz giving Elton some trees as a present after she stayed at his place in Windsor… That was a hardwire tap by me on her landline and hacking Elton's gardener. I actually got a lot of info about Elton and his husband David from Liz's landline and phones. Elton didn't have a mobile phone and we never knew which landline he was going to use. So we got to him by hacking and tapping the people around him – especially Liz because they were really close.
>
> …
>
> On Liz, I remember [J53] ringing me up to put a window mic on her home window in London. It looked like a sticker – plasticky, around ¼ inch in size. They usually

> give 24 hours listening time. Overall, I hacked, tapped and bugged Liz a huge number of times. She (like Hugh Grant) was a huge earner for me. I could get an itemised phone bill for Liz and Hugh and sell each one for £5k, much more than the average price on my menu. I also definitely targeted a lot of the people around Liz…"

146. At the end of his witness statement, Mr Burrows reflected on his activities and included an apology:

> "I targeted hundreds, possibly thousands of people during my time working with [J53] at *The Mail on Sunday*. There pretty much wasn't a week that went by during that time when I didn't have a hardwire tap on somebody, on instruction from [J53]. I look back now and feel really bad about what I did. I didn't give it much thought then. It was just survival, making money, routine and part of the job. But now, I've had time to reflect and think, to appreciate how what I did has hurt a lot of people. I've also had time to reflect and think about the kind of person I want to be. Which is not that person I was before.
>
> I really want to say sorry to everyone I targeted and for them to know I never meant any harm. I want to do everything I can to help them and to make amends for my actions. I hope this statement and my telling the truth is a good start."

147. The position that confronts the Court is that Mr Burrows has given two, flatly contradictory, statements to each side in this litigation. It is perhaps surprising that, when he gave his witness statement to Associated, he apparently did not mention that he had given a completely contradictory statement, some 17 months earlier, to the Claimants. As I observed during the hearing, that might be thought to be a classic case of a conflict of fact that could only be resolved at a trial. It certainly cannot be resolved on a summary judgment application. For the purposes of the Limitation Application, however, it is more a question of assessing the significance of the information Mr Burrows gave to the Claimants in 2021. I will return to this below.

(d) Sir Elton John and David Furnish

148. Although they are individual Claimants, Associated has approached the claims of Sir Elton and Mr Furnish together. Complaint is made that, in their witness statements, both Sir Elton and Mr Furnish have "*failed to give anything approaching a full account of [their] knowledge of the issue of [Unlawful Information Gathering] by the media*", but it is submitted that they had a "*general level of contemporaneous awareness*" arising from (a) their friendship with Hugh Grant; (b) information gathered as a result of Mr Furnish following the Inquiry and that allegations of Unlawful Information Gathering had been put to Mr Dacre at the Inquiry; and (c) their civil claims for phone-hacking against MGN in 2015-2016. Based on that, Associated contends that Sir Elton and Mr Furnish are in the same position as Ms Hurley. They were close friends of Mr Grant and could easily have discovered from him his beliefs and suspicions as to Unlawful Information Gathering by Associated. Five of the articles, published by Associated, relied upon by Sir Elton and Mr Furnish as the product of Unlawful Information Gathering, were written by journalists who were formerly employed by NGN. Six articles were written by journalists who had been publicly "*implicated*" in Unlawful Information Gathering at the time of the Inquiry.

149. Sir Elton has provided a witness statement in response to the Limitation Application, dated 24 February 2023. He states that, in early 2021, he (and Mr Furnish) received a call from Ms Hurley. She told them that a private investigator, Gavin Burrows, had been tapping their landlines and their Windsor home for *The Mail on Sunday*. He continued:

> "This was the first we knew of what [Associated] had done. Gavin Burrows even had disturbing and convincing details about us, things that no one outside of our home could know. David called lawyers and commissioned investigations. We soon received information about how Gavin Burrows had also hacked and tapped two of our key people for *The Mail*, our gardener and my right-hand man… whose mobile phone I used to make and receive calls and messages when David and I were not together… That was when we discovered that we might have a claim against the Defendant for these activities."

150. Mr Furnish has also provided a witness statement, dated 24 February 2023. He confirms that it was the telephone call from Ms Hurley that first alerted him of the allegation that he and Sir Elton had been targeted by Mr Burrows. He explains that it was Ms Hurley who previously alerted them, in November 2015, to similar allegations against *The Mirror*:

> "… Elton and I had received a similar call… That time it was about the Mirror and evidence she had found that the Mirror had hacked us. I remember not believing her and thinking there was no way this could have happened. Elton and I had never been contacted by the police about hacking or private investigators, or about any newspaper breaking the law. In fact, nobody ever mentioned this as a possibility to us before and we had never considered it as one ourselves… Even when lawyers showed us information that calls had been made to my mobile phone by *Mirror* journalists I still didn't believe that my phone messages had been compromised… In 2016, the *Mirror* admitted to Elizabeth that my phone messages had been compromised and that summer, Elton and I started legal proceedings. This time, when Elizabeth called us in 2021 with information about what *The Mail* had done we took it seriously."

151. Mr Furnish denies that Ms Hurley (or anyone else) had alerted them to the allegations of wrongdoing by Associated before the telephone call in early 2021. Specifically, he denies that he or Sir Elton had spoken to Hugh Grant about Associated and allegations of hacking. He states that, whilst they knew of Mr Grant's campaigning in this area, "*we never once believed that they had anything to do with us*".

152. Mr Furnish accepts that he watched Mr Dacre giving evidence to the Inquiry in which he stated that Associated had never hacked a phone. "*He was unequivocal and very strenuous in his denials. I believed him,*" Mr Furnish states, adding that Associated has denied and rejected the Claimants' claims, publicly calling them "*preposterous*".

153. Finally, Mr Furnish refers to evidence that was obtained, in 2021, from Daniel Portley-Hanks, another private investigator who, he was told, had admitted to carrying out Unlawful Acts for Associated newspapers until around 2013. One of the Unlawful Articles relied upon by Sir Elton and Mr Furnish relates to the birth of their first son. It was written by J13 and J65, journalists identified by Mr Portley-Hanks as ones for whom he had worked (see [116]-[117] above).

(e) Sir Simon Hughes

154. Associated contends that Sir Simon has been "*closely and actively involved in the phone hacking scandal from its earliest days*". The key matters relied upon by Associated – which are largely not disputed by Sir Simon – are:

(1) In Autumn 2006, he was notified by the Metropolitan Police that he had been subject to unlawful monitoring of his voicemails. Mr Mulcaire and Mr Goodman were subsequently convicted of voicemail interception in January 2007.

(2) Sir Simon was aware, of allegations published by *The Guardian* in July 2009, that there had been voicemail interception at the *News of the World*.

(3) In May 2011, he met with Metropolitan Police officers who showed him handwritten notes of Glenn Mulcaire (who had been convicted of intercepting voicemail messages in January 2007) ("the Mulcaire Notebooks"). These notes included Sir Simon's name on some of the pages, together with names of three journalists at the *News of the World*. Sir Simon issued civil proceedings against NGN and Mr Mulcaire on 9 August 2011. NGN did not defend this claim.

(4) Sir Simon was a Core Participant in the Inquiry. He provided a witness statement dated 20 February 2012. In it, he referred to media attention that was paid to someone known to Sir Simon, referred to as 'HJK', in April 2006. HJK had been, he said, "*pursued serially and regularly*" by the *News of the World*, but also approached by an Associated journalist in late April 2006.

(5) Sir Simon has been a supporter of *Hacked Off* and has attended its events and events held by the Coordinating Committee for Media Reform.

155. Based on this, Associated contends that Sir Simon "*has at all material times been well versed in the issue of [Unlawful Information Gathering] by the press and the use of [Private Investigators] to obtain information on subjects of media interest such as himself and his associates*".

156. As noted, in his witness statement, Sir Simon has not disputed the key facts relied upon by Associated. However, Sir Simon disputes that he had knowledge of, or with reasonable diligence could have discovered, the facts upon which to bring a claim against Associated. In relation to the settlement of his claim against NGN, in early February 2012, Sir Simon states that he was not aware of any evidence or material from those proceedings which demonstrated that other newspapers were using Mr Mulcaire to intercept voicemails. He believed that Mr Mulcaire had been engaged exclusively by the *News of the World*. NGN had admitted that: "*between 16 February and 16 June 2006, [Mr Mulcaire] intercepted voicemail messages left on the mobile telephone of Simon Hughes MP and provided unlawfully obtained information to [NGN].*" Sir Simon states that he believed that NGN, through Glenn Mulcaire, had been the only entity intercepting his voicemail messages: "*there was no basis then at all for me to think otherwise*". Sir Simon accepts that, in his Leveson Inquiry witness statement, he had stated that the Mulcaire Notebooks had revealed that "*a whole range of people [were] clearly acting in concert*", but states that he was not referring to Associated, but to several other journalists at the *News of the World*. He refers to a passage of his

oral evidence to the Inquiry in which he made that clear. Sir Simon states that he did not see any of the Ledgers at the Inquiry.

157. In his witness statement, Sir Simon states that it was not until evidence emerged in early 2022 that he knew that he "*might have the basis*" for bringing a claim against Associated. Mr Beltrami KC suggested that this was "*carefully crafted language*" which obfuscated whether, at some earlier point, Sir Simon believed that he had a basis for bringing a similar, but perhaps differently formulated, claim.

158. Associated has placed significance reliance, in Sir Simon's case, on his appearance on the BBC's *Andrew Marr Show*, in February 2012. Associated contends that, during the programme, Sir Simon "*alleged that* The Daily Mail *and* Mail on Sunday *had engaged in 'blagging, getting hold of information that they shouldn't have done'*". Based on this, Associated contends that "*there is no reason why Sir Simon could not have articulated the claim he now makes before October 2016.*"

159. Sir Simon has addressed this allegation in his witness statement. He says that what he said during the programme has been taken out of context. Sir Simon had appeared on the programme, together with Amanda Platell ("AP"), an Associated journalist, to review the day's newspapers. The context was not any suggestion that Sir Simon had been the victim of any Unlawful Information Gathering, but that, the day before, five journalists from *The Sun* had been arrested; a development which was described by Mr Marr as "*fairly shocking*" and by Ms Platell as "*quite terrifying*". The relevant exchange is as follows:

> Sir Simon: "… I was clear also that it was not just the *News of the World*, it was a variety of different activities – hacking by *The Sun*, blagging, getting hold of information that they shouldn't have done was being done by *The Mail*, *The Mail on Sunday*, by *The Sun*, there was a whole list, the Information Commissioner said so.
>
> AP: "Do not say that *The Mail* has been phone hacking please because our editor has categorically said it has [not] nor has the Mail group."
>
> Sir Simon: "Amanda, you are right."

160. In his statement, Sir Simon states that, when he said that *The Mail* and *The Mail on Sunday* had obtained information that they should not have done, this was a reference to the finding made by the ICO (following Operation Motorman). He did not say on the programme, and did not then believe, that Associated had hacked his voicemails, and he agreed with the intervention of Ms Platell repeating Associated's denial of phone hacking.

161. Associated also contends that the incident involving HJK in April 2006 is relevant to Sir Simon's actual or constructive knowledge of Unlawful Information Gathering by Associated. Sir Simon was aware that, in April 2006, an Associated journalist had approached HJK. In his evidence to the Inquiry, HJK had said he was approached at his home by the journalist after his address had been obtained by blagging. His evidence was to the effect that his mobile phone had been hacked by Mr Mulcaire. In his witness statement, Sir Simon states that he did not see HJK give evidence at the Inquiry, but Mr Beltrami KC submits that Sir Simon has not said that he was unaware of HJK's

claim that his address had been obtained by the journalist by blagging. He argues that, on the evidence, Sir Simon was aware that a journalist from Associated had approached HJK in April 2006 and he must have known that HJK held Associated responsible, and that HJK suspected that his voicemails had been hacked.

162. Finally, Associated relies on the following evidence which it contends demonstrates that Sir Simon had sufficient constructive knowledge to bring a claim prior to October 2016.

(1) The Mulcaire Notebooks included entries that are relied upon by Sir Simon as demonstrating that he was also targeted on behalf of Associated. Sir Simon has stated in his evidence that he was not aware until recently that this is what the entries show. Mr Beltrami KC submits that no credible reason has been given why Sir Simon could not have discovered these facts before October 2016, for example by asking Mr Mulcaire who, he suggests, had been assisting claimants in other claims against newspaper groups. He points to the fact that, in Sir Simon's pre-action letter to Associated, it was stated that Mr Mulcaire had drawn Sir Simon's attention to entries in the Mulcaire Notebooks which he said showed targeting of him by Associated.

(2) In the Particulars of Claim, each Claimant has pleaded the following in support of his/her/their general case that information obtained by private investigators instructed by Associated, was (and was known by the relevant journalists to have been) unlawfully obtained:

> "In about 2005/2006 Mr Mulcaire's assistant… discussed with [J23] and [J53] the unlawful or illegal services which Mr Mulcaire would provide to *The Mail on Sunday*, … At about the same time, [ZZ] also discussed with [J16] at *The Mail on Sunday*, the unlawful or illegal services which Mr Mulcaire could offer to the newspaper, as a result of which [J16] received what he knew to be the product of unlawful information gathering by Mr Mulcaire, through [ZZ], in relation to both Sadie Frost and Sir Simon Hughes MP, as demonstrated by the exchange of emails between [J16] and [ZZ] in 2006".

(3) The emails referred to were referred to at the criminal trial of Andy Coulson and others in 2013. Sir Simon has, in his statement, denied that he was aware that these emails had featured in the trial. Associated's case is that, nevertheless, Sir Simon (and the other Claimants) could, with reasonable diligence, have discovered these emails, upon which reliance is now placed, before October 2016, by making inquiries with ZZ, Mr Mulcaire or the police.

(f) Prince Harry, the Duke of Sussex

163. Prince Harry, the Duke of Sussex ("Prince Harry") has filed a witness statement, dated 24 February 2023, in response to the Limitation Application. He states:

> "The first I discovered about Associated having been carrying out Unlawful Acts against me or commissioning private investigators on their behalf was in the last few years. This was after I started to pursue my claims against NGN and MGN in late 2019.

> I learnt from my solicitors that some private investigators had come forward to admit – for the first time – to unlawful information gathering that had been commissioned by Associated. I believe that the combined effect of the claim brought by my wife against *The Mail* over her letter to her father and by myself against NGN and MGN, prompted private investigators, such as Daniel 'Detective Danno' Hanks and Gavin Burrows, to come forward and to admit to this unlawful activity.
>
> Daniel Hanks, in particular, was significant as he admitted in 2021 that he had been instructed by [another newspaper] to target Meghan and her family and unlawfully obtain their social security numbers around the time we first started dating in 2016. Whilst this related to [this other newspaper], it led Hanks to make further confessions of unlawful activity in relation to Associated and to state that this was the other main UK tabloid group he worked for. I was told that Hanks had been regularly instructed by two journalists at *The Mail on Sunday*, [J13] and [J9] to specifically target me by blagging my private information from various companies which was then incorporated into articles for their newspaper.
>
> Another private investigator, Gavin Burrows, admitted to targeting me and those close to me… on behalf of Associated. I was told that Mr Burrows had been regularly commissioned by [J53] at *The Mail on Sunday* to unlawfully obtain my private information by methods such as landline tapping, voicemail hacking, blagging, obtaining credit card bills and phone records, and placing a hardwire tap on, for example [a friend's] phone…
>
> Prior to the past few years, no one had ever mentioned any evidence, or even suggested the possibility of guilt, in relation to unlawful information gathered by Associated. Before this point, whenever I considered Associated, I never thought about this…"

164. As to his particular knowledge of hacking and other Unlawful Information Gathering, Prince Harry states in his statement that he did not receive any disclosure relating to Mr Mulcaire having targeted him until late 2019. He was unaware of Mr Whittamore and Operation Motorman until he started to pursue his claims against NGN and MGN. He did not closely follow the Inquiry, but he did recall Mr Dacre stating that phone hacking had not taken place at Associated.

165. In response to this, although the suggestion is made that Prince Harry must have been aware of the Unlawful Articles prior to October 2016, Associated has not directly challenged his denial of actual knowledge of the facts of the claim now advanced against it. As to his constructive knowledge. Associated points to Prince Harry's awareness, in 2005, that members of staff in the Royal Household had been hacked by NGN and his having been aware "*of key moments and figures in the hacking scandal*". Mr Beltrami KC submits that, if Prince Harry was aware of Mr Dacre's evidence at the Inquiry, he would also have been aware that allegations regarding Associated's use of Unlawful Information Gathering had been put to him at the Inquiry. More generally, Associated rely upon what was said in Prince Harry's letter of claim about "*strange things happening around his phone communications*", "*unexplained disclosures of private information*" in Associated publications, and journalists from Associated "*regularly turning up at different locations which you would never expect them to, including South Africa… despite the extreme lengths my security team and I went to in order to protect my security and privacy*". More generally, Associated relies upon the

Operation Motorman conclusions as to the extent of the use of private investigators by Associated as demonstrating that, with reasonable diligence, Prince Harry could have discovered the facts upon which he now brings his claim.

(g) Sadie Frost Law

166. Ms Frost Law has filed a witness statement, dated 24 February 2023, in response to the Limitation Application. She explains her awareness of evidence that she had been targeted by Associated as follows:

> "In 2019, I learnt that private voicemails I had left for my children's then nanny… in April 2006 were the subject of emails by a freelance journalist [ZZ] to a journalist at *The Mail on Sunday* called [J16]. When I saw the emails for the first time, I was horrified. It was obvious that they contained transcripts of my voicemails… I instructed lawyers. I wanted to find out what else and what exactly had happened.
>
> In 2020, further information came to light. Somehow a device had been put on my landline to record calls. An individual had come forward to admit doing this for Associated in relation to me and my family…
>
> I have also learnt recently that a number of Associated's journalists engaged in unlawful acts (or commissioned private investigators to carry out unlawful acts) against me, and that the information obtained in this way was then used in articles which were published in the *Mail* titles…"

167. Ms Frost Law brought claims against NGN and MGN for Unlawful Information Gathering. She accepts that, during Operation Weeting and in her claim against NGN, a note from the Mulcaire Notebooks identified her with the words "*Mail on Sunday*" included on the page. Ms Frost Law says that she does not recall seeing this evidence at the time. She was not contacted by the police, and it was not suggested to her at the time that there was any material that "*could relate to what I now know Associated did to me*". She said she did not follow the Inquiry.

168. Associated has relied on evidence, as stated in her letter of claim, that Ms Frost Law was aware of "*unexplained disclosures of her private information in [Associated's] publications*". She was identified as a victim of Unlawful Information Gathering early in the phone hacking scandal and, by 2011, she had brought claims against NGN and Mr Mulcaire for interception of her voicemails. Her claims were settled, in January 2012, with NGN accepting that Mr Mulcaire had targeted Ms Frost Law's voicemail messages between 2003 and 2006. In the statement in open court, that was read as part of the settlement, it was stated Ms Frost Law had become "*increasingly worried about her mobile phone security*" and that "*[j]ournalists and photographers always appeared to know where [she] and her children were going to be*". Based on that evidence, Associated contends that by early January 2012, Ms Frost Law had actual knowledge that she had been subjected to Unlawful Information Gathering by Mr Mulcaire. In this context, Mr Beltrami KC submits that the reference to "*Mail on Sunday*" on a page in the Mulcaire Notebooks is significant and, even if Ms Frost Law had not noticed this when she first saw the document, or appreciated its importance, she could with reasonable diligence have followed up its significance.

169. More generally, Associated has relied upon the evidence that Ms Frost Law was one of the claimants in the original test case against MGN and her lack of explanation as to why the information and evidence upon which she brought the proceedings against MGN did not suggest that she might have a similar claim against Associated. In respect of the emails exchanged by ZZ and a journalist at *The Mail on Sunday*, which Mr Beltrami KC submits appears to have been the turning point on Ms Frost Law's witness statement, Associated contends that Ms Frost was aware that her voicemails had been intercepted by Mr Mulcaire since 2011 and the emails were referred to during the Andy Coulson trial. As they had done for Sir Simon Hughes, the police had provided Ms Frost Law with relevant evidence from the Mulcaire Notebooks in 2011. It is submitted that a claimant acting with reasonable diligence would have reviewed all the pages of the notes and investigated their significance to any potential claim for Unlawful Information Gathering. Finally, in relation to the Unlawful Articles identified in Ms Frost Law's claim, Associated contend that, of the by-lined journalists, three of them had previously worked for NGN and that there was "*evidence in the public domain prior to October 2016 implicating four of [them] in Unlawful Evidence Gathering*".

(3) Submissions

(a) Associated

170. I have largely set out, in the preceding section, Associated's submissions on particular aspects of the evidence. Associated's overarching submission is that the Claimants bear the burden of demonstrating that they each have a real prospect of establishing, at trial, that some essential fact relevant to articulating their cause of action was deliberately concealed from them by Associated and that they did not know, nor with reasonable diligence could they have discovered, that matter more than six years before these proceedings were issued. Associated argues that the Claimants have, in the evidence filed for the Limitation Application, failed to identify any such issue. It accepts that there are factual issues on the evidence that would have to be resolved if any of the claims were to proceed to trial, but argues that the Claimants' evidence "*fails to offer any credible reason to conclude that they had insufficient actual knowledge, when assessed on a relevant basis, or could not with reasonable diligence have discovered any such necessary information which they did not know, more than six years prior to issuing these proceedings.*"

171. Mr Beltrami KC, on behalf of Associated, has identified the essential elements of the Claimants' claims as follows:

(1) Associated widely and habitually carried out (or commissioned others to carry out) Unlawful Information Gathering;

(2) the Claimants were the targets and victims of that Unlawful Information Gathering; and

(3) the resulting information obtained from the Unlawful Information Gathering was used to produce articles that were published by Associated's newspaper titles.

172. Mr Beltrami KC argues that the first core element is largely advanced by the Claimants on an inferential basis relying upon the contentions that Associated instructed a large number of private investigators, many of whom were alleged to have carried out Unlawful Information Gathering for other newspapers. Factors relied upon by the Claimants to support their inferential case include the amount of money paid by Associated to private investigators, the number of journalists who are alleged to have used the services of private investigators and the fact that several of the journalists alleged to have used private investigators were previously employed at newspapers where phone-hacking has been admitted.

173. Apart from Sir Simon Hughes, each of the Claimants alleges that Unlawful Articles were published by Associated which contain (or represent) the fruits of the Unlawful Information Gathering. The Claimants' case is that each of the Unlawful Acts, to which they allege they were subject, as well as the publication of each Unlawful Article said to flow from them, gives rise to a separate cause of action. The Claimants therefore advance their claims on two bases: the unlawful *obtaining* of private information by Unlawful Information Gathering and the subsequent *publication* of the private information. In respect of the latter, all the Unlawful Articles were published prior to October 2016, so Associated has a clear defence of limitation for any claim that arises from publication of the Unlawful Articles. Associated's short point is that, insofar as the Claimants rely on the *publication* of Unlawful Articles as the relevant tort, then the Claimants cannot (and do not) allege that there was any concealment; the Unlawful Articles were published to the world at large. Fancourt J reached a similar conclusion in the MGN action: ***Various Claimants -v- MGN Ltd*** [95]-[105].

174. As regards the claims based on *obtaining* the Claimants' private information, Associated submits that there is no material difference. The claims are advanced (at least in part) on an inference that the Unlawful Articles did not represent the entirety of the private information that had been obtained by Associated. Associated submits that that inference has been available to the Claimants at any time after publication of the Unlawful Articles. It is argued that details of how, and precisely what, information was obtained are further details that did not need to be known to advance the essential claim for misuse of private information that is now brought.

175. Associated does submit, on the Limitation Application, that prior to October 2016, each of the Claimants had actual knowledge of the relevant facts to enable them to bring the claim they now bring; the "*bare but essential bones*" of the case that has now been pleaded. In summary, Associated contends that the Claimants must have known, prior to this date, that Unlawful Information Gathering had been widely used by the media during the same period that articles about them had appeared (or they had been targeted by journalists). That case is not advanced on the basis of direct evidence, but based on a contention that they *must* have known the relevant facts. It is argued that, by October 2016, each of the Claimants was, as a minimum, aware of the following:

    (1) Each Claimant was a person in the public eye, and so of considerable interest to newspapers.

    (2) Save for Sir Simon Hughes, Associated had published articles containing information which the relevant Claimant considered to be private and which s/he had not authorised to be published. In the case of Sir Simon, details of his private

life had been published in *The Sun* and HJK had been pursued by a journalist working for Associated.

(3) Each Claimant must have been aware, at least in general terms, of the phone hacking scandal. Many of the Claimants were involved as high-profile victims of phone-hacking and had, subsequently, brought claims against other newspaper publishers for Unlawful Information Gathering. As regards those Claimants whose evidence was that they had not followed the phone-hacking litigation closely, Associated submits that "*as public figures who claim to have been caused considerable distress by the publication of details of their private lives without consent*" they would have been particularly interested in evidence indicating that such information had been obtained unlawfully. Reliance is placed on the key events of the revelation phone-hacking at *News of the World*, the Inquiry, the arrest and subsequent prosecution of Rebekah Brooks and Andy Coulson between July 2012 and June 2014, and the civil claims against NGN and MGN.

(4) Several Claimants rely upon Unlawful Articles that were published after the phone hacking scandal came to public knowledge. It is pleaded by the Claimants in support of their generic case that it was the "*obvious and inescapable inference*" that, if journalists at NGN and MGN were practising Unlawful Information Gathering as part of their *modus operandi*, then the same must have been true of journalists at Associated.

176. Associated submits that such a pleaded case, if advanced prior to October 2016, would not have been dismissed by the Court as "*purely speculative*". Mr Beltrami KC suggested that the Claimants would "*naturally not [have been] expected to know precisely how (on their case) Associated had targeted them*", but nevertheless could have pleaded a proper case, relying largely on the material that they have pleaded. He argued that the fact that certain private investigators had come forward to give evidence to the Claimants, since October 2016, does not alter the position. The essential facts that the Claimants needed to plead their claim were known and available to the Claimants prior to October 2016.

177. As to constructive knowledge of the facts needed to bring a claim, Associated argues that the Claimants have said little on this issue in the witness statements they have filed in opposition to the Limitation Application. Mr Beltrami KC argues that it is no answer for the Claimants to assert that they have obtained new information about which they were previously ignorant. The material question, he submits, is whether they could, with reasonable diligence, have discovered that information before October 2016.

(b) Claimants

178. The Claimants' primary submission is that the issue - whether any limitation defence raised by Associated can be defeated upon proof by the relevant Claimant that there was concealment that was not, and could not with reasonable diligence have been, discovered by him/her prior to October 2016 – cannot be resolved on a summary judgment application. Relying upon Fancourt J's observations in ***Various Claimants -v- MGN Ltd***, this issue would require the Court to resolve disputed issues of fact that cannot be performed without those issues being resolved at a trial.

179. Each of the Claimants has provided evidence, in the form of a witness statement, in which s/he denies being aware prior to October 2016 that s/he had a viable claim in the form now advanced. Whether any relevant Claimant should nevertheless be fixed with constructive knowledge of such a claim would require a careful analysis of the evidence and fact-finding at trial. An inquiry into what could have been discovered with reasonable diligence requires a two-stage approach; first whether there was anything to put the relevant Claimant on notice of a need to investigate and, second, what a reasonably diligent claimant would have discovered if s/he had investigated.

180. Mr Sherborne submits that, in the Limitation Application, Associated mischaracterises and oversimplifies the Claimants' claims. Associated's submissions concentrate on the publication of the Unlawful Articles, whereas the Claimants argue that their claim is primarily about the Unlawful Acts, the fruits of which were, in the main, the Unlawful Articles. Mr Sherborne rejects the characterisation of the Claimants' claim as being wholly inferential. Whilst the extent and prevalence of the Unlawful Acts is advanced on an inferential basis, the Claimants have now been able to identify specific allegations of Unlawful Information Gathering. They have been able to do so, principally as a result of information provided to them from private investigators – Messrs. Burrows, Whittamore, Portley-Hanks and others. It is the emergence of these facts that, Mr Sherborne submits, transformed the Claimants' claims from speculative to realistic and worthwhile.

181. As to concealment, the Claimants contend that the Unlawful Acts were concealed from them right from the start. To be effective, it is necessary that the Unlawful Information Gathering is undetected; it must be concealed from the target. The Claimants allege that what was obtained by Unlawful Acts was then disguised by Associated in the resulting articles to avoid detection of the true source of the information and the methods used to obtain it, for example by attribution of the unlawfully obtained information plausibly to "*insiders*", "*pals*" or "*sources close to*" the relevant Claimant.

182. The Claimants argue that further concealment of the Unlawful Acts was practised in Associated's repeated denials of any form of wrongdoing either by its journalists at its titles or on their behalf, principally in evidence to the Inquiry (see [37]-[42] and [48]-[53] above). In written submissions on the Claimants' behalf, Mr Sherborne suggested: "*by expecting the Claimants to disregard these vehement denials, including those made under oath by senior executives at the Leveson Inquiry, and bring claims against [Associated] in the face of unyielding denials of wrongdoing, the Defendant's position on limitation is logically, factually, and legally incoherent*". In response to Associated's contention that its extensive use of private investigators was well known at least from the publication of the ICO report, "*What price privacy?*", the Claimants argue that both in evidence to the Inquiry and subsequently, Associated's position was that the use of such private investigators was to carry out lawful inquiries. To the suggestion that, to the extent that any private investigators carried out any Unlawful Acts, Associated had no knowledge of them, the Claimants point to the importance of the evidence that they have recently obtained, from the key private investigators, which enables them to challenge Associated's case.

183. Mr Sherborne does not challenge the facts that there had been widespread publicity of phone-hacking at the newspapers of NGN and MGN, but there was nothing (beyond speculation) to link the wrongdoing at these newspapers and those published by Associated. The Claimants rely on observations by Fancourt J, in the NGN

phone-hacking litigation, that "*knowledge about phone-hacking practices generally through media coverage does not equate to realisation that a person was themselves a victim of phone-hacking*" (**[2022] EWHC 891 (Ch)** [91(6)]). Those remarks were made in the context of widespread media coverage of litigation over phone-hacking at NGN, in respect of those bringing fresh claims against NGN. There has been no such coverage concerning Associated.

184. On behalf of the Claimants, it is argued that they did not benefit from any finding or notification by a regulatory or investigatory body – as happens in many cartel or competition cases. In the context of these claims, Mr Sherborne relied upon Mann J's observations in earlier phone-hacking litigation against NGN (albeit in the context of a *Norwich Pharmacal* application against the Metropolitan Police) that "*what distinguishes the phone-hacking cases from most claims is that the victims (claimants) are unlikely to know that they are victims until someone else… tells them…*" (**[2014] 1 Ch 400** [62]). Here, Mr Sherborne submits, none of the Claimants was contacted or notified about Associated's alleged wrongdoing by (1) Associated; (2) the Inquiry; (3) the police; (4) the Information Commissioner; or (5) the Press Complaints Commission (or the Independent Press Standards Organisation as it later became). Instead, it is argued, the Claimants have themselves uncovered what is alleged to be "*concealed and systemic wrongdoing*" by Associated.

185. Based on the Claimants' witness statements, Mr Sherborne submitted that the 'trigger' that led each Claimant to investigate whether they had a worthwhile claim happened long after October 2016.

(1) For Mr Frost Law, it was the discovery, in 2019, that her voicemails had been intercepted by ZZ for J16.

(2) For Prince Harry, it was the discovery, in late 2019, that he had been the target of Unlawful Acts by Mr Portley-Hanks and Mr Burrows on behalf of Associated.

(3) For Ms Hurley, she learned, in December 2020, about the Unlawful Acts carried out by Mr Burrows against her. She then alerted Sir Elton John and Mr Furnish that they too had been targets.

(4) Baroness Lawrence was told about the Unlawful Acts of which, it was alleged, she had been the subject, in January 2020.

(5) Sir Simon Hughes learned, in 2022, that his voicemails were alleged to have been intercepted by ZZ and Glenn Mulcaire for Associated.

186. In his written submissions on behalf of the Claimants, Mr Sherborne advanced a detailed rebuttal of Associated's case that each Claimant knew of, or with reasonable diligence could have discovered, the concealment of the claims that each now brings. I am not going to lengthen this judgment, by setting out the detail of these submissions. I have considered them carefully, but having regard to the decision I have reached, it is not necessary for me to go into the detail. Resolving the factual disputes on this evidence would be a matter for trial.

(4) Decision

187. This is a summary judgment application. As such, my task is not to resolve disputed issues of fact. It is to assess the evidence and to determine whether the Claimants have a real prospect, at a trial, of overcoming a defence of limitation advanced by Associated. If there are material disputes of fact to be resolved, the proper place for that is at trial. As it is common ground that the relevant period of limitation for the claims has expired, if any particular Claimant's claim is to proceed, and not be disposed of summarily on the grounds of limitation, the relevant Claimant must show that s/he has a real prospect of demonstrating that there was concealment of relevant fact(s) by Associated that s/he did not (and could not with reasonable diligence) discover prior to October 2016. Although there is significant overlap between the position of each Claimant, and some of the evidence is common to each of them, the Court must consider each claim separately.

188. As I have already noted (see [107]), the Limitation Application has been made before the Defendant has filed a Defence, raising the issue of limitation; perhaps more importantly, before each Claimant has filed a Reply setting out his/her case on s.32; and before the Defendant has responded in a Rejoinder (which would almost certainly be necessary). The Court lacks, therefore, even the focused articulation of the parties' respective cases and the clarity that brings to the issues in dispute. Instead, I have been confronted with an unstructured presentation of substantial evidence contained in the rival witness statements. There may well be straightforward and obvious cases, where it is plain that a claimant is not going to overcome a limitation defence, but these cases are not amongst them.

189. For the reasons I shall explain in the remaining section of this judgment, I have (ultimately, without difficulty) reached the conclusion that each Claimant does have a real prospect of overcoming a limitation defence (if such a defence is ultimately relied upon by Associated). In other words, I consider that each Claimant has a real prospect of demonstrating concealment by Associated that was not (and could not with reasonable diligence have been) discovered by the relevant Claimant before October 2016. At each stage of the inquiry required by s.32, the Court would be required, at trial, to determine the factual position (drawing inferences upon the evidence where appropriate and justified). In anything but a plain and obvious case, where a knockout blow can be delivered, resolution of the factual issues necessary to resolve whether a defendant can defeat a claim on the grounds of limitation will require the court to ascertain the relevant facts. As Males LJ observed in ***OT Computers*** [47], they are "*questions of fact and will depend on the evidence*" (see also his comments in ***Canada Square Operations Ltd*** ([89] above)). Ascertaining the facts, following consideration of disputed evidence, is to be done at a trial, not on a summary judgment application.

190. Associated has not been able to deliver a 'knockout blow' to the claims of any of these Claimants. Fair resolution of any limitation defence – and any reliance on s.32 in opposition to it – must await trial. Although not binding on me as a matter of precedent, I can only echo Andrews LJ's succinct summary (see [82] above).

(a) Concealment

191. In my judgment, each Claimant has a real prospect of demonstrating that Associated (or those for whom Associated is responsible) concealed from him/her the relevant facts

upon which a worthwhile claim of Unlawful Information Gathering could have been advanced. Whilst it is common ground that the publication of any Unlawful Articles was not concealed, these were (on the Claimants' case) only the tip of the iceberg. What was deliberately hidden from the Claimants – if they are correct in their allegations – were the underlying Unlawful Acts that are alleged to have been used to obtain information for subsequent publication. The Claimants, as they accepted at the hearing, cannot maintain a free-standing cause of action for misuse of private information based on the *publication* of the Unlawful Articles. Any such claim is time barred and was not concealed from any of the Claimants.

192. The claims for misuse of private information based on the *obtaining* of the information that was later published in the Unlawful Articles are materially different. Each Claimant's case in this respect is based on various strands of evidence, nearly all of it disputed by Associated. Some of those strands are common to all Claimants and are advanced to support an inferential case about the existence and extent of Unlawful Acts that it is alleged were practised at Associated. But the Claimants also rely upon specific alleged Unlawful Acts, some of which relate to specific Claimants (even, in some instances, identifying particular stories). I deal with the case of each of the Claimants in specific sections below ([217]-[248]).

193. The starting point, for the issue of concealment, is that if the Claimants are correct that they were the subject of the Unlawful Acts then these were, in their nature, concealed from the Claimants. That was the whole point. Each Unlawful Act used to obtain the relevant information about a Claimant (or his/her contacts) depended, for its effectiveness, upon concealment from (at least) the relevant Claimant (see observations of Mann J quoted in [184] above). Whilst Associated denies the Unlawful Acts, I do not understand it to challenge this proposition, and I am satisfied that the Claimants have at least a real prospect of demonstrating it at trial.

194. In my judgment, the Claimants also have a real prospect of demonstrating that there was further active concealment by Associated which made it correspondingly less likely that any of them was (or should have been) put on inquiry that s/he had a claim worth investigating. In Section F(5) ([37]-[55] above), I have set out the significant parts of Associated's evidence to the Inquiry. The Claimants are entitled to point to the fact that this was evidence given on oath. Qualitatively, therefore, it is of a different order from, for example, a formulaic denial of wrongdoing published in a press release. The Claimants summarise this evidence, given to the Inquiry by some of Associated's most senior executives, as a comprehensive and robust (in places even furious) denial of any wrongdoing. That is not a fanciful submission. In a letter from its solicitors, dated 11 August 2022, in respect of Baroness Lawrence's claim, Associated continued to reject her claim and stated this:

> "As is well documented, our client's publicly stated position at the Leveson Inquiry was that to the best of its knowledge no journalist employed by it has ever hacked into voicemail messages or intercepted phone calls. Our client condemned the practice of phone hacking and other nefarious, illegal practices. Let us be clear in case of any doubt, this remains our client's position.
>
> To suggest that our client, its senior executives and journalists have repeatedly lied for years (even going so far as to lie under oath at the Inquiry) is utterly baseless

> and wholly false. As you are well aware, such allegations should not be raised unless there is a credible basis for them."

195. The Court is in no position, on the Limitation Application, to determine whether any of the evidence given to the Inquiry was false (or was known to be false). At this stage of the litigation, none of the Claimants is alleging that any of Associated's witnesses at the Inquiry gave evidence s/he knew to be false. Those who gave evidence to the Inquiry, on behalf of Associated, are entitled to the same rigorous approach that the Court would insist upon when a serious allegation of wrongdoing is made during litigation, including strict evidential requirements, before such allegations can be pleaded and advanced (as adverted to in the letter of 11 August 2022). Nevertheless, in rebuttal of the limitation defence, it is an important part of the Claimants' case on concealment that there were, what they characterise to be, comprehensive and steadfast denials of any wrongdoing by Associated's witnesses at the Inquiry (and subsequently). Several of the Claimants have claimed in their evidence that they were misled by these statements. The Claimants contend that the evidence upon which they intend to rely will show that those denials were not correct.

196. There was some criticism levelled at Associated by the Claimants that witnesses at the Inquiry had attempted to conceal the extent of Associated's use of private investigators. That criticism was misplaced. As made clear in Ms Hartley's evidence for the Limitation Application, it is quite clear from the evidence, and indeed the Inquiry Report, that the extent of use of private investigators by newspapers generally, including Associated, was a significant focus of the Inquiry. Associated's evidence to the Inquiry had been candid about the extent of that use. A criticism that may have more substance is the contention that Associated had initially taken the position that the evidence of Mr Whittamore's activities failed to demonstrate *prima facie* evidence that some of the inquiries were likely to be breaches of s.55 Data Protection Act 1998, and only reluctantly subscribed to the agreed position taken by the Core Participants on the issue. In other words, Associated's public stance was that there was no evidence to suggest that Associated journalists had obtained information from Mr Whittamore which they knew had been obtained unlawfully. That was consistent with the evidence given by Associated to the Inquiry, particularly by Mr Dacre, that Associated did not engage in any form of Unlawful Information Gathering.

197. Finally, in my judgment, the Claimants have a real prospect of demonstrating not only that the Unlawful Acts themselves were concealed, but also, in many instances, further devices were employed in the published articles to throw the subject 'off the scent' (see [181] above). Several Claimants complain that they believed that their confidences were being betrayed by people close to them. Depending upon what the evidence shows, this may be a significant factor on the issue of both concealment and the point at which any Claimant could have been expected to begin investigating whether, in fact, the true source of private information appearing in articles was Unlawful Information Gathering, rather than treacherous friends. Consideration of the particular Unlawful Articles relied upon by any Claimant, and his/her belief as to the source of the information, would be a matter for trial.

198. On the issue of concealment, my conclusion is that each Claimant has a real prospect of demonstrating that the facts relevant to the claims that they now bring were concealed from him/her by Associated. Ultimately, if issues of disputed fact require to be resolved, the proper place to do so is at trial not on a summary judgment application.

(b) Actual knowledge

199. I do not detect that Associated has made any real challenge to each Claimant's evidence that s/he did not have actual knowledge that s/he was the target of Unlawful Acts (as distinct from publication of the Unlawful Articles). Mr Beltrami KC did make some efforts to suggest, in some cases, that the relevant Claimant *must* have known, at least in broad terms, that s/he was a target for Unlawful Information Gathering prior to October 2016. In my judgment, however, if such a case is to be advanced, it could only be fairly resolved at trial after the relevant Claimant's denial of actual knowledge has been tested. It will be very important, at trial, to identify precisely what each Claimant is alleged to have known. There is a danger in generalisation to which the Court will be alive at any trial.

(c) Constructive Knowledge

200. The real battle ground, on the Limitation Application, is the issue of whether each Claimant could, with reasonable diligence, have discovered the concealment of the relevant facts to support the Unlawful Acts claim before October 2016.

201. Ultimately, at any trial at which this issue fell to be resolved, the burden of proof would rest on the relevant Claimant. At the summary judgment stage, s/he is required to show that there is a real prospect that s/he will succeed in discharging this burden.

202. Associated's principal argument is that each of the Claimants could (and should) have advanced the claim they now pursue prior to October 2016. If looked at, simply, as an assessment of the individual facts now relied upon by each Claimant, there is superficial force in this submission. It is, of course, true that the Claimants *could* have assembled *some* of the facts, upon which they now rely, at a point well before October 2016. For example, Associated's extensive use of private investigators would have been apparent to any reasonably diligent claimant from the point at which the ICO Reports were published in 2006 (see Section E(1): [19]-[22] above).

203. In my judgment, however, the Claimants have a realistic prospect of persuading the Court, at trial, that this overlooks the reality of what confronted them and applies a large dose of hindsight or reverse engineering. Once the evidence of the private investigators became available, it permitted a reappraisal by the Claimants and their advisors of the value of earlier pieces of evidence which, if analysed in isolation, would have been of limited (or no) probative value. I will shortly come to the separate analysis of the position of each Claimant, but there are some general matters which are common to each of them, that it is convenient to address first.

204. The broad case advanced by the Claimants is that, whatever an individual Claimant's level of suspicion as to Unlawful Activities (and this varied, Claimant by Claimant), there was a 'watershed' moment for the Claimants when Mr Burrows (and other key private investigators) stepped forward to give a detailed account of what each alleged he had done for Associated. The evidence that the private investigators provided to the Claimants had different elements. It includes evidence upon which the Claimants have relied to support their generic case as to the prevalence of Unlawful Information Gathering by Associated and, from that foundation, to support an inferential case that the relevant Claimant was the target of Unlawful Acts which, for most Claimants, also resulted in the publication of Unlawful Articles by Associated. But the private

investigators' evidence also includes evidence that individual Claimants were specific targets for Unlawful Acts by those working for Associated and also, in a few cases, evidence of particular incidents concerning some of the Claimants. In that latter category falls Mr Burrows' evidence, upon which Ms Hurley relies, that she was targeted by him for Associated for interception of her landline telephone (see [145] above).

205. Associated challenges that there was, in reality, any 'watershed' moment for the Claimants. Its case is that the Claimants had *sufficient* information to plead the case now advanced – at least in broad outline; the "*bare but essential bones*" – before October 2016. The evidence of the private investigators (which Associated disputes) should be regarded as merely providing further support to a claim that could have been pleaded many years before October 2016.

206. The short answer to this is that these rival contentions cannot be fairly resolved by the Court on a summary judgment application, and (if a limitation defence is ultimately relied upon in any Claimant's case) will require proper investigation of the evidence at a trial.

207. The longer answer is that the Claimants have, in my judgment, a real prospect of demonstrating that, prior to learning of the evidence provided by the private investigators (identified above), each of them did not have a viable or worthwhile claim. Even if I felt that I had sufficient evidence to embark on the exercise (which I do not), it would not be appropriate on a summary judgment application to make findings of fact on disputed evidence as to whether (and if so at what point) each Claimant did suspect (or should have suspected) that Unlawful Information Gathering was practised at Associated. But even that fact would not be sufficient. To have a worthwhile claim, the relevant Claimant must additionally believe that s/he has a worthwhile claim that s/he was a victim of such Unlawful Information Gathering. And even then, there is a material difference between a person suspecting that they may have been the victim of some wrongdoing, and a person having a reasonable belief that s/he has been the victim of a particular wrong: ***Gemalto*** [45]. For the purposes of s.32, a viable or worthwhile claim is the latter, not the former. On the facts of the typical claim brought by these Claimants, it is the difference between suspecting that information that has appeared in a published article must have been obtained unlawfully and knowledge of facts (even if incomplete) that enable a claim of particular wrongdoing to be articulated.

208. In my judgment, the Claimants have a real prospect of persuading the Court, at the trial of any limitation defence, that a statement of case that advanced a claim of Unlawful Information Gathering, on a wholly inferential basis, relying simply on the facts (a) of the prevalence and notoriety of the practice of Unlawful Acts at some other newspapers; (b) that journalists who had worked for those newspapers moved to work for Associated; (c) of extensive use of private investigators by Associated journalists (as uncovered by the ICO); (d) that each of the Claimants was a public figure and was therefore of interest to Associated journalists and, if there were Unlawful Acts, s/he could well have been the target of such acts; and (e) (save for the claim brought by Sir Simon Hughes) of publication of the Unlawful Articles that contained private information about them the source of which was unexplained; would have been summarily dismissed as speculative and lacking substance.

209. In advancing that argument at any trial, it would be open to each Claimant to submit that a claim advanced on this purely inferential basis would have been vigorously defended and characterised by Associated, on an application to dismiss the claim, as "*purely speculative*". It is perhaps noteworthy that Associated's solicitors' letter of response, dated 22 April 2022, dismissed Baroness Lawrence's claim as "*no more than speculative*". Although each Claimant was not advancing a cause of action that included fraud or dishonesty – in terms – for all practical purposes they would have faced a very similar obstacle (with the consequences identified by Marcus Smith J in ***Bilta (UK) Ltd*** [31(7)(h)]).

210. In all probability, Associated could have been expected to rely upon the fact that Associated executives had given evidence, on oath, in the Inquiry, that there was no evidence that Associated was guilty of the sort of wrongdoing that had been practised at other newspapers. In light of Associated's historical response to similar allegations, it is not fanciful to suppose that Associated might well have described the Claimants' claims as "*mendacious smears*" and robustly criticised and attacked the speculative basis on which they had been brought. Set against the sworn testimony of Associated's senior executives, each Claimant, it would have been argued, was under a heavy burden to show that this evidence was false.

211. It is not fanciful to suggest that, without clear allegations that specific people working for Associated had been guilty of Unlawful Acts, the Claimants would have been very vulnerable to the charge that they were 'fishing' for a case on a wholly speculative basis. As the Master of the Rolls noted in ***Gemalto*** [46], "*a claim in respect of a concealed event would not be a worthwhile one if it were pure speculation*". Associated argues that the "*bare bones*" that the Claimants had, in terms of facts that they could plead, mean that such a claim would not have been "*pure speculation*". That submission can only fairly be resolved at a trial, on a Claimant-by-Claimant basis, where all the evidence has been considered.

212. Having regard to all those factors, I am satisfied that there is a real prospect that the Claimants could, at trial, and following proper consideration of all the evidence, persuade the Court that Associated would have been successful in striking out or dismissing a claim brought on that purely inferential basis.

213. I therefore accept the Claimants' submission that they have a real prospect of demonstrating that the arrival of the evidence and information from the private investigators was the moment at which they discovered that they had a worthwhile claim to bring against Associated; one that would not get struck out or dismissed summarily.

214. I also accept that the Claimants have a real prospect of demonstrating at a trial that they could not have discovered the information they learned from the private investigators, with reasonable diligence, at a point earlier than October 2016. That is a separate evidential inquiry. It has several stages. First, was there something that could reasonably have alerted the Claimants to the identity of the relevant private investigators and that they might have information that disclosed potential claims against Associated? Second, at what point could (and should) the Claimants have made inquiries with the private investigator? Third, what would the Claimants have discovered, had they made the inquiry with the relevant private investigator at that earlier point?

215. On this Limitation Application, the evidence simply does not enable the Court to answer these questions. It is not a question, as Associated submitted, of the Claimants having to discharge a burden on a summary judgment application. An overall assessment of the evidence – including areas where there presently is a lack of evidence – leads me to the conclusion that the Claimants have (at least) a real prospect of defeating any limitation by reliance upon s.32.

216. In the final part of this section of the judgment, I will consider the case of each Claimant individually to determine whether the evidence in his/her case compels a different conclusion.

(d) Baroness Lawrence

217. Although no doubt a public figure, Baroness Lawrence is not a 'celebrity'. Associated's case that the Claimants *should* have been aware that they were potentially the targets of Unlawful Information Gathering is therefore likely to carry less weight against Baroness Lawrence. She has stated in her evidence that, prior to the information she received from PI1, she did not ever suspect that she had been the target of Unlawful Information Gathering. She did not pay much attention to the phone-hacking scandal because she did not believe that it had anything to do with her. Baroness Lawrence's evidence is that, although she was aware of the four Unlawful Articles she has identified in her Particulars of Claim, she thought that the information contained in them had been leaked by sources in the police. Associated cannot, and does not, ask the Court to disbelieve this evidence on a summary judgment application.

218. Baroness Lawrence's evidence on the Limitation Application is that she first became aware that she might have been the target of Unlawful Information Gathering in January 2022. When she learned that PI1 had claimed to have tapped her landline telephone, hacked her voicemails, blagged her telephone bills, placed her under covert surveillance and made corrupt payments to police officers, she "*could not believe what [she] was hearing*" (see also [123] above). This evidence provides Baroness Lawrence with a real prospect of demonstrating that she was not aware of the acts of Associated that are now the subject of her claim before January 2022. Associated has not identified the earlier point at which a reasonably diligent claimant, in Baroness Lawrence's position, had information that would have put her on inquiry to investigate whether she had been the target of Unlawful Information Gathering by Associated. She was aware, in general terms, of the phone-hacking scandal, but, as confirmed by Mr Khan KC, she did not think such activities had anything to do with her or Associated.

219. The high-point of Associated's evidence is, perhaps, DCI Driscoll's suggestion, in a book published in 2015 for which Baroness Lawrence wrote the foreword, that one of the Unlawful Articles might have been the product of phone-hacking (see [125]-[126] above). In my judgment, at this stage, this evidence falls into the category, at best, of possible cross-examination material for Baroness Lawrence. It is very far from a 'knock-out' blow. There are several obvious questions that would arise in relation to the passage in DCI Driscoll's book, that would have to be answered by reference to the available evidence at trial. First, assuming that Baroness Lawrence did read the book (as suggested in the foreword), what did she understand this passage to mean? Did she think that DCI Driscoll considered that *she* had been the target of phone-hacking or that he (or other officers) had been? The phrase used by DCI Driscoll is "*we could have been victims of the phone hacking scandal*". Did Baroness Lawrence think that she was

included in the "*we*"? Had she thought she was, then this would contradict her very clear evidence that the revelations, in 2022, implicating Associated in Unlawful Acts had come as a complete surprise to her.

220. Similarly, Baroness Lawrence's general knowledge of police corruption may be a point upon which Associated will rely in any case of constructive knowledge, but this is also an issue that can only fairly be resolved at a trial. First, even if Associated could establish a case of constructive knowledge of corrupt payments to police officers to provide information about Baroness Lawrence, depending on the overall assessment of the evidence, that might only preserve the limitation defence in respect of that specific Unlawful Act. Second, the Court may well be satisfied that there is a material difference between Baroness Lawrence's belief or suspicion that corrupt police officers leaked information about her and suspecting that journalists from a national newspaper were involved in the supply of that information by procuring and paying for it.

221. I cannot judge, now, what assessment the Court will make of Baroness Lawrence's evidence at any trial, and the evidence available to the Court now may well only be a fraction of the total evidence upon which the Court will ultimately make the decision. At this stage, I can conclude that she has a real prospect of resisting a limitation defence relying upon s.32.

(e) Elizabeth Hurley

222. Ms Hurley has given evidence that she first became aware of allegations that she had been the target of Unlawful Information Gathering just before Christmas 2020, when she learned of Mr Burrows' claims, evidence which is corroborated by Mr Grant. Associated cannot, and does not, ask the Court to disbelieve this evidence on a summary judgment application.

223. Mr Burrows' evidence is hotly disputed by Associated. He has provided a statement to Associated denying that he carried out unlawful information gathering on Associated's behalf (see [139]-[140] above). At this stage, I cannot resolve the conflict between Mr Burrows' witness statements. For present purposes, the issue is not whether what he told the Claimants and Ms Hurley around Christmas 2020 was true, but whether Ms Hurley could reasonably have been expected to have realised, before October 2016 and before Mr Burrows' revelations, that she had a claim against Associated for Unlawful Information Gathering that needed to be investigated.

224. Associated's case of constructive knowledge against Ms Hurley relies principally on the fact that she had been identified, as early as 2011, as a victim of phone-hacking by NGN. She was also a target for Mr Whittamore. From that, it is argued, Ms Hurley should have realised that she may well have been a target of similar unlawful activities by journalists or agents of Associated. Whether Ms Hurley should have been put on inquiry, at a point earlier than October 2016, to investigate whether she had been the subject of Unlawful Information Gathering *by Associated* is ultimately a question of fact, as is what she might have discovered had she carried out such investigations. On the question of whether Ms Hurley, by reason of the unlawful acts of MGN and NGN to which she was subject, should have suspected that Associated would be similarly guilty engages consideration of Associated's steadfast denials to the Inquiry that it was similarly guilty.

225. Even if Ms Hurley had thought that Associated might have hacked her voicemail, in a manner similar to MGN and NGN, inquiries she made targeting possible voicemail interception might not have led her to discover the full extent of the Unlawful Acts identified in the information that was subsequently to be provided by Mr Burrows. The evidence Ms Hurley has given in her witness statement very much suggests that she was someone who was attentive (although perhaps not to the extent of Mr Grant) and that she did take steps to investigate when she was presented with information that she had been subject to any wrongdoing. At this stage, I am satisfied that Ms Hurley has a real prospect of demonstrating to the Court at any trial that if she had suspected, at any stage prior to Christmas 2020, that she had been subjected to Unlawful Information Gathering by Associated, she would have set about investigating that. The test of reasonable diligence is, of course, objective, but it will be for Associated to point to the matters which it says would have alerted the notional claimant in Ms Hurley's position of the need to investigate at a point prior to October 2016.

226. For example, Associated has contended that Ms Hurley could, with reasonable diligence, have discovered that evidence seized during Operation Motorman suggested that she had been targeted by a journalist employed by *The Mail on Sunday*. But even if this were to be accepted (and Ms Hurley's evidence is that when she made a subject access request to the ICO she did not receive anything that indicated the involvement of Associated journalists – see [131] above), that would not have provided a sound basis on which Ms Hurley could conclude that she had a viable claim and launched the claim that she now pursues. Associated has consistently adopted the position that proof of use of private investigators does not amount to proof of wrongdoing by Associated's journalists. To have a viable claim, a claimant would have to demonstrate something more than mere use of private investigators (or "inquiry agents" as Associated styled them).

227. The Court carrying out that exercise would have to assess Ms Hurley's evidence that, in summary, her learning of Mr Burrows' evidence around Christmas 2020 was a 'watershed' moment which first put her on inquiry as to whether she had been a target of Unlawful Information Gathering by Associated. Associated can probe and challenge Ms Hurley's evidence to advance its case that, judged objectively, she could with reasonable diligence have discovered the facts of the Unlawful Information Gathering sooner than she did. Without a trial, I am in no position to make the findings of fact that would lead the Court to reject Ms Hurley's reliance upon s.32.

(f) Sir Elton John and David Furnish

228. Sir Elton and Mr Furnish have both given witness statements. They say that they learned, for the first time, of Mr Burrow's claims of his involvement with Unlawful Information Gathering for Associated in early 2021, having been alerted by Ms Hurley. Their response was to contact their lawyers and commission investigations into his claims. Both say that Mr Grant had not shared any suspicions he may have had about whether Associated was also engaged in Unlawful Information Gathering. Mr Furnish is one of the Claimants who watched Mr Dacre giving evidence at the Inquiry. He says that he believed Mr Dacre's "*unequivocal and very strenuous denials*" that the sort of wrongdoing that had been uncovered at NGN had been practised also at Associated. Associated cannot, and does not, ask the Court to disbelieve this evidence on a summary judgment application.

229. Associated's case against Sir Elton and Mr Furnish has a basis similar to that advanced against Mr Hurley. Both Claimants were involved in earlier claims against MGN for phone-hacking, they were celebrities in the public eye who were therefore potential targets for Unlawful Information Gathering and they were close friends of Mr Grant, whom they could have asked about his beliefs and suspicions about Unlawful Information Gathering by Associated. It is not clear to me, on this hypothesis, what Associated contends Mr Grant would have told Sir Elton and Mr Furnish had they asked him. In his witness statement for the Limitation Application, Mr Grant rather gives the impression that he would have said that, whilst he had his own suspicions about whether Associated was involved in Unlawful Information Gathering, he lacked proof. Had he conveyed that information to Sir Elton and Mr Furnish, it might be argued that it would hardly have provided a basis on which to launch a worthwhile civil claim. But, again, these are matters of fact-finding, upon potentially disputed evidence, which can only be carried out fairly at a trial.

230. Associated has criticised Sir Elton and Mr Furnish for not giving a "*full account*", in their statements, of their knowledge of media reporting of Unlawful Information Gathering by certain newspapers. I reject that criticism, which has an air of unreality about it. Sir Elton and Mr Furnish, and the other Claimants, have been confronted with a summary judgment application asking the Court to dispose of their claim without a trial, on the ground of limitation, before even service of a Defence in which that defence is raised.

231. Associated is well aware, both in this litigation, and from litigation against other publishers faced with similar allegations, that any limitation defence is highly likely to be met with reliance upon s.32. Associated has filed voluminous evidence in support of the Limitation Application. If the criticism levelled at the Claimants is rooted in a contention that they should have filed the sort of evidence they might have been expected to file before a trial, I reject that. Summary judgment applications are not a way of expediting a trial, bypassing all the usual phases of civil litigation. Equally, they should not be used as an attempt to flush out, at an early stage, the key evidence upon which the opposing party might rely.

232. Each Claimant has filed evidence stating when s/he first became aware that they might have a claim against Associated for Unlawful Information Gathering. As I have noted, Associated has made no real attempt to impeach this evidence. The battle ground is whether each Claimant could have discovered a viable claim at an earlier point. I have already set out, in some detail in this judgment, why that exercise is highly fact sensitive and unlikely – save in plain and obvious cases – to be suitable for summary judgment.

233. I recognise, of course, that, under s.32, it is for each Claimant to prove that s/he could not with reasonable diligence have discovered the relevant facts prior to October 2016, but this is to require them to prove a negative. In such circumstances, as is commonplace, the effective burden passes to the party asserting the alternative positive case. In other words, the evidential burden is likely, at any trial, to fall on Associated to identify the facts upon which it relies to demonstrate that the relevant Claimant (applying the objective test) could with reasonable diligence have discovered the relevant facts.

234. Associated argued that several of the Unlawful Articles now sued upon by Sir Elton and Mr Furnish were written by journalists who had previously been employed by

NGN, and others had been written by journalists who had been "*publicly implicated*" in Unlawful Information Gathering at the time of the Inquiry. In my judgment, this argument is particularly vulnerable to the charge that it involves application of significant hindsight or reverse engineering. It also rests on an implicit suggestion that, because someone who has worked previously for a newspaper that has been guilty of phone-hacking, or because someone has been accused of phone-hacking (or "*implicated*", whatever that means in this context), this is a basis upon which the person can be alleged in Particulars of Claim (to be verified with a statement of truth) to be guilty of Unlawful Information Gathering. It may well be that Associated itself will challenge both premises in this litigation, but the proper place to test this, and any other arguments, is at a trial as part of the consideration of all the evidence.

235. There is a further point. Associated knows who these journalists are. It has not been suggested that there is any difficulty in contacting any of them. If it is valid criticism of the Claimants that they have failed to provide all the evidence relevant to the Limitation Application, Associated might have to accept that it is potentially open to criticism that it, too, has not provided all the evidence that might assist in the resolution of the s.32 issue.

236. The inquiry under s.32 embraces not only whether the Claimants could reasonably have been expected to have carried out investigations at an earlier point, but also what they could have been expected to find if they had done so. I do not know – because I do not have evidence from them – what each of these journalists would have said if s/he had been approached by the Claimants (or their representatives) following the Inquiry, and asked, for example, how s/he had obtained the personal information relating to the relevant Claimant that was published in a particular article. Looking ahead, it may well be that at least some of these journalists might be called to give evidence at a trial. If Associated relies upon a limitation defence, the Court will be able to determine the answer to this, and other relevant questions, based upon the totality of the evidence presented by the parties.

(g) Sir Simon Hughes

237. In his witness statement for the Limitation Application, Sir Simon has stated that it was not until early 2022 that he knew that he "*might have the basis*" for a claim for Unlawful Information Gathering against Associated. As I have noted ([157] above), Associated have suggested that Sir Simon's words have been "*carefully crafted*" and leave open the possibility that Sir Simon had information that would have enabled him to bring a claim of some sort at an earlier point. To the extent that this represents a challenge to Sir Simon's evidence, the only place to resolve that issue would be at a trial.

238. More generally, Sir Simon's evidence is that, although he brought and, in February 2012, settled civil proceedings against NGN for phone-hacking, nothing that he learned in those proceedings suggested that Mr Mulcaire had been hacking phones for any other newspaper. In support of its case of constructive knowledge against Sir Simon, Associated has argued that, at a point prior to October 2016, Sir Simon Hughes was a Core Participant in the Inquiry and he could have asked Mr Mulcaire about entries in his Notebooks that suggested that he may have been a target by Associated, indeed this allegation is now pleaded in the Particulars of Claim. Sir Simon has stated in his evidence that he was unaware until recently that there was evidence in the Mulcaire Notebooks that could implicate Associated in Mr Mulcaire's activities. It was

Mr Mulcaire who had drawn to his attention the significance of some of the entries in his Notebooks.

239. Taking this simple example of what inquiries Sir Simon could have been expected to have made with Mr Mulcaire, prior to October 2016, that is not something I can resolve without hearing evidence from the relevant witnesses. At present, there is no evidence from Mr Mulcaire (or anyone else) which sheds light on what Mr Mulcaire would have said in response to inquiries raised with him on Sir Simon's behalf. And this is just one facet of the wider factual inquiry that would be required fairly to adjudicate on any limitation defence in his case. Again, the analysis of what the Mulcaire Notebooks contained, what they showed, and the extent to (and the point at) which Sir Simon was (or should have been) aware that it suggested that Mr Mulcaire had also acted for Associated journalists in targeting him, is evidence that can only be assessed and tested at a trial.

240. The same is true for what Sir Simon said on the *Andrew Marr Show* (and more importantly what he meant, and what it revealed about his state of knowledge and belief). Sir Simon has given his explanation in his witness statement (see [159]-[160] above). Likewise, the emails referred to at Mr Coulson's trial, of which Sir Simon denies knowledge (see [162(3)] above). To the extent that Associated wishes to challenge any of this evidence, it will have an opportunity at trial.

241. The incident involving HJK, in April 2006, on the evidence as it stands now, raises more questions than it answers. HJK was a target of interest for more than one newspaper. HJK believed, and gave evidence to the Inquiry, that his address had been blagged and his voicemails had been hacked by Mr Mulcaire. Sir Simon has said in his evidence that, although a Core Participant, he did not see HJK's evidence to the Inquiry. Associated contends that even if that is right, Sir Simon could have separately known the substance of HJK's account, and, further, that he could have asked HJK about it. The connection with Associated, beyond Mr Mulcaire, is the fact that Sir Simon knew, in 2006, that HJK had been approached at his home address by a journalist from Associated.

242. None of Associated's points on the evidence is a 'knock-out' blow. Even assessed cumulatively, they do not render fanciful Sir Simon's resistance of any limitation defence. Whether Sir Simon is successful in reliance upon s.32 is a matter to be adjudicated at trial.

(h) Prince Harry

243. In his witness statement, Prince Harry has stated that he first learned that he was alleged to have been the target of Unlawful Information Gathering by Associated in 2019, after he brought his claims against NGN and MGN. He explained what he learned, and from whom, in his witness statement (see [163] above). Associated cannot, and does not, ask the Court to disbelieve this evidence on a summary judgment application.

244. As to constructive knowledge, Associated's case against Prince Harry is that, given his position and profile, the fact that his suspicions had been aroused by the behaviour of journalists and information that was published, and his general awareness of phone-hacking by NGN, he could with reasonable diligence have discovered sufficient

facts to bring a claim for Unlawful Information Gathering against Associated before October 2016. As to specific matters of evidence, the high point of Associated's submissions seems to be that, as Prince Harry had watched Mr Dacre giving evidence to the Inquiry, he would have been aware that suggestions were made to him in his evidence that Associated was also involved in Unlawful Information Gathering. That analysis rather ignores the fact of Mr Dacre's firm denials in the same testimony of any suggestion of wrongdoing at Associated, to which Prince Harry says he did attach importance, but I have dealt with the more general point already (see [234]). This is a summary judgment application, and it may be that the point may be developed by Associated further at a trial, but at this stage it did not seem to me to be one of Associated's strongest points, and it is certainly not a 'knock-out' blow. The assessment of the cogency of this submission (and others) on the evidence is a matter for trial.

(i) Ms Frost Law

245. Ms Frost Law's evidence on the Limitation Application is that the first time she learned about an Unlawful Act, for which Associated was alleged to be responsible, was, in 2019, from emails that suggested that voicemails she had left had been intercepted. She obtained information about further alleged Unlawful Acts in 2020. Associated cannot, and does not, ask the Court to disbelieve this evidence on a summary judgment application.

246. As with the other Claimants, Associated's focus has been upon the constructive knowledge that it contends Ms Frost Law had, and her ability to commence a civil claim against Associated before October 2016. Some of the evidence relied upon by Associated is similar to that relied upon in respect of other Claimants, and is inconclusive on the Limitation Application for the reasons I have explained earlier. Ms Frost has also brought civil claims against NGN and MGN for hacking and, of the Unlawful Articles upon which she relies, several of them were written by journalists who had worked for NGN and had been publicly "*implicated*" in Unlawful Information Gathering.

247. Nevertheless, in Ms Frost Law's case there are also significant pieces of evidence. She accepts that a note from the Mulcaire Notebooks, disclosed in the NGN litigation, associated her name with the words "*Mail on Sunday*". Associated argue that, even if she missed the significance of that evidence at the time, with reasonable diligence it should have caused her to investigate whether Mr Mulcaire had also targeted her for Unlawful Information Gathering on behalf of Associated. Similarly, although it was not until 2019 that Ms Frost Law appreciated the importance of the email exchanges (and what potentially they showed in terms of voicemail interception), the documents themselves had been available much earlier.

248. In my judgment, the state of the evidence relied upon by Associated in Ms Frost's case is materially different from the other Claimants. In her case, Associated can point to undisputed pieces of evidence in support of its case on constructive knowledge. They may ultimately be found to be very significant on the decision on s.32. However, in my judgment the *assessment* of this evidence and the totality of the necessary fact-finding that would be required under the section, cannot fairly be carried out in a summary judgment application. As part of the exercise at trial, there would need to be a focus on the available evidence not only of whether there was an earlier trigger that should have put Ms Frost Law on inquiry, but also what she would have discovered if

she had investigated. In Ms Frost Law's case, as with the other Claimants, the answer to that second question is far from certain on the state of the evidence on the Limitation Application. On that issue, Mr Mulcaire's evidence could well be highly material. It is not available on this application.

249. For the reasons given in this section of the judgment, I am satisfied that each of the Claimants has a real prospect of relying upon s.32 to defeat any reliance upon a limitation defence by Associated. In consequence, the Limitation Application is dismissed.

H: Restriction Order Application

(1) Background and Introduction

250. Earlier in the judgment (see [31] and [34] above), I have set out the circumstances in which Associated came to disclose the Ledgers to the Inquiry. There is no doubt that the Inquiry compelled provision of the Ledgers (and other documents) pursuant to s.21 Notices that were served on Associated.

251. Associated contends that the Claimants have relied upon information from the Ledgers to plead certain paragraphs in their Particulars of Claim. It contends that such use is as a result of breaches of restrictions, imposed by the Inquiry, on the publication and disclosure of the Ledgers that have not been revoked or varied. Alternatively, Associated argues that use of the Ledgers, by Mr Sherborne, Sir Simon Hughes and Mr Thomson, to plead the Particulars of Claim, is a breach of the CP Undertaking that each of them gave to the Inquiry ([35]-[36] above).

252. By the Restriction Order Application, Associated seeks the striking out of those parts of the Claimants' Particulars of Claim which have been based on information taken from the Ledgers. At the hearing, Mr Beltrami KC recognised that an alternative Order would be for the Court to stay the claims until such time as the Claimants have obtained the permission of the Minister to use the documents.

253. In response, the Claimants have argued that the Ledgers were not the subject of any effective restriction order from the Inquiry. In the alternative, and in any event, the Ledgers have come into the public domain as a result of publication of them by the Online Publisher, and the Claimants argue they are therefore entitled to rely upon them to plead their Particulars of Claim.

254. There are some further discrete points that have also been raised by Associated on the Restriction Order Application: (1) whether documents have been independently provided by Mr Whittamore; (2) whether references in the Particulars of Claim to journalists at Associated who used the agency ELI/TDI have come from the Ledgers; and (3) whether the name of an Associated journalist alleged to have been interviewed by the police under caution came from a witness statement provided to the Inquiry.

(2) Evidence

255. Associated's evidence in relation to the Restriction Order Application is contained in evidence from its solicitor, Nadia Banno. In her first witness statement, dated 5 December 2022, Ms Banno essentially sets out the history of the provision of the

Ledgers to the Inquiry and the restrictions that Associated contends were imposed in the restriction orders. The Claimants' evidence, in response, is provided in a witness statement of Callum Galbraith, dated 6 January 2023. Ms Banno provided a further witness statement, dated 17 January 2023, and Mr Galbraith filed a further statement, dated 20 March 2023. I shall not refer to all the evidence contained in these witness statements (and they contain much by way of argument), just the parts I consider to be relevant and material to the issues that I must decide.

256. Perhaps the most important evidence is that concerning the publication by the Online Publisher of some of the Ledgers and information derived from them.

(3) Publication of the Ledgers and supply to the Claimants

257. During 2017, articles were published by the Online Publisher that focused on some aspects of the Inquiry and evidence that was available to the Inquiry about the extent of Associated's use of private investigators. The articles have remained generally available online since first publication. In analysing the use of private investigators, the articles relied upon data drawn from the Ledgers (some of which were described as "*accounting spreadsheets*" that had been disclosed by Associated to Part 1 of the Inquiry). In one of the articles the publishers indicated that they had seen "*unpublished data*" submitted to the Inquiry and referred to questions that they had sent to Associated about the "*secret dossier*". One article stated that some of the documents were not easy to interpret because the copies of the relevant Ledgers "*provided to the Leveson Inquiry"* were printouts in which one column of information was distorted.

258. Whilst the Online Publisher's articles do rely, extensively, upon information that has been drawn from the Ledgers, the Online Publisher has not published the Ledgers. It is not the case, therefore, on the evidence, that all (or even most of) the information contained in the Ledgers has entered (or remains available in) the public domain. I reject the Claimants' submission that confidentiality in all the documents has been exhausted. The extent to which confidential information in the Ledgers has been destroyed by publication by the Online Publisher would, if it were a task that needed to be carried out, have necessitated a careful analysis of precisely what information from the Ledgers had been published.

259. Associated has complained, in its evidence, that publication of the Ledgers (and information derived from them) by the Online Publisher was "*unlawful*". However, beyond sending a complaint to the Online Publisher – on behalf of Mr Dacre, Mr Wright and Ms Hartley alleging that three articles were defamatory of them – Associated (and the three individuals) took no action in relation to the publication of any of the articles, whether by way of civil claim or by complaint about an alleged breach of a restriction order. The Online Publisher has, in correspondence with solicitors acting on behalf of the three complainants, defended the publication of its articles as being in the public interest. As it was not, at that stage, contended that publication of the Ledgers (or information derived from them) was contrary to the Final Restriction Order, this specific allegation was not addressed by the Online Publisher.

260. Although the Online Publisher attended the hearing, and made some submissions in respect of the Reporting Restriction Application, it has not itself provided any evidence about the articles it has published and particularly how it came to be in possession of the Ledgers. That is not surprising. The Online Publisher is not a party, and, on the

grounds of source protection, I would not have expected it to reveal how – or from whom – it had obtained documents and information upon which its articles were based (including at least some of the Ledgers). The Online Publisher has maintained, in its correspondence with Associated, that insofar as it has published information from the Ledgers that is confidential, then any alleged breach of confidence is justified in the public interest.

261. Nevertheless, simply from the description given to the documents in the articles, it seems more likely than not that these documents ultimately came from someone who had access to them during the Inquiry. That conclusion is fortified by Mr Galbraith's evidence. He has confirmed, in his first witness statement, that the Ledgers were provided to the Claimants' solicitors by the Online Publisher, and not (for example) by Sir Simon Hughes. Perhaps most importantly, Mr Galbraith has stated that "*the URNs that appear on the face of the Ledgers [provided by the Online Publisher] are not referred to in the [Final Restriction Order]*" (emphasis added). Whether or not the Ledgers are subject to a restriction order is a different issue – that I shall come to shortly – but the fact that the copies of the Ledgers that have been provided by the Online Publisher have the Inquiry URNs marked on them provides very strong evidence that the copies that were provided to the Online Publisher, and thence to the Claimants' solicitors, originally came from the Inquiry and not some other source.

262. Mr Sherborne raised the possibility that a person at Associated, who had access to copies of the Ledgers bearing the Leveson URNs, might have disclosed them to the Online Publisher. I accept that is a possibility, but as an explanation for how the Ledgers got into the hands of the Online Publisher it is more theoretical (even fanciful) than real.

263. On the evidence now available to the Court, and on the balance of probabilities, I conclude:

(1) that the copies of the Ledgers that were provided to the Claimants by the Online Publisher, originally came from a person or persons (other than someone at Associated) who had received, or had access to, them during the course of the Inquiry ("the primary source(s)");

(2) that provision of the Ledgers by the primary source(s) to a third party was, depending on when they were provided, either contrary to confidentiality restrictions (imposed by the CP Undertaking or otherwise) or contrary to the terms of the Final Restriction Order because it amounted to "*disclosure or publication*" within the terms of that order;

(3) that, thereafter – and it matters not how many links there are in the chain – the provision of the Ledgers ultimately to the Online Publisher was contrary to the terms of the Final Restriction Order; and

(4) that, by the same reasoning, the provision of the Ledgers by the Online Publisher to the Claimants' solicitors was contrary to the terms of the Final Restriction Order.

264. If necessary, and again based on the evidence I have, I would also find that it is more likely than not that the Online Publisher and the Claimants knew that the copies of the

Ledgers in their hands had come from the Leveson Inquiry. Indeed, the Claimants do not suggest otherwise. Their principal submission is that the Ledgers are not subject to any continuing restriction imposed by the Inquiry. It is to that issue that I shall now turn.

(4) The Inquiries Act 2005 and applicable legal principles

265. For the purposes of this judgment, I should set out the key provisions of the Inquiries Act 2005.

266. Section 18 provides a presumption that the Inquiry would be conducted in public. Specifically, the chairman of the Inquiry was required to take such steps as he considered reasonable to secure that members of the public and media were able to attend the inquiry (or watch simultaneous transmission) and to obtain, or view, a record of the evidence and "*documents given, produced or provided to the inquiry*": s.18(1).

267. Under s.21, the chairman of the Inquiry could issue a s.21 Notice requiring a person:

(1) to produce any documents that relate to a matter in question at the Inquiry (s.21(1)(b) and s.21(2)(b)); and/or

(2) to provide evidence, by way of written statement (s.21(2)(a)), and/or by attending to give oral evidence (s.21(1)(a)) under oath (s.17(2)).

(A failure to comply with a s.21 Notice would amount to a criminal offence under s.35(1), or could be referred to the High Court for enforcement, for example by injunction: s.36(1)-(2)).

268. Sections 19 and 20 of the Inquiries Act 2005 provide as follows (so far as material):

> "**19. Restrictions on public access etc.**
>
> (1) Restrictions may, in accordance with this section, be imposed on -
>
> (a) attendance at an inquiry, or at any particular part of an inquiry;
>
> (b) disclosure or publication of any evidence or documents given, produced or provided to an inquiry.
>
> (2) Restrictions may be imposed in either or both of the following ways—
>
> (a) by being specified in a notice (a 'restriction notice') given by the Minister to the chairman at any time before the end of the inquiry;
>
> (b) by being specified in an order (a 'restriction order') made by the chairman during the course of the inquiry.
>
> (3) A restriction notice or restriction order must specify only such restrictions …
>
> (b) as the Minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).

(4) Those matters are—

(a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;

(b) any risk of harm or damage that could be avoided or reduced by any such restriction;

(c) any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry;

(d) the extent to which not imposing any particular restriction would be likely—

(i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or

(ii) otherwise to result in additional cost (whether to public funds or to witnesses or others).

(5) In subsection (4)(b) 'harm or damage' includes in particular—

(a) death or injury;

(b) damage to national security or international relations;

(c) damage to the economic interests of the United Kingdom or of any part of the United Kingdom;

(d) damage caused by disclosure of commercially sensitive information.

20. Further provisions about restriction notices and orders

(1) Restrictions specified in a restriction notice have effect in addition to any already specified, whether in an earlier restriction notice or in a restriction order.

(2) Restrictions specified in a restriction order have effect in addition to any already specified, whether in an earlier restriction order or in a restriction notice.

(3) The Minister may vary or revoke a restriction notice by giving a further notice to the chairman at any time before the end of the inquiry.

(4) The chairman may vary or revoke a restriction order by making a further order during the course of the inquiry.

(5) Restrictions imposed under section 19 on disclosure or publication of evidence or documents ('disclosure restrictions') continue in force indefinitely, unless—

(a) under the terms of the relevant notice or order the restrictions expire at the end of the inquiry, or at some other time, or

(b) the relevant notice or order is varied or revoked under subsection (3), (4) or (7).

This is subject to subsection (6).

(6) After the end of the inquiry, disclosure restrictions do not apply to a public authority, or a Scottish public authority, in relation to information held by the authority otherwise than as a result of the breach of any such restrictions.

(7) After the end of an inquiry the Minister may, by a notice published in a way that he considers suitable—

(a) revoke a restriction order or restriction notice containing disclosure restrictions that are still in force, or

(b) vary it so as to remove or relax any of the restrictions.

(8) In this section 'restriction notice' and 'restriction order' have the meaning given by section 19(2).

269. "*The Minister*", for the purposes of these sections, is the Minister(s) responsible for the inquiry: s.43(4). A breach of a restriction order could be referred to the High Court for potential contempt of court proceedings: s.36(1)-(2).

270. A restriction order imposed in an inquiry under the 2005 Act would only apply to restrict disclosure of documents from the inquiry. The Explanatory Notes, to ss.19-20 of the Act, explained:

"(48) Disclosure restrictions would not prevent a person not involved in the inquiry from disclosing or publishing information that had come into his possession through means unconnected with the inquiry, even if some of that information might be included in documents or hearings that were covered by a restriction order or notice.

(49) For example, suppose that an inquiry were set up into the death of a hospital patient, and that a restriction notice were issued to exclude the general public from the proceedings and to prevent the publication of transcripts of evidence, because it was considered that an inquiry held partly in private would be more effective. The inquiry might consider information already in the public domain, such as papers from the inquest, or statements of hospital policy. The fact that a restriction notice was in place for the inquiry would not prevent a member of staff at the hospital from providing a patient with a copy of the hospital policy.

(50) To take another example, suppose that a Government department provided information to an inquiry held in private and that, after the end of the inquiry, a request were made under the Freedom of Information Act 2000 for some of that information. The Department could not refuse to provide the information purely because it happened to have been covered by the restriction notice, because the Department would have held that information even if the inquiry had never happened. The purpose of a restriction notice is just to restrict disclosure of information in the context of

> the inquiry or to restrict disclosure by those who have received the information only by virtue of it being given to the inquiry."

271. There appears to be no direct authority on the approach the Court should adopt when considering alleged use of inquiry documents that are the subject of a restriction order under s.19. Nevertheless, restrictions upon the use of documents from an inquiry is very similar to the well-established principles that prohibit collateral use of documents disclosed in litigation.

272. The key authorities on the prohibition on collateral use ("the collateral purpose rule") are ***Riddick -v- Thames Board Mills Ltd*** **[1977] QB 881, 896C-H** *per* Lord Denning MR; ***Harman -v- Secretary of State for the Home Department*** **[1983] AC 280, 308B-D, F-H** *per* Lord Keith, **314H-315A** *per* Lord Scarman (both decided in the pre-CPR era when the limitation on the use of disclosed documents was derived from an implied obligation rather than the express restriction now found in CPR 31.22); ***IG Index plc -v- Cloete*** **[2015] ICR 254** [42]-[43] *per* Christopher Clarke LJ; and ***Tchenguiz -v- Director of the Serious Fraud Office*** **[2014] EWCA Civ 1409** [56] *per* Jackson LJ. From these authorities, I draw the following key principles:

(1) the administration of justice is usually promoted if there is no disincentive to making full and frank disclosure by the spectre of disclosed documents being used for other purposes (the 'candour' principle); and

(2) compelled disclosure of a party's own private/confidential documents represents a significant interference with that party's rights and should be matched by a corresponding limitation on the use of the documents disclosed.

273. More generally, and as a matter of policy, documents and information obtained under compulsion, by the exercise of statutory powers, should not be used for purposes other than those for which the powers were conferred: ***Marcel -v- Commissioner of Police of the Metropolis*** **[1992] Ch 225, 237B-E** *per* Sir Nicholas Browne-Wilkinson VC; and ***Taylor -v- Director of the Serious Fraud Office*** **[1999] 2 AC 177, 212D-E** *per* Lord Hoffmann.

274. Restrictions on collateral use are imposed not merely in the interests of protecting any confidentiality in the relevant disclosed documents, but principally to protect the administration of justice: ***Harman***, **308G** *per* Lord Keith; ***Marlwood Commercial Inc -v- Kozeny*** **[2005] 1 WLR 104** [41] *per* Rix LJ. There is a public interest in the prohibition on the collateral use of disclosed documents: ***Lakatamia Shipping Company Limited -v- Su*** **[2021] 1 WLR 1097** [47] *per* Cockerill J. The restriction applies not only to the documents themselves, but also information derived from the documents: ***Crest Homes plc -v- Marks*** **[1987] 1 AC 829, 854A-B** *per* Lord Oliver.

275. Under the former implied undertaking on disclosure, the fact that the documents had entered the public domain did not necessarily release a party who was bound by the undertaking: ***Sybron Corp -v- Barclays Bank plc*** **[1985] 1 Ch 299, 322D-323B** *per* Scott J.

276. The Civil Procedure Rules replaced the implied undertaking with an express restriction on the collateral use of disclosed documents. CPR 31.22 provides (so far as material):

> "(1) A party to whom a document has been disclosed may use the document only for the purposes of the proceedings in which it is disclosed, except where
>
> (a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;
>
> (b) the court gives permission; or
>
> (c) the party who disclosed the document and the person to whom the document belongs agree…"

277. The Court of Appeal, in ***Tchenguiz -v- SFO*** [66], identified the following general principles when considering the collateral purpose rule:

> "(i) The collateral purpose rule now contained in CPR 31.22 exists for sound and long-established policy reasons. The court will only grant permission under rule 31.22(1)(b) if there are special circumstances which constitute a cogent reason for permitting collateral use.
>
> (ii) …
>
> (iii) There is a strong public interest in facilitating the just resolution of civil litigation. Whether that public interest warrants releasing a party from the collateral purpose rule depends upon the particular circumstances of the case. Those circumstances require careful examination. There are decisions going both ways in the authorities cited above.
>
> (iv) There is a strong public interest in preserving the integrity of criminal investigations and protecting those who provide information to prosecuting authorities from any wider dissemination of that information, other than in the resultant prosecution.
>
> (v) It is for the first instance judge to weigh up the conflicting public interests. The Court of Appeal will only intervene if the judge erred in law (as in ***Gohil -v- Gohil*** **[2013] Fam 276**) or failed to take proper account of the conflicting interests in play (as in ***IG Index -v- Cloete***)."

278. An action commenced relying upon documents that were subject to a restriction on their use (whether an implied undertaking or restriction imposed by CPR 31.22) may be struck out as an abuse of process: ***Riddick***, **902H-903B** *per* Stephenson LJ, **912D** *per* Waller LJ.

279. The Court nevertheless has a discretion to permit collateral use of the documents: CPR 31.22(1)(b); ***Tchenguiz -v- SFO***; permission that can be granted retrospectively: ***Miller -v- Scorey*** **[1996] 1 WLR 1122, 1133C-D** *per* Rimer J (circumstances in which it would be proper to grant retrospective permission "*would be rare*"); and ***Lakatamia Shipping*** [61] *per* Cockerill J. The Court has no power, equivalent to CPR 31.22(1)(b), to permit use of documents that have been provided in breach of a restriction order imposed under s.19 Inquiries Act 2005. The power to revoke or vary a restriction order is given, during the currency of the inquiry, to the chairman or, after the end of the Inquiry, to the relevant Minister.

280. There is a separate strand of potentially relevant jurisprudence relating to abuse of process. The Court has an inherent power to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation or where the relevant conduct would otherwise bring the administration of justice into disrepute: ***Hunter -v- Chief Constable of West Midlands*** **[1982] AC 529, 536** *per* Lord Diplock.

(5) Are the Ledgers the subject of a restriction order from the Inquiry?

281. I have already set out the restriction orders that were made during the Inquiry (see [66]-[71] above).

(a) The First and Second Restriction Orders

282. Associated contends that the Ledgers fell within the terms of the First and Second Restriction Orders. The Claimants argue that they do not. The point turns on the construction of the wording of the terms of each Restriction Order.

283. As noted above (see [34] above), the Ledgers were provided by Associated as part of the evidence submitted in response to the s.21 Notices from the Inquiry. Whilst the Ledgers were not exhibited to any witness statement, they were submitted as part of Associated's evidence to the Inquiry. In its evidence, Associated has stated that the Ledgers were included in a bundle prepared for the use of the Inquiry when Associated's witnesses were giving evidence. That evidence has not been challenged by the Claimants.

284. The Claimants contend that the First Restriction Order could only apply to the Ledgers if they are held to be "*part of the evidence of the witness*". Relying upon both the terms of the Restriction Orders, and the explanation as to their purpose and effect in the ruling on 14 May 2012, the Claimants argue that the Ledgers were never part of the evidence of any of Associated's witnesses.

285. In my judgment, the Claimants' submissions are to be preferred. The purpose of the First and Second Restriction Orders was to impose short-term restrictions for the period between Core Participants being provided with the witness statement of an individual and that individual giving evidence at the Inquiry. The practice of the Inquiry was to release into the public domain – via the Inquiry's website – the witness statements of the witnesses who gave evidence as soon as they had given evidence. That would include publication of the exhibits and other documents that had formed part of a witness's evidence. The Ledgers, although apparently *available* to the Inquiry when Associated's witnesses gave evidence, never formed part of the evidence of any witness. No witness was asked questions about any of the Ledgers, so the relevant documents did not become part of any witness's evidence.

286. As the Ledgers never came into the public domain as a result of the questioning of witnesses in the way I have described, the Ledgers remained part of the repository of documents that the Inquiry held, but had not published. Unless and until released into the public domain by the Inquiry by publication on its website, those documents were protected from publication – for the duration of the Inquiry – by the CP Undertaking.

(b) The Final Restriction Order

287. Whilst there are some oddities about the Final Restriction Order, in my judgment the purpose and effect of this Order is clear. During the currency of the Inquiry, Sir Brian Leveson published witness statements, documents and other evidence on the Inquiry website. Such documents were not the subject of any restriction order under s.19 and, once published, were released from the CP Undertaking.

288. At the end of the Inquiry, amongst other things, Sir Brian Leveson had to decide what to do with the documents held by the Inquiry which had not previously been published. Consistent with the presumption that documents received by the Inquiry would be made public (see [30] and [266] above), it appears that the vast majority of them, in respect of which no credible claim by the owner of the document was or could be made that publication of the documents would give rise to any risk of harm (within the terms of s.19(4)(b)), were published on the Inquiry website at the end of Part 1 of the Inquiry.

289. Some documents were, however withheld by the Inquiry, and not published, Sir Brian having been satisfied that it was appropriate to withhold the relevant document (or any redacted material) on the grounds identified in paragraph 3 of the Final Restriction Order. The Final Restriction Order – which binds "*all persons*" – prohibited the disclosure or publication of any of the redacted material that had been published by the Inquiry and the withheld material.

290. The imposition of the Final Restriction Order, in my judgment, neatly and effectively transferred the restrictions that had, until that point, been imposed by the CP Undertaking upon any withheld material from Part 1 of the Inquiry. The CP Undertaking would have come to an end at the conclusion of the Inquiry.

291. The Claimants submitted that this analysis is flawed. They argue, first, that Sir Brian made no order (or ruling) that the Ledgers should be withheld following representations made by Associated (see [56]-[59] above), and that the Ledgers were not included in the Schedule to the Final Restriction Order. Both of those submissions are correct – as far as they go. Sir Brian did not make an express ruling upholding Associated's objections to publication of the Ledgers (indeed, the Inquiry did not respond to the submissions sent on Associated's behalf on 18 September 2012) and the Ledgers were not identified in the Schedule to the Final Restriction Order. Nevertheless, I do not accept that these matters have the consequence urged by the Claimants. I also reject the Claimants' submission that the Final Restriction Order is unclear or vague in its ambit.

292. The starting point is that the Inquiry did not publish or release the Ledgers; on the contrary, they were withheld by the Inquiry. Mr Sherborne submits that there is a 'missing' (or 'phantom') restriction order, and that this absence is fatal to Associated's contention that there is any continuing restriction on use of the Ledgers by the Claimants. I reject that submission. It is clear that Sir Brian must have accepted Associated's submissions that the Ledgers should not be published by the Inquiry. Although it is not possible to identify precisely when that decision was taken, it clearly was made because the Inquiry ultimately decided (in a change from its starting position, as indicated in the email of 17 August 2012) to withhold publication of the Ledgers from the documents that were released to the public at the end of the Inquiry. I also reject the Claimants' contention that "*withheld material*" in the Final Restriction Order embraces only material in respect of which the Inquiry has made a previous restriction

order. In my judgment, the Final Restriction Order bears its ordinary meaning of material that the Inquiry has, in fact, withheld from the public. There is nothing unclear about the terms of the restriction that were imposed.

293. I accept that it is an oddity that the Ledgers were not *expressly* included in the Schedule to the Final Restriction Order, which listed, by URN, the documents that could not be disclosed or published. The wording in the Schedule indicating that, also withheld, were "*various documents and other material without reference numbers*" would appear not to include the Ledgers which *did* have URNs. However, in my judgment, these points do not lead to a different conclusion. The Ledgers plainly fall within the "*withheld material*" in Paragraph (1) of the Final Restriction Order; they had been withheld from publication by the Inquiry. As Schedule 1 was expressly stated to be inclusive of withheld material, it did not exhaustively define it. That being the case, it does not matter whether the wording of the Schedule embraces the Ledgers or not. Whilst inclusion of the Ledgers in the Schedule, would have put beyond doubt that they were subject to the Final Restriction Order, the converse is not the case. The absence of the Ledgers from the Schedule does not mean that they are excluded from the Final Restriction Order or that the terms of the order are unclear.

294. For the reasons I have given, I conclude that the Ledgers are subject to the Final Restriction Order imposed by the Inquiry.

(6) What is the consequence for this litigation?

295. Unless varied or revoked, the Final Restriction Order continues in force "*indefinitely*": s.20(5). It binds all persons. As the Inquiry has now ended, the power to vary or revoke lies with "*the Minister*", in this instance, the Secretary of State for Media, Culture and Sport and/or the Home Secretary (see [25] and [269] above). As made clear in the order itself, any person affected by its terms could seek its variation or revocation under s.20(7). The Final Restriction Order has not (yet) been varied or revoked to enable publication or use of the Ledgers, and there is no evidence that anyone has sought such a variation or revocation. As noted above, unlike the position under CPR 31.22, the Court lacks jurisdiction to vary or discharge the Final Restriction Order, and it cannot give retrospective permission for the use of the relevant documents.

296. That being the case, in my judgment, the starting point is that the Court must recognise, and give effect to, the significant public interest in ensuring that a restriction order made under the Inquiries Act 2005 is observed and not breached.

297. Where statutory powers to compel the production of documents from an individual have been used for a public inquiry, there is a corresponding expectation that any confidentiality in those documents will be appropriately respected. Ultimately, the public inquiry may decide that any confidentiality in documents that are provided is outweighed by a countervailing interest, but until such determination is made the party disclosing the documents and the inquiry share a common interest in appropriately protecting any confidentiality. Whilst the disclosing party has obvious private interests in maintaining confidentiality, the inquiry must also consider the broader public interest in the proper administration of justice, particularly the candour principle. It is not in the public interest for an individual in possession of documents that are potentially relevant to, and could assist with, a public inquiry to be discouraged from providing them in response to a s.21 Notice by a fear that the inquiry will not properly take into account

any confidentiality interests. The analogy with the restrictions on collateral use of documents disclosed in legal proceedings is a powerful one because the underlying policy considerations are very similar.

298. In consequence, in my judgment, where (and to the extent that) there has been use of material in breach of a restriction order imposed under s.19 Inquiries Act 2005 then, quite apart from any other sanction that might be available under the Act for any proved breach, such use is an abuse of process and would justify the striking out of the relevant parts of a statement of case. Looked at another way, I am satisfied that it would bring the administration of justice into disrepute, in the manner explained in ***Hunter -v- Chief Constable of West Midlands***, if the Court were to permit the use, in civil litigation, of material in breach of a restriction order that remains in force.

299. Does the publication by the Online Publisher of information from the Ledgers make any difference to the outcome? In my judgment it does not.

300. First, the Online Publisher has not published all the Ledgers (or the information contained in them). It is not the case, therefore, that the sections of the Particulars of Claim could have been pleaded relying on information available that was readily available in the public domain. Second, whether (and to the extent that) material has entered the public domain contrary to a restriction order, whilst relevant to the Restriction Order Application, cannot be determinative of it (see further [304]-[305] below). Finally, and importantly in any event, the Claimants' evidence is clear. The Ledgers were provided to the Claimants' solicitors by the Online Publisher. It was these documents that were then used to plead various sections in the Particulars of Claim. Without revocation or variation of the Final Restriction Order, such use is impermissible.

301. The Claimants submitted that the Restriction Order Application is "*artificial in the extreme*" because Associated has not suggested that there are independent grounds upon which the Court would strike out the sections of the Particulars of Claim that have relied upon information from the Ledgers. The Ledgers would, the Claimants submit, fall within Associated's disclosure obligations during the litigation. The Claimants argue all that is achieved by upholding the Restriction Order Application is the postponement of the point at which the Claimants would be able to rely upon the Ledgers in the proceedings.

302. It may be that the Claimants' claims *could* have been formulated without use of the Ledgers (and they may yet be reformulated to do so). It may be that Associated will, at some point in the litigation, be required to disclose the Ledgers to the Claimants as part of its obligations under Part 31. There is some force in those submissions, and people learning of the Court's decision may think that the Court is elevating form over substance. However, in my judgment the Restriction Order Application raises an important issue of principle. Parliament has – in the Inquiries Act 2005 – set out the law that governs the conduct of public inquiries. That includes granting to the chairman of an inquiry important powers to compel the production to the inquiry of documents and evidence, and a concomitant power to place restrictions on the use of such material both during and after the inquiry.

303. I have concluded that restrictions were imposed on the Ledgers by the Inquiry and that those restrictions remain in force. The policy considerations, well-developed in other

areas of the law prohibiting collateral use of documents whose production has also been compelled, apply equally to restriction orders made under the Inquiries Act 2005. Fundamentally, this engages the rule of law. Restriction orders made in a public inquiry must be obeyed. If they appear to have been breached, potential remedies are provided under the Inquiries Act 2005. But beyond that, and in my judgment, the Court will, for its part, not permit the use in litigation of documents which have been provided or obtained in breach of a restriction order without the relevant restriction order being varied or revoked pursuant to s.20. By so doing, the Court is upholding and promoting the rule of law. Ignoring (or treating without consequence) the breach of a restriction order would involve the Court in undermining the rule of law. That being so, the Court's duty is clear.

304. It is not the case, here, that the Claimants could have pleaded the same facts in their Particulars of Claim from material available in the public domain. But even if they could have done, if that material had been placed in the public domain in breach of a restriction order, the availability in the public domain would not have been determinative. Often, when confronted with such a situation, the Court can be met with criticism that it is adopting a Canute-like approach. Nevertheless, the need to uphold the rule of law is not diminished (or extinguished) by breaches of it. Arguably it is at that point that the Court's duty is the clearest. If authority were required for that proposition, it can be found in the opening paragraphs of the Supreme Court's decision in ***PJS -v- News Group Newspapers Ltd*** **[2016] AC 1081** and Lord Mance's observation (on behalf of the majority) [3]:

> "The Court is well aware of the lesson which King Canute gave his courtiers. Unlike Canute, the courts can take steps to enforce its injunction pending trial. As to the *Mail Online*'s portrayal of the law as an ass, if that is the price of applying the law, it is one which must be paid. Nor is the law one-sided; on setting aside John Wilkes' outlawry for publishing *The North Briton*, Lord Mansfield said that the law must be applied even if the heavens fell: ***R -v- Wilkes*** **(1768) 4 Burr 2527**, **98 ER 327 (347)**."

305. That extreme position has not been reached in this case. The Court is not engaging on a futile exercise. Notwithstanding the publications of the Online Publisher, there remains something worthwhile to be protected by ensuring that there is compliance with the Final Restriction Order.

(7) Alleged breach of the CP Undertaking

306. In light of the decision I have reached, it is not necessary formally to resolve Associated's alternative submission that use of the Ledgers was also a breach of the CP Undertaking by Mr Sherborne, Sir Simon Hughes and/or Mr Thomson (see [251] above).

307. Many reasons were advanced by the Claimants as to why there was no breach of the CP Undertaking. I do not need to consider these as, in my judgment, the CP Undertaking came to an end once the Inquiry had ended. As I have noted (see [290] above), the CP Undertaking was practically replaced by the Final Restriction Order at the end of Part 1 of the Inquiry. There was some interesting discussion, at the hearing, as to whether the CP Undertaking could have survived the end of the Inquiry and, if it did, who could now seek to enforce it. Those potential difficulties perhaps

demonstrate why the Final Restriction Order was made in the terms it was. In light of my conclusions, I do not need to resolve these issues, but given the potential seriousness of the allegation, it is important that I should state clearly that, on the evidence I have seen, I do not consider that Mr Sherborne, Sir Simon or Mr Thomson have breached the CP Undertaking.

(8) The order the court will make

308. Although the precise terms of the order that should be made to reflect the Court's decision will need to be resolved after this judgment is handed down, following the submissions of the parties, the principle is clear. Without obtaining the variation or revocation of the Final Restriction Order, the Claimants will not be permitted to advance those parts of the Particulars of Claim that have relied upon information drawn from the Ledgers provided to them by the Online Publisher.

309. Several options would appear to be available. The Claimants could seek the variation (or revocation) of the Final Restriction Order by the relevant Minister(s) (see [295] above), in which case the Court may well be persuaded to grant a short stay of the proceedings to allow them to do so. Alternatively, the Claimants could, by amendment, remove those parts of the Particulars of Claim that have relied upon information drawn from the Ledgers. Whether, and the extent to which, any parts that the Claimants remove from the Particulars of Claim could be reinserted at a later point, would depend upon the course the litigation takes and particularly the disclosure phase. A further option would be for Associated, now, to give voluntary disclosure and inspection of the Ledgers to the Claimants, but that is not something that the Court can order on this application. Whichever option is adopted, the position regarding use of the Ledgers must be regularised.

(9) The discrete further points

310. As I have noted (see [254] above), there are three further discrete points that Associated raised in relation to passages of the Particulars of Claim. I shall deal with this shortly.

(a) Documents provided by Mr Whittamore to the Claimants

311. There is an issue as to whether Mr Whittamore has independently provided the Claimants with certain invoices, from which the Claimants have identified journalists at Associated who used his services. In his witness statement, Mr Whittamore stated that he had retained a copy of his typed contact list which he had created and used after 2003 (after an earlier contact list was seized). This contained a list of journalists at various newspapers, including Associated titles, who had "*used his services regularly after 2003*".

312. Associated accepts that if the Claimants are able (independently from the Ledgers) to source payments to Mr Whittamore from information that he has provided to them, then there is no objection to inclusion of that information in the Particulars of Claim. Nevertheless, Associated complain that Mr Galbraith's evidence is unclear on this point. In his witness statement, Mr Galbraith has stated that "*references in the Particulars of Claim to [Associated's] use or, or payments to… Steve Whittamore… are underpinned by material provided by Mr Whittamore himself…*" and later in his statement, that Mr Whittamore "*had provided the underpinning of the references [in the*

Particulars of Claim] to [Associated's] instruction of him". Mr Galbraith's third witness statement takes matters no further forward.

313. I cannot, at this stage and on the available evidence, finally resolve this point. The principle, however, is clear. The Claimants cannot rely on information from the Ledgers if they have come from the Inquiry. Mr Whittamore has independently provided documents to the Claimants. If information pleaded in the Particulars of Claim has been sourced from the documents provided by Mr Whittamore, then that is unobjectionable, as Associated accepts. The Claimants' advisors will know the answer to this question, and ultimately the position will become clear on disclosure. If there is any further dispute, then the issue will have to be resolved later in the proceedings.

(b) References to ELI/TDI

314. Associated makes a similar point regarding identification, in the Particulars of Claim, of journalists at Associated who used the agency ELI/TDI. In his witness statement, Mr Galbraith stated, compendiously, that information in the Particulars of Claim, had come from "*material and information… provided to the Claimants' ... solicitors by [the Online Publisher], by Mr Whittamore himself... or by [another named individual QZ]*". That leaves unclear the extent to which information relating to Associated's use of ELI/TDI that has been pleaded in the Particulars of Claim came from the Ledgers. Mr Galbraith's third witness statement is again silent on this point.

315. Again, I cannot finally resolve this point on the evidence. The reasons I have set out in [313] apply equally to this point.

(c) The Associated journalist alleged to have been interviewed by the police

316. The name of an Associated journalist who, it was alleged, was interviewed by the police, was contained in a witness statement provided by a police officer to the Inquiry. The name was redacted from the publicly available material from the Inquiry. Associated have questioned whether the unredacted statement was the source of the information that has been used to plead a section of the Particulars of Claim.

317. In his witness statement, Mr Galbraith identified the source of the information that was used in the Particulars of Claim. Associated challenged that evidence. In his third witness statement, Mr Galbraith has provided more information. He states that the identity of the Associated Journalist was established by QZ.

318. Associated apparently remains unsatisfied with this explanation. Nevertheless, Mr Galbraith has now clearly stated in his evidence that the name of the Associated journalist included in the Particulars of Claim did not come from material withheld by the Inquiry, but from QZ. As such, there is no sustainable objection to its inclusion in the Particulars of Claim.

I: Reporting Restriction Application

319. I have explained and introduced the Reporting Restriction Application earlier in this judgment (see [15]-[16] above).

320. The basis of the application can be summarised as follows.

(1) The restrictions on reference to, and disclosure of, the parts of the Particulars of Claim that were the subject of the Restriction Order Application, were sought by Associated on the basis that, if no restriction were granted, the process of hearing the Restriction Order Application, in open court, was likely to destroy the substance of what Associated was trying to protect. Pending the determination of the Restriction Order Application, it was necessary to prevent reference to the disputed passages in the Particulars of Claim in open court.

(2) The restrictions on the names of the Anonymised Journalists were sought on the grounds that, at this early stage in the proceedings, it was unfair to each of the Anonymised Journalists that s/he should be identified as an individual against whom the Claimants had made potentially serious allegations of wrongdoing in circumstances where (a) the proceedings are at a very early stage; and (b) there has been no opportunity for the allegations of wrongdoing to be answered in a Defence. Without such restrictions, fair and accurate reports of the hearing would have been protected by reporting privilege, leaving those individuals exposed to a risk of widespread reporting of damaging allegations in respect of which they had had no opportunity to respond and had no right of redress (even in the case of proven inaccuracy).

(3) The restrictions on the name of the Online Publisher were sought on the ground that identifying the Online Publisher – and permitted reporting of the same – would likely lead to further publication of material which, if Associated was correct in its submissions on the Restriction Order Application, was the subject of a restriction order from the Inquiry.

321. The Reporting Restriction Application was opposed, in part, by the Online Publisher. It complained that it had not been given notice of the Reporting Restriction Application, but nevertheless had been able to instruct Counsel for the hearing who provided a note of its submissions. The Claimants adopted a neutral stance on the Reporting Restriction Application.

(1) Legal principles

322. Ordinarily, civil proceedings in this jurisdiction are conducted in open court, enabling members of the public and media to attend and observe the proceedings: CPR 39.2(1). Subject only to any reporting restrictions that are imposed (or apply), a person who attends the hearing is entitled to report what has taken place during the proceedings. This right is of greatest practical importance and significance for those journalists (and others) who attend to report on the proceedings. This is the principle of open justice. It is vital to the proper functioning of the Court in a democratic society.

323. Restrictions on (or derogations from) open justice come in different forms. The most restrictive type of order is a direction that the Court's proceedings will be held in private, the effect of which is to exclude from the hearing everyone except the parties, including members of the public and media. A court will only sit in private where it is been demonstrated, convincingly, that it is necessary to do so: CPR 39.2(3). Even then, the Court will strive to provide as much information about the proceedings and why the Court has found it necessary to sit in private: ***JIH -v- News Group Newspapers Ltd*** **[2011] 1 WLR 1645** [21(9)] and [35].

324. Orders withholding, from the public, the identity of an individual in connection with the proceedings ("anonymity orders") (and any corresponding reporting restrictions prohibiting the identification of the individual) will only be granted where it is strictly necessary, and then only to that extent: CPR 39.2(4).

325. Often, the legitimate aim sought to be achieved by the relevant restriction can be imposed by measures short of the Court sitting in private. In this category fall anonymity orders, reporting restriction orders, and orders restricting access to certain documents from the Court file that would otherwise be available to non-parties.

326. Nevertheless, any derogations from the principle of open justice:

(1) can only be justified in exceptional circumstances, when the court is satisfied that the restriction is strictly necessary to secure the proper administration of justice;

(2) must be established by clear and cogent evidence by the person seeking the order;

(3) where justified, must go no further than strictly necessary to achieve their purpose; and

(4) are not a question of discretion, they are matters of obligation; the court is under a duty to either grant the derogation or refuse it when it has applied the relevant test.

327. A temporary order imposing anonymity and reporting restrictions may be necessary in the interests of fairness and to protect the administration of justice: ***Clifford -v- Millicom Services UK Ltd*** **[2023] ICR 663** [40] *per* Warby LJ. The stage the proceedings have reached is also likely to be a factor in the Court's determination of whether such an order is necessary: ***CDE -v- NOP*** **[2022] 4 WLR 6** [42] *per* Males LJ: "*... there is a spectrum, with the trial at one end and an early procedural hearing at which there is to be no adjudication on the merits at another*"; and ***HRH The Duchess of Sussex -v- Associated Newspapers Ltd*** **[2020] 1 WLR 4762** *per* Warby J (identity of potential witnesses withheld at pre-trial stage). It is not usually in the interests of justice or fairness, or for the public benefit, that only one side of a story is ventilated, or to allow reporting (under privilege) of allegations of serious wrongdoing, where the subject of the allegations has not yet been given an opportunity to answer them: ***Bray -v- Deutsche Bank AG*** **[2009] EMLR 12** [7] *per* Tugendhat J; ***Qadir -v- Associated Newspapers Ltd*** **[2013] EMLR 15** [100]-[101] *per* Tugendhat J.

(2) Submissions

(a) Associated

328. Ms Evans KC, for Associated, submitted that derogations from open justice were necessary:

(1) in respect of the reporting restrictions of the parts of the Particulars of Claim that were the subject of the Restriction Order Application and the name of the Online Publisher (and corresponding restrictions on non-party access to

unredacted versions of the Particulars of Claim on the Court file), so as not to defeat the purpose of the application; and

(2) in respect of the anonymity order and reporting restrictions for the Anonymised Journalists, to provide temporary protection in respect of serious allegations of wrongdoing made in the Particulars of Claim that they had not yet had an opportunity to answer.

(b) The Online Publisher

329. The Online Publisher was neutral about sub-paragraph (1) in the paragraph above, but it opposed the extensive anonymity order sought under sub-paragraph (2). The Online Publisher provided a witness statement, dated 26 March 2023, from one of its journalists. The evidence consisted largely of the extent to which the Online Publisher had published articles concerning "*unlawful practices*" at certain national newspapers, including Associated. Specifically, the Online Publisher identified occasions where it had named journalists and private investigators who it was alleged had been involved in Unlawful Information Gathering.

(3) Decision

330. In the short judgment I gave, when I made the order granting anonymity and imposing reporting restrictions, I explained why I was satisfied that it was necessary to do so.

331. Largely I accepted Associated's submissions. It was necessary to impose restrictions on access to, and reporting of, those parts of the Particulars of Claim that were the subject of the Restriction Order Application. If I had not done so, then reporting of these proceedings would likely have destroyed that which Associated was trying to protect by its application, before the Court had adjudicated upon it.

332. It was necessary to permit the names of the Anonymised Journalists to be withheld, and for reporting restrictions to be imposed, because I was satisfied that it would be unfair, and not in the interests of administration of justice, for them to be identified, at this early stage, before there has been an opportunity for them to respond to the allegations made against them. It is very unusual for the Court to have a 4-day hearing on matters concerning the Particulars of Claim in an action before even an Acknowledgement of Service has been filed.

333. As I indicated at the hearing, the restrictions imposed by the Order of 27 March 2023 will be reconsidered at the hearing that will be fixed after this judgment has been handed down. Whilst some of these restrictions are likely to remain in place, in view of the decisions I have made, the restrictions upon identification of the Anonymised Journalists are likely to be lifted once a Defence has been filed. At that point, fair and accurate reports of allegations made in the Particulars of Claim, if they are to be published for the public benefit, would have to include any response to those allegations pleaded in the Defence.

J: Conclusion and next steps

334. For the reasons set out in this judgment: (1) the Limitation Application is dismissed; and (2) the Restriction Order Application succeeds.

335. This judgment will be handed down remotely. A hearing has been fixed for 21 November 2023, at which the Court will hear the parties' submissions on the orders that should be made consequent on the judgment. Until then, the Reporting Restriction Order will remain in force.