



Courts and Tribunals Judiciary

SUMMARY

Various Claimants -v- Associated Newspapers Limited
[2023] EWHC 2789 (KB): Mr Justice Nicklin
10 November 2023

[References in square brackets are to paragraphs in the judgment of the Court]

1. The Court has today handed down judgment (“the Judgment”) in claims brought by 7 separate Claimants against the Defendant, Associated Newspapers Limited (“Associated”). There will be a further hearing on 21 November 2023, at which the Court will consider the orders that should be made consequent upon the Judgment.
2. Reporting restrictions that were imposed at the hearing in March 2023 ([16]) have been continued until this further hearing. For reasons that are explained in the judgment ([17] and [332]-[333]), the Court has, at this very early stage in the proceedings, withheld the names of journalists and others against whom allegations of serious wrongdoing are made by the Claimants until they have had an opportunity to respond to the allegations. This temporary measure reflects basic principles of fairness.

The parties

3. The seven Claimants are Baroness Lawrence of Clarendon, OBE; Elizabeth Hurley, Sir Elton John, CH CB; David Furnish; Sir Simon Hughes; Prince Harry, the Duke of Sussex; and Sadie Frost Law. Associated is the publisher of the national newspapers *The Daily Mail* and *The Mail on Sunday* and the global website *MailOnline*.

The claim

4. The Claimants allege that Associated has, in the past, 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 its newspapers and online. Further details of the Claimants claims are set out in [5]-[7]. The Claimants seek remedies for misuse of private information, including damages and an injunction. Associated denies the allegations. At this early stage, the Court is not adjudicating on the truth of any of the allegations that have been made by the Claimants ([17]).

Associated’s challenges to the Claimants’ claims

5. Associated has not yet filed a Defence to the claims. Instead, it has sought to challenge the Claimants’ claims, at a preliminary stage, on two grounds.
6. The first challenge is on the ground of limitation. Associated has asked the Court to strike out or dismiss without a trial the Claimants’ claims on the grounds that the wrongdoing alleged by the Claimants took place over 6 years before their claim was issued and so

Associated has a defence of limitation to the claims under [s.2 Limitation Act 1980](#). The Claimants have responded by relying upon [s.32 Limitation Act 1980](#), which provides that where the fact(s) relevant to a claimant's claim has been deliberately concealed, the limitation period does not begin to run until the claimant has discovered the concealment or could with reasonable diligence have discovered it. Associated argued that the Claimants' claims should be dismissed now (and without trial) because they had no real prospect of successfully relying upon s.32. The Judgment refers to this as the **Limitation Application**.

7. The second challenge is to those parts of the Claimants' Particulars of Claim which had relied upon certain documents from the Leveson Inquiry ("the Ledgers"). Associated were required to produce the Ledgers to the Leveson Inquiry ([31]-[34]). Associated argued that the Ledgers were subject to continuing restrictions on their use as a result of restriction orders made during the Leveson Inquiry ("the Inquiry"), pursuant to [s.19 Inquiries Act 2005](#), and that the Claimants were prohibited from using the Ledgers to plead parts of their Particulars of Claim, without taking steps to have the restrictions modified or discharged. The Claimants accepted that they had received copies of the Ledgers but argued that, on proper interpretation, they were not subject to any restrictions imposed by the Leveson Inquiry. The Judgment refers to this as the **Restriction Order Application**.
8. Alternatively, Associated argued that use of the Ledgers was prohibited as a result of an undertaking provided by Core Participants at the Inquiry ("the CP Undertaking"), including Counsel, David Sherborne, Sir Simon Hughes and Solicitor, Mark Thomson ([35]-[36] and [251]).

The Limitation Application

9. The Court has dismissed the Limitation Application, on the grounds that the Claimants have a real prospect of succeeding with reliance on [s.32 Limitation Act 1980](#) ([187]-[190]). A large amount of evidence was filed by the parties – and considered by the Court ([106]-[109]) – but the Judge held that the appropriate stage for the Court to determine the facts necessary to resolve any limitation defence, including the issues arising under s.32, would be at a trial, after consideration of all the relevant evidence. Associated has failed to deliver a 'knockout blow' to any of the claims brought by the Claimants ([190]).

The Restriction Order Application

10. The Court has upheld Associated's objections to reliance upon the Ledgers to plead sections of the Claimants' Particulars of Claim.
11. Under the Inquiries Act 2005, Sir Brian Leveson, as the chairman of the Inquiry, had the power to compel the production of documents and evidence to assist with the Inquiry ([267]). The Ledgers were provided to the Inquiry by Associated in response to Notices served under the Inquiries Act 2005 ([34]). Sir Brian Leveson had the power to impose restrictions on the disclosure or publication of any evidence or documents given, produced or provided to the Inquiry, pursuant to [s.19 Inquiries Act 2005](#) ("restriction orders"). Restriction orders can be varied or revoked, during the currency of a public inquiry, by the chairman of the inquiry, or by the Minister who was responsible for the inquiry after its end: [s.20 Inquiries Act 2005](#).
12. On 29 November 2012, upon publication of the Report at the conclusion of Part 1 of the Inquiry, Sir Brian Leveson made an order under s.19 prohibiting the disclosure or publication of specified material from the Inquiry ("the Final Restriction Order") ([69]). Having considered the evidence, the Judge has concluded that the Ledgers were subject

to the restrictions imposed by the Final Restriction Order ([287]-[294]). The Judge rejected the Claimants arguments that the Ledgers were not the subject of continuing restrictions imposed by the Inquiry.

13. Some information from the Ledgers was published in articles by an online publisher in 2017 ([257]-[258]). Subsequently, the online publisher provided copies of the Ledgers to the Claimants' solicitors ([261]). Information from the Ledgers was then used by the Claimants to plead certain sections of the Particulars of Claim.
14. The Judge concluded, on the evidence, that the copies of the Ledgers provided to the Claimants by the online publisher had come originally from a person or persons who had received, or had access to them during the course of the Inquiry. The provision of the Ledgers to the online publisher was contrary to the Final Restriction Order because it amounted to "*disclosure or publication*" within the terms of that order and, by the same reasoning, the provision of the Ledgers by the online publisher to the Claimants' solicitors was contrary to the Final Restriction Order ([263]).
15. In consequence, the Judge found, by analogy with restrictions that are placed on further use of documents that have been disclosed in litigation, that the Court could not permit the Claimants to use information derived from the Ledgers in their claim for as long as the Ledgers remained subject to the Final Restriction Order ([295]-[298]). It made no difference that *some* of the information from the Ledgers had been included in articles published by the online publisher ([300]-[305]).
16. Although, because of the Court's finding on the Restriction Order Application, it was not necessary for the Judge to consider the alleged breach of the CP Undertaking, he found, on the evidence, that Mr Sherborne, Sir Simon Hughes and Mr Thomson had not breached the CP Undertaking ([307]).

Next steps

17. Following dismissal of the Limitation Application, the Claimants claim will continue. The upholding of the Restriction Order Application presents several options. The Claimants can seek the variation (or revocation) of the Final Restriction Order by the relevant Minister(s). Alternatively, the Claimants could remove those parts of the Particulars of Claim that have relied upon information drawn from the Ledgers. 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 Court has made clear that the position regarding use of the Ledgers must be regularised ([309]).

NOTE: This summary is provided to help in understanding the Court's decision. It does not form part of the judgment. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.judiciary.uk, <https://caselaw.nationalarchives.gov.uk> and www.bailii.org