Neutral Citation Number: **[2024] EWHC 902 (Ch)**

Case No: **HC-2000-00004**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (Ch)
IN THE MOBILE TELEPHONE VOICEMAIL INTERCEPTION LITIGATION

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

Date: **19 April 2024**

Before :

Mr Justice Fancourt

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Between :

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

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David Sherborne, Kate Wilson and Ben Hamer (instructed by **Hamlins LLP**) Counsel for the **Claimant**

Anthony Hudson KC, Ben Silverstone and Harry Lambert (instructed by **Clifford Chance LLP**) Counsel for the **Defendant**

Hearing dates: **17 April 2024**

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APPROVED JUDGMENT

Mr Justice Fancourt **Friday, 19 April 2024**
(**10:00**am)

Judgment by **MR JUSTICE FANCOURT**

1. This is an application issued on 13 February 2024 by News Group Newspapers Limited ('NGN') for a direction in the mobile telephone voicemail interception litigation ('MTVIL') that there should be a trial of a preliminary issue, namely:

   "Whether for the purposes of section 32(1) of the Limitation Act 1980, the claimant knew or could with reasonable diligence have known more than six years before he/she issued proceedings, facts that would have led a reasonable person to discover that they had a worthwhile claim, in the sense that such a person would have sufficient confidence to justify embarking on the preliminaries to issuing proceedings, such as submitting a claim to the defendant, taking advice and/or collecting evidence."

2. The issue identified, therefore, amounts to this: can the claimants defeat what would otherwise be a successful limitation defence by relying on section 32(1)(b) of the Limitation Act? I will refer to that as the "section 32 issue".

3. There are currently 42 claims in this fourth tranche of the MTVIL that have not settled and are proceeding towards a trial in January 2025 of between six and eight weeks' duration. NGN accepts that, practically, there cannot be a preliminary issue in more than a selection of those claims, and that is likely to require a trial of in the region of six to seven days. Such a trial, if now separately listed, would be heard in a window between April and July 2025, i.e. after the trial in January 2025 will have concluded. NGN proposes therefore that the fixed trial, in January 2025, should be vacated and the window used instead for a trial of this preliminary issue in certain claims. If that happened, a six to eight week trial would not be listed afresh, now, before the Michaelmas term 2025 at the earliest, and possibly not until 2026.

4. The section 32 issue is proposed by NGN to be tried on the basis that all the factual allegations about breach and deliberate concealment are assumed for this purpose to be true. That includes the

extensive allegations of deliberate concealment and destruction of evidence in the re-amended generic particulars of concealment and disruption.

5. The section 32 issue, as NGN submits, is a 'threshold' issue for all the remaining claims. All these claims were issued more than six years after the causes of action arose, and so they depend for success on section 32(1)(b). Accordingly, if there is a preliminary issue as sought by NGN, and NGN succeeds on a given claim, that will dispose of that entire claim, but not other claims. If the claimant succeeds to any extent on the preliminary issue, that claim will continue towards a trial, shorn of the limitation defence. The other issues in the claim, in particular the allegations of misuse of private information or breach of confidence, the generic issues about the extent of unlawful information gathering and concealment and false denials by NGN, causation of loss and quantum of damages, would then be tried.
6. It is clear that the section 32 issue is an important issue in each of these claims and that it is an issue on which NGN has at least a real (as opposed to fanciful) chance of succeeding on many claims. NGN does not put its case higher than that for the purposes of this application, and the claimants did not dispute that that was a fair characterisation. It is, however, apparent that NGN considers that its prospects of success are good, if not strong, on many of the claims.
7. Given that there cannot be a trial of preliminary issues in every claim, which would take as long as the full trial is listed for, if there is to be a preliminary issue, as sought, it is important that claims are selected to be as far as possible representative of the different relevant fact patterns in all the remaining claims. That is so that a decision on about six claims may be likely to persuade the remaining parties that their cases will be decided in the same way and thereby encourage settlement. Whether that is a realistic ambition is one of the matters that I shall have to consider.
8. So far as the law is concerned, the court obviously has always had power to order a trial of a preliminary issue. That power is now contained in rule 3.12 of the Civil Procedure Rules. Orders for preliminary issues are only made, or should only be made, after careful consideration of the

possible consequences, including in particular whether it will unexpectedly turn out to be a means of delaying the final determination of the claims and increasing the costs. Experience shows that this is often the case. Sometimes, as a result of a preliminary issue, there are two trials and two appeals to the Court of Appeal, and it takes twice as long as a single trial. On the other hand, with the much greater emphasis placed by the rules of court on alternative dispute resolution in the 2020s, preliminary issues which significantly increase the chances of settlement, even if they will not resolve the claim or a part of the claim, are sometimes ordered.

9. There is also the point forcefully made, on behalf of NGN, that limitation issues should in principle be decided on a preliminary basis. The limitation defence exists so that where a claim is stale the defendant is not be put to the trouble of investigating historic matters and finding witnesses for a full trial. If limitation issues are only decided at such a trial, the policy of the law would be undermined, to the extent that the limitation defence succeeds.

10. On the other hand, if the parties have already proceeded a substantial way towards a trial, that policy objective is unlikely to be achieved by ordering a late preliminary issue and costs may be wasted if it is. Moreover, it is sometimes difficult to isolate a limitation issue, if the issue is not one of law only, or if the facts that are relevant to it are not agreed or cannot safely be assumed, or sometimes if the facts are interwoven with facts relating to other issues that would be live at the trial.

11. In a number of cases, observations have been made to the effect that preliminary issues should usually only be on questions of law; that lengthy preliminary issues, where there are disputed facts, should be regarded as very exceptional; and that caution should be exercised in ordering preliminary issues that will involve cross-examination of witnesses who will also be called at trial. See, amongst other cases, McLoughlin v Jones [2002] QB 1312; Bond v Dunster Properties Limited [2011] EWCA Civ 455; Gorton v McDermott Will & Emery [2018] EWHC 2045; Mather v Ministry of Defence [2021] EWHC 811 (QB) and Bindel v PinkNews Media Group Ltd [2021] EWHC 1868

(QB). The decision in each case, however, is a fact sensitive case management decision and observations made in other cases can only be guidance.

12. The right approach to deciding whether to have a preliminary issue in a particular case is generally taken to be summarised by Neuberger J in Steele v Steele [2001] CP Rep 106, a case where the claimant claimed repayment of monies previously laid out for the benefit of her then husband and exoneration in relation to security provided for his benefit. The defendant raised various limitation issues. The Master had directed a trial of preliminary issues on limitation and adjourned the case to the Judge to be heard. The Judge declined to do so, considering that the preliminary issues were inappropriate, as directed. He identified various questions that should be asked in what he called "a case such as this", that is, one in which there were various limitation issues raised and various arguments why relief that was claimed was not subject to any period of limitation, which were all questions of law. That is why Neuberger J was concerned with the question of what was involved in identifying the relevant facts and whether they were to be agreed.

13. The ten questions that Neuberger J identified were the following. First, whether the determination of the preliminary issue would dispose of the case, or at least one aspect of the case. Second, whether the determination of the preliminary issue could significantly cut down the cost and time involved in pre-trial preparation, and in connection with the trial itself. Third, if the preliminary issue is an issue of law, how much effort will be involved in identifying the relevant facts for the purposes of the preliminary issue. Fourth, if the preliminary issue is one of law, to what extent is it to be determined on agreed facts. Fifth, where the facts are not agreed, the court should ask itself to what extent that impinges on the value of a preliminary issue. Sixth, whether the determination of a preliminary issue may unreasonably fetter either or both parties, or indeed the court, in achieving a just result. Seventh, is there a risk of the determination of the preliminary issue increasing costs and/or delaying the trial. Eighth, to what extent may the determination of the preliminary issue prove irrelevant. Ninth, to what extent is there a risk that the determination of a preliminary issue

could lead to an application for the pleadings being amended so as to avoid the consequences of the determination. And tenth, and finally, taking into account all the previous points, is it just to order the preliminary issue?

14. Here, the proposed preliminary issue is not an issue of law but an issue of mixed fact and law. Although I set out my conclusion on the way that section 32 will operate in my judgment in Duke of Sussex v MGN Ltd [2023] EWHC 3217 (Ch), that decision does not bind any of the claimants in these claims. The claimants may think that it is not worthwhile spending much time arguing the law before me, on the basis that I am unlikely to change my mind, but it would be open to any claimant in the Court of Appeal to raise the entire question of the right legal approach. Apart from the law, there are substantial and important issues of fact that would have to be decided on the preliminary issue, including the state of actual knowledge of the relevant claimant, and what they could have known by exercising the diligence reasonably to be expected of a claimant in their position. It seems to me to be highly likely that, whichever way the preliminary issue is decided in each individual case, there would be an appeal to the Court of Appeal, either because NGN has succeeded and the claim is otherwise defeated, or because the claim survives but NGN wishes to avoid a full trial.

15. My analysis of the appropriateness of the preliminary issue should therefore factor in not just a trial of a preliminary issue but an appeal as likely to follow. That means that in practice the trial of the other issues in the claims, if needed, would be likely to be delayed for up to two years: one year for the appeal and one year for the trial to be re-listed once the outcome of the appeal was known.

16. Given the mix of fact and law involved in the proposed preliminary issue, the questions in *Steele* are not all directly applicable, nor do they purport to be an exhaustive statement of all relevant considerations. The decision whether or not to order a preliminary issue has to be made on a case-specific basis, having regard to the overriding objective and what is just and convenient in all the

circumstances. The Neuberger list of questions, if I may call it that, is nevertheless a useful check as to the good sense of ordering a preliminary issue.

17. Before addressing those questions in relation to this case, it is relevant to consider what wider benefit a determination of the section 32 issue on a handful of the 42 claims may have. The question of whether there should be a preliminary issue arises here not in the context of deciding a single claim but in the context of managed litigation, where there are 42 separate claims progressing towards a trial.

18. A trial of the section 32 issue in, say, six different claims with a variety of facts would, I consider, be likely to give useful guidance to many of the other claims, though not necessarily all. Some of the claims appear to be straightforward publication of articles claims in respect of voicemail interception, blagging and private investigator unlawful information gathering, in relation to both the News of the World and the Sun, where the claimant is likely to say they were misled into believing that friends and family were to blame, or that they believed NGN's vociferous denials. But as Mr Sherborne explained in his submissions, there are many variables and different fact patterns and a decision on the facts of some cases will not necessarily result in those other claims being conceded.

19. It will not, in my view, be easy to decide which claims should be selected for a preliminary issue, or how many there should be. Before its argument presented in court on Wednesday, NGN had not sought to identify by what process or criteria the sample claims should be chosen, saying only that it would be a straightforward matter and that there were not many different types of claim to cater for. In the course of argument, NGN identified the following different types of claim. First, where the claimant is not claiming to have been misled by any alleged concealment in the published articles or elsewhere (four cases). Second, where the claimant is claiming to have been misled by concealment (two cases). Third, where the claimant is not referred to in any published articles (three cases). Fourth, where the claimant does not rely on a published article (two cases). And fifth, where the

claimant's claim does not include an allegation of phone hacking (only the Duke of Sussex's case). That analysis does not account for the remaining 30 claims of the 42 remaining, which may reflect a lack of clarity in the pleaded section 32 case in the other claimants' replies; but it does suggest that NGN's identification of categories is likely to be incomplete and may not sufficiently represent all the claims.

20. The claimants contend that there is a much wider variety of types of claim and many different fact patterns and permutations, in addition to those identified. First, there are different types of cause of action involved, mobile phone hacking, blagging, unlawful information gathering using private investigators, landline call interception, burglaries and bugging, which may (the claimants say 'will') give rise to different considerations on questions of constructive knowledge, though with the exception of the Duke of Sussex, those claims plead most of these types of claim.

21. Then there are different desks and different newspapers pleaded, though again most claims are in relation to both newspapers. Then there are claims by associates, within which category there are likely to be differences between partners, representatives, relations and friends of the principal target. Then there is a category of victims of stings by Mazher Mahmoud or others, victims of crime, and politicians, as distinct groups, where the degree of actual knowledge and the ability to acquire facts by use of reasonable diligence may vary significantly.

22. Mr Sherborne therefore submitted that it is not possible to get a representative sample of a few claims at this stage, nor is it appropriate to leave the selection until later. I agree that there will be difficulty in identifying a representative sample. However, it is a difficulty that to some extent will exist if the limitation issue is to be determined at a full trial, though selection of claims for a full trial will depend on other considerations too.

23. As for the claims selected for the preliminary issue trial, NGN has not identified these, but they suggested two different possible approaches. One, to give directions now for selection to be agreed in the near future and, in default of agreement, that I should decide on paper which claims should be

tried, with some reserve claims. Two, to direct a preliminary issue on all 42 claims and progress them all towards a trial of the preliminary issue, with the claims being selected at a later stage.

24. Both alternatives are somewhat unsatisfactory for the same reason, namely that a decision will have to be taken now to abandon the full trial and try limitation issues only without knowing how exactly the issues and categories that arise on the section 32 issue will be represented and, therefore, dealt with at the trial.

25. The first alternative risks the parties falling out about categories and my having to become involved to determine what are the different categories and which claims best represent them. That sounds rather labour-intensive for the parties as well as the court. The court would need to consider detailed submissions about the characteristics of the relevant claims in order to decide. I would put the risk of the parties disagreeing about categories and selection as ‘high’.

26. The second alternative avoids that problem, but leaves the selection of claims to happenstance, depending on which are left from December 2023. The best outcome would be only a few left, say, up to a maximum of eight, which could all be tried. But if there remained 15 claims, at that stage, the selection would have to be done at a late stage while incurring costs of disclosure and witness statements to progress all of those claims towards a trial. I recognise, of course, that the same incurring of potentially unnecessary costs will arise in preparing for a full trial on all remaining claims. The difference is that the costs of preparation will only be incurred once for a full trial, not successively for a trial of limitation then possibly a trial of the remaining issues.

27. It seems to me that Mr Sherborne is probably right to speculate that if a preliminary issue is ordered claims will not settle in the meantime, because NGN strongly desires to have a trial of the limitation issues and not to have a trial on all issues. In short, the process of identifying and selecting an appropriate sample of claims for a trial of limitation issues is far from straightforward. Apart from the question of whether it is likely that claims or other claimants will settle following a decision on limitation in the sample claims, whatever that decision is, there is a separate question about

settlement to consider in the event that the claimant succeeds to any extent on the preliminary issue. Is there reason to believe that it would make settlement of that claim *more* likely than if no preliminary issue is ordered, with the result that a trial of the remaining issues is not required.

28. NGN asserts that it would, on the basis that the defence of limitation will have been cleared away. That sounds superficially plausible, but to date there has been no evident connection between the unresolved limitation defence and settlement. All claims in the previous January 2024 trial settled by November 2023, despite a limitation defence being raised in all of those claims. Non-resolution of the section 32 issue is therefore not apparently a bar to settlement and there is no evidence on behalf of NGN or the claimants that says that it is. Although resolution of the preliminary issue in favour of the claimants will therefore remove the limitation issue from the trial, it does not remove any other issue or make it less likely, or at least significantly less likely, that that trial will be needed.

29. It is also notable that in relation to those 50 claims that were due to be tried in January 2024, NGN was willing to proceed towards a single trial of all issues, including the section 32 issue. The claims were not settled. There was evidently no perception then that it was important to have limitation tried as a preliminary issue.

30. Returning then to the ten Neuberger questions. First, will the determination of the preliminary issue dispose of the case, or at least one aspect of case? It will dispose of an issue in the case whichever way it is decided, and the whole case if decided in favour of NGN, but it will not dispose of any part of the claimant's claim if decided in favour of the claimant, unless NGN succeeds in part. It is therefore an issue that is only determinative if decided one way. NGN does not put its case on the issue higher than saying that there is a real prospect that it could succeed and does not submit that it is likely to win on all claims.

31. Second, whether the determination would significantly cut down the cost and time involved in pre-trial preparation, or in connection with the trial itself. The time and cost of preparing for a trial of

the preliminary issue would itself be considerable. What is contemplated is a 6-7 day trial. There will be likely to be detailed evidence called, including each claimant, possibly in some cases an associate of the claimant, which will require preparation of witness statements and further disclosure to the extent not already given by a claimant, or not adequately given on the section 32 issue. These costs will, of course, be less than the time and cost of preparing for a full trial but they will be substantial nevertheless. If a further full trial is then needed because the preliminary issue is decided, at least in part, in favour of one or more claimants, the preliminary issue will not have cut down the costs of the trial to any substantial extent. On the contrary, the aggregate costs of the two trials will then be much greater than the costs of one trial.

32. The third and fourth questions do not directly arise because all facts relating to breach and concealment are to be assumed in favour of the claimants and the facts relating to the section 32 issue itself will be the subject of trial. There is a substantial dispute of fact: the preliminary issue is not a question of law only, indeed at trial it will be principally a dispute of fact. The issue of constructive knowledge is a complex factual assessment, based on the circumstances of each claimant, their actual knowledge, particular facts relating to their conduct pleaded in the defence and responded to in paragraph 18 of each reply, and all the background facts relating to publicity about phone hacking and other unlawful information gathering over the period 2011 to 2016.

33. The fifth question: where the facts are not agreed, does that impinge on the value of the preliminary issue? The preliminary issue here is about disputed facts. It does not seem to me, however, that assuming facts relating to breach and concealment in favour of the claimants as pleaded creates any difficulty should a trial of the remaining issues later be needed. That is because limitation will not feature at all in that trial. However, if there is a full trial, there will then have to be evidence about how journalists and private investigators operated both generally and in relation to each trial claimant. And so issues of concealment in the alleged *modus operandi* of NGN and the private investigators and concealment of working practices generally, will have to be investigated. The

preliminary issue will not, therefore, have the result that, at a later trial, evidence will not have to be given about concealment.

34. Sixth, whether the determination of a preliminary issue may unreasonably fetter the parties or the court in achieving a just result. I am not persuaded that trying a preliminary issue will obstruct the process of trying the remaining issues, should that be needed. There will, however, obviously be overlap of witnesses and possibly evidence. For example, a claimant will have to give evidence on the section 32 issue about what they knew about the articles that were published, what they thought about how NGN obtained their private information, and about their associates. They will have to give evidence at the later trial about what they knew at the time about each article about which they complain, and what effect it had on them at the time or subsequently. There will, therefore, be some duplication of evidence. I may have to make findings about the reliability or even honesty of a witness on the section 32 issue without having heard their full evidence, and an issue of reliability or honesty may also arise at the later trial. This is undesirable and is a factor to be taken into account, as observed by Bryan J in the *Gorton* case at paragraph 32 of his judgment. If there is a delay of two years from 2025 following the trial of the section 32 issue, I do not know if I will be the trial judge in 2027, but even if I were, it is undesirable to have to split key witnesses' evidence in that way.

35. Seventh, to what extent is there a risk of the preliminary issue increasing costs and/or delaying the trial? There is plainly a considerable risk of the trial of a preliminary issue increasing costs overall and delaying the trial. It is inevitable, given that the preliminary issue would be tried in the main trial window, that the trial will be delayed, possibly by up to two years, as explained. That is unsatisfactory, given the number of claimants who may not be trial claimants who are awaiting a determination on all the generic issues, as well as claimant-specific issues that are similar to their own claims. The risk of increased costs arises if I decide against NGN to any extent on preliminary issue. That is a realistic outcome. It is perhaps unlikely that NGN will win on limitation in every

case. There will then have to be a second trial at a much later date, incurring in aggregate far greater costs.

36. Eighth, might the determination of the preliminary issue prove irrelevant? The determination of the preliminary issue cannot be irrelevant as it is a threshold issue in every claim.

37. Ninth, could the trial of a preliminary issue lead to an amendment of the pleadings? There is no risk of a relevant application to amend the statements of case following the determination of the preliminary issue.

38. And so to the tenth question, is it just to order a preliminary issue on the facts of this case?

39. As to that, if the application had been made by NGN after the first defences and replies had been pleaded, either in the 50 claims that were due to be tried in January 2024 or in the current group of claims, I might have been persuaded to order a preliminary issue on limitation, albeit with some concern about the practicalities of how the relevant claims would be selected. Ignoring the Duke of Sussex's claim, in which an application for summary judgment on limitation was made in December 2022, the earliest defences raising section 32 facts were filed in October 2022. Many more defences and replies were filed by the middle of 2023. A preliminary issue applied for in spring 2023 could have been tried and decided by now without prejudicing the January 2025 trial date. The arguments for and against the wisdom of a preliminary issue, in those circumstances, would have been finely balanced. There would still be a risk that if the claimant succeeded it would have increased the costs substantially overall, but dealing with limitation first, to save the effort and substantial cost of investigating stale claims and preparing them for trial, is right in principle, where that objective is likely to be achieved and where to do so does not prejudice other legitimate interests.

40. I asked Mr Hudson why the application was made late. He said that the position on limitation had been evolving gradually in these claims, that it was only as a result of my decisions in the MTVIL in Mr Grant's claim in May 2023, the Duke of Sussex's claim in July 2023, and then in my judgment in Duke of Sussex v MGN Limited [2023] EWHC 3217 in December 2023 and [2024] EWHC 274

(Ch) in February 2024, that the time was considered appropriate to make the application. Even though the lateness was "not ideal", in Mr Hudson's words. He also said that NGN had been considering it for some time.

41. I am unable to accept that the limitation preliminary issue only became a sensible and realistic proposition after my judgments in the MGN case. What that case may have provided is greater encouragement for NGN on the likelihood of its succeeding, but that is not the same thing as whether it is right in principle to have a determination of a limitation issue at an early stage without requiring the defendant to prepare a stale claim for a full trial. The importance of the limitation issue would have been clear to NGN throughout the fourth tranche of the MTVIL claims, which started in March 2019, and would have assumed greater prominence as time went on, particularly as six years elapsed in May 2021 from the date of Mann J's judgment in Gulati v MGN Limited [2015] EWHC 1805 (Ch).

42. The trial date of January 2025 was set in November 2022. In December 2022 NGN applied to strike-out Mr Grant's and the Duke of Sussex's claims on limitation grounds, rather than apply for the trial of a preliminary issue. If there were any remaining doubt, my judgment of May 2023 in Mr Grant's case would have indicated how the principles under section 32 would be likely to apply in any claimant's case, but no application was made for a preliminary issue until February 2024, almost nine months later. As I have noted, NGN was prepared to go to trial in January 2024, if necessary, with the section 32 issue being determined at a full trial.

43. Whatever the wisdom of ordering a preliminary issue where there is time to hear it before the main trial is due to take place, there are further considerations that arise from the fact that the application has been made late and would result in the loss of the trial date. The point was forcefully made by Mr Sherborne. The court is effectively being asked, at a late stage, to vacate the trial date for 42 claimants, which has been fixed since November 2022, and use the time instead to hear a trial of

only one issue in the claims. That, he said, was wrong in principle and unjust for many claimants who were expecting their cases to be settled or be tried and decided by about mid-2025.

44. The following further matters seem to me to be particularly material to the exercise of my discretion.

45. First, a considerable amount of preparation, including generic disclosure for the generic trial issues and in most cases claimant-specific disclosure, has already been done at considerable expense, with a view to all issues being tried in 2025. NGN has filed defences in all claims and given disclosure in all but 17 already, so it has already spent much time and money investigating those claims.

46. Second, although witness statements are not due to be exchanged until October and November 2024,, which will of course involve further investigation, many generic statements have already been produced and filed on the generic issues, as they were prepared for earlier trials of claims in the fourth tranche, which settled at a late stage. Hearing a preliminary issue that might dispose of the claims will therefore not save the parties so much (in the context of this very expensive litigation) in the way of trial preparation because a lot has already been done; and it may instead result in all that expenditure being wasted.

47. Third, the claimants are, reasonably, expecting a trial, even if not of their own case, then of the generic issues that feed into their case and other comparable cases, including on the important limitation issue. The limitation issue will be tried at a full trial at the same time. The claims can be managed to ensure that if there is a selection to be made, the most representative cases are selected for trial. The claimants have been waiting for the trial since 2022.

48. Fourth, there is no evidence to support the assertion that trying the section 32 issue first will make any difference to the settlement of the cases. The evidence of experience in the MTVIL is that cases settle anyway, even in the face of limitation issues. NGN does not say that the limitation issue is a bar to settlement, as MGN did in the parallel litigation. It cannot, therefore, be said that the preliminary issue is necessary to assist settlement of claims.

49. Fifth, there is a real prospect following a trial of the section 32 issue that a trial of the remaining issues will still be necessary in some of the claims at least. That would include all the generic issues, so the cost of those and of the claimant-specific claims that go to trial will not be saved in those circumstances, but the trial will be delayed for up to two years.

50. Taking into account all these matters, I consider there are too few advantages at this stage to abandoning the orderly preparation for a trial of all issues in January 2025 and having instead a trial of only one issue, almost certain to result in an appeal, and which may result in the need for a trial of all the other issues thereafter. I am not satisfied that the risk of two trials and two appeals is removed by a likelihood that, if limitation wereidecided in favour of the claimants, the rest of that claim would then settle. If these claims are going to settle, they will do so anyway before the start of a full trial in 2025. Directing a preliminary issue actually prevents those settlements taking place before January 2025.

51. In the course of his reply, Mr Hudson complained that the MTVIL had always been case managed with a view to settlement of cases and a trial only if cases do not settle. He suggested that that approach was no longer an efficient way to manage the litigation and that a change was required, so that important individual issues are determined by the court rather than listing a series of full trials which are then abandoned. He implied that the claimants are far too comfortable with the existing "regime", as Mr Galbraith labelled it in his witness statement, which enables claimants to settle for substantial sums because NGN does not want a trial. Mr Sherborne countered that litigants often have no alternative but to settle because of the prohibitive costs of the trial.

52. It would, in my view, be quite a serious thing to overturn at a late stage the established way of managing this litigation, in accordance with which all of the existing parties have been working for years, and to vacate a trial date which has been fixed since 2022, particularly so when no such objection was raised before the January 2024 trial date. It would have the effect of defeating the reasonable expectations of all these claimants and potentially wasting the work that has been done to

prepare for the January 2025 trial. In any event, the justification for doing so at this moment does not exist, for reasons that I have given.

53. If and when a new tranche of claims comes forward for case management, after the disposal of the existing claims, NGN has the opportunity to apply at an appropriately early stage for a preliminary issue on limitation, if it sees fit, and the appropriate conduct of the MTVIL can be reviewed in those circumstances. Obviously, limitation is likely to be an even more significant issue for claims only issued in 2023 and 2024.

54. For the reasons that I have given, I dismiss NGN's application for the preliminary issue on limitation.