Neutral Citation Number: [2024] EWHC 2526 (Ch)

Case No: BL-2019-001788

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice
The Rolls Building
Fetter Lane
LONDON
EC4A 1NL

4 October 2024

Before :

MR JUSTICE FANCOURT

- -

Between :

HRH THE DUKE OF SUSSEX

Claimant

- and -

NEWS GROUP NEWSPAPERS LIMITED

Defendant

- -
- -

Mr David Sherborne and Mr Ben Hamer (instructed by **Clintons**) for the **Claimant**
Mr Anthony Hudson KC and Mr Ben Silverstone (instructed by **Clifford Chance LLP**) for the **Defendant**

Hearing dates: submissions on paper

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APPROVED JUDGMENT

This judgment was handed down electronically at 10.00 am on 4 October 2024 by circulation to the parties or their representatives and by release to the National Archives.

Mr Justice Fancourt:

1. On 21 May 2024, I handed down a judgment ("the May 2024 Judgment") which decided that the Claimant ("the Duke") had failed to draft amended Particulars of Claim that complied with my Order of 27 July 2023 ("the July 2023 Order"), granted permission in principle for certain proposed voluntary amendments to the Particulars of Claim and refused permission for others, and refused permission for yet further amendments unless appropriate particulars were provided.

2. I gave directions on 21 May 2024 ("the May 2024 Order") requiring the Duke to serve a further version of his draft amended Particulars of Claim that gave proper effect to the 27 July 2023 Order and pleaded his permitted and conditionally permitted voluntary amendments in accordance with the terms of the May 2024 Judgment, distinguishing between each category of amendments.

3. Anticipating that any draft provided by the Duke would not be agreed by the Defendant ("NGN"), I directed that NGN should respond in the form of a schedule, identifying which parts of the draft were objected to, and that I should resolve any dispute on the papers.

4. By the time of a case management conference in the MTVIL managed litigation in July 2024, NGN had responded as directed to the Duke's further draft, but it was clear that a longer process of re-drafting and identification of disputed content would be needed. The Duke agreed to submit a further revised draft, taking account of some of NGN's objections. I directed that NGN should serve a further schedule of objections by 7 August 2024 and that the Duke should respond in the schedule by 21 August 2024. There would then be written submissions exchanged by 4 September 2024, so that I could determine the remaining disputes expeditiously on the papers thereafter. The directions were complied with, save that the parties agreed to extend the deadline for filing their submissions.

5. As a result of holidays of court staff, my clerk and myself during the court vacation, the materials were not available to me until Monday 23 September 2024.

6. This work – to finalise the Duke's pleaded case – is being done in the context of a 6-8 weeks trial due to start in January 2025, and there are existing directions for witness statements of fact to be exchanged starting in late October 2024.

7. It is clearly imperative that the content of the pleaded case is resolved as soon as possible. I had, perhaps unduly optimistically, expected that the residual disputed material would be limited, in view of the length and detail of my May 2024 Judgment explaining exactly what was permitted and what was required. But, in the event, I am faced with a table of disputes running to 44 pages, with 49 separate items or groups of items disputed (only a handful of which were eventually agreed) ("the Table"), and 34 pages of dense submissions by NGN in support of their objections, which amplify the content of the Table.

8. NGN submits that I should now rule that the consequential amendments do not give effect to the July 2023 Order and that the voluntary amendments for which permission is sought should be refused.

9. I have previously indicated to the parties that this individual claim (not the MTVIL as a whole), although it raises important issues, is starting to absorb more than an appropriate share of the court's resources, contrary to the requirement in the overriding objective to deal with cases justly and at proportionate cost. It is now doing so. The claim at times resembles more an entrenched front in a campaign between two obdurate but well-resourced armies than a claim for misuse of private information. It is unsatisfactory to say the least that the court should be faced a second time with having to resolve such a large extent of disputed material on amendments to a statement of case.

10. I have also previously indicated that this claim will not be adjourned and will be either tried in January 2025 or settled, since it was issued as far back as September 2019 and has been stood out of eligibility for 2 previous listed trial dates. That remains the position.

11. In light of this and the urgency of the matter, having regard to the imminence of final trial preparations, I shall make this judgment as short as reasonably possible, so that matters can progress without delay. I have read carefully the contents of the Table and the written submissions of both sides. The fact that I do not refer to each point raised and every argument deployed does not mean that I have not considered them in reaching my conclusions.

12. It is important also to bear in mind that there are two different types of proposed amendment in the final draft amended Particulars of Claim ("the Draft") that are unresolved: (1) consequential amendments, to give effect to my 2023 Order that (in effect) the remaining causes of action for misuse of private information ("MOPI") must be disentangled from the previous allegations of mobile voicemail interception, so that it is clear what causes of action remain; and (2) the voluntary amendments, to add permitted new claims where, in my May 2024 Judgment, I concluded that they were permitted in principle but inadequately pleaded. This second category comprised "landline claims", as defined in the May 2024 Judgment to include landline voicemail interception ("LVMI"), live phone call interception, bugging, analogue scanning and tracking, and breach of confidence claims. There were also some minor points where clarification of the pleaded case was required.

13. These are the only matters that should be live at this stage: all other proposed amendments were either permitted or refused by my May 2024 Judgment and Order. The revised draft directed by the May 2024 Order was therefore not a further opportunity for the Duke to plead discrete new causes of action that had not been pleaded in the original draft, nor was the Table an opportunity for NGN to raise new objections to the content of the previous draft. Regrettably, it appears to me that, to varying extents, both parties have crossed the line in these respects beyond what was indicated in the May 2024 Judgment as permissible. Thus, for example, NGN's renewed complaint about various parts of the draft being "otiose" or "vague" or "confusing" will not be entertained, save where the criticism relates to the newly drafted material itself. In this regard, the Duke makes quite clear, in his draft and in the Table and his submissions, that his causes of action are limited to those specified in paras 22A-I of the Draft and Parts G and H of its Schedule, so it is pointless for NGN to complain that it is unclear whether other material in the Draft is relied on as a cause of action.

14. On a different point, it is somewhat obtuse and pointless for NGN to complain that the Duke has failed to give full particulars of the nature of the MOPI complained of, or the acts that amounted to a breach of a duty of confidence ("BOC"), who exactly committed

the wrong in question and when, where the facts relating to the Duke's case have allegedly been concealed by NGN and are not within his knowledge. As regards Parts G and H of the Schedule to the Draft, the Duke pleads that these contain the only facts, by way of particulars, that he is able to plead and (subject to evidence emerging *ex improviso* at trial) that he will adduce at trial, and that his case as to the alleged MOPI or BOC is an inferential one, based on the only known facts. In the event that the Duke seeks to lead further *facts* relevant to any cause of action at trial that have not been pleaded, NGN will be entitled to object. NGN may have a point in some individual causes of action alleged, however, where it is said that the Duke has not spelt out what information is alleged to be private or confidential *to him*, especially where the pleaded facts relate to PI activity directed at one of his associates.

15. With that introduction, I deal briefly below with each of the separate heads of objection (called "Rows" in the Table).

i) Row 1 – this objection to the BOC claims being pleaded in the claim form is consequential on NGN's objections to the way that the BOC claims are pleaded in the draft amended Particulars of Claim (hereafter, "the Draft"). It therefore follows resolution of the question whether BOC claims are adequately pleaded.

ii) Row 2 – The paragraphs of the Draft objected to here (4C-6D) are generic allegations of wrongdoing by NGN, but which identify the specific PIs alleged to have been involved in the subject-matter of the Duke's claim. Paragraph 5 correctly names the individuals at NGN alleged to have been involved in three different categories, as required by the May 2024 Judgment. The PI payments in paragraph 6 are not to be taken as evidencing or constituting causes of action, except to the extent that these are pleaded in paragraphs 22A-I or in Parts G and H. I do not accept that there is confusion as to what the causes of action are on which the Duke relies. Objection dismissed.

iii) Row 3 – The Duke has now identified the specific PIs who are alleged to have been involved with the content of Parts G and H. The Duke's inability to allege further specific facts about what the PI did is different in principle from a claimant who pleaded undifferentiated reliance on the entirety of the PI Annexe and identified no PIs or any connection to him or her. The connection here is established by the payment records relied upon in relation to Parts G and H. Objection dismissed.

iv) Row 4 – s/a Row 3. Objection dismissed.

v) Row 5 – this objection is also consequential on the objections to the pleading of the BOC claims.

vi) Row 6 – the version of the further amendments set out in the Duke's response in the Table amounts to a restriction on what was previously contained in the draft amended Particulars of Claim. It amounts to a plea of a generic case of wrongdoing that previously existed and was not required by the May 2024 Judgment to be removed. NGN is not entitled to raise this at this stage. Objection dismissed.

vii) Row 7 – this plea was already present in the Particulars of Claim and is not an amendment or content that was required to be removed to comply with the July 2023 Order. The amendment to it only limits reliance on such matters to the

remaining Unlawful Acts, as defined. It is made clear by the Duke that these invoices are not relied on as causes of action unless they appear in Parts G or H. NGN cannot now object to content that was already pleaded and which is not inconsistent with the remaining causes of action. Objection dismissed.

viii) Row 9 – the May 2024 Judgment required clarification of the extent of the "landline claims", including LVMI, with appropriate particulars. The amendment comprises a generic allegation about use of VMI and LVMI by NGN's journalists and PIs, by reference to the generic case, and a specific plea that it took place in relation to two of the Duke's associates, identified with telephone numbers in Confidential Part B of the Schedule. The May 2024 Judgment did not preclude the Duke from adding further landline numbers or associates. The LVMI claim remains pleaded on a limited basis, relating to only those numbers. The allegations in para 6C(a) are permissible as establishing the basis for the specific allegations and causes of action, given that the Duke does not know the facts about who in particular carried out LVMI. The revised version of the plea offered in the Duke's response in the Table appropriately defines the extent of the allegation. The causes of action are taken to be limited to those specified in Parts G and H. Objection dismissed.

ix) Row 10 – the substance of the plea at paragraph 6D of the Draft was previously pleaded, and only an inference of use directed at the Duke and all his associates has been added. The requirement was for the Duke to provide particularity, so far as he was able to do so. Pending disclosure relating to this plea, it is understandable that the Duke cannot provide specific details of live call interception, but the allegation has been made in relation to all his associates for the entire period of the association. No particulars are provided about bugging and a previous specific allegation in relation to Chelsy Davy's car has been withdrawn. Permission is refused for the allegations of planting bugs in rooms and residences and bugs or tracking devices on cars, as no particulars whatsoever of such allegations have been provided. The objection is therefore upheld to this extent only.

x) Row 11 – paragraphs 7-11 and 12A are not relied on as causes of action, save in so far as their content is also contained in Parts G or H. They existed prior to the amendment application and only such further amendments as are appropriate have been made. Objection dismissed.

xi) Row 12 – s/a Row 11 above.

xii) Row 13 – the allegation of targeting by Mr Mulcaire was already pleaded and the amendment now restricts this to the Unlawful Acts, as defined, and complies with the requirement of the July 2023 Order in limiting the allegations to UIG that is not accessory to VMI, while specifying that the causes of action are those specified in Parts G and H. The best particulars that the Duke is able to provide of Mr Mulcaire's involvement are those pleaded at paragraphs 11 and 20(a). There is no failure to comply in these amendments. Objection dismissed.

xiii) Row 14 – s/a Row 13 above. Objection dismissed.

xiv) Row 15 – paragraph 12A pleads facts that follow from the allegations in paragraphs 6C and 6D, if those are proved – and is necessarily limited to the numbers of Ms

Davy and Mr Dyer – and then the inferences that will be drawn from the facts and the effect of those inferences. Objection dismissed.

16. Row 16 – paragraph 13 is not relied on as a cause of action, and there is in any event nothing materially new that is pleaded here by way of amendment. The amendments are mostly deletions in accordance with the July 2023 Order and the May 2024 Judgment. Objection dismissed.

    i) Row 18 – there is no material change in paragraphs 14-18 other than appropriate deletions. Objection dismissed.

    ii) Row 19 – s/a Row 18.

    iii) Row 21 – there is nothing new of substance in paragraph 19 other than to plead BOCs by reference to specific matters pleaded later in the Draft. This is really consequential on other objections raised by NGN.

    iv) Row 22 – s/a Row 13. The plea is to be taken as the best particulars that the Duke is able to give and adduce at trial as to the UIG of Mr Mulcaire. The matters alleged are not relied on as causes of action but as evidence that Mr Mulcaire conducted UIG generally. What inference is to be drawn from that, if any, in relation to the pleaded causes of action is a matter for trial. Objection dismissed.

    v) Row 23 – this is consequential on other objections raised by NGN.

    vi) Row 24 – paragraphs 22A-22E introduce the pleaded causes of action for MOPI, in response to the requirement for the Duke to give the best particulars of facts to be proved at trial that he can. The articles now said to evidence MOPI in respect of which the Duke can claim are identified by Part G, as amended, and in Part H in cases where no article is said to have resulted from the UIG alleged. The case based on Parts G and H is clearly inferential, as the Duke does not (and cannot) know all the facts. In relation to MOPI claims, the May 2024 Judgment did not require consequential amendments of what was already pleaded as Part G, only that allegations in respect of non-VMI UIG should be identified as such. This the Duke has done, by his amendments to Part G, even though he is unable to state exactly what was done and by whom to obtain his private information. There is however no excuse for any failure on the part of the Duke to identify what information is said to be private, though in many cases this is self-evident from the nature of the articles said to result. Overarching objection dismissed.

    vii) Row 26 – paragraph 22B.1 merely introduces the function served by Part G. Any objection is consequential on the further objections to the content of Part G.

    viii) Row 27 – paragraph 22B.2 merely pleads in general the nature of the Unlawful Acts and the relevant PIs. Objection dismissed.

    ix) Row 28 – the complaint about paragraph 22B.3 is that Part G does not specifically identify the unlawful act. The complaint is therefore misdirected and the objection dismissed.

x) Row 29 – paragraph 22C introduces Part H, making it clear that the case in relation to each matter identified in Part H is an inferential one. The complaint about this paragraph is therefore misdirected and the objection is dismissed.

17. Row 30 – paragraph 22D is apparently an attempt to rely on causes of action that cannot be identified, as the Duke seeks to bring a claim in relation to other causes of action of which he can provide no particulars whatsoever. This is misconceived. A claim cannot be brought in respect of unidentifiable causes of action: there must be some factual foundation for an individual allegation of MOPI. Whether damages awarded for repeated misuse (if established at trial) can extend beyond the specific causes of action proved is a separate question. The amendment except for the first sentence of paragraph 22D is therefore disallowed.

i) Row 31 – paragraphs 22F-I are the equivalent paragraphs to 22A-E but in respect of the BOC claims. They only in substance introduce the BOC claims advanced on the basis of the facts set out in Part G, articles 1-21. Paragraphs 6(b) and 15(b)(ii) are not relied on as causes of action. The complaint about lack of particularity of confidential information in Part H is addressed below. The overarching objection is dismissed.

18. Row 32 – paragraph 22G introduces the BOC claims in Part G. As to the criticism that in relation to each claim it is not identified (as required) whether the information is alleged to be self-evidently confidential or only confidential on the basis of particular facts, it is true that the Duke has not addressed this and so it must be taken that, absent a plea of particular facts relied upon to establish confidentiality, his case at trial is that the information identified is self-evidently confidential. The Duke will not be permitted at trial to rely on unpleaded facts to establish the confidential nature of information relied on. The complaint that paragraph 22G.1 is internally inconsistent (as opposed to clumsily drafted) is not understood, as it is arguable both that there was a breach regardless of the character of the information and that the information was confidential.

i) Row 33 – paragraph 22H raises the same issue as Row 30, above, and the objection to all but the first sentence is upheld for the same reason.

ii) Row 34 – this objection is not understood. The plea is perfectly conventional and satisfactory, at least in the varied form proposed by the Duke in his response in the schedule. Objection dismissed.

iii) Row 35 – consequential on other objections.

iv) Row 36 – consequential on other objections.

v) Row 37 - consequential on other objections.

19. Row 38 – this objection relates to the adequacy of Part G as the only place where particulars of individual causes of action are provided. NGN's main objection is that in each case the column headed "Unlawful act alleged" is completed on an unspecific and generalised basis, without specifying exactly what unlawful act is alleged. This is in my view misconceived. The plea is that the Duke *infers* that the information in question was wrongly obtained by one means or another. The Duke is not in a position to plead how NGN obtained it. The plea of *inference* makes clear that the Duke's case is not based on

facts other than those that are identified, from which he will seek to draw inferential conclusions. If a different factual case from that pleaded is led by the Duke at trial, as opposed to facts emerging *ex improviso*, NGN will be able to say that the case advanced on the facts is not pleaded as a cause of action.

As to the complaint that the information said to have been misused or obtained in breach of confidence has not been adequately identified, it was pleaded in a somewhat shorthand way, by reference to the content of the published article, in the original Particulars of Claim. The consequential amendments required the Duke to excise the VMI claims, not re-plead the non-VMI claims. In fact, Part G as further revised contains more detail than the original Part G. NGN therefore cannot raise now an objection to the general style of pleading in Part G.

In any event, in most cases, it is obvious what information that was published the Duke is complaining about, as I stated in my May 2024 Judgment. NGN complains instead that more specificity is now required because it is necessary to clarify why the remaining causes of action are non-VMI claims. I disagree. The Duke has removed those articles where the claim was only based on VMI, and the remaining articles must be taken to be those where the Duke alleges non-VMI UIG. The May 2024 Judgment did not require the Duke to explain *why* the causes of action were not VMI claims, only to plead with adequate particularity his non-VMI claims. Whether the Duke can explain why the remaining claims are not VMI claims may be highly material in cross-examination, but it is not a matter for pleading.

The BOC claims introduced by reference to articles 1-21 plead the confidential information and the unlawful act in the same style as the MOPI claims. In most cases, the identity of the confidential information is clear enough from what is pleaded read alongside the article in question. I would therefore reject the argument that insufficient particularity has been pleaded generally, and consider whether in relation to any individual articles complained about there has been a failure to comply.

This overarching objection is therefore dismissed.

20. Row 39 – the objection to rows 14 and 15 of Part G relates to the description of the confidential information, namely "Confidential information regarding the Claimant's activities on a trip *and/or the article marks an occasion around which there was unlawful information gathering*" (emphasis added). The plea is in the context of a BOC claim, as the articles date from 1998, and so the cause of action is breach of confidence, not MOPI. It is unclear to me what the alternative plea can mean, without identifying other confidential information apart from what was published. The inference of unlawful act relating to both articles, in column G of Part G, refers to the nature of the confidential information in column F as being the basis of the inference. I therefore agree with NGN that this plea does not make sense. If the Duke intends to plead other confidential information that was not in the publication, he needs to do so expressly. The objection is upheld and permission to include the words "and/or the article marks an occasion around which there was unlawful information gathering" is refused.

21. Row 40 – this objection relates to a discrete point in that unlawful act or acts broadly pleaded in column G for rows 24-25 include the words "and/or computer (email) hacking (as defined in paragraph 3(c) of the PI Annexe to the RRAGPCD)". This appears to be a

new sub-species of claim that has not previously been introduced into the proposed voluntary amendments. The reason why it is pleaded here is that the articles were written by Mr Goodman, who worked closely with Mr Mulcaire, who has previously been admitted by NGN in one case to have used computer hacking. On that revised basis, it can be seen that the allegation is in relation to PI activity by Mr Mulcaire and is not a new claim against NGN's journalists that would be subject to s.35 Limitation Act restrictions, for the reasons given in the May 2024 Judgment. On that basis, NGN's objections seem to me to fall away and the plea is a legitimate and specific allegation for which there is some evidential foundation. Objection dismissed.

22. Row 41 – this objection raises a similar issue to Row 40, above. What is alleged as one possible unlawful act in this case is "unlawful payments to employees of private companies (as defined in paragraph 1(h) of the PI Annexe to the RRAGPCD)". If the allegation is that PIs made the unlawful payments to employees, it seems to me to be permissible for the same reasons given in relation to row 40. However, it is not clear that this is the case, as the Duke argues that an employee providing information in return for payment would be in the same position as a PI. I do not accept that such an employee is to be equated with a PI, as defined in the Draft by reference to the PI Annexe. Accordingly, if the case intended to be advanced is that NGN's journalists made unlawful payments to employees of private companies, that is arguably a new claim, newly raised, and is too late to be raised now, even if it can be said to arise out of the same or substantially the same facts as other allegations (which is doubtful). Accordingly, unless the Duke is able properly to plead that this is an allegation that one or more of the PIs identified as being relevant to his claim made unlawful payments to employees, and includes all facts that he intends to advance at trial in that regard, permission to make this amendment is refused to the extent of the words quoted above, but not otherwise.

23. Row 42 – the objection here is to repeated use in different variant forms of the formulation "and/or supplied the product of their [PI] activities to [NGN]", on the basis that no case for mere supply to NGN being unlawful or otherwise a MOPI is pleaded. The Duke accepts in his response in the Table that a further amended version is appropriate, adding the words "(who knew that it has been illegally obtained and/or used the material provided for unlawful purposes)". To this, NGN contends that "and/or used the material provided for unlawful purposes" is objectionable for lack of particularity of the unlawful purposes. I agree with NGN that, if NGN did not know that the material it received (unrequested) had been obtained illegally, the basis on which it is suggested that it then used the material unlawfully needs to be particularised. It has not been, and so I disallow from the proposed revised amendment (which I otherwise permit) the words "and/or used the material provided for unlawful purposes" in relation to each row of Part G identified in the schedule.

    i) Row 43 – for reasons previously given, I refuse permission for the amendment to row 78 on the ground of want of particularity. There is no clue provided, in the pleaded case, as to the UIG alleged or (if different) the underlying infringement.

    ii) Row 44 – The issue here is the same as in relation to row 41. The amendment is only permissible if it is made clear in the pleading that what is alleged is that a PI made an unlawful payment to an employee. Otherwise, the amendment is not permitted in any of these cases.

iii) Row 46 – the issue here is whether allegations of computer hacking and "social media hacking" are permissible as further particulars of UIG by PIs or are objectionable as new claims. The answer is the same as for rows 41 and 44: the amendment is only permitted if what is being alleged is that PIs hacked into computers and social media, and if all the relevant facts known by the Duke in this regard are pleaded. If this is the case, the wording should be further amended by adding "by PIs" after the words quoted in the Plea column in row 46.

iv) Row 47 – there is no private information referred to in column F, contrary to what is said in column G of this row. If the article is intended to be an "asterisk" article then, by definition, the private information is not what was published. There is no clue given in the pleaded case about what the private information is or about the unlawful extraction of it. It is unclear how the content of the article is said to relate (if at all) to the MOPI. Permission is refused for that reason.

v) Row 48 – this objection relates to the presence and content of Part H. There is a subsidiary point relating only to article A.

Part H is causes of action based on payment records, which are not alleged to be directly connected to any published article. Broadly, the Duke relies on the content of the payment record (if otherwise unexplained) and the generic evidence to give rise to an inference that the payment was for some UIG, and accordingly a misuse of his private information (see paragraph 22C of the Draft). The Duke says that he has no other facts to plead in relation to these payment records. The question is whether sufficient particulars of a cause of action arising from each payment record have been pleaded.

Once again, it is hopeless for NGN to complain that the Duke has not pleaded exactly who did what. The Duke does not know that, by reason of the nature of the case. He does however have to identify at trial that the invoice related to obtaining or attempting to obtain *his* private information, or was otherwise an actionable wrong. No wrong other than MOPI is alleged. A connection with the Duke's private information is significant because NGN says that 18 of the payment records pleaded do not mention the Duke; they relate to Chelsy Davy.

There is no doubt that the invoices themselves give rise to an arguable case where the named object of the inquiry was the Duke. That is probably also the case, as it proved to be in some instance in the Duke of Sussex v MGN Ltd decision, where the payment record names particular associates. However, the issue here is a separate pleading issue: should the Duke be required to specify, either in all cases or in relation to the 18 invoices, the basis on which it is alleged to relate to his private information? In my view, the obvious answer to that is that in each case it is sufficiently clear what the private information of the Duke is, namely detail of his private relationship with Ms Davy.

24. The subsidiary point is that payment record A is dated 7 August 2000, which means that no claim for MOPI can exist. Paragraph 22C pleads that Part H relates to misuse of private information only. On that basis, as the Duke accepted in his written submissions, the claim in relation to record A cannot standand permission is refused for that amendment, but otherwise granted for Part H.

i) Row 49 – the only objection raised here is that the invoices in rows 2, 41, 51 and 52 were not pleaded in the previous draft amended Particulars of Claim. The Duke argues that they were omitted in error from the original draft. It does not seem to me that there is any substantial prejudice in permitting the Duke to rely on these additional payment records, which were disclosed by NGN. A selection of the payment records in Part H will need to be made for trial in any event, as there are too many (as with the articles) to make a trial of all of them proportionate. I dismiss this objection.

25. It follows that I grant permission for the amendments in the Draft except to the extent of the matters identified under rows 10, 30, 33, 39, 41, 42, 43, 44, 46, 47 and 48 above. Where, in relation to any of those rows, I indicate that permission would be granted on a particular basis but not as pleaded, the Duke must either remove the amendment from the Draft or vary the plea as indicated.

26. There are further references to "bugging" in a generalised form in para 4C(b) of the Draft and at row 51 of Part H, where the phrase "Bugging and/or other Unlawful Acts" appears. There being no particulars of these allegations, permission for them is refused. It follows from the above that I should also refuse permission for the Duke's proposed amendments to the Claim Form to the extent of the words "and/or the use of listening and tracking devices".

27. The parties disagreed about whether the terms of the July 2024 Order should include a requirement that the parties identify their cases as to the date on which they contend that any landline claims are deemed to have been issued (on the basis set out in *Advanced Control Systems, Inc v Efacec Engenharia e Sistemas S.A.* [2021] EWHC 914 (TCC)) ("the ACS Date") (see at [189] of the May 2024 Judgment). The July 2024 Order does not include that requirement for the simple reason that it was not ordered at the time of the July 2024 hearing. It is however necessary for any dispute about the ACS Date to be resolved. The Duke contends that, subject to NGN pleading limitation to the landline claims, it would argue that permission to bring the claims should be subject to a deemed ACS Date of 7 September 2017, i.e. 6 years before the Duke's application for permission for the voluntary amendments was made. NGN clarified that its position is that the date is the date on which the amended Particulars of Claim are actually served. Whether this difference is best resolved before or at trial I leave to the parties to consider. The consequence of deciding it at trial would be that evidence of the Duke's actual and constructive knowledge of the matters alleged would have to be investigated at two different dates, but whether that is unduly burdensome, compared with the time and cost of resolving it ahead of trial, is unclear at this time. In any event, the reality is that it is very unlikely that I will be able to receive submissions and determine this issue before the date set for exchange of witness statements.

28. There is only limited time for the final version of the Amended Particulars of Claim to be pleaded, served and responded to by way of Amended Defence. Both parties should continue to work on the statements of case without delaying until receipt of the hand down version of this judgment. The parties should include with their suggested corrections to the draft judgment a proposed timescale for these steps, as part of a draft order reflecting the content of the judgment. I will make an order on the date of formal hand down of this judgment.