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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 July 2025

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, 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
Sheridans Solicitors LLP for the **Sixth and Seventh Claimants**
Andrew Caldecott KC (skeleton only)**, Antony White KC, Catrin Evans KC, Sarah Palin,** and **Ben Gallop** instructed by **Baker McKenzie LLP** for the **Defendant**

Hearing dates: 6-7 May 2025

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Approved Judgment

This judgment was handed down remotely at 2pm on 11 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Nicklin :

1. This judgment is divided into the following sections:

2. This is the judgment arising from the second substantial case management hearing in the claims for misuse of private information brought by the Claimants against the Defendant.

3. This judgment necessarily deals with various allegations made by the Claimants against named individuals. The Court is dealing with interim stages of this litigation. As such, I am not resolving whether these allegations are true, and this judgment must be read and understood accordingly.

A: Litigation history

4. The Claim Forms in each claim were issued on 6 October 2022.

5. The Defendant's application for summary judgment, on the issue of limitation was dismissed, on 10 November 2023 ([2024] 1 WLR 3669) ("the Limitation Judgment"). The background to the Claimants' claims is explained in the Limitation Judgment.

6. During 2024, there was a short hiatus, whilst the Claimants sought and obtained permission from the relevant Ministers to use in the litigation certain documents from the Leveson Inquiry, before the parties exchanged statements of case (including Rejoinders).

7. The first case management hearing took place on 26-27 November 2024. ("First CMC"). The Court set a timetable up to a trial – now listed for 9 weeks from 14 January 2026 – and dealt with costs budgeting ([2025] EWHC 106 (KB)). Further case management hearings were fixed for 6-7 May 2025 ("Second CMC") and 1-2 October 2025 ("Third CMC"). A pre-trial review is fixed for 27 November 2025.

8. Between the First and Second CMCs, by 21 March 2025, the parties were ordered to provide disclosure. The Second CMC was specifically fixed to deal with (a) any issues arising from disclosure; and (b) amendments to the statements of case. To that end, the Order of 26-27 November 2024 ("the First CMC Order") required the Claimants to provide any draft Amended Particulars of Claim by 17 April 2025, with any application for permission to amend being dealt with at the Second CMC. During the hearing, I made clear: "*I'm imposing that deadline for the amended Particulars of Claim to bring some discipline to the process*".

B: Issues in the litigation

9. It is important to set out the principal issues to be resolved in this litigation as they arise from the statements of case. The statements of case follow the same structure and, ignoring factual matters specific to the individual Claimants, raise largely the same issues.

(1) Core allegations made by the Claimants

10. The claims are based on the tort of misuse of private information and, in one case, breach of confidence.

11. The claims rely principally upon alleged unlawful information gathering ("UIG") by individuals acting on behalf of the Defendant ("Associated"). The pleaded types of alleged UIG are (i) phone hacking; (ii) phone tapping; (iii) blagging information; (iv) burglary to order; and (v) the commissioning of third-party investigators (including search agencies and private investigators) ("TPIs") to commit acts of UIG.

12. The core allegations in the POC fall into three categories:

    (1) specific claims that:

        (a) each Claimant was "*targeted*" by Associated using UIG during a specified period; and

        (b) the information obtained through UIG resulted in articles published by Associated identified in Schedule B of the Particulars of Claim (save that in the claim by Sir Simon Hughes, no articles are relied upon).

    (2) specific claims that Associated carried out these types of UIG in respect of third parties (not the Claimants), which resulted in further articles published by Associated identified in Confidential Schedule C of the Particulars of Claim; and

    (3) a general allegation that 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*".

13. Category (1) consists of specific acts of wrongdoing alleged to amount to misuse of private information by each Claimant. Categories (2) (referred to by the parties as the "*similar fact*" case) and (3) (referred to as the "*generic case*") are pleaded as providing evidential support for the wrongdoing alleged in Category (1).

14. Category (2) sets out the key "*similar fact*" evidence relied upon by the Claimants to establish a *modus operandi* of the TPIs relied upon. Schedule C to the Particulars of Claim contains specific examples. With some exceptions, the matters relied upon in Schedule C focus on the activities of the TPIs. Although a few Pleaded Journalists are named in Schedule C, they are not its focus.

15. Category (3) – the generic case – is exceptionally broad. It is advanced, in the Particulars of Claim in each of the claims, in the following terms:

> "8. The Claimant will contend that the use of these Unlawful Acts was both habitual and widespread across Associated's newspapers during the period at least 1993 onwards to 2011 and even continued beyond until 2018. In support of this contention, pending full and proper disclosure of all relevant documents being provided and/or responses to requests for further information being given, the Claimant will rely upon the following facts and matters (which are further detailed in paragraphs 9 to 14 below):
>
> a. The very large number of different private investigators who were instructed or commissioned by Associated to obtain information through unlawful or illegal means, as they were by other tabloid newspaper groups such as News Group Newspapers and Mirror Group Newspapers (and in respect of which their activities have been admitted or demonstrated to have been unlawful or illegal).
>
> b. The considerable number of different journalists, as well as desks or departments, within the *Daily Mail* and *Mail on Sunday* who commissioned these private investigators, some of whom came to work at these newspaper titles following their employment at other newspapers where these same unlawful activities were also heavily used such as the *Daily Mirror*, the *Sunday Mirror*, *The People*, *The Sun* and the *News of the World*, including by these same journalists.
>
> c. The substantial amounts of money paid by Associated to these private investigators for carrying out such services, and the fact that these amounts were known to and approved by executives at Associated's newspapers.
>
> d. The fact that the activities of these private investigators were known or must have been known to be (or were obviously) unlawful or illegal, not least given the nature of the information requested and/or provided, and the manner in which it was obtained, as well as the amounts of money paid for it (ie. in excess of what the cost would be if the information was freely or lawfully available).
>
> e. The substantial number of victims (including the Claimant) who were targeted by Associated using these Unlawful Acts, including the publication of articles which exploited the information unlawfully or illegally obtained as a direct result in the *Daily Mail* and *Mail on Sunday* (as well as on *MailOnline*).
>
> 9. Pending the provision of disclosure and/or further information, the Claimant will refer by way of example to the instruction or commissioning by Associated of the following private investigators (and some of their corporate identities) and the Unlawful Acts which they carried out for them during the period of at least 1993 onwards to 2011 and even continued beyond until 2018…"

16. Nineteen TPIs (some using aliases) have been identified by the Claimants ("the Pleaded TPIs"). They are alleged to have engaged in UIG and (in Paragraphs 10-11 of the Particulars of Claim) to have been instructed by identified Associated journalists and

desk executives. In total, 82 different journalists/editors/executives are named in the Particulars of Claim as being potentially involved in UIG ("the Pleaded Journalists").

17. The claims concern 53 different pleaded Schedule B Articles (i.e. articles relating to the Claimants themselves) and a further 17 pleaded Schedule C Articles, concerning additional individuals other than the Claimants (together "the Pleaded Articles"). 65 pleaded associates of the seven Claimants are also alleged to have been likely targets of UIG.

18. In Paragraph 15 of the Particulars of Claim, each Claimant contends:

> "For the avoidance of doubt, the Claimant will rely upon the fact that these Unlawful Acts were habitually and widely carried out or commissioned by Associated and its journalists (as set out in paragraphs 9 to 14 above) in support of her case that the same Unlawful Acts were also carried out or commissioned against her … as part of the *modus operandi* of obtaining, preparing and publishing stories during this period. In the premises, the Claimant will contend that she was one of the victims of Associated's widespread unlawful or illegal activities."

19. It is a feature of the Particulars of Claim that each Claimant sought to reserve his/her position pending provision of disclosure and/or further information. This expansive style of pleading is generally undesirable because it injects uncertainty as to the parameters of a claimant's case. In these claims, whilst it may have been defensible when the Particulars of Claim were originally drafted, each claim has now progressed beyond the stages of disclosure and further information. I will return to this point later in the judgment (see [274] below).

(2) Associated's Defence

20. Associated's answer to each of the Claimant's allegations – pleaded in its Defence to each claim – is straightforward. Associated denies all the allegations of unlawful activity in respect of each Claimant, including phone hacking, phone tapping, blagging, or commissioning private investigators to target them. Specifically, Associated denies in respect of each Claimant (a) that its journalists engaged in or commissioned unlawful acts; (b) using information obtained through illegal means; (c) misusing each Claimant's private information; or (d) commissioning or paying the Pleaded TPIs. Associated does admit that, prior to April 2007, some journalists used search/enquiry agents to obtain contact details, but not for illegal purposes. Associated's case is that use of private investigators ceased in 2007.

21. In relation to the Claimants' similar fact and generic cases, Associated's response is set out in the Defence as follows:

(1) Paragraph 6:

> "… [the] 'similar fact' case is… of no real probative value to the Claimant's case and its disposal at trial would be disproportionate and contrary to the overriding objective, including by reason of the fact that many of the journalists and alleged "private investigators" referred to as part of that case are not said to have had targeted the Claimant in any way or to have had any involvement in the articles about which she complains."

(2) Paragraphs 11.2-11.4:

> "… [the Claimants] also impermissibly seek to introduce a distinct and unparticularised assertion of general wrongdoing by Associated's journalists over a period of some twenty years [– the generic case –] to support an inference that the Claimant was also subjected to wrongdoing. That [generic] case is replete with unparticularised allegations of illegal or unlawful information gathering and serious criminal acts of almost limitless scope which are said to be pleaded 'pending disclosure'. It is not possible or practical for Associated to give a detailed response to such generalities so as to comply with CPR 16.5. In this context Associated will rely on and refer to the overriding objective and the importance of particularity in terms of achieving a fair, timely and manageable trial of the real issues between the parties at a proportionate cost both to the parties and in terms of Court resources (including time). Associated will further rely on and refer in this context to the mandatory requirements set out in paragraph 8.2 of the Practice Direction in CPR Part 16 (Statements of Case) and to those set out in paragraph 5.32 of the King's Bench Division Guide. In particular, in contravention of the foregoing requirements, the pleading includes allegations of serious criminal conduct without providing any proper particulars…"

22. Associated also relied upon a defence of limitation – under s.2 Limitation Act 1980 – in answer to each Claimant's claim.

(3) The Replies

23. Each Claimant has served a Reply.

24. As to the substantive claim, each Claimant has:

(1) criticised Associated for "*singularly [failing] to answer [each] Claimant's highly compelling case (even without the benefit yet of disclosure) that Unlawful Acts were carried out or commissioned on a widespread and habitual basis… during the period from at least 1993 to 2018*";

(2) complained that Associated had failed to explain for what lawful basis the TPIs could have been used by Associated; and

(3) contended that Associated's denial that the articles identified by each Claimant were the product of UIG was "*unconvincing*" and that:

> "… no plausible alternative justification is provided, nor cogent explanation for why the bylined journalists would not have used the same private investigators, blaggers or other third parties they frequently instructed (and who used unlawful or illegal methods to obtain information) for the preparation or corroboration of the Unlawful Articles in this claim".

25. In response to the limitation defence, each Claimant has alleged that Associated – through covert methods inherent in UIG, euphemistic language, misleading article sourcing, and document destruction – concealed facts relevant to his/her claim and has relied upon s.32 Limitation Act 1980 to defeat Associated's limitation defence.

Each Claimant has provided details of what has been called his/her "*personal watershed moment*" ("the Watershed Moment"); the point at which the Claimant realised that s/he had a claim worth pursuing against Associated in respect of the claim now pursued.

(4) The Rejoinders

26. Associated has filed a Rejoinder in each claim in which it denies that the relevant Claimant can rely upon s.32 Limitation Act 1980. Associated has denied deliberate concealment of any matter from the relevant Claimant and complained that each Claimant had failed properly to identify the facts that were concealed. Alternatively, Associated contends that, prior to 6 October 2016 (being 6 years before the claims were commenced), each Claimant either had actual knowledge or, with reasonable diligence, could have discovered sufficient facts to render his/her claim worthwhile. The facts alleged in support of both actual and constructive knowledge relevant to each Claimant are set out in each Rejoinder.

C: Disclosure

27. The First CMC order required the parties to give standard disclosure. The parties exchanged disclosure lists on 21 March 2025.

28. The test for standard disclosure is provided in CPR 31.6. Save for documents that are specifically required to be disclosed by a practice direction, standard disclosure requires a party to disclose only:

> "(a) the documents on which he relies; and
>
> (b) the documents which –
>
> (i) adversely affect his own case;
>
> (ii) adversely affect another party's case; or
>
> (iii) support another party's case."

29. The approach adopted by Associated – in what I accept has been an onerous disclosure process – has been explained in the 9th Witness Statement of Francesca Richmond, a solicitor at Baker McKenzie. As summarised in its written submissions for the hearing, Associated has carried out searches for and, when located, disclosed:

> (1) any document containing references to blagging, phone tapping, phone hacking or burglary to order or synonyms of the same, or the use of private investigators or other such third parties to carry out such work;
>
> (2) any document relating to obtaining any of the following categories of information or subject matter: occupancy searches; flight records (including contact with flight operators or travel agents); ex-directory phone numbers; medical information or contact with medical professionals; financial information (including bank details); phone (mobile or landline) or other bills; call logs; live content of telephone conversations; voicemails; vehicle records;

criminal records checks; payments to public officials; social security numbers and/or traces;

(3) any document showing a payment or instruction to a Pleaded TPI in respect of any Claimant or his/her pleaded associates during the relevant targeting period identified by each Claimant;

(4) any document showing a payment to a Pleaded TPI referring to a Pleaded Journalist;

(5) any document – in a period one week before the publication until the end of one calendar month following publication – showing a payment or instruction to a Pleaded TPI in respect of the subject matter of any of the Schedule B or Schedule C Articles ("the Pleaded Articles"), unless it was clear from the face of the document that it did not relate to a Pleaded Article; and

(6) any document evidencing the sourcing of any Pleaded Article.

30. Some of the documents, disclosed by the parties, were redacted. The extent of Associated's redactions to documents it has disclosed has been challenged by the Claimants (see Section E(2) below).

D: Matters to be resolved at the Second CMC

31. The First CMC Order required the parties to issue any applications to be dealt with at the Second CMC by 28 April 2025. The parties have made a significant number of Applications, largely by this deadline.

32. The Claimants' Application Notice (supported by the 8th Witness Statement of Callum Galbraith) sought orders requiring Associated:

(1) to remove all redactions based on irrelevance and provide to the Claimants copies of the unredacted documents ("the Unredaction Application");

(2) to conduct a reasonable search of its electronic disclosure platform for the names "*Gavin Rhodes*" and "*G Rhodes*", which were names used by Gavin Burrows ("the Burrows Application");

(3) to disclose to the Claimants records of all telephone calls (and, where available, text messages or other such communications) made or received from Associated's telephony systems (including journalists' work mobile phones) that connect to any of the telephone numbers or devices used by the TPIs, including landline telephone numbers and mobile telephone accounts from 2011 to 2018, save where disclosure has already been given ("the Phone Data Application");

(4) (i) to provide to the Claimants with a written explanation identifying the proceedings in which Katie Nicholl (one of the Pleaded Journalists) made a witness statement dated 13 June 2014 regarding the origins of a *Mail on Sunday* article and the exhibit to Ms Nicholl's witness statement; and (ii) to conduct a reasonable search of call data and financial records relating to Lee Harpin and

provide copies of those that meet the test for standard disclosure for the period 1998 to 2018 ("the Katie Nicholl/Lee Harpin Applications");

(5) to conduct a reasonable search for documents using various search terms related to Commercial & Legal Services and the name "*Scott*" ("the C&LS Application");

(6) to provide an Amended List of Documents which states, for each of the specified documents, (i) in relation to physical items: the archive facility, box-reference, file title, bundle code, or other reference; (ii) in relation to electronic items: the custodian, mailbox or shared drive, folder path, original filename, or other reference; and (iii) the name of the system or repository from which the document was collected or otherwise obtained ("the Disclosure Information Application");

(7) to provide one or more witness statements from an appropriate officer of Associated, addressing in detail Associated's systems and practices for storage, retention, and destruction of documents relevant to these claims (specific information is identified) ("the Data Storage Information Application");

(8) to undertake further reasonable searches of the email accounts and other electronic document files and hardcopy files insofar as available of specified custodians for the period 1998 to 2018; 2011 to 2012 and 1 January 2011 to 7 August 2011, and provide copies of documents identified ("Further Custodians Search Application"); and

(9) to undertake reasonable searches for records of all payments and/or ledger cards to specified individuals and companies and/or their aliases from 1993 to 2018, and disclose to the Claimants those records and/or ledger cards that meet the test for disclosure on a train of inquiry basis ("the Train of Inquiry Application").

33. Associated's Application Notices sought orders:

(1) for third-party disclosure against the Metropolitan Police and the Information Commissioner ("the Third-Party Disclosure Applications");

(2) for various specific disclosure orders against each Claimants (the terms of the order sought by Associated against the Claimants is set out in Annex 1 to this judgment) ("Associated's Specific Disclosure Application"); and

(3) for permission to amend the Defences in relation to the Ward burglary allegation ("the Amendment Application").

34. A separate Application Notice was issued by Sir Simon Hughes, on 29 April 2025, seeking further disclosure from Associated ("Sir Simon Hughes' Application"). The evidence in support is contained in the Application Notice. Associated have responded to it in Ms Richmond's 11th Witness Statement.

35. In breach of the First CMC Order, the Claimants failed to provide any draft Amended Particulars of Claim, whether by the deadline of 17 April 2025 or at all. The Defendant's solicitors, in a letter dated 16 April 2025, made the point that the

dispute over redactions "*are not a valid reason for the Claimants to delay circulating any proposed draft Amendment to the Particulars of Claim*" in compliance with the First CMC Order and that they would oppose any application by the Claimants for an extension of time. Despite this, the Claimants made no application seeking either an extension of time or relief from sanction. They have unilaterally decided not to comply the requirement in the First CMC Order to provide draft amendments to their Particulars of Claim. I will return to this below ([273]-[274]).

E: Resolution of the Applications

(1) Preliminary matters

36. The resolution of several of the Applications requires determination of the proper ambit and scope of these proceedings, and the role of the generic case.

37. During the hearing, Mr Sherborne, for the Claimants, made several submissions as to the importance of the generic case to the Claimants' claims. He submitted that the generic case supported the inferences that the Claimants sought in their individual cases. He argued that the Court must first resolve the generic case because each Claimant's individual claim is "*informed*" by it. If the generic case were to be "*relegated*" to something minor, then, he submitted, "*it's very hard to see how that can be fair*"; that, without the generic case, the Court could not fairly resolve the Claimants' claims; and that the Claimants would be fighting with "*both hands tied behind [their] back*". Mr Sherborne submitted that the generic case has been pleaded by the Claimants and, as there has been no application to strike it out, the Claimants are entitled to proceed with it, and to seek disclosure from Associated to support it. As will become apparent below, I do not accept these submissions.

38. Mr Sherborne also submitted that the generic case had been "*tried and tested and accepted*" in litigation against Mirror Group and News Group Newspapers. I have not found Mr Sherborne's reliance on other litigation, conducted against different defendants, concerning different allegations, particularly helpful or illuminating. The claims against those defendants have been proceeding for nearly 15 years. They have their own extensive history and dynamic. It is also the case, although Mr Sherborne appeared to dispute the significance of this, that the defendants in those claims have made some admissions (or the Court has made findings) of wrongdoing.

39. Finally, in this litigation the Claimants have demonstrated a tendency to seek to rely, as matters of fact, upon findings of the Court in these other proceedings. So that there is no doubt about it, as these claims proceed, as a matter of law, findings made in those other proceedings – between different parties – are not admissible in these proceedings: ***Hollington -v- F Hewthorn & Co Ltd*** **[1943] KB 587**. Therefore, in the absence of admissions by Associated, wrongdoing alleged against other individuals (principally TPIs) will need to be proved by the Claimants in this litigation.

40. Mr White KC submitted that, in the most recent judgment following trial in the Mirror Group litigation, Fancourt J expressed some concern about the absence of clarity as to the parameters of the generic case which had led, during the trial, to a "*lack of focus on the really important issues and the apparent inability of the parties to agree what they are*". The Judge complained that the core issues to be resolved: "*were constantly at risk of being obscured by a mass of individual details, disputes and documents relied upon*

by the claimants in an attempt to maximise the range of possible findings of wrongdoing": ***Duke of Sussex -v- MGN Ltd*** **[2023] EWHC 3217 (Ch)** [17]. I should be most anxious to avoid something similar happening at the trial in this action.

41. Whilst, therefore, I shall always consider judgments of the Court in these other claims, where they illuminate issues of principle, I am not persuaded that these claims provide any sort of 'road map' for how to manage these very different claims, against a different defendant, where there have been no admissions of wrongdoing. Instead, I intend to manage these claims by applying the conventional principles and tools of case management in civil litigation. Although brought by individuals of some prominence, making serious allegations of wrongdoing, these are civil claims for damages and other remedies. So far as possible, they will be managed just like any other civil claim. That starts with identifying the issues in dispute from the statements of case.

(a) Each Claimant's case: proof of UIG

42. Each Claimant's fundamental case can be stated simply: s/he alleges that the Pleaded Articles identified in Schedule B to his/her Particulars of Claim demonstrate that s/he has been the target of UIG by Associated. The Articles – put simply – are the fruits of, or otherwise demonstrate, UIG. This is the primary case advanced by the Claimants. Associated denies this.

43. At trial, each Claimant must prove that s/he was the subject of UIG. Each Claimant's primary case (save for Sir Simon Hughes) is that the impugned Articles are the result of UIG. As such, each Claimant must prove that information in the relevant Article about them was obtained through unlawful means (UIG), as they allege, rather than lawfully, as Associated claims. Sir Simon's case is that he was the target of UIG, but this did not produce identifiable articles. The burden of proving the case rests upon each Claimant. Courts must strive to avoid allowing a civil case to turn into a public inquiry – not just to ensure that time and costs are managed properly, but because of a core legal principle. Under the adversarial system, a claimant must prove his/her case. The Court's function is to adjudicate whether the claimant has discharged this burden, and if so, to determine the remedies (if any) to which s/he is entitled. It is not usually the Court's role, in civil litigation, to investigate whether a wrong was done.

44. The Claimants' similar fact and generic cases are insufficient, on their own, to establish the primary case of each Claimant. Instead, the Claimants hope to use these cases to demonstrate a pattern which provides evidential support to their individual claims. This is similar to how, in a criminal case, evidence of a defendant's previous convictions can sometimes be used to suggest that s/he has a propensity to act in a particular way. If a Claimant can prove that journalist A used UIG to obtain information for 50 previous articles, s/he might persuade the Court that journalist A tends to use such methods and likely did so again on the disputed further occasion(s).

45. However, as juries in criminal trials are routinely directed, proof of propensity cannot itself prove wrongdoing by a defendant on another occasion. The standard direction to criminal juries as to how they must approach evidence of bad character (typically a defendant's previous convictions for similar offences) and propensity is as follows:

> "You have to decide whether the defendant's previous convictions show that s/he has a tendency to behave in this way.

> If you are not sure that the defendant's previous convictions show that s/he has such a tendency, then you must ignore them.
>
> But if you are sure that they do show such a tendency then this may support the prosecution case. It is for you to say whether it does and, if so, to what extent. You must not convict the defendant wholly or mainly because of his/her previous convictions. The fact that someone has committed an offence in the past does not prove that s/he did so on this occasion. The defendant's previous convictions may only be used as some support for the prosecution case if, having assessed all the evidence, you are satisfied that it is right so to do."

46. In the context of this case, if journalist A is proved to have used UIG 50 times before, that does not prove s/he did it again on the 51st (or any other) occasion. However, his/her past behaviour may lend support to a Claimant's case if other evidence also points to UIG. For example, if an article by journalist A includes private details that would be hard to obtain without UIG, that a TPI was paid for information at around the same time, and the journalist cannot satisfactorily explain how s/he got the information legally, the Court might conclude – based on the entirety of the evidence and by drawing appropriate inferences – that it was likely that UIG was used. But if the journalist gives a clear and credible explanation – potentially backed up by contemporaneous notes – the Court might conclude from the evidence that the information was probably obtained lawfully and ignore the journalist's past record of using UIG. In short, the weight to be attached to an established propensity will depend upon the individual circumstances of the alleged UIG, but propensity evidence alone is very unlikely to establish a probability of UIG. Certainly, save in an exceptional case, propensity evidence alone could not provide an appropriate foundation for drawing an inference of UIG on a particular occasion. "*Drawing inferences is not a process of optimistic guesswork; it is a process whereby the court concludes that the evidence adduced enables a further inference of fact to be drawn*": ***Amersi -v- Leslie*** **[2023] EWHC 1368 (KB)** [158].

47. Propensity evidence must be both relevant and probative. Showing that journalist A tended to use UIG cannot prove that journalist B did the same, unless there are very unusual circumstances. Further, Associated is a company, and it can only act through its staff or agents. Even if the Court were to make the finding – urged by the Claimants – that 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*" that would not help prove whether UIG happened in any specific case. The focus must be on the specific journalist or TPI involved in the Article or incident in question – not others who were not involved. So, the general claims made by the Claimants against Associated – even if they could be substantiated – cannot support their individual cases. That is also why I reject Mr Sherborne's argument that proving the "*scale of wrongdoing*" is relevant to resolving the Claimants' claims.

48. Quite apart from this issue of principle, propensity evidence also frequently presents case management challenges. In the criminal context, it is one thing for a Court to admit specific evidence of a defendant's undisputed previous convictions, it is quite another to embark upon determining whether the defendant can be proved to have a propensity to act in the way alleged by investigating wholly separate and disputed incidents. Admissible bad character evidence can be excluded by the Court if it is satisfied that its

investigation and resolution would lead to a disproportionate diversion from the main issues in the trial (see *Archbold* §13-72).

49. In ***R -v- McKenzie*** **[2008] EWCA Crim 758** Toulson LJ explained:

> [22] … Where the prosecution seeks to prove propensity to commit offences by evidence other than previous convictions, the application of those criteria may in the nature of things present particular difficulties, and the judge may also have to consider whether the admission of the evidence would result in the trial becoming unnecessarily and undesirably complex even if not unfair.
>
> [23] In the first place, where there has been a conviction, it follows that the defendant's guilt must have been established either by his own admission or by evidence which satisfied the court to the requisite standard after a criminal investigation and trial. Section 103(2) [Criminal Justice Act 2003] enables evidence of the conviction to be given as evidence of guilt and thus of propensity to commit offences of such a kind (subject to the other provisions of the Act). In short, the conviction operates as launch pad for establishing propensity. Without such a launch pad, proof of the previous alleged misconduct requires the trial of a collateral or satellite issue as part of the trial of the defendant for the offence with which he is charged. Trials of collateral issues have the dangers not only of adding to the length and cost of the trial, but of complicating the issues which the jury has to decide and taking the focus away from the most important issue or issues.

Endorsing robust case management, the Judge noted [28]: "*there is much to be said for trial judges doing all in their power to ensure that cases are tightly focused on the essential* issues".

50. In ***R -v- O'Dowd*** **[2009] 2 Cr App R 16**, a defendant appealed his conviction for rape following a trial at which the prosecution had been permitted to adduce evidence of three previous allegations of rape, all disputed by the defendant. This disputed evidence had occupied three weeks of evidence at a trial that had lasted 6½ months. Quashing the conviction, the Court of Appeal warned [2]: "*If ever there is a case to illustrate the dangers of satellite litigation through the introduction of bad character evidence this is it*".

51. In ***R -v- Mitchell*** [**2017**] **AC 571** [53], Lord Kerr explained:

> "Reliance on cumulative past incidents in support of a case of propensity may indeed illuminate the truth of the currently indicted allegations, but excessive recourse to such history may skew the trial in a way which distracts attention from the central issue. [The law] requires the judge to consider actively whether the effect of admitting the bad character evidence will have such an adverse effect on the fairness of the trial that it ought to be excluded. That species of adverse effect can arise through the sheer weight of disputed evidence on other uncharged allegations. And that can happen even though the jury will in due course be directed to consider propensity cumulatively, if the volume of evidence received is sufficiently strong to support a conviction. It is a truism that satellite litigation is often inimical to efficient trial."

52. Of course, those remarks were made in the context of criminal jury trials where the mode of trial requires a stricter approach to the control of evidence. In civil proceedings, tried by a judge alone, there is no risk of the Court being distracted from the issues to be resolved or failing to attach appropriate weight to propensity evidence. Nevertheless, these authorities do provide a salutary reminder of the need, by proper case management, to keep litigation within manageable and proportionate bounds. These principles apply equally in the civil jurisdiction.

(b) Civil litigation not a public inquiry

53. At the First CMC, I set out what I believed to be the proper parameters of this litigation:

> "[T]his is civil litigation, it's not a public inquiry. And, as with all actions, the case management directions the Court is going to make will be aiming to confine within manageable and proportionate bounds the scope of the litigation… The court strives to ensure that this litigation will not descend into an uncontrolled and wide-ranging investigation akin to a public inquiry. That is not the purpose of civil litigation, where that is not necessary to determine the issues that are between the parties. The Court will deal with these cases justly, but at proportionate cost, allotting to it an appropriate share of the Court's resources as well. So those are important aspects, and reflecting this, the parameters of the litigation and the factual enquiry that will be undertaken in these cases will be set substantially by the Statements of Case. … The Statements of Case are, in this litigation, not to be regarded as some sort of general guide, which will permit some sort of roaming inquiry to be conducted underneath them. They … do strictly set the parameters of the litigation".

54. I believe these to be uncontroversial propositions, but given their significance to several of the decisions that I must make in this judgment, it is important that I set out the guiding principles that I shall apply.

55. First, as to the proper parameters of civil litigation, there is the Court of Appeal's decision in ***McPhilemy -v- Times Newspapers Ltd*** **[1999] EMLR 751, 773** in which May LJ held:

> "… all actions… should by proper case management be confined within manageable and economic bounds. They should not descend into uncontrolled and wide-ranging investigations akin to public inquiries, where that is not necessary to determine the real issues between the parties. The court will… strive to manage the case… This includes excluding all peripheral material which is not essential to the just determination of the real issues between the parties, and whose examination would be disproportionate to its importance to those issues".

56. Second, the role of the Court is no longer that of disinterested umpire. The overriding objective requires the Court to deal with cases justly and at proportionate cost (CPR 1.1). This includes the allocation of an appropriate share of the Court's scarce resources (CPR 1.2(e)). As explained by Lord Phillips MR in ***Jameel -v- Dow Jones & Co*** **[2005] QB 946** [54]:

> "It is no longer the role of the court simply to provide a level playing-field and to referee whatever game the parties choose to play upon it. The court is concerned

> to ensure that judicial and court resources are appropriately and proportionately used in accordance with the requirements of justice."

57. Together, these principles mean that: "*The scope of the case is not just a matter for the parties' choice*": ***Lokhova -v- Longmuir*** **[2017] EMLR 7 (QB)** [57] *per* Warby J.

(c) Proper control of the generic case

58. I do not accept Mr Sherborne's submission that the Court should (or even, as he argued, must), in this litigation, start with the Claimants' generic case. I also reject the submission that, having pleaded this as part of their case, the Court is bound to litigate it. In modern civil litigation, ultimately it is the Court that controls the issues and how they are to be resolved.

59. The generic case is exceptionally wide; indeed, it could hardly be wider. The Claimants allege that, for a 25-year period, 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*". If the Court were to embark on litigation with those parameters, this litigation would become precisely the wide-ranging public inquiry that the authorities make clear should be avoided.

60. The focus in this litigation must be kept upon fair resolution, in an adversarial process, of each Claimant's claim that s/he has been the subject of UIG. That requires the primary focus to be upon the individual Articles and their genesis – and in Sir Simon Hughes' case, the specific events – relied upon by each Claimant. As I have explained, the Claimants rely upon the generic case as evidential support – on a propensity basis – to support their primary case. I intend – through appropriate but firm use of the Court's case management powers – to keep that generic case within proper bounds and recognising (as I have set out above) its evidential limits.

61. The decisions I have made – as explained below, and particularly in respect of the ambit of disclosure – will permit a limited and proportionate investigation, at this stage, of whether there is further evidence from Associated's disclosure upon which the Claimants can advance an arguable case that the Pleaded Journalists/TPIs relevant to their claim had a propensity to use UIG. But that is only the first stage. If the Claimants wish to widen the scope of allegations made against the Pleaded Journalists in their individual claims, they will need to propose amendments to their Particulars of Claim. The principles to be applied on an application for permission to amend provide scope for the Court to require demonstration that the value of what is sought to be added to the claim justifies the additional costs and resources implications of widening the parameters of the case to include it.

(2) The Unredaction Application

(a) Summary

62. In their original application, the Claimants sought the removal of all redactions in Associated's disclosure that had been made on the grounds of relevance.

63. By letter, dated 10 April 2025, the Claimants had asked Associated to remove all redactions which had been applied to disclosed documents on grounds of relevance. It was suggested that they were "*inconsistent with [Associated's] disclosure obligations*"; that the redactions had "*rendered a large proportion of the documents incomprehensible and incapable of proper analysis or understanding*"; and that the "*information redacted is unarguably relevant to the matters in dispute between the parties*".

64. Associated provided an explanation of the basis for redactions and the nature of the information redacted at the time of disclosure. The redactions included in particular:

    (1) the name of the subject of the information gathering, save where it was a Claimant or the pleaded associate of a Claimant or otherwise identified as being in the public domain;

    (2) the name of any contributor, save where it was a Pleaded TPI, Pleaded Journalist or otherwise in the public domain as a contributor;

    (3) information that otherwise may identify the subject of the information gathering or contributor, in particular: (a) description; (b) address; (c) telephone number; or (d) date of birth;

    (4) any social security number; and

    (5) confidential financial information, such as account details for payment.

65. Associated makes the point that the Claimants have similarly produced documents on disclosure which they have redacted on grounds of irrelevance.

66. Following its issue, the Unredaction Application has been narrowed by the Claimants.

    (1) On the day before the hearing, the Claimants provided a 6-page schedule identifying specific documents from Associated's disclosure that the Claimants targeted by the Unredaction Application.

    (2) After lunchtime on the second day of the hearing, 7 May 2025, the Claimants further narrowed the target documents ("the Unredaction Target Schedule"): see Annex 2 to this judgment.

    (3) Finally, the targets for unredaction were further narrowed by the Claimants in further submissions of the parties following the hearing (see [98] below).

67. Associated argues that the redactions do not make the documents incomprehensible or incapable of proper analysis or understanding, it merely means that the Claimants do not have the names or personal details of irrelevant subjects. It is submitted that the Claimants can still identify the pattern of activities undertaken by the Pleaded TPIs, when those activities were undertaken, at what cost and for which of the Pleaded Journalists, as well as each occasion when such activities were carried out in relation to the Claimants or their pleaded associates.

(b) Evidence

68. In his witness statement in support of the application, Mr Galbraith argues that the redactions prevent the Claimants from understanding "*the full extent of UIG*". Specifically, he challenges the redactions of the names of the subject(s) of each TPI's investigation unless they are Claimants or their associates. This, he contends, undermines the Claimants' ability to prove habitual and widespread UIG. He presented the Claimants' objections to the redactions as follows:

> "(a) First, they hide the scale of the conduct. When non-party names are blanked out, it is impossible to see the breadth of an exercise in UIG that may have targeted many individuals. That uncertainty goes directly to the pleaded allegation of habitual and widespread wrongdoing.
>
> (b) Secondly, they sever the link between payment and publication. Removing the identity of the commissioning reporter or editor from payment records prevents the Claimants from matching a payment to the article that followed, from examining the journalist's knowledge of the unlawful act, and potentially from pleading further instances of misuse.
>
> (c) Thirdly, they mask patterns that might be understood from the identities of such third parties".

69. Mr Galbraith gave an example, from Associated's disclosure, where a name had not been redacted. This, he says, enabled the Claimants to trace a payment made to a published article. Associated disclosed a payment record for a cash payment of £400, on 2 May 2007, requested by the *Daily Mail*'s crime correspondent, Stephen Wright (a Pleaded Journalist), in respect of "*special contacts re Winston Silcott shoplifting exclusive*".

70. Mr Silcott's name was not redacted. As a result, the Claimants were able to identify an article, written by Mr Wright and published on 3 April 2007 in the *Daily Mail*, under the headline "*Silcott in the cells for stealing two jumpers*". The article alleged that Mr Silcott had been arrested on suspicion of shoplifting from a Debenhams department store and had been held in custody for 2 nights before appearing in Court. Mr Galbraith states that the Claimants infer that Mr Wright's "*special contacts*" may have been police officers who unlawfully sold information to Mr Wright about Mr Silcott's arrest detention. It is right to observe here, in fairness to Mr Wright, that there may be other innocent explanations for how he obtained the information that was published in the article.

71. Nevertheless, Mr Galbraith argues that:

> "It is exactly this process, of linking the targets of UIG to published articles, which enables the Claimants to establish their pleaded case, undermine Associated's Defences, and establish the modus operandi of the pleaded journalists such as Mr Wright."

72. The Claimants have identified numerous other payment records disclosed by Associated, including ELI invoices, for work commissioned by Mr Wright. These documents have been redacted to remove the names of the subject of the relevant inquiry. The Claimants argue that they ought to be provided with this information

because, like the exercise carried out in relation to the Silcott article, this may enable them to link the inquiry made by a Pleaded Journalist to published articles and, they hope, bolster their case that Mr Wright had a propensity to use UIG.

(c) Legal principles

73. There is no real dispute as to the principles that apply to the redaction of disclosed documents.

74. A party giving inspection of disclosed documents is entitled to redact parts of a document which are irrelevant: ***GE Capital Corporate Finance -v- The Bankers Trust* [1995] 1 WLR 172**, *per* Hoffman LJ at p.174, and Leggatt LJ at p.176.

75. Following the introduction of the CPR, in ***Shah -v- HSBC Private Bank (UK) Ltd* [2011] EWCA Civ 1154**, Lewison LJ confirmed that the approach in ***GE Capital*** applied in the "*changed landscape*" of the CPR but, the test for standard disclosure had been narrowed by CPR 31.6 and no longer included what was known as *Peruvian Guano* 'train of inquiry' disclosure. Instead, "*the question is: is this [redacted] material either material which adversely affects the bank's case or material which supports the claimants' case?*" ([36]). And "*in deciding whether it does, the* Peruvian Guano *test is inapplicable. In other words, it is not enough that the material may lead to a train of inquiry which may adversely affect the bank's case*" ([37]).

76. Reflecting these principles, a party may redact irrelevant material from disclosed documents. The test for redaction of such material is that set out in CPR 31.6.

77. A party wishing to challenge such redactions must apply pursuant to CPR 31.19(5). On such an application, the statement of irrelevance in the disclosing party's disclosure statement is usually conclusive, unless it can be shown to be wrong by the challenging party: ***Shah*** [27]-[29]; applied in ***Paddick -v- Associated Newspapers Ltd* [2003] EWHC 2991 (QB)** [14]-[22].

78. Mr White KC does not challenge that the Court has a power to make an order for disclosure that goes beyond standard disclosure under CPR 31.6. Indeed, the parties are agreed that the Court has a wide discretion as to the orders for disclosure it can make as part of its case management powers (see CPR 31.5(8) and CPR 31.12). The object in making such orders is to further the overriding objective.

(d) Submissions

79. Mr Sherborne advanced arguments similar to those that Mr Galbraith had advanced in his witness statement. At the hearing, he also relied upon further examples of what he submits is the unfairness occasioned to the Claimants by the redaction of names of third parties in Associated's disclosure.

80. Mr Sherborne showed me disclosed call data which establishes telephone calls made from Pleaded Journalists to Pleaded TPIs. These showed calls made by several journalists to Dave Parker. Mr Parker appears in the contact book of David Dillon, a *Mail on Sunday* journalist, described as "*Heathrow tipster and photographer*". In disclosed payment records, there is an entry for 17 March 2007 in relation to Mr Parker, for a payment of £176.25 for what is described as "MALDIVES GREENE".

The name Green (misspelled) had not been redacted. This enabled the Claimants to identify an article, published in the *Daily Mail* on 17 March 2007, concerning a party attended by Sir Philip Green in the Maldives. The article contains reference to a private jet and a departure from Stansted airport. Mr Sherborne argued this provided support for the Claimants' allegation that Mr Parker was used by Associated journalists to "blag" flight details.

81. A second example relied upon by Mr Sherborne at the hearing was an invoice from JJ Services (the business name of the Pleaded TPI, Steve Whittamore) to the *Mail on Sunday* for his work for the newspaper for the week ending 2 February 2003. The document itemises work done for particular journalists, including Katie Nicholl and David Dillon, and Mr Whittamore's itemised charges. The descriptions of the work he did are of potential significance for the Claimants' case: "*Occupant search*", "*XD t/p for above*" (which appears to be a reference to obtaining an ex-directory telephone number), "*Veh. Reg*", and "*T/p conversion*" (potentially establishing an address from a telephone number). It is the Claimants' case that Mr Whittamore could not have obtained legally some of this information – particularly ex-directory telephone numbers and vehicle registration details.

82. There are also annotations on the document, possibly as a result of some form of accounting reconciliation, e.g. "*found article 2/2/03 by Katie Nicholl*", that appear to tie the inquiries to particular published stories. The document has significant redactions of the names and addresses of what appear to be the targets of the inquiries, and the cross-referenced articles that have been added by annotation to the document.

83. Mr Sherborne then showed me an article, dated 2 February 2003 and published in the *Ireland on Sunday* (the Irish version of the *Mail on Sunday*) under the headline "*Zoe given ultimatum before jetting off*", concerning Zoe Ball and Norman Cook. The article included a quote, attributed to a "*close friend*". The Claimants argue that this sort of attribution can be used to hide the fact the relevant information has not been provided by an unidentified source, but in fact been obtained by some form of UIG. Mr Sherborne argues that, again, it is only the availability of unredacted information in the underlying document that has allowed the Claimants to identify the article linked to the use of Pleaded TPIs. The Claimants, he argues, should be entitled to see the targets of the Pleaded TPIs work so that they can properly investigate and potentially identify the resulting article(s) to support the generic case.

84. Mr Sherborne relied on this Whittamore invoice as providing a further example. The annotation, for the work attributed to Mr Dillon, noted "*Found story 16/2/03 Re: [Redacted]*". Mr Sherborne said it was from this that the Claimants had been able to identify an article, published on 16 February 2003 in the *Mail on Sunday*, concerning fines issued to motorists even before the London Congestion Charge had come into force. The article included the following: "*Contrary to speculation, the London Mayor has not been taking driving lessons and still cannot drive at the age of 57. Instead Mr Livingstone and his two-month-old son Thomas are regularly ferried around by his live-in girlfriend Emma Beal in a T-reg Peugeot (pictured right) which they bought recently*". Mr Sherborne argues that this information, when read together with the searches carried out by Mr Whittamore, instructed by Mr Dillon, supports the case that Mr Dillon was using Mr Whittamore to obtain information – the registration details – that Mr Dillon must have realised could not have been obtained lawfully by Mr Whittamore.

85. The fourth example Mr Sherborne relied upon was tracing a payment – from a petty cash record from 2010 – to a published article. The disclosed document shows payments of £250 for "*documents*" and £500 for "*Information re Pakistan cricket fixer (C Gysin)*". Christian Gysin is a Pleaded Journalist. Call data shows that he called Pleaded TPI Jonathan Stafford on 24 occasions. The Claimants' case against Mr Stafford is that he was someone who was used to obtain itemised telephone records, which the Claimants contend could only have involved some form of UIG. The Claimants believe that they have identified the article to which this activity relates. On 1 September 2010, an article by Mr Gysin was published in the *Daily Mail* under the headline: "*Riddle of cricket 'fixer' and a blizzard of phone calls linked to big games*". The first paragraph of the article gives a summary of its contents:

> "A BLIZZARD of telephone calls to and from the agent at the centre of the cricket match-fixing allegations was being examined by investigators last night."

86. The article includes a specific allegation that a mobile phone bill of one of the players had "*surged*" when the team was on tour. Mr Sherborne suggested that the totality of the documents relating to this incident provide "*prima facie evidence of blagging telephone call data*". This, he argued, was another example where – because important linking information has not been redacted – the Claimants have been able to link together separate pieces of evidence to support their generic case.

87. The final example upon which Mr Sherborne relied were documents, disclosed by Associated, from Daniel Hanks, a Pleaded TPI. The documents clearly show Mr Hanks was providing telephone call data. The records have been redacted to remove the name of the target of the search, his/her date of birth, social security number, address, and the full telephone numbers. However, there are annotations on the document (only some of which have been redacted) which appear to show that someone has carried out an exercise of seeking to identify to whom the called telephone numbers belonged. One of the documents is a fax, dated 1 April 1999, to Pleaded Journalist Caroline Graham. The annotations show that the telephone numbers have been linked to some hospitals, doctors, a lawyer, and friends. It is a vivid demonstration of the sort of personal information that can be obtained simply from basic telephone call records, and why it would have been of real value to journalists who wanted to follow leads.

88. Mr Sherborne submitted that the documents show that Mr Hanks had obtained – he suggests unlawfully – the relevant call data and provided it to Associated journalists. Certainly, the documents do raise a question as to how Mr Hanks could have obtained this information lawfully. Of course, Mr Sherborne can rely upon these documents to seek to establish that point, but he argues that, without the redactions being lifted, the Claimants cannot carry out the exercise to see whether they can demonstrate that articles were published relying on this information. An individual article may shed light on what information was obtained. It may also assist the Claimants in demonstrating, if it be the case, that the article used devices to obscure the fact that the information had been obtained using unlawful means (e.g. "*a pal said*").

89. Mr White KC, on behalf of Associated, has submitted that the redactions on the grounds of relevance are conclusive. The material redacted for relevance does not meet the standard disclosure test. The Claimants' argument is, in reality, a train of enquiry application by which they hope to obtain material to bolster the generic case. Mr White KC submitted that the Claimants have largely pleaded a propensity case in Schedule C

of the Particulars of Claim. That, he submitted, should be the principled limit of the disclosure exercise.

90. Although, by the time of the hearing, the Claimants had narrowed the scope of the Unredaction Application, Mr White KC complained that even the first narrowed targets for unredaction (see [66(1)] above) sought the removal of redactions in a vast number of documents. He relied upon the *Daily Mail* Green Book and *Daily Mail* Yellow Book. These are spreadsheets from the Information Commissioner Office's Operation Motorman inquiry (see Limitation Judgment [19]-[22]). Both are substantial documents, occupying four ring binders. The application to lift all redactions in the Green and Yellow Books was, Mr White KC, argued, an "*astonishingly broad train of inquiry application*". He suggested that the Claimants' solicitors were interested to obtain all this material, unredacted, so that further potential claimants could be identified. That, he said, was not a proper use of disclosure. Mr White KC also submitted that it appeared that the Claimants already had access to the unredacted Green and Yellow Books. He relied upon an article, by Graham Johnson, a member of what has been described as the Claimants' research team ("the Research Team"), published on 18 December 2019, that included information drawn from an analysis of the Green and Yellow Books. Mr White KC told me that the Claimants had not included the Green and Yellow Books in their disclosure. I shall return to this issue of documents held by the Research Team (see [209]-[228] below).

91. Mr White KC did not address the specific examples upon which Mr Sherborne had relied at the hearing.

92. In his reply to Mr White KC's submissions, Mr Sherborne seemed to suggest that Schedule C did not identify the Claimants' best examples, "*it's just a few examples*". He then seemed to suggest that the Claimants' needed unredacted disclosure from Associated to make good the claim that the Pleaded TPIs themselves habitually practised UIG. Given the terms in which each Particulars of Claim have been advanced, verified with a statement of truth, that was a surprising submission.

(e) Further submissions after the hearing

93. The Claimants produced the Unredaction Target Schedule during the second day of the hearing. Whilst, on the one hand, this was helpful – because it narrowed down the real targets of the Unredaction Application – it meant that there was limited time to allow the parties to focus their submissions on the amended parameters of the Unredacted Application. Consequently, after the hearing, the parties have continued discussion of the Unredaction Application in correspondence (copied to the Court) and provided the Court with further written submissions after the hearing (including a 19-page "Note" by Associated's Counsel, dated 15 May 2025, with a 10-page Annex).

94. With that "Note" Associated's solicitors also sent me 4 ring-binders containing copies of the documents in the Unredaction Target Schedule. Helpfully, that has allowed me to see the scope of the refocused Unredaction Application, and to consider the targets individually.

95. In the "Note", Associated complained that even the narrowed Unredaction Target Schedule still lacked focus, was too broad, sought to support a train of inquiry, and the evidence in support of the original Unredaction Application could not justify an order

being made in even these limited terms. The "Note" also renewed the attack, made in Mr White KC's oral submissions, that the application to lift the redactions in the Green and Yellow Books was unnecessary if the Claimants had – via Mr Johnson – ready access to the unredacted documents. Associated argues that the Claimants have given no explanation for how Mr Johnson could have written such a detailed article, published in 2019, if he did not have access to the Green and Yellow Books. Associated make other complaints about documents held by the Research Team which, it contends, have not been properly disclosed, but these complaints are beyond the issues that I must resolve.

96. Largely in response to Associated's allegation that the Claimants already had at least some of the documents in respect of which they were seeking unredacted copies, on 16 May 2025, Sir Simon Hughes' solicitors wrote to Baker McKenzie (copied to the Court) confirming that "*whether through his legal representatives or members of his Research Team, does not and has not had any of the documents set out in the Claimants' list of documents for unredaction in his control in an unredacted form*". Solicitors for the other Claimants have provided similar confirmation.

97. On 20 May 2025, Baker McKenzie replied suggesting that this was only a "*partial answer*", and the Claimants had not confirmed whether "*through their legal representatives or other members of their research team or otherwise, have in their control or have access to any other documents containing substantially the same information (or a substantial part of that information) in an unredacted form*". They also complained that it remained unclear the extent to which the Claimants dispute that, for the purposes of disclosure, they have control over documents which members of the Research Team acquired prior to their engagement by the Claimants.

98. Between 30 May and 2 June 2025, the Claimants' solicitors further narrowed the categories of document subject to the Unredaction Application. They confirmed that the Claimants sought unredaction of the documents in categories 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 19, 22, 23, 24 and 25 in the Unredaction Target Schedule (see Annex 2). In respect of categories 20 and 21 (the Green and Yellow Books), the Claimants sought the lifting only of the redactions of information concerning Pleaded Journalists. I shall therefore determine the Application only in relation to these categories.

(f) Decision

99. The original Unredaction Application was hopelessly unfocused and far too broad. It should never have been pursued on this basis. As Mr Sherborne accepted at the hearing, it seeks disclosure on a train of inquiry basis. A strict application of the principles would, therefore, have justified simply refusing it. The Claimants have failed to demonstrate that the redactions they seek to have removed hide material that fell within the terms of standard disclosure.

100. However, the efficient management of this case requires me to consider whether the Court should, nevertheless, order the removal of redactions on a targeted basis. There is force in Associated's complaint that the broad terms and unfocused approach of the original Unredaction Application, and the way that it has been pursued, has impaired the ability of the Court and the parties to carry out fairly the focused exercise that, as a result of the Claimants' concessions, now falls to be determined.

101. I infer that Associated's fundamental submission remains that I should simply refuse the Unredaction Application, leaving the Claimants to pursue the more focused application at some later point. I reject that. It would be wasteful of resources and would cause significant delay. Associated has not submitted that the Court cannot fairly resolve the much more limited Unredaction Application that the Claimants now pursue. It is in the parties' and the Court's interests that this application is resolved now. The Court can appropriately reflect disapproval of the way in which this application has been pursued in the order for costs that is made.

102. I have already explained (see [36]-[62] above) why I am not going to allow the parameters of disclosure in this litigation to be dictated by the generic case. If I did, there would be no principled basis on which the Court could prevent this litigation becoming something akin to a public inquiry. The focus of this litigation is – and will remain – on the fair resolution of claims of misuse of private information advanced by each Claimant and the defences advanced by Associated. Associated has provided extensive disclosure based on the issues identified in the statements of case. That is the correct approach. Any application for further disclosure by the Claimants (or Associated) must demonstrate why the further disclosure is necessary for the fair resolution of the claims in the adversarial process and be proportionate. Proportionality requires that the party seeking further disclosure must demonstrate that, having regard to the impact on costs and resources (the parties' and the Court's), the expense is worth it.

103. Although I reject the argument that disclosure should enable the Claimants to explore "*the full extent of UIG*", as Mr Galbraith argued, Mr Sherborne has persuaded me, through the examples upon which he relied, that redactions to documents in this category do prevent the Claimants from completing a legitimate exercise of exploring whether they can identify further examples of alleged UIG involving Pleaded Journalists to support their propensity case. Whilst the redacted documents from Mr Whittamore (see [81] above) and Mr Hanks (see [87] above) can be relied upon by the Claimants in support of their case that these TPIs were obtaining information for Associated journalists using UIG (and must have been known by the relevant journalist to have been obtained in this way), I am satisfied that the Claimants ought additionally to be able to explore how the information was then used. For example, it is an important part of the Claimants' case as to the Pleaded Articles to be able to demonstrate (if they can) devices and euphemisms that were used in other published articles to hide the provenance of information that had actually been obtained by UIG.

104. In my judgment, considering Associated's denials of wrongdoing, the Claimants are entitled to explore whether they can advance a case, with a real prospect of success, that the Pleaded Journalists have a propensity to engage in UIG. If permission is granted to add further instances of alleged UIG, the Court will assess, at trial, whether (if proved or admitted) these establish propensity on the part of any Pleaded Journalist and whether that ultimately supports the Claimants' case. Until then, the process will be tightly managed. The main control will be through the Particulars of Claim, which must clearly set out any incidents relied upon. The Court also retains the power to exclude parts of the case if they become overly complex and the investigation and resolution of which become disproportionate to their evidential value. Ultimately, this is a civil claim, and the Claimants bear the burden of proof.

105. I will order that some redactions will be lifted, but only in a targeted way – limited to information that relates to Pleaded Journalists. That will provide the Claimants with an opportunity to propose focused amendments alleging, if they can, that a particular journalist has a propensity to use UIG, relying on specified examples.

106. However, this does not open the door to a broad investigation into the Pleaded Journalists' conduct. The Court will ensure the scope remains narrow, focused and proportionate. As I have said, the issues to be resolved at trial will be governed by the statements of case. In proposing any amendments to their Particulars of Claim, the Claimants must select their strongest examples, as even a small number of compelling incidents may be enough to establish propensity. It is the cogency – rather than number – of the incidents relied upon that is likely to be key. Any amendments will require Associated's agreement or the Court's permission, ensuring continued oversight and control.

107. As regards the TPIs, the Claimants have already pleaded their case on their involvement in UIG. The evidential value of establishing that any TPI had a propensity to use UIG is one step removed again from the Pleaded Journalists. The focus must be on the Pleaded Journalists and whether it can be demonstrated that they were complicit in UIG. The potential evidential value of establishing such a propensity on the part of TPIs is not sufficient to persuade me that the Court should order the removal of redactions, at this stage, to enable a wider investigation into the TPIs. If there are particular documents, in respect of which the Claimants believe they can demonstrate a justification for seeking the removal of a redaction, then they can seek Associated's cooperation or make a focused application to the Court.

108. Reflecting the decision I have reached, by reference to the documents (or categories of document) in the Annex 2 (as narrowed by the Claimants after the hearing – see [98] above), I will make the following orders:

(1) Category 2 – the Capitol Inquiry invoices. Associated must lift such redactions as would enable the Claimants, if they can, to link activities of Pleaded Journalists to individual articles. Redactions outside this may be maintained.

(2) Category 3 – the Backstreet Investigation/Investigator's Support Services/British American News invoices/reports. Associated must lift such redactions as would enable the Claimants, if they can, to link activities of Pleaded Journalists to individual articles. Redactions outside this may be maintained.

(3) Category 4 – Schedules to JJ Services invoices. Associated must lift such redactions as would enable the Claimants, if they can, to link activities of Pleaded Journalists to individual articles. Redactions outside this may be maintained.

(4) Category 6 – Jonathan Stafford Invoices. Associated must lift such redactions as would enable the Claimants, if they can, to link activities of Pleaded Journalists to individual articles. Redactions outside this may be maintained.

(5) Category 7 – System Searches Invoices. Associated must lift such redactions as would enable the Claimants, if they can, to link activities of Pleaded Journalists to individual articles. Redactions outside this may be maintained.

(6) Category 8 – Email from Sharon Churcher dated 12 December 2003 regarding outstanding payment to Capitol Inquiry. Associated must lift the redaction in this document.

(7) Category 9 – ELI invoices. The copies of the ELI invoices provided to the Court by Baker McKenzie, following the hearing (see [94] above) do not appear to contain any redactions. However, consistent with the decision I have made, Associated must lift such redactions as would enable the Claimants, if they can, to link activities of Pleaded Journalists to individual articles. Any redactions outside this may be maintained.

(8) Category 10 – Payments to Greg Miskiw. Associated must lift the redactions in these documents.

(9) Category 11 – Cash payment chits. Associated must lift the redactions in the documents that concern Pleaded Journalists. Any redactions outside this may be maintained.

(10) Category 12 – Mike Behr invoice. Associated must lift the redaction in this document.

(11) Category 13 – List of petty cash payments. Associated must lift the redactions in the documents that concern Pleaded Journalists. Any redactions outside this may be maintained.

(12) Category 14 – Emails from Sharon Churcher dated 11 February 2009 regarding payments to Daniel Hanks. Associated must lift the redactions in these documents.

(13) Category 16 – *Daily Mail* 2009/10 Petty Cash Week 42/2010. Associated must lift the redactions in the document that concern Pleaded Journalists. Any redactions outside this may be maintained.

(14) Category 19 – ELI Ledger Card. Associated must lift such redactions as would enable the Claimants, if they can, to link activities of Pleaded Journalists to individual articles. Any redactions outside this may be maintained.

(15) Category 22 – Record of interview with Neil Sears re use of Whittamore. Associated must lift the redactions in this document.

(16) Category 23 – Record of interview with Amanda Perthen re use of Whittamore. Associated must lift the redactions in this document.

(17) Category 24 – Record of interview with various journalists re use of Whittamore. Associated must lift such redactions as would enable the Claimants, if they can, to link activities of Pleaded Journalists to individual articles. Any redactions outside this may be maintained.

(18) Category 25 – Email from Mike Behr dated 22 November 2013. Associated must lift such redactions as would enable the Claimants, if they can, to link activities of Pleaded Journalists to individual articles. Any redactions outside this may be maintained.

109. As regards Categories 20 and 21, I remain concerned that there is uncertainty as to whether any member of the Research Team has previously had control of the Green and/or Yellow Books. The short point is this. If the Claimants have ready access – through their Research Team – to the Green and/or Yellow Books, it is unnecessary and disproportionate to order Associated to carry out an exercise that would simply reveal information to which the Claimants already have access. Although some statements have been made about this issue on behalf of the Claimants, during the hearing and in correspondence, it has not been the subject of evidence, and it remains unclear. As things stand, I do not understand how the 2019 article, written by Mr Johnson and relied upon by Mr White KC, could have been written without Mr Johnson having access to the Green and/or Yellow Books. Nevertheless, if confirmation is provided that the Claimants and no one in the Research Team has access to the Green and/or Yellow Books, I am prepared to grant an order, requiring the lifting of the redactions, on a similar basis limited to Pleaded Journalists. It is not an answer, as Associated's solicitors seemed to suggest, that the Claimants have access to the same information. If, for example, Mr Johnson was given access to the Green and/or Yellow Books and took notes, that is no substitute (evidentially) for having the underlying documents. But this needs proper explanation.

110. Therefore, I am minded to direct that if, within 7 days of judgment being handed down, the Claimants file a witness statement confirming that each of them, whether through his/her legal representatives or any member of the Research Team, does not have, and has never had, in his/her control an unredacted copy of the Green and/or Yellow Books (Items 20 and 21 in the Unredaction Target Schedule), I will order that Associated must lift such redactions in Items 20 and 21 as would enable the Claimants, if they can, to link activities of Pleaded Journalists to individual articles. Any redactions outside this may be maintained. As I have not received focused submissions on this, the precise formulation of this order can be determined once judgment is handed down. The purpose, however, is clear. I would only be prepared to make this order if satisfied that the Claimants, including through their research team, do not have control of these unredacted documents.

(3) The Burrows Application

111. Associated has located no payment records for Mr Burrows in its disclosure searches. On 29 April 2025, the Claimants asked for searches to be carried out for "*Gavin Rhodes*" or "*G Rhodes*" on the grounds that this was an alias used by Mr Burrows (although this was not pleaded by the Claimants). As explained in Ms Richmond's 11th Witness Statement, Associated has checked and confirmed that it does not hold a record of an account in these names. Although it maintained the position that it was not reasonable or proportionate to carry out any further search for electronic documents relating to a "*G Rhodes*" or "*Gavin Rhodes*", Associated agreed to carry out a search using the search term "*Gavin Rhodes*".

112. Mr White KC took the principled position that aliases have been pleaded in the Particulars of Claim and Associated has duly carried out searches that embrace these

aliases. The Rhodes name was not pleaded as an alias of Mr Burrows, so the search has not been carried out. Beyond that, searching for "*G Rhodes*" is likely to throw up numerous entries (including the chef, Gary Rhodes).

113. The Claimants and Associated both recognise that Mr Burrows is a very important individual in this litigation. I have sympathy with Associated's position that it cannot be expected to carry out limitless further searches, demanded on a piecemeal basis by the Claimants (and I have refused a similar application in respect of further Pleaded TPI aliases – see [134]-[137] below). The disclosure exercise is supposed to be done once, in accordance with the issues identified in the statements of case. A great deal of effort went into setting the parameters of the disclosure exercise. The Claimants did not identify the name "*Rhodes*" as an alias for Mr Burrows, so it was not included in those searches.

114. Nevertheless, as I observed at the hearing, these principled objections are likely to resonate more on the issue of who pays for this exercise than whether it ought to be done. Exceptionally, given Mr Burrows' importance, and as Associated does not apparently challenge that "Rhodes" was an alias of his (and that I consider weeding out any payment records for Gary Rhodes is unlikely to be an onerous process), I will order these searches to be carried out. In addition, I will also direct searches be made of addresses that are proven to have been used by Mr Burrows that were sought by the Claimants at the hearing. The precise terms of the search will be provided in the order. It is very important to try and locate all documents relating to Mr Burrows in Associated's records.

(4) The Phone Data Application

115. Associated has disclosed call data from the mobile phones of Pleaded Journalists to the numbers provided by the Claimants for Pleaded TPIs.

116. Associated conducted searches of available landline and mobile telephone call data for telephone numbers associated with Pleaded Journalists. No call data is available prior to 2011. In the case of the mobile telephones of journalists, this call data goes back to August 2011. For landline call data, this goes back to December 2011. The results have been disclosed to the Claimants (without a further review for relevance). Searches were not limited to TPI telephone numbers provided by the Claimants. All telephone numbers identified by Associated as potentially associated with a Pleaded TPI were checked. For example, telephone numbers identified as being associated with "*Gavin*" were also searched. The telephone numbers searched were identified to the Claimants in Annex A to the Schedule to the Disclosure Statement.

117. In her evidence, Ms Richmond states that no call records from landline numbers to Pleaded TPIs have been disclosed because no such call records were identified as having been in respect of the landline numbers associated with Pleaded Journalists.

118. The Claimants complain that Associated has not disclosed call data (1) from the mobile numbers of non-pleaded journalists to Pleaded TPIs; or (2) from any landline numbers to Pleaded TPIs. The Claimants seek an order that the Defendant should search and disclose additional telephone call records in its possession, namely (i) call data from landline telephone systems; and (ii) further mobile phone call records.

(a) Evidence

119. In his witness statement, Mr Galbraith suggests that "*call data is an important evidential tool to establish Associated's wrongdoing in these claims*". He argues, first, that call data can be used to show calls to the Claimants' phones and those of their associates, which "*could assist in evidencing unlawful activity*". Second, he suggests that call data can show calls by journalists to private investigators. He says this is "*an important part of the evidential jigsaw which is fragmented and partial*".

120. Mr Galbraith has set out in his evidence what he says is "*highly revealing and significant*" evidence from the disclosure provided to the Claimants. I would observe, here, that this might be thought to be precisely the sort of material that the Claimants would have proposed for inclusion in Amended Particulars of Claim to be produced for the Second CMC but did not do so.

121. In her witness statement, Ms Richmond has explained the difficulties in searching call records (previously set out in Associated's Electronic Disclosure Questionnaire):

> "The third-party platforms on which this data is held (iTiger (landline) and Tangoe (mobile network)) both require an application layer to view data. Records can be extracted but some data fields are lost on extraction and so need to be added back in manually where the record is responsive to a pleaded telephone number and that data field was available in the first instance. The records do not include the name of the person or entity associated with the telephone number.
>
> The data held is not limited to the Defendant's *Daily Mail* and *TMOS* newspaper titles and includes call records for other entities owned by the Defendant's holding company. Organisation of data is by telephone number and not custodian name or entity; it extends to approximately 37m individual records.
>
> It is not possible to extract records by reference to a list of pleaded journalists' names or by reference to an ANL publication title. Complete directories have not been retained such as to allow the Defendant to associate every telephone number with any particular person or entity. Manual work is therefore required to determine: (i) if a record of a call to or from any specific pleaded telephone number was made to or from a telephone number that can be associated with the *Daily Mail* or *TMOS*; and (ii) if that call was made to or from a telephone number that can be associated with a pleaded journalist."

122. She submits that the further disclosure sought by the Claimants would require Associated (manually): (1) to identify all journalists that worked for the *Daily Mail* or the *Mail on Sunday* from 2011 to 2018; (2) to investigate the telephone numbers associated with those journalists in each year of their employment at Associated over that 7-year period; and (3) to search for any call record with a Pleaded TPI irrespective of that being associated in time with any Pleaded Article or other pleaded allegation.

(b) Submissions

123. Mr Sherborne submitted that telephone records are important evidence in establishing whether the Associated journalists engaged in unlawful information gathering practices through private investigators. He suggested that "*the probative value of such call logs is obvious*". Frequent communications between Associated and TPIs strongly indicates,

he suggests, the systematic use of TPIs and would directly support the Claimants' cases. At the hearing, Mr Sherborne suggested that the Court needed "*to assess … the extent of the instruction of private investigators*", and that the landline call data should be provided "*to demonstrate the picture*". It should not be limited to the Pleaded Journalists because the Claimants wanted to demonstrate: "*the habitual and widespread use of the private investigators*" by Associated.

124. He argued that Associated has adopted a selective approach to mobile communications; calls from Pleaded Journalists have been disclosed. Calls involving the numbers of other journalists or non-attributed work phones have been excluded. Mr Sherborne submits that, in many cases it is likely to be the news desk or showbiz desk executives (and not the Pleaded Journalists themselves) who would have been calling the TPI in relation to an article or a target.

125. Associated opposed this application. Mr White KC submitted that the search proposed by the Claimants is for all call data evidencing calls to Pleaded TPIs (i.e. from unpleaded individuals who might include journalists but also employees of Associated outside of its editorial function) without tying this to any Pleaded Article (or other pleaded allegation).

(c) Decision

126. This application is refused. It lacks focus and is far too broad.

127. This litigation is concerned with whether the Claimants can establish whether they were the targets of UIG by individuals for whom Associated are responsible. The focus of the inquiry is the Pleaded Articles, the Pleaded Journalists and the Pleaded TPIs. Mr Sherborne's submissions demonstrated that this further call data is sought to support the generic case as to "*widespread and habitual*" use of TPIs. I have already explained why the Court is not going to sanction disclosure on this broad issue.

128. It does not appear to me that it is a major issue of dispute that Associated used TPIs. The dispute is over what the Pleaded TPIs did, whether that was or included UIG, and whether the Pleaded Journalists knew that UIG was being used. Establishing, through call data (even assuming that this was possible), the broad *extent* of journalists' contacts with TPIs (which is all that call data could establish) is not going to be of any evidential value in resolving the Claimants' particular claims. As I have explained, the general picture of the use of TPIs can have no real bearing on the *specific* question of whether, in the cases relied upon, each Claimant was the subject of UIG. The cost of carrying out this exercise (not only disclosure, but in the later phases of the litigation) is wholly disproportionate to its evidential value (if any). As I have said, the Court is not, in this litigation, conducting a public inquiry as to the extent to which Associated used TPIs and what those TPIs did.

129. If the Claimants believe – and can demonstrate – that contact between particular individuals, during a specific period and related to the specific cases being advanced by the individual Claimants, is relevant, they can make a targeted specific disclosure application for any relevant call data.

(5) The Katie Nicholl/Lee Harpin Application

130. Included in Associated's disclosure was a witness statement from Pleaded Journalist, Katie Nicholl, dated 13 June 2014. It is a statement volunteered by Ms Nicholl, apparently in a police investigation, concerning an article published on 23 January 2005 about Euan Blair. The statement refers to an exhibit. Associated has confirmed to the Claimants that copy of the exhibit cannot be located. Associated is making further enquiries (including with Ms Nicholl) to locate it and will provide a copy if it can be located.

131. Connected to this application is a further application for an order that Associated should carry out a search of call data and financial records relating to Lee Harpin, whom Ms Nicholl identified as the source of the article on 23 January 2005. However, the search requested is wider than for this specific article, it is for the period of 1998 to 2018.

132. In her witness statement, Ms Richmond makes the point that Mr Harpin is not a Pleaded TPI, associate or sub-contractor. Nevertheless, searches for payment records relevant to Pleaded Articles were not confined to Pleaded TPIs. Therefore, had a disclosable document referring to Mr Harpin been identified in that search, it would have been disclosed.

133. I refuse the application relating to further, wider, searches regarding Mr Harpin. Associated has carried out a search for a payment record for Mr Harpin in relation to this article. None has been found. There is no principled basis on which to require a further search. Mr Harpin is not a Pleaded TPI. If the Claimants believe that the disclosure they have received, and any further admissible evidence they have, enables them to advance a case that Mr Harpin was someone who used UIG (directly or indirectly) and who was engaged by a Pleaded Journalist, then they can advance that case in a proposed amendment to their claim, and (if not agreed) the Court will decide whether it should form part of the case. This is the conventional way in which civil litigation is kept within manageable bounds.

(6) The C&LS Application

134. In his witness statement, Mr Galbraith explains that Commercial & Legal Services (C&L) were an alias of System Searches, one of the Pleaded TPIs. He points to instances from Associated's disclosure that illustrate the alias, for example correspondence with Charles Garside about the methods of System Searches, under notepaper headed "*Commercial & Legal Services*". Mr Galbraith refers to findings made in the Mirror Group litigation regarding this TPI's unlawful methods (see ***Duke of Sussex -v- MGN Ltd*** **[2023] EWHC 3217 (Ch)** [270]).

135. Mr Galbraith accepted that the Claimants did not identify "*Commercial & Legal Services*" as an alias of System Searches in the Particulars of Claim. He points, however, to the fact that the name was provided as part of a Request for Further Information provided by the Claimants dated 7 June 2024. Mr Galbraith also accepts that the terms "*Commercial and/& Legal Services*", "*Comm and/& Legal*" or "*C&L*" were not among the search terms identified in Associated's Electronic Disclosure Questionnaire (prepared in advance of the First CMC). This led Mr White KC to the

simple, but principled, objection that the Claimants did not plead these aliases and did not seek their inclusion in the EDQ.

136. I refuse the Claimants' application. As I have made clear, throughout this litigation, I intend there to be a disciplined and focused approach. If the Claimants want to allege that Systems Searches has used various aliases, then they should have pleaded them (as they did for other TPIs). It is not a realistic way to approach litigation, particularly of this size, for a party to be expected to second guess the search terms to be used for disclosure by reference to a Request for Further Information, or to carry out separate research to identify potential further aliases. The time to raise this, if not by an amendment application earlier in the proceedings, was when the EDQs were being finalised.

137. I did consider whether insisting on an amendment would be to promote form over substance. However, I have concluded there is a clear risk that, if the Court abandons (or relegates the importance of) the statements of case as the parameters of the litigation, the principal control mechanism in keeping this litigation within clear and proportionate boundaries is deactivated and it promotes a culture towards disclosure that is unprincipled and unfocused. This is not an idle point. The Claimants have specifically pleaded aliases for some TPIs. The aliases used by System Searches have not been recently discovered by the Claimants. If a rigorous approach is not adopted, there would be nothing to stop the Claimants returning, in a few weeks or months, with a further list of aliases and a request for further searches to be carried out. As these searches include physical, not only electronic, searches each further search carries significant implications in terms of cost.

(7) The Disclosure Information Application

138. The Claimants seek an order that Associated must serve an Amended List of Documents identifying precisely where 470 specified documents were located, including the archive box, electronic folder, custodian's files, or the particular system or repository from which it was retrieved, where available.

139. The requirements for what must be provided in List of Documents are set out in CPR 31.10(2)-(4) and CPR PD31 §§3.1-3. Associated's List of Documents complied with this. Effectively, the Claimants' application is for a further and better List of Documents under CPR 31.5(8).

140. The relevant legal principles are not in dispute. I can take them from two passages from *Disclosure* (6th edition, Sweet & Maxwell, 2024) (with footnotes omitted):

> "In respect of Lists of Documents and affidavits or witness statements served under the CPR, they are regarded as conclusive…, save in relation to an application for specific disclosure under CPR r.31.12. As with a list of documents served under the old rules, it is generally not sufficient to adduce evidence to show that the List is untrue in order to challenge it, save in the context of a specific disclosure application…" (§6-80) …
>
> "In the context of the old rules it was held that a party could not serve interrogatories for the purposes of showing that a List of Documents is insufficient, although in special circumstances interrogatories were allowed as to the existence of particular documents. Similarly the court will not allow the mechanism of

> Information Request under CPR Pt 18 to be used as a means of challenging a List of Documents.
>
> Under the RSC, the court did not generally permit that a deponent be cross-examined on his affidavit for the purposes of obtaining further disclosure. Indeed, the weight of authority was to the effect that an opposing party could not cross-examine the deponent on his verifying affidavit at all. This was on the basis that the affidavit did not go to any of the issues in the action. The position is the same under the CPR. Even if there is no jurisdictional bar to ordering cross-examination of a deponent on his affidavit or disclosure statement, the exercise of such power is reserved to extreme cases where there is no alternative relief…" (§§6-82 to 6-83)

141. The justification advanced for this order is, the Claimants contend, that Associated's disclosure of documents – particularly invoices and payment records related to TPIs – is incomplete, inconsistent, and unclear, and raises concerns about missing or destroyed documents and the adequacy of Associated's searches for documents. In his witness statement, Mr Galbraith cites inadequate or vague disclosure; alleged discrepancies in TPI invoices (e.g. ELI was used extensively, yet only 26 invoices have been disclosed); what are said to be conflicting accounts as to Associated's document retention policy; unclear storage and search practices; an apparent failure to consult key staff regarding where documents might be located; refusal to provide provenance information; and a suggestion that potentially relevant expense records may not have been searched properly.

142. Ms Richmond, in her witness statement, has provided a detailed response to Mr Galbraith. In summary:

(1) The Claimants have not explained how the requested provenance details are relevant to the issues in dispute. The Claimants themselves have not provided provenance or custodian information in their own disclosure.

(2) 436 documents have been listed as "*hard copy*", meaning they were found in boxes stored at the Crown storage facility in Ruislip or Associated's offices. Documents marked "*ANL*" were found in electronic records, but due to the method of data extraction (a single export), identifying the exact mailbox or custodian would require re-extraction, which it is argued would be disproportionate in time and cost.

(3) Various documents already have their provenance clearly identified.

(4) 316 boxes from Crown and 6 from Iron Mountain were reviewed; 229 were found to be irrelevant. On this basis, Associated believes further searches are unlikely to yield disclosable material.

(5) Hard copy invoices were not retained systematically; some were stored ad hoc and found in various boxes. That explains the apparently haphazard retention. The Iron Mountain facility in Birmingham is the designated storage for financial documents, which are subject to routine deletion after 6 years. The Crown facility retained documents without routine deletion. It is here that some older invoices have been found.

(6) The Agresso system backup contains over 3.5 million payment records, dating from 2001, with full data from March 2011. 450 payment records have been disclosed, including 237 related to Pleaded TPIs.

143. As Mr Sherborne accepts, the starting position is that the order that the Claimants seek is an unusual one and requires a clear justification. It would only be appropriate to make such an order where the Court is satisfied, on evidence, that there are grounds to believe that the disclosure provided by a party (and the searches carried out to provide it) have been inadequate or that the approach to search demonstrably flawed. The Court will also proceed on the assumption, unless the contrary is shown, that professional solicitors know what is required to be done in relation to disclosure and will do their job diligently and conscientiously.

144. Mr Sherborne took me to some examples (and there are more in the evidence of Mr Galbraith) which, the Claimants suggest, demonstrate that there are 'missing' documents. One of these was the ELI invoices. The Ledgers suggest that there were around 800 invoices, yet only 26 have been disclosed. "*Where are the rest?*" asks Mr Sherborne.

145. This example is not particularly persuasive. On the evidence, it would appear likely that all the ELI invoices were, as accounting records, routinely destroyed. The fact that 26 have survived – in another document storage facility – does not suggest that the 'missing' 774 can now be located.

146. But there is a broader point in relation to the Claimants' examples. If they have force, the Claimants should make a specific disclosure application in respect of these documents. The Court can then assess whether it is persuaded that there are likely to be missing documents that a further search might locate. Whether the Court would make such an order would largely be an assessment of what is the value of what might be found measured against the cost of looking for it.

147. And if the Court were persuaded, after one or more specific disclosure applications, that there were worrying failures in the original disclosure process, it might be persuaded to make an order along the lines of that sort by the Claimants by the current application.

148. But as it presently stands, the Claimants' application is premised, largely, on an assumption that Associated (and its solicitors) have not done the disclosure exercise properly; that (despite these being Associated's documents) they have been looking in the wrong places; and that, if assisted by the Claimants' lawyers, the searches can be properly focused to find various disclosed documents the discovery of which have previously eluded the efforts of Associated and its solicitors. Based on Ms Richmond's evidence, and as matters stand now, I am satisfied that such an assumption would be wholly unwarranted.

149. I have been involved in the disclosure exercise (as the managing Judge) since the First CMC. Ms Richmond has made several witness statements explaining the disclosure process – both before and after the exercise has been carried out. Her evidence has been detailed and straightforward. It has not been substantially challenged.

150. At the hearing, Mr White KC took me to an example of what he submitted demonstrated the conscientiousness of the approach. Following the First CMC, Associated's solicitors considered a list of ten further boxes that the Claimants had suggested should be the subject of a search for disclosable documents. On 17 December 2024, Baker McKenzie wrote to the Claimants' solicitors. The letter gave a highly detailed response, explaining what the solicitors had done, and the rationale for their conclusions. The Claimants did not reply to the letter.

151. There is nothing in this evidence that leads me to suspect that Associated's solicitors have not been carrying out their duties fully and effectively. There is presently no justification, in my view, for the Court to make the orders sought by the Claimants.

152. There may be key documents, relating to the Pleaded Articles, Pleaded Journalists and/or Pleaded TPIs, the provenance or discovery of which the Claimants can demonstrate needs further explanation. Focused inquiries relating to such documents may be proportionate and justified. But, in my judgment, this current application is speculative, unfocused and far too broad. The Claimants have received some further information in Ms Richmond's witness statement – probably beyond that to which they were entitled. Based on the current application, they are not entitled to more. I refuse the application.

(8) The Data Storage Information Application

153. This covers similar ground to the previous application.

154. The Claimants seek an order requiring Associated to provide a detailed witness statement (or witness statements) from an appropriate senior officer explaining its document management, retention, and deletion practices during 1993–2018.

155. Ms Richmond has explained, in her witness statement, that the Claimants have been given a full explanation of Associated's relevant data management policies. In light of that, I am not persuaded that the Court should grant the order sought by the Claimants. Again, this application lacks proper focus and is refused.

(9) Further Custodians Search Application

156. The Claimants seek an order requiring Associated to perform additional disclosure searches in respect of three groups of custodians. The Claimants contend that the involvement of these individuals has become evident from the disclosure that has been provided. The groups and individuals are:

    (1) Group 1 (1998-2018): Jon Steafel, Phil Ross, Paul Webb, Nicola Hall, Harcharan Chandhoka, and Ian Shoebridge;

    (2) Group 2 (2011-2012): Alex Bannister, Charles Garside, David Dillon, John Wellington, Karl Dirckx, and Richard Monham; and

    (3) Group 3 (Jan-Aug 2011): Liz Hartley, Peter Wright, Paul Dacre, Sarah Amos (PA to Mr Wright), and Lesley Chirnside (PA to Mr Dacre).

157. Associated has agreed to extend the period of search proposed in its EDQ for what have been termed the "*concealment custodians*" to that suggested by the Claimants. Otherwise, the additional searches are opposed as unreasonable and disproportionate.

158. Mr Sherborne argues that the requested searches are targeted, proportionate, and tailored to specific periods relevant to the Claimants' pleaded case. He submits that the searches are not duplicative, and the disclosure could not have been sought in respect of these individuals until after Associated's disclosure had been received.

159. Mr White KC argues that the Claimants have known of the proposed custodians for concealment/limitation searches since the EDQs were served on 25 October 2024. No objection was taken, and the first suggestion that additional custodians should be searched was made on 29 April 2025. He submits that the extended list now proposed by the Claimants is intended to cover individuals involved in approving expenditure, notwithstanding the very broad search for and disclosure of financial records that has already taken place. Associated again takes the principled objection that this is a train of inquiry application, not justified by the issues disclosed on the statements of case.

160. I accept Associated's submissions. In my judgment, this is another example of the Claimants trying to conduct a wide-ranging, unfocused and disproportionate inquiry that is not justified by their current Particulars of Claim. If Associated's disclosure has provided the Claimants with new points that they believe support their respective claims and upon which they wish to rely, then they must propose amendments to advance these new points. If those amendments are allowed, either by consent or with the permission of the Court, any further disclosure, or custodian searches, will be governed by the parameters of the new statement of case. The Order from the First CMC set out a timetable and framework to enable the Claimants to bring forward their amendments based on the disclosure they received from Associated. The Claimants did not comply with that Order. When they do, they may be in a better position to pursue further focused applications regarding disclosure.

(10) The Train of Inquiry Application

161. This application appears to have been something of an afterthought.

162. Train of inquiry disclosure orders are exceptional: ***Ras Al Khaimah IA -v- Azima*** **[2022] EWHC 1295 (Ch)** [64]. That is because such orders are likely to be both onerous and expensive and may produce little of any real evidential value. Even when the Court is satisfied that such an order is justified, it must be specifically targeted. In ***Berezovsky -v- Abramovich*** **[2010] EWHC 2010 (Comm)** [12(iv)], Gloster J observed:

> "… if any order for enhanced disclosure is to be applied for, the applications should be focussed, directed at an identifiable category or class of document and linked to specific issues, not broadly aimed at the whole gamut of issues as presently is the case with the Claimant's application. Moreover some explanation should be provided as to the nature of the enquiry envisaged."

163. In his witness statement, Mr Galbraith offered two paragraphs to support the order sought:

> "In light of the Standard Disclosure received, the Claimants now seek disclosure from Associated of documents on the train of enquiry basis pursuant to PD 31A paragraph 5.5(1)(b) on the issue of Associated's use of certain private investigators and/or their aliases as set out in Annex A to the Claimants' draft order.
>
> The Claimants consider that certain documents, and in particular certain PI payment records, have been not disclosed by Associated on the basis of standard disclosure. It is important for the Claimants to receive disclosure of the same as they provide a key part of the puzzle for the Claimants to be able to piece together the information to show the underlying Unlawful Acts of the Defendant".

164. To be blunt, that is not evidence, it is assertion. It does not begin to justify the order sought by the Claimants, which itself is seeking disclosure to support the generic case. The application is refused.

(11) The Third-Party Disclosure Applications

165. By Application Notices dated 28 April 2025, Associated has applied for orders for third party disclosure against the Information Commissioner's Office ("the ICO") and Metropolitan Police Service ("the MPS").

166. Neither application is opposed by the third party in question.

(a) The MPS Application

167. The MPS application is supported by Ms Richmond's 8th Witness Statement. It follows a request by Associated, on 21 January 2025, for the MPS to search Southern Investigations phone billing records dating between 1997-2008. The MPS indicated that it was prepared to volunteer the results to Associated and the Claimants provided the parties agreed to receive them at the same time. The Claimants were initially reluctant to agree, and consequently Associated made an application to permit the MPS to disclose the results of the search.

168. Having been sent Associated's application in draft, the Claimants confirmed that they would consent to the order sought by letter dated 28 April 2025.

169. I indicated at the hearing that I was satisfied that an order would be made.

(b) The ICO Application

170. The application in respect of the ICO seeks disclosure of correspondence between Ms Hurley and Ms Frost Law (or sent on their behalf) and the ICO. It is supported by Ms Richmond's 10th Witness Statement.

171. Both Claimants plead that they, or their associates, were the subject of unlawful searches by Mr Whittamore, whose activities were the subject of the ICO's Operation Motorman (see Limitation Judgment [19]-[22]). Ms Hurley states, in her disclosure statement, that she believes she made a subject access request to the ICO in 2017. Ms Frost Law has not disclosed any correspondence with the ICO relating to a subject access request (or other disclosure request) for information from the Operation Motorman file.

172. Associated contends that the relevance of the disclosure sought is as follows. To the extent the ICO holds a record of or copies of correspondence in respect of the two Claimants, it is relevant to the issue of whether they knew, or could with reasonable diligence have known, by 6 October 2016, facts that would have led a reasonable person to discover that they had a reasonable claim.

173. The application was sent in draft to the relevant Claimants on 17 April 2025. Ms Hurley accepted that "*any disclosure [she] received from the ICO and relating correspondence may be of relevance to the Knowledge Issue*". At the hearing, Mr Sherborne suggested that the Court should order the ICO to make disclosure initially to Ms Hurley's solicitors and that they should decide what should be disclosed to Associated. Asked why the Court should insert Ms Hurley's solicitors into a third-party disclosure exercise, Mr Sherborne faintly suggested that there might be privilege issues or third-party interests that needed consideration. He could not explain how the ICO could have documents over which Ms Hurley could seriously advance a claim for privilege.

174. I shall make the order Associated seek, without any requirement that Ms Hurley's solicitors first consider what falls to be disclosed to Associated.

(12) Associated's Specific Disclosure Application

175. Associated's Specific Disclosure Application is supported by Ms Richmond's 9th Witness Statement. It seeks an order in relation to three key areas:

(1) Disclosure relating to each Claimant's knowledge (actual or constructive) of facts that would have enabled a reasonable person to realise that s/he had a valuable claim against Associated ("the Knowledge Disclosure Application");

(2) Disclosure relating to the Research Team and agreements with individuals to provide support to the Claimants. The orders sought:

(i) confirmation that all disclosable documents obtained or created by the Research Team (including those documents adverse to the Claimants' case) have been disclosed ("the Research Team Application"); and

(ii) a requirement that, to the extent not already done so, the Claimants should search for and disclose any documents that relate to payments, royalties or inducements paid, provided or offered, or any demands or threats made, in order to obtain documents, information or other cooperation from Pleaded TPIs or any person who worked with any TPI in relation to the provision of information to the Defendant ("the Third-Party Support Application"); and

(3) Disclosure relating to Glenn Mulcaire's notebooks ("the Mulcaire Application").

(a) Legal Principles

176. CPR 31.5(8) and 31.12 enable the Court to grant orders for specific disclosure.

177. In ***Lisle-Mainwaring -v- Associated Newspapers Ltd*** **[2018] 1 WLR 4766** Coulson LJ [34(c)]:

> "The application for specific disclosure will usually arise because the applicant believes that the other party has not given adequate disclosure first time round. But that is not inevitable: sometimes, there may be documents (or a particular class of documents) which the applicant seeks by way of specific disclosure, regardless of whether or not they should have been disclosed by way of standard disclosure."

178. The court can make an order for specific disclosure in respect of documents that relate solely to credit: ***First Subsea Ltd -v- Balltec Ltd*** **[2013] EWHC 584 (Ch)** [16]-[21]

179. A solicitor's knowledge is generally to be attributed to his client: §4-036 *Snell's Equity* (35th edition, Sweet & Maxwell, 2025).

(b) Knowledge Disclosure Application

180. Fundamental to Associated's limitation defence is whether each Claimant knew, or could with reasonable diligence have known, more than 6 years before they issued proceedings, facts that would have led a reasonable person to discover that they had a worthwhile claim.

(i) The Claimants' alleged personal Watershed Moments

181. In his/her Reply, each Claimant alleges that s/he had a personal Watershed Moment, variously between 2019 and 2022 when Mr Miskiw, Mr Mulcaire, Mr Burrows and other key TPIs provided information to the Claimants.

182. In advance of the First CMC, Associated sought further information under CPR Part 18 from Prince Harry, Ms Hurley, Baroness Lawrence and Ms Frost Law as to their alleged Watershed Moments. The further information sought including details of which individuals it is alleged had provided information to whom and on what dates.

183. The responses stated that Mr Sherborne, Ms Sangani (the partner acting for Ms Hurley, Sir Elton, Mr Furnish and Baroness Lawrence) and Mr Galbraith (the partner acting for Ms Frost Law) played integral roles in making certain Claimants aware of potential claims they might have against Associated. Their answers, provided by way of Further Information, stated that:

(1) Prince Harry learned that Associated had subjected him to UIG from a conversation with Mr Sherborne, and subsequently with Mr Galbraith;

(2) Ms Hurley learned of Mr Burrows claims in a telephone call with Ms Sangani;

(3) Baroness Lawrence was alerted to potential claims she might have against Associated by a message sent to her by Prince Harry; and that the two lawyers Baroness Lawrence met with subsequently (at Prince Harry's suggestion) were Ms Sangani and Mr Sherborne; and

(4) Ms Frost Law learned that her voicemails were alleged to have been intercepted by Mr Miskiw and Mr Mulcaire on behalf of Associated from reading an article by Graham Johnson in *Byline Investigates* dated 1 January 2019.

184. In each Claimant's case, the relevant answer expressly stated that his/her rights "*were reserved in respect of any applicable privileges covering communications sent to or by [him/her] with [his/her] legal representatives, past or present*".

(ii) Evidence

185. In her witness statement supporting Associated's Specific Disclosure Application, Ms Richmond expresses concern that disclosure relevant to these issues is not being dealt with adequately by the Claimants. She suggests that none of Claimants appears to have made enquiries of those people who provided or procured the information (including Mr Johnson, Dr Harris and other members of the Research Team), nor included them as custodians in their disclosure exercise. The only searches carried out by Prince Harry in respect of his claim against Associated is of his laptop via remote access. Where devices appear to be readily accessible, Ms Richmond suggests that the Claimants have made only cursory attempts to access the data. For example, no attempt has been made using a SIM card reader/adapter to access the data on the retained SIM cards of one of Ms Hurley's custodians, her PA Sara Woodhatch, until 2006.

186. Ms Richmond goes on to say that, whilst Baroness Lawrence has disclosed the message from Prince Harry, she has not disclosed any other documents relating to the "*information that had come to light*", the "*information shared with her during*" the meeting in January 2022 with Mr Sherborne and Ms Sangani. Nor has any of the "*material*" which Mr Sherborne had "*come across*" and which Prince Harry said in his email to Baroness Lawrence "*he and one of his team would be keen to come and speak to you… in order to explain what this material shows and what your options are*". Ms Richmond notes that no documents have been produced notwithstanding that the Claimants' case is that Mr Burrows had provided Claimants with a witness statement six months earlier in August 2021. Similarly, Ms Frost Law has not disclosed any communication with Mr Johnson/*Byline Investigates* in relation to the article published online in January 2019, which alleged to be her Watershed Moment, despite that article stating that she was taking legal advice.

187. Specifically, Associated seeks:

(1) in respect of Elizabeth Hurley, Prince Harry, Sadie Frost Law, Sir Elton John and David Furnish:

(a) an order that the Claimants each search for (to the extent not done already), disclose and produce for inspection all documents relating to, evidencing or referring to the point in time when they each first became aware of potential unlawful information gathering by Associated; and

(b) an order that each Claimant searches for (to the extent not done already), discloses and produces for inspection all documents that contain or refer to the information provided to them directly or through the Research Team or any legal adviser or other representative at or around the time of their alleged Personal Watershed Moments and from which it is alleged they discovered they may have a worthwhile claim against Associated (in so far as not included in response to (a) above);

(2) in respect of Baroness Lawrence an order that Baroness Lawrence search for (to the extent not done already), disclose and produce for inspection all documents containing or referring to the information relied upon and pleaded in her Reply (§20) whether provided to her directly or through any legal adviser or other representative and from which it is alleged she discovered she may have a worthwhile claim against Associated;

(3) in respect of Sir Simon Hughes:

(a) an order that Sir Simon search for (to the extent not done already), disclose and produce for inspection all documents evidencing the information provided at or in advance of or following: (i) the meeting in or around early April 2016 that was arranged between him and Dr Evan Harris and Graham Johnson; and (ii) the meetings referred to at §22(a)(i) and §22(b)(ii) of the Reply in relation to his alleged Personal Watershed Moment;

(b) an order that Sir Simon search for (to the extent not done already), disclose and produce for inspection all documents that explain, evidence or refer to the "*Mail business*" referred to in the email from Dr Harris to Sir Simon dated 3 March 2016 in connection with the meeting arranged in or around early April 2016;

(c) an order that Sir Simon disclose and produce for inspection the witness statement he provided to the Leveson Inquiry and quoted from in the *Byline Investigates* article entitled "*Phone hacker emailed Mail on Sunday executive Chris Anderson with updates during complex eavesdropping operation on Simon Hughes MP*", written by Mr Johnson and published on 28 July 2020, or any other document containing the quoted words or any other document in which Sir Simon and/or HJK raised their suspicions, during the Leveson Inquiry, that journalists engaged by Associated had been involved in UIG or that formed the basis of those suspicions;

(d) an order that Sir Simon disclose and produce for inspection the further and better particulars provided by Mr Mark Thomson to the Leveson Inquiry of a paragraph in his witness statement that read: "*It is clear that from the evidence that has been disclosed and/or the evidence that I have obtained in the phone hacking litigation, this activity was not confined to one newspaper or one newspaper group but common industry practice. Paul McMullan admitted as much in his meeting with Hugh Grant, which was the subject to matter of an article a copy of which is exhibited at Tab 6 of MT1*";

(e) an order that Sir Simon disclose and produce for inspection documents evidencing who he followed on his social media accounts and when he followed them in the period from January 2011 to October 2016.

188. Associated also seeks, insofar as may be appropriate, a determination as to whether the Claimants or any of them can establish that any document or category of documents containing or referring to the information provided to them when they each first became

aware of potential unlawful information gathering by Associated (including, without limitation, at their Personal Watershed Moments) is covered by legal professional privilege.

189. There is no dispute that the acts complained of by each Claimant took place more than six years before the proceedings were commenced. Associated have relied upon a limitation defence and the Claimants, in turn, allege deliberate concealment under s.32 Limitation Act 1980 to defeat the limitation defence. Associated argues that a critical issue in relation to the limitation defence is when each Claimant first became aware of potential unlawful information gathering by Associated and the nature of the information provided to each Claimant in respect of such alleged unlawful information gathering ("the Knowledge Issue").

190. In their Replies, the Claimants each pleaded their case as to their alleged "*Personal Watershed Moment*" when it was alleged that each Claimant first discovered that s/he may have a worthwhile claim against Associated. Each Claimant relies upon "*information*" provided to him/her at around the time of their "*Personal Watershed Moment*". For example, Baroness Lawrence relies on "*information that had come to light*", "*information shared with her*", and "*information the Claimant had learned*". Each Claimant states that s/he "*did not in fact know the relevant facts relating to the Unlawful Acts as advanced in these proceedings (which were deliberately concealed from [him/her] as set out above), and that [s/he] therefore had sufficient confidence [s/he] might have a worthwhile claim in relation to the same, prior to October 2016.*"

191. In its Rejoinders, Associated has denied that the Claimants were entitled to rely upon s.32 Limitation Act 1980 and specifically pleaded that each Claimant "*had actual knowledge of sufficient facts to render this claim a worthwhile one prior to 6 October 2016, being the date 6 years prior to the issue of the Claim Form in these proceedings*". Further or alternatively, that each Claimant "*could with reasonable diligence have discovered sufficient facts to render this claim a worthwhile one prior to that date, in each case by reference to the requirements of s.32(1)(b) of the Limitation Act 1980.*"

192. In her witness statement, Ms Richmond has identified the several occasions, prior to the First CMC, that Baker McKenzie had written to the Claimants' solicitors identifying the importance of disclosure on these issues.

193. In the event, when disclosure was provided by the Claimants:

(1) only two of the Claimants, Baroness Lawrence and Sir Simon Hughes, disclosed any documents evidencing when they first became aware of potential UIG by Associated;

(2) none of the Claimants disclosed documents evidencing the nature of the information provided to him/her in respect of such alleged UIG.

194. Ms Richmond concluded:

> "It is inconceivable that no such documents [concerning the Knowledge Issue] exist at all in respect of any of the Claimants. Instead, it appears likely that the

Claimants' failure to disclose such documents arises from a failure to carry out a sufficient search for such documents".

195. Mr Galbraith has provided a witness statement (the 9th) in response to Associated's Specific Disclosure Application, dated 1 May 2025. Mr Galbraith states that the Claimants' Disclosure Statements demonstrate that "*very extensive searches have been undertaken by the Claimants across a large source of documents and across an expansive date range*". As to Ms Richmond's contention that it is "*inconceivable*" that there are no further documents that fall to be disclosed on the Knowledge Issue, Mr Galbraith suggested that most of the Claimants learned of the information giving rise to their Personal Watershed Moments orally. He says that, without waiving privilege, further evidence is likely to be provided in the Claimants' witness statements on which they can be cross-examined.

(iii) Submissions

196. The submissions of the parties substantially relied upon the arguments advanced in the evidence.

197. Mr White KC quarrelled with Mr Galbraith's suggestion that information concerning the Personal Watershed Moments was largely conveyed orally. Even if this were correct, he suggested that the information communicated orally would have been contained or referred to in a document in the possession of the communicator, and/or recorded in some form by the recipient. In this regard, Mr White KC drew attention to what Mr Sherborne had told the Court at the First CMC that in relation to constructive knowledge "*a large proportion of documents going up to 2023 are going to be privileged*". Similarly, in Further Information, provided by the Claimants on 20 November 2024, the Claimants reserved their rights to claim privilege over the communications in question. Mr White KC argues that this clearly suggests there *were* documents, but that privilege would be claimed whereas the position adopted by Mr Galbraith, in his witness statement, is that there are *no* documents.

198. Mr White KC argues that evidence relating to the Knowledge Issue is one where the Claimants and those acting on their behalf (in particular their legal advisers and members of the Research Team) are uniquely possessed of the relevant knowledge and documents. Associated depends on full and proper disclosure being given. It is therefore of crucial importance that the Claimants should conduct proper searches on these issues.

199. As to specific disclosure sought against Sir Simon Hughes, Associated submitted the following:

(1) In his witness statement for the limitation application, Sir Simon stated that it was not until early 2022 that he knew that he "*might have the basis*" for a claim for UIG against Associated. Sir Simon's evidence was 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. Sir Simon stated that he believed that NGN, through Mr Mulcaire, had been the only entity intercepting his voicemail messages: "*there was no basis then at all for me to think otherwise*". Similarly, in his Reply, Sir Simon says: "*It appeared to [him] at the time*

[in 2012] that NGN, using Mr Mulcaire, had been the only entity unlawfully intercepting his voicemails. He had no basis then at all to think otherwise. Nothing that [he] learned in his proceedings against NGN suggested that Mr Mulcaire had been hacking phones for other newspapers".

(2) The incident involving HJK in April 2006 is highly relevant to Sir Simon's actual or constructive knowledge of UIG by Associated. HJK gave evidence to the Leveson Inquiry that his address had been blagged, and his voicemails hacked, by Mr Mulcaire. He stated that, after his address had been obtained by blagging, he was approached at his home and telephoned by a journalist from a newspaper group other than NGN asking about whether he was in a relationship with "X" and that he suspected this other newspaper was implicated in the blagging and hacking. He said no story was published as another story dominated the Sunday newspapers and that he later tore up the journalist's business card. The name of the other newspaper was redacted from his published evidence, as was the other story. In his limitation witness statement, Sir Simon stated that he was aware that, in April 2006, a *Mail on Sunday* journalist had approached HJK and, although a Core Participant, he did not see HJK give evidence at the Inquiry.

(3) In his disclosure, Sir Simon has now produced documents which reveal that:

(a) Dr Evan Harris invited him in March 2016 to a meeting to discuss "*the Mail business*";

(b) Dr Harris told him on 4 April 2016, in advance of a meeting planned for the following day, that "*I am bringing my investigative journalist Graham who got the whistleblower stuff*", and that "*Glenn is one of his sources – he'll explain*";

(c) on the eve of that meeting, Sir Simon emailed HJK (with the subject line "*Old tricks*") asking for the name of the journalist "*who tried to link you and me for the papers*" as (as he said later in the exchange) he "*had no clear recollection of the name*"; and

(d) Dr Harris had also been in contact with HJK and indicated that Dr Harris had put an earlier case to HJK ("*I know he had a source that the [Daily Mail] or [Mail on Sunday] was implicated, However, I doubted Evan's source… I wonder if Evan has a better case now*"). HJK added "*you know my statement at Leveson implicated them*".

(4) Further, it is evident from Sir Simon's disclosure that Dr Harris was a close associate from at least 2005-6 and with whom he regularly exchanged messages.

(5) Associated submits that it seems highly likely therefore that there must be more disclosable material, as:

(a) there clearly had been earlier communications about the "*Mail business*" between Sir Simon and Dr Harris before the first disclosed email at on 3 March 2016 and the first disclosed text on 4 April 2016 which would tend to show what the "*Mail business*" was and how it developed;

(b) no diary entries or other emails or texts between Dr Harris and Sir Simon have been disclosed;

(c) no follow up communications or notes of the meeting have been disclosed; and

(d) no documents provided at or in advance of or following the meeting arranged for early April 2016 have been disclosed.

(6) The extent to which Sir Simon knew (a) about HJK's account of being doorstepped by a journalist and his suspicions; and (b) the claims by Mr Mulcaire (who by then, with Mr Miskiw, was assisting claimants in the News Group litigation) that he had undertaken work for Associated, or could have asked them, is critical to the Knowledge Issue.

(7) Further, in Sir Simon's Reply it is pleaded that "*he was first made aware of potential UIG targeted against him by D in around July 2020*" when he "*was contacted by Mr Johnson who told him he had been targeted by hacking by [the Mail on Sunday]*"; and his personal Watershed Moment was not until early 2022, when Mr Johnson provided Mr Thomson with (i) the emails between Mr Miskiw and Mr Anderson, (ii) a payment record from Mr Miskiw; and Mr Mulcaire told him that he had "*undertaken phone hacking for Associated*". Sir Simon has disclosed the payment record and a version of the email exchanges between Mr Miskiw and Mr Anderson, but no other documents have been disclosed. Importantly, in his letter of claim Sir Simon referred to having been provided with three pages from Mr Mulcaire's notebook. None of these pages has been disclosed or, if they have, they have not been identified. Nor has any correspondence with Mr Johnson in July 2020, or between Mr Thomson/Sir Simon and Mr Mulcaire/Johnson in 2022, been disclosed.

200. Mr White KC submits that there are three further key documents, which have not been disclosed by Sir Simon:

(1) **Sir Simon's submission to the Leveson Inquiry**. The *Byline Investigates* article entitled "Phone hacker emailed *Mail on Sunday* executive Chris Anderson with updates during complex eavesdropping operation on Simon Hughes MP", written by Mr Johnson and published on 28 July 2020, contains quotes from what is said to be a witness statement, said by Mr Johnson to have been provided by Sir Simon to the Leveson Inquiry:

> "Hughes later gave a witness statement to the Leveson Inquiry, stating: '*I believe that the Mail on Sunday was also trying to write a story about [HJK] and me. I remember that both of us had reporters turn up on our doorstep on the same day trying to find out information.*' The story was due to be published the following day on Sunday April 30th 2006. However, a bigger political story broke which may have knocked it out of the paper. The story involved John Prescott and Tracey Temple, his former employee, who may have also been hacked for the *Mail on Sunday*".

(2) Sir Simon has not disclosed this witness statement or any other document containing the quoted wording. Any witness statement or other document which contains this wording, and any other document in which Sir Simon and HJK "*raised their suspicions at Leveson*" is, Associated argues, plainly relevant to the Knowledge Issue.

(3) In Mr Galbraith's witness statement in response, he states that only one witness statement was provided by Sir Simon to the Inquiry (dated 20 February 2012) and that has been disclosed. However, Mr Galbraith does not address the rest of the request, for "*any other document containing the quoted words*". Accordingly, Associated contends that this is not an answer to the application.

(4) **Mark Thomson's submission to the Leveson Inquiry**. In his oral evidence to the Inquiry, Mr Thomson, Sir Simon's solicitor, agreed to provide to the Inquiry further and better particulars of a paragraph in his witness statement that read:

> "It is clear that from the evidence that has been disclosed and/or the evidence that I have obtained in the phone hacking litigation, this activity was not confined to one newspaper or one newspaper group but common industry practice. Paul McMullan admitted as much in his meeting with Hugh Grant, which was the subject to matter of an article a copy of which is exhibited at Tab 6 of MT1".

(5) The further and better particulars are relevant to Mr Thomson's knowledge of alleged UIG by Associated in late 2011, and what evidence, which had been disclosed or obtained in the phone hacking litigation, had led him to conclude that it was clear, on the evidence, that phone hacking was "*common industry practice*". It is submitted that this is in marked contrast to what is pleaded in Sir Simon's Reply, which stated that "*Nothing that [he] learned from his proceedings against NGN [in 2011/2012] suggested that Mr Mulcaire had been hacking phones for any other newspaper group*". In response, Mr Galbraith has stated that "*no such information/document was provided by Mr Thomson to the Leveson Inquiry*."

(6) Mr White KC contends, however, that this answer does not meet the substance of Associated's concern. Mr Thomson was acting as Sir Simon's solicitor from August 2011. It is clear, from his witness statement, that Mr Thomson had information at the time when he gave evidence at the Leveson Inquiry (in November 2011) that "*evidence that has been disclosed and/or the evidence that I have obtained in the phone hacking litigation, [showed] this activity was not confined to one newspaper or one newspaper group but common industry practice*", which enabled him to offer to provide further and better particulars of this allegation to the Inquiry. It is highly likely that the information held by Mr Thomson would have been contained in or referred to in documents. Knowledge of the information held by his solicitor Mr Thomson would have been attributable to, or at least accessible to Sir Simon, as his client. Mr Thomson has been continuously involved in phone hacking litigation against MGN, NGN, and more recently Associated, for many years. He is bound to have retained the documents in question. They should be searched for and disclosed by Sir Simon.

(7) **Sir Simon's social media accounts:** No disclosure is given as to who Sir Simon followed via his social media accounts. Given his close involvement in the phone hacking litigation, following, for example, @DrEvanHarris, @HackedOffHugh, any journalist, regulator, inquiry or associate or Claimant research team member via these accounts and the account handles in question would be relevant to the Knowledge Issue. Mr Galbraith dismissed the request for disclosure as being disproportionate, but did not explain why.

201. In relation to the Claimants' general disclosure on the Knowledge Issue, Mr Sherborne relied on Mr Galbraith's evidence. Apart from the documents that have been disclosed (and documents that are privileged), there is nothing more to be disclosed. Mr Sherborne submitted that it was insufficient support for a specific disclosure application to state that it is inconceivable that there are no further documents.

(iv) Decision

202. Associated's specific disclosure application has been targeted and focused. Whilst I accept that there would usually be force in a submission that simply stating that it is "*inconceivable*" that there are no further documents in a particular category, or going to a particular issue, would not normally be sufficient to justify a specific disclosure order. However, Ms Richmond's evidence is not limited to a cry of "*inconceivable*". She has carried out a careful analysis of the case advanced by each Claimant in response to the limitation defence.

203. As I expressed at the hearing, and as things currently stand, I do find the lack of documents surrounding each Claimant's Watershed Moment to be surprising. The suggestion that most Claimants received the information that led to their Watershed Moment orally is not a complete answer. Put shortly, each Claimant's case is that, in this Watershed Moment, they suddenly realised, for the first time, that they may have been subjected to UIG by Associated. It will be a matter for evidence and assessment in due course, but I anticipate that the Claimants will suggest that receipt of this information was shocking, not routine. At the hearing I described the effect of learning this information as similar to dropping a stone into a pool of water. And just as the stone entering the water would cause ripples, so too the impact of receipt of the information on each Claimant could be expected to have a ripple effect, for example leading to communications between trusted friends and family members; messages seeking advice or guidance, or expressing shock or outrage. Whilst the search for such documents will start with each Claimant's own documents, it does not end there. There are other important custodians whose documents are within the control of the Claimants and must be searched, principally the Claimants' lawyers and members of the Research Team.

204. I have considered carefully whether to refuse Associated's application on the basis that Mr Galbraith has stated that a thorough search has been carried out, and the few documents that have been found as a result have been disclosed. However, given the importance of the issue, and the potential consequences of the absence of documents in this category at trial, I consider that the Claimants should be required to carry out a further search.

205. It is important, when carrying out this exercise, that the Claimants understand the potential impact that the absence of disclosure may have at the ultimate trial. As explained in ***Wetton -v- Ahmed*** **[2011] EWCA Civ 610** [14], contemporaneous

documentation can be of "*the very greatest importance in assessing credibility*". Sometimes, the importance comes from what is contained in the relevant documents, but equally what is absent can also be evidentially significant. As Arden LJ observed:

> "… if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct… then the documentation may be conspicuous by its absence and the judge may be able to draw inferences from its absence."

206. Reflecting this, the importance of the disclosure is therefore not only the identification of documents that still exist, but also the identification of documents that did once exist but are no longer available. The Claimants' case is – in summary – that they discovered that they had been targets of UIG by Associated. If that was – as each Claimant contends – the first moment that they became aware of this – then that might be expected to be a shocking moment. Whilst each Claimant's evidence will be very important on this issue, and the Court will need to assess all the evidence at trial, a complete absence of corroborating documents may well be relied upon by Associated to suggest that the Watershed Moment could not have been quite as shocking as is being claimed. Whatever submissions are made on the documents (or lack of documents) is a matter for trial. At this stage, however, I am satisfied that the issue is important enough to warrant a further search so that the Court and the parties can be assured, at trial, that the disclosure exercise has been conducted fully and robustly and that the Court and the parties can rely upon it when considering what conclusions can be drawn from the existence or non-existence of particular documents.

207. I am satisfied that the Court should make an order in the terms sought by Associated as identified in [187(1)] and [187(2)] above. I am also satisfied, on the evidence, that an order should be made in the terms of [187(3)] above.

208. At the moment, there is confusion as to whether the Claimants' position is that there are no further documents that fall to be disclosed, or whether there are further documents but they are being withheld from inspection on the grounds of legal professional privilege. As with any claim for legal professional privilege, it is important the documents that would otherwise fall to be disclosed are identified, and the claim to withholding inspection on the grounds of legal professional privilege considered separately for each document. It is not inconceivable that Associated may wish to challenge a claim for privilege depending on the particular circumstances of individual documents, but to be in a position to do so they must have sufficient information as to the nature of each document to be able to assess whether the claim for privilege is well-founded or potentially open to challenge. Any challenge to a claim to withhold any document on the grounds of privilege cannot be resolved now.

(c) The Research Team Application

209. Associated seeks an order that the Claimants should confirm that all disclosable documents obtained or created by the Research Team, that fall within the terms of standard disclosure, have been disclosed.

(i) Evidence

210. In her witness statement, Ms Richmond has set out the background and evidence about the Research Team and the assistance that they have provided.

211. Early in the proceedings, the Claimants confirmed to Associated that they had jointly instructed the Research Team and have identified its members. Baker McKenzie wrote to each member of the Research Team, on 19 July 2023, requesting that they preserve documents relevant to these proceedings. On 21 October 2024, Baker McKenzie wrote to the Claimants' solicitors seeking confirmation that the Claimants accepted that documents obtained by the Research Team were in the Claimants' control and therefore liable to fall within the ambit of disclosure searches.

212. Ms Richmond suggests that there is clear evidence that the Research Team is likely to hold documents that fall within standard disclosure.

(1) In his First Witness Statement, Mr Galbraith stated that the claims in these proceedings rely on evidence and documents provided to the Claimants by Graham Johnson of *Byline Investigates*. Specifically, Mr Galbraith stated that Mr Johnson's articles:

> "… referred to much of information which also appears in the Particulars of Claim for example: (a) details of the payment of certain Private Investigators (such as ELI/TDI and Steve Whittamore/JJ Services); (b) the role of individual journalists in instructing Private Investigators (such as Katie Nicholl, Stephen Wright, Richard Simpson, Ben Taylor, and Tony Gallagher) (c) the overall amount of money and number of instructions given by the Defendant generally to the Private Investigators and (d) the names of some of the Defendants' targets and various suspicious articles about these high-profile individuals (such as Prince Harry, The Duke of Sussex, Elizabeth Hurley, Kylie Minogue and Heather Mills)."

(2) Mr Johnson has appeared publicly to confirm that position, stating to *Press Gazette* on 5 March 2025 that:

> "The Mail litigation is almost entirely based on the stories I published on Byline about five years ago. It's the same evidence. It is based on Miskiw, Mulcaire, Whittamore, documents and other witnesses who came forward".

(3) *Byline*'s own reporting states that the tip that sparked its investigations into Associated's newspapers was received in 2015 and, following that tip, at least fifty-three articles have been published by *Byline Investigates* across a range of topics. The articles published to date have included reports on Ms Frost Law, Sir Simon and Heather Mills that have been pleaded as examples of unlawful information gathering in these proceedings.

(4) Mr Johnson confirmed on oath in the Mirror Group litigation that he had suggested Gavin Burrows, Steve Whittamore and Dan Hanks as witnesses to the claimants in those proceedings. Mr Johnson also confirmed on oath that he had purchased documents from Mr Hanks as well as from Christine Hart.

Ms Richmond suggests that it appears that Mr Johnson has made arrangements with other TPIs in order to obtain documents or statements for use both in media projects and in civil litigation against newspapers including the *Daily Mail*/*Mail on Sunday*. The potential issue with this, as identified by Fancourt J in the most recent trial judgment in the Mirror Group litigation ([244]), is what the Judge described as the "*obvious*" risk that Mr Johnson:

> "…will himself give, or procure from others, evidence that is calculated to serve his own objective and so stray from the truth – if that is not a risk of invention, then it is at least a risk of exaggeration".

(5) Messrs Burrows, Miskiw, Mulcaire, Whittamore and Ms Hart have assisted the Claimants having been persuaded to do so by Mr Johnson and Dr Harris at various times from around 2015 onwards. Some of those individuals have provided evidence – in the form of witness statements and affidavits – to Mr Johnson some of which has been disclosed by the Claimants. Mr Miskiw, for example, provided an affidavit in August 2019 headed "*In any Intended Proceedings by Katie Nicholl or Associated Newspaper Limited*" in response to a request from *Byline Investigates*. This has been disclosed by the Claimants, but other witness statements and affidavits procured by Mr Johnson which have been referred to in the most recent MGN trial judgment have not.

(6) At the most recent MGN trial, further documents were produced by Mr Johnson after Mr Johnson had given evidence, not having previously been disclosed by the claimants.

213. In her evidence, Ms Richmond suggests that, from 2014, Mr Johnson was collaborating with Dr Harris and solicitors to obtain evidence against Associated for use in civil claims. Ms Richmond suggests that, as a result, it is likely that the Claimants and/or their solicitors would have had access to the documents Mr Johnson gathered. In support of this, she relies upon the following:

(1) In an email in February 2016, Christine Hart told Charles Garside at the *Daily Mail* that she had been approached by Graham Johnson "*who* [was] *working on behalf of Hugh Grant and his lawyer*" and who had interviewed her about working for Associated.

(2) Dr Harris arranged a meeting between Sir Simon Hughes and Mr Johnson, in April 2016, whom Dr Harris described as "*my investigative journalist*" (see [199(3)(b)] above).

(3) In an email to Liz Hartley in December 2018, Chris Anderson, formerly a journalist at the *Mail on Sunday* whom the Claimants allege was a main contact for Greg Miskiw, reported that he had been approached by Mr Johnson, in the summer of 2016, and that he had told Mr Anderson that he was "*authorised to guarantee… that if [he] co-operated with his wider enquiries into the Mail group then the emails would be kept private*".

214. Ms Richmond states that concerns were raised about the Research Team, and the documents they held, as early as 19 June 2023 and again in Ms Richmond's 6th Witness

Statement. The articulated concerns were that the Research Team should not be used as a device to:

(1) cherry-pick the documents disclosed so as to produce only those documents relied upon by the Claimants and avoid disclosing documents adverse to their pleaded claims or that show a trail of investigation beginning well before the limitation cut-off date; or

(2) avoid explanation as to the provenance of documents or the circumstances in which information has been obtained and so make it difficult to assess the credibility or authenticity of the documents relied upon.

215. Despite this, Ms Richmond argues that appropriate searches do not appear to have been carried out by the Claimants, as a number of documents purporting to set out accounts of unlawful information gathering by TPIs have been produced without the Claimants also disclosing documents as to provenance or the circumstances in which documents have been obtained and only three documents in disclosure appear to have been taken from the electronic email accounts of the Research Team. The question of when these documents were obtained by the Research Team, and so might have first been provided to the Claimants, Ms Richmond notes may well have a bearing upon the Knowledge Issue.

216. Associated wrote to the Claimants, on 22 April 2025, to request:

(1) confirmation that all disclosable documents obtained or created by the Research Team (including those documents adverse to the Claimants' case) had been produced for inspection on 21 March 2025; and

(2) that if they have not already done so, the Claimants will search for and disclose any documents that relate to payments or inducements paid, provided or offered, and any demands or threats made, in order to obtain documents, information or other cooperation from a TPI or any person who worked with any TPI in relation to the provision of information relating to Associated.

217. In his witness statement in response, Mr Galbraith has stated:

> "A further criticism levelled at the Claimants is the suggestion that searches have not been conducted in respect of communications with the Claimants' research teams... This is again not correct. I refer to two examples from the List of Documents in the claims brought by Baroness Lawrence and one in the claim brought by Elizabeth Hurley".

(ii) Submissions

218. Associated contends that there are several features that make this case exceptional, and that there is a need for particular care to be taken with the disclosure exercise and documents held by the Research Team.

219. Mr White KC submitted that the Claimants have brought these claims, principally as a result of information allegedly provided to them by TPIs – Messrs. Burrows, Miskiw, Mulcaire, Whittamore and Ms Hart. As I noted in the Limitation Judgment [180], "*it is*

the emergence of these facts that, Mr Sherborne submits, transformed the Claimants' claims from speculative to realistic and worthwhile".

220. The Claimants have relied on documents generated by the Research Team which, Mr White KC argues, appear to have been produced in circumstances that are both unusual and unclear. He submits that the evidence shows that the Research Team has been actively seeking to obtain evidence against Associated, only part of which has been disclosed by the Claimants. In his skeleton argument, Mr White KC also identified several examples from the Claimants' Particulars of Claim where the allegations made appear to have been based on documents that have not been disclosed by the Claimants. Mr White KC invites the inference that the documents relied upon are held by the Research Team.

221. Mr White KC submits that the documents held by the Research Team may well be relevant, particularly, to the Knowledge Issue and Associated's limitation defence. On that issue, it is potentially of significance *when* the various TPIs first provided information and documents to Mr Johnson and *what* they provided, and closely related to that, *when* Mr Johnson passed information and evidence to legal advisers who were investigating potential civil claims against publishers and *what* they received.

222. Mr White KC submits that it is apparent from the evidence that, although key witnesses like Mr Mulcaire may only have directly provided evidence to the Claimants in 2021, they are likely to have provided information to Mr Johnson much earlier. Mr Galbraith's evidence is that the Claimants were provided with information regarding Ms Hart between 2021 and 2022, but the disclosure shows that Dr Harris and Mr Johnson were seeking to procure Ms Hart's evidence and invoices in 2016, and then signed a Memorandum of Understanding in January 2017 (see [234]-[236] below). Similarly, Mr Whittamore was said to have come forward to assist the Claimants in 2021, but Mr Johnson first published an article based on Mr Whittamore's documents in March 2017.

223. Mr White KC submits that Mr Galbraith's evidence that the Claimants have searched for communications with the Research Team is no answer. The disclosure obligation extends much further than simply searching for communications with the Research Team. Based on the evidence, he submits that it is highly likely that the Research Team are also in possession of documents that would fall within the terms of standard disclosure.

224. The Claimants' skeleton argument for the hearing did not deal with the point concerning the Research Team. In his oral submissions, Mr Sherborne did not advance a principled objection to the order sought by Associated, but what he did say did not alleviate the concerns about the status of documents held by the Research Team and whether they have been included in the Claimants' disclosure searches.

225. During the hearing, I asked Mr Sherborne: "*As a matter of principle, are documents held by the Research Team in the custody and control of the claimants?*" Mr Sherborne confirmed that they were. Referring to a concern raised by Associated in its skeleton argument for the hearing, I explained: "*I want to avoid a situation where documents are held in a situation where they don't fall within the terms of standard disclosure, only to be released later when it might be thought convenient*". Mr Sherborne took instructions and confirmed that, as part of the disclosure exercise, the documents held

by the Research Team had been searched and any documents identified as falling within standard disclosure had been disclosed by the Claimants. Specifically, Mr Sherborne confirmed, again on instructions, that the Research Team did not have a copy of the Green and Yellow Books.

226. Nevertheless, Mr Sherborne also told me that the status of documents held by the research team was a "*complicated*" issue. When I asked for an explanation of why it was complicated, Mr Sherborne chose to give me an example:

> "There are documents, for example, like the documents provided in the context of the News Group proceedings which are subject to the News Group proceedings and, therefore, they are subject to disclosure orders. Therefore, it would be collateral use to provide documents to us that were provided to them as part of being the legal team".

227. I do not understand that answer. Mr Sherborne has accepted that if members of the Research Team hold documents that fall within the terms of standard disclosure, then by dint of their engagement by the Claimants such documents should have been disclosed by the Claimants. If members of the Research Team legitimately hold documents (a) disclosed in earlier proceedings and upon which there are continuing restrictions on their use outside those proceedings; and (b) that fall within the ambit of standard disclosure in these proceedings, then they should have been included in the disclosure list and an objection taken to inspection of such documents on the grounds that they are subject to continuing restrictions imposed in the earlier proceedings.

(iii) Decision

228. At the hearing, Mr Sherborne complained that Associated had launched an "*attack on the research team that is mounted at every single hearing*". I do not consider that Associated, or their representatives, have done anything wrong in questioning the role of the Research Team. There are serious questions to be answered about the status of the Claimants' Research Team, particularly the documents they hold, and whether there has been adequate disclosure from those documents by the Claimants. Insofar as Associated has been pursuing those inquiries for some time, that is likely to be the consequence of a lack of engagement by the Claimants. It is quite striking that the detailed evidence provided by Ms Richmond was answered by a single – vague and dismissive – paragraph in Mr Galbraith's witness statement, and that the issue was not dealt with in the Claimants' skeleton argument for the hearing,

229. I am not presently satisfied by the explanations that the Court has received from the Claimants regarding documents held by the Research Team (which includes Mr Johnson) and whether they have been included in searches for the Claimants' disclosure. None of the Research Team was identified as a custodian for the purposes of the disclosure search.

230. On the evidence, I am satisfied that:

(1) the disclosure provided by the Claimants has failed to deal adequately with documents held by the Research Team; and

(2) it appears highly likely that members of the Research Team do hold documents that fall within the Claimants' standard disclosure obligations, and which have not yet been disclosed.

231. Mr Sherborne's acceptance, at the hearing, that documents held by the Research Team are within the control of the Claimants means that they should have been searched and it is apparent, not least from the list of custodians, that there has not yet been a proper search of documents held by the Research Team for documents that fall to be disclosed by the Claimants under standard disclosure in these proceedings.

232. On this issue, there needs to be clarity. I shall therefore order that a further search is carried out of documents held by the Research Team and a further list be provided of documents that fall within standard disclosure. The Claimants must also file a witness statement that confirms what I was told on instructions at the hearing: that the nature of the engagement of the Research Team means that documents held by the Research Team are within their control for the purposes of disclosure in these proceedings. If there are any "*complications*", as Mr Sherborne put it (and he mentioned an "*agency agreement*" by which the Research Team has been engaged), this witness statement will be the opportunity for the Claimants to explain them. There must be complete transparency about the status of documents held by the Research Team. Mr White KC submitted that it would be wrong for the Research Team to hold documents in a way that means they do not fall to be disclosed by the Claimants, but from which the Claimants can nevertheless "*cherry-pick*" as and when they judge it to be advantageous. Mr Sherborne accepted this. The orders that I shall make will ensure that a proper search will be made of documents held by the Research Team and appropriate disclosure made as a result.

(d) The Third-Party Support Application

233. Associated seeks an order that, to the extent not already done so, the Claimants should search for and disclose any documents that relate to payments, royalties or other inducements paid, provided or offered, or any demands or threats made, in order to obtain documents, information or other cooperation from Pleaded TPIs or any person who worked with any TPI in relation to the provision of information and/or evidence concerning Associated.

(i) Evidence

234. In her witness statement in support of Associated's application, Ms Richmond has relied upon a Memorandum of Understanding, dated 29 December 2016, between Christine Hart and Mr Johnson and Dr Harris ("the Hart Agreement") which has been disclosed by Ms Hurley, Sir Elton John and Mr Furnish, Baroness Lawrence, Ms Frost Law and Prince Harry.

235. The Hart Agreement records the parties' agreement:

(1) Mr Johnson agreed to pay £16,000 to Ms Hart; and

(2) Mr Johnson and Dr Harris agreed that they would use their best endeavours to prevent any claim being made against Ms Hart based on either already published admissions or any information provided under the Hart Agreement, including

> by using their best endeavours to dissuade any potential claimant from pursuing a civil claim against Ms Hart and to take active steps to seek a written undertaking to that effect from any potential claimant who was identified (described as "*immunity from suit*" for Ms Hart).

In return, Ms Hart agreed (amongst other things):

(3) to provide certain invoices from various newspapers to Mr Johnson, including 24 paid by the *Daily Mail*, if they could be found;

(4) to cooperate with Mr Johnson to provide full details of the work reflected in those invoices; and

(5) to provide evidence in litigation against the newspapers relating to the work she did as reflected in those invoices.

236. In one undated email, relating to the negotiations with Ms Hart concerning the purchase of invoices and her account as to the matters to which they related, Ms Hart's solicitors wrote:

> "Graham is keen to get this sorted out. He is meeting with funders tomorrow and would like to show them a result. If he can show you're on board, he may be able to secure further funding which he says will benefit not just them but you too".

(The "*funders*" have not been identified).

237. Ms Hart said, in an email sent shortly after the Hart Agreement was signed, that she understood Mr Johnson to be "*working on behalf of Hugh Grant and his lawyer*".

238. Ms Richmond has also relied upon a similar agreement between Mr Johnson and Mr Burrows. The unsigned "*General Services Agreement*", dated 2 August 2021, was disclosed by Associated ("the Burrows Agreement"). Under its terms Mr Burrows (described as "The Contractor") was to:

> "… carry out all of the work that is requested, including but not limited to research for the book that the Contractor is contracted to write (working title Hacker, Blagger, Tapper), research for other media projects, meetings with media representatives and legal representatives, reports and research in common with the nature of the work that has been carried-out by The Contractor over the last year".

239. In return, the Burrows Agreement, which was expressed to extend until 21 July 2022 (but extendable with the parties' agreement) provided that Mr Johnson would pay Mr Burrows £5,000 per month.

240. The Claimants did not disclose the Burrows Agreement (or any similar agreement), but they have disclosed several notes and witness statements relating to Mr Burrows that, Ms Richmond suggests, appear to have been obtained by him between 29 March 2021 and 14 February 2022 (i.e. within the period covered by the Burrows Agreement). The Claimants have also disclosed various public statements made by Mr. Burrows referring to "*evidence we provided*" and "*statements I supplied*". Ms Richmond suggests that the creation of these documents appears to fall within the description of "*reports and research*" that the Burrows Agreement embraced.

241. In the most recent MGN trial, Mr Johnson was questioned about the Burrows Agreement, and, separately, Daniel Hanks confirmed in his evidence that he had sold documents to Mr Johnson. Mr Johnson's publishing company has published several books co-written by private investigators such as Mr Miskiw, Mr Mulcaire and Mr Hanks and a further book is planned by Mr Whittamore. At the MGN trial, Mr Whittamore gave evidence that Mr Johnson had paid him "*a couple of thousand pounds, actual amount I'm not sure of, to write a book [on] I guess my career*". When asked if that was the total sum Mr Johnson was paying him, he answered "*I sincerely hope not*". Emails disclosed by the Claimants exchanged between Mr Johnson and Ms Hart refer to "*a book project*" and "*documentary*".

242. Ms Richmond noted that the Claimants have not disclosed any documents relating to payments or inducements offered to TPIs other than Ms Hart, despite the point having been made as to the relevance of payments made for information obtained for "*media projects*" that then is provided to the Claimants.

243. Mr Galbraith's response to Ms Richmond's evidence was brief. He said that the Claimants had undertaken searches of their records which included terms specifically relating to Dr Harris and Mr Johnson. Further, the Claimants' solicitors had conducted searches of documents relating to the Claimants' engagement of them. Documents located as a result of that search have been disclosed. Mr Galbraith concluded: "*As such, and leaving aside the picture that Associated is seeking to paint, this order is unnecessary*". Mr Galbraith's evidence did not engage with the detailed factual evidence provided by Ms Richmond in her witness statement.

(ii) Submissions

244. Mr White KC argued that the Claimants approach on this disclosure has been inconsistent. They have disclosed the Hart Agreement which shows that Ms Hart was paid to provide a limited number of documents and to procure her cooperation as a potential witness. Yet, the Claimants have not disclosed further documents, some of which can be shown to exist (like the Burrows Agreement) and others for which there appears a firm evidential foundation to believe must exist.

245. As to the test for standard disclosure, and whether the documents showing payments or other incentives being provided or offered to potential witnesses might potentially harm the Claimants' case, Mr White KC argued that it was "*plainly relevant*" if a witness has been incentivised by payments or offers of a potential book deal or documentary (including by the prospect of further payment or publicity in respect thereof).

246. In his skeleton argument for the hearing, Mr Sherborne argued that the Third-Party Support Application was "*redundant and unjustified*" and that the issue whether any witness had been paid or offered other inducements "*is collateral to the central legal issues in dispute. At best, it goes only to credibility*". The Claimants' submissions did not engage with the detail of the evidence provided by Ms Richmond.

247. At the hearing, Mr Sherborne submitted that documents demonstrating that witnesses or third parties had been paid or offered inducements was irrelevant to the pleaded issues. I asked Mr Sherborne, if that was right, why the Claimants had disclosed the Hart Agreement. He replied that it had already appeared in other litigation and so was now a public document. That was a surprising answer. By reference to the test for

standard disclosure, I asked Mr Sherborne on what basis had the Hart Agreement been disclosed. He answered that it was to explain the provenance of Ms Hart's invoices that had been disclosed. As to why the Burrows Agreement had not been disclosed by the Claimants, Mr Sherborne said that that was because the agreement did not offer Mr Burrows any payment or inducement to give evidence.

(iii) Decision

248. Mr Sherborne is correct that the issue as to whether witnesses or other third parties have been paid or offered other inducements to provide evidence and/or assistance to the Claimants is, ultimately, an issue that is likely to be relevant only to credibility. Generally, disclosure only as to credit does not fall within standard disclosure, but that rule is not universal and it is not, however, easy to draw a bright line between documents that go to the "*issues*" in a case and documents that go merely to credit. Issues of credibility can be important to the fair resolution of civil claims; in some cases, credibility can determine a case. Depending on the particular issues in a case, and the nature of the particular document(s), standard disclosure under CPR 31.6 *may* require disclosure of documents going to credibility if it appears that the document would adversely affect the disclosing party's own case or would support another party's case. Equally, the Court may make targeted orders for disclosure of documents going to credit under CPR 31.12 in the exercise of its broad discretion over disclosure in any particular case.

249. In this case, for reasons that will be apparent from the Limitation Judgment ([139]-[147]), the credibility of Mr Burrows' evidence is likely to be a significant issue in these proceedings. On that point, both sides are agreed. More widely, I am satisfied that documents, held by the Claimants, that can support a case that a witness has been paid or offered other inducement for their evidence (whether directly or indirectly) should be disclosed. That is because there is a real prospect that Associated will be able to rely upon this evidence to attack the credibility of such witnesses. Ultimately, the issue of whether the payment or inducement does affect the credibility of any witness is a matter to be resolved at trial.

250. In this case, the stance adopted by the Claimants has been undermined by their inconsistent and incoherent approach to disclosure of documents relating to payments to potential witnesses and/or other inducements. The explanation for the disclosure of the Hart Agreement is unconvincing. Equally so the argument advanced as to why the Burrows Agreement was not disclosed. The fact that the Burrows Agreement did not expressly provide for him to be paid for giving evidence (in the sense of testimony) is not a basis upon which to withhold disclosure of the document. Documents that would assist Associated in suggesting that Mr Burrows (or any other potential witness) has a financial interest in supporting a case that Associated was guilty of UIG – or colloquially that he has 'skin in the game' – should be disclosed.

251. I shall make an order requiring a further search to be carried out to identify documents upon which Associated could rely in advancing a case that potential witnesses have been given or offered financial incentives to provide information or evidence in support of allegations of UIG against Associated.

(e) The Mulcaire Notes Application

252. Associated seek specific disclosure orders in relation to two specific areas concerning documents concerning Glenn Mulcaire.

253. Seven pages of handwritten notes from the notebooks of Mr Mulcaire ("the Mulcaire Notes"), seized by the Metropolitan Police in 2006, are relied upon by the Claimants as demonstrating that Sir Simon and Ms Frost Law (and others) were targeted by Mr Mulcaire on behalf of Associated. Associated contends that an analysis of what the Mulcaire notes contained, what they showed, and the extent to (and the point at) which Sir Simon and Ms Frost Law and their legal advisers in particular were (or should have been) aware that the material suggested that Mr Mulcaire had also acted for Associated is a key issue for the limitation defence and alleged concealment.

254. Associated contends that, although the notes have been disclosed by the Claimants, inadequate attention has been paid to the issue of the copies of the notes that were disclosed to Sir Simon and Ms Frost Law in their litigation against News Group, which is relevant to the Knowledge Issue.

255. In their Particulars of Claim, the Claimants also allege that, in 2006, Mr Miskiw discussed with *Mail on Sunday* journalist Chris Anderson, "*the unlawful or illegal services which Mr Mulcaire could offer*" to the *Mail on Sunday*, "*as a result of which Mr Anderson received what he knew to be the product of unlawful information gathering by Mr Mulcaire, through Greg Miskiw, in relation to both*" Sir Simon and Ms Frost Law and that such knowledge is "*demonstrated by the exchange of emails between Mr Anderson and Mr Miskiw in 2006*" ("the 2006 Miskiw Emails").

256. Associated contends that there appear to be at least two versions of the 2006 Miskiw Emails: one as relied upon by Ms Frost Law in her evidence for the Limitation Application (which has not been disclosed) and the second from Sir Simon's disclosure, which Associated contends is incomplete.

257. The Mulcaire Notes Application is dealt with in a detailed section of Ms Richmond's 9th Witness Statement. In his evidence in response, Mr Galbraith stated that the solicitors acting for Ms Frost Law and Sir Simon had not had enough time to fully review the complaints raised by Associated. He suggested that there may have been an error in a letter from the Metropolitan Police that may have referred to the wrong document, and some documents related to Mulcaire Notes may have been mislabelled. Mr Galbraith offered to provide the requested information and documents to Associated within 21 days of his witness statement. As such, Associated did not pursue the Mulcaire Notes Application at the hearing. If there are any issues that remain to be resolved, they can be dealt with when this judgment is handed down.

(13) The Amendment Application

258. This concerns a discrete area of the case concerning an alleged burglary. The Claimants allege that two senior *Mail on Sunday* Editors "*commissioned the deliberate breaking into or theft from private premises of businessman Michael Ward … to obtain documents*". Although the Claimants allege that Associated commissioned burglaries (plural) to order as part of the alleged UIG, this is the only particularised allegation of such conduct alleged by the Claimants. Associated applied at the First CMC for an

order striking out this part of the Claimants' case. Although that application was refused, I did note:

> "The Court will need to keep this area of the case under review going forward. If the costs of litigating this issue become wholly disproportionate, the Court may need to think again whether the potential probative value of the allegation is worth the cost of investigating and resolving it. It would be premature, however, to exclude it from consideration at this stage."

259. Following investigation, and disclosure, Associated now applies to amend its Defence. Substantially, the proposed amendments provide further information as to the circumstances of the alleged burglary. In brief summary, by its amendments, Associated seeks to advance a case that there was no "*burglary*" as alleged, and that, in fact, Mr Ward's estranged wife, had allowed the journalists to enter the property and take copies of documents (not originals). If that is right, the probative value of the allegation made by the Claimants (which is already at the margins of relevance in this litigation) is substantially weakened.

260. The Claimants do not object to the substantive amendments that Associated seek to make to their Defence. They object to the following two paragraphs:

> "113.2F The Claimants, despite alleging burglary against two named journalists, have not disclosed a single document relating to Mr Ward's allegations notwithstanding their gravity and the fact that clearly relevant documents were available to Mr Ward. The Claimants therefore appear to have pleaded these allegations without any proper attempt at investigation.
>
> 113.2G In further support of the case that trial of these serious allegations would be disproportionate and/or contrary to the interests of justice and/or the overriding objective, Associated will rely on the following:
>
> (a) Different factual allegations were made by Mr Ward against Mr Lever and Mr Wolman, which paragraph 12.4 inappropriately elides. Separate investigation of the factual allegations against each would be required.
>
> (b) The incoherence (pleaded in paragraph 113.2A above), and lack of essential particularity in the Claimants' pleaded case.
>
> (c) The complexity of the factual background and the difficulty of resolving relevant or potentially relevant issues of detail arising from Mr Ward's case in the contemporary correspondence (in terms of what was complained of and what was not) and his detailed complaint as made to Associated in and after 2011.
>
> (d) The passage of time and the limits of memory.
>
> (e) The absence of any allegation by any Claimant in these proceedings that they were subjected to any actual or suspected burglary or the removal of documents without authority, or that any relevant article had any connection with Mr Lever or Wolman.

(f) The complexity of issues arising from the integrity and completeness of recordings relevant to the issues secretly made by Mr Ward of Mr Wolman's intermediary as is apparent from the summing up of HHJ Rivlin QC in the second criminal trial on 25 September 1995.

(g) Fairness to Mr Lever and Mr Wolman having regard to the matters pleaded above.

(h) Costs and court time."

261. Apart from these paragraphs, I grant Associated permission to amend. The disputed paragraphs are argument, not facts relied upon to support the defence. I appreciate that Associated is trying to persuade me that the Ward allegations should be excluded from this case, but a statement of case is not the appropriate vehicle to make such points. Indeed, including them in the Defence would only be likely to provoke an argumentative response from the Claimants, which is not the purpose of a statement of case.

262. In fact, as I indicated at the hearing, the Claimants will now be required, when pleading an Amended Reply, to focus upon whether they admit the key facts alleged by Associated in relation to this incident, and particularly whether this was not, in fact, a burglary. Once that responsive statement of case has been received, it will be possible to identify the extent of the factual dispute. Thereafter, and at the next Case Management Hearing, the Court will take stock of whether this part of the Claimants case should proceed further. For now, Associated is granted permission to amend, save for the two paragraphs I have identified, permission for which is refused.

(14) Sir Simon Hughes' Application

263. In his Application for further disclosure, Sir Simon Hughes contends that (1) Associated has failed to search relevant custodians despite having access to their data; and (2) the date ranges used for searches were too narrow and excluded relevant periods. In relation to the former, several senior editorial staff were not included as custodians, despite their involvement in internal reviews and discussions relevant to the claim. It is alleged that disclosed documents show these individuals were involved in discussions about editorial and financial controls, including payments to private investigators. For example, John Wellington approved a £500 payment to Greg Miskiw relating to Sir Simon and there is an entry on a petty cash schedule for £650 for "*Special assistance on Nick Clegg/Simon Hughes story*". It is also submitted that Associated holds thousands of emails for John Wellington and David Dillon, yet it is alleged it did not search them for the relevant concealment period.

264. As to the date range of searches, Sir Simon contends Associated have applied excessively narrow date range to their searches. In particular, the date range for the concealment period ends on 9 March 2012 just two days after an email chain, dated 7 March 2012, disclosed in respect of the Metropolitan police seeking the contact details of *Mail on Sunday* journalist Chris Anderson (who was in email contact with Greg Miskiw). The police sought Mr Anderson's contact details from John Wellington, who then forwarded the email entitled "*Weeting officer seeking Chris Anderson*" to Liz Hartley. Sir Simon contends that Mr Anderson is highly relevant, as he received

emails from Greg Miskiw in respect of the information about him obtained by voicemail interception. Sir Simon therefore seeks an order that Associated should conduct further searches of the identified custodians and expand the date ranges to cover all relevant periods.

265. Associated has indicated, in response to the Application, that it is willing to "*conduct further reasonable searches for emails and/or other relevant documents relating to Chris Anderson's interview with the police*" across the date range proposed by Sir Simon (namely 9 March 2012 to 20 April 2012) and disclose and produce for inspection any documents that meet the test for standard disclosure. Associated will search the term "Chris AND Anderson" from 9 March 2012 to 20 April 2012 inclusive in respect of custodians, John Wellington and Liz Hartley.

266. Beyond that, Associated resists Sir Simon Hughes' Application. In her witness statement in response to Sir Simon Hughes' Application, Ms Richmond stated the following:

(1) Sir Simon's solicitors provided specific requests for the first time on 21 January 2025, and a response was provided on 28 January 2025 confirming additional searches would be run. A further response was provided on 11 February 2025 explaining why Associated was unwilling to extend the proposed date range searches to 2019, but confirming that it would extend searches so as to (a) apply a start date of 1 January 2006 to the first search proposed in the relevant part of the EDQ; and (b) run Sir Simon's suggested terms "Chris Anderson AND (MPS OR police OR Weeting)" across the Concealment and Limitation date range (8 August 2011 to 9 March 2012) and custodians (Mr Dacre, Mr Wright, Ms Hartley, Ms Chirnside and Ms Amos) as set out in the relevant part of the EDQ; and (c) run the search "Anderson w/12 Hughes" for the period 1 January 2006 to 31 December 2006 across the eight custodians proposed for the first search of the relevant section of the EDQ.

(2) Those additional searches were carried out and confirmed in Associated's Disclosure Statement.

(3) Sir Simon Hughes' Application does not explain by reference to his pleaded case why further searches should be carried out in relation to isolated payments. Mr Thomson simply notes that at the time of the relevant payment in June 2010, Sir Simon Hughes was the Deputy Leader of the Liberal Democrats and Sir Nick Clegg was the Leader of the Liberal Democrats as well as the Deputy Prime Minister of the United Kingdom and that Sir Simon Hughes is "*concerned that he as well as the Deputy Prime Minister were the subject of a significant suspicious payment*". That does not explain or put forward any real basis for further searches to be run.

(4) As to additional custodians, Mr Wellington, Mr Garside and Mr Dillon were identified as custodians in the EDQ and electronic searches that have been carried out in relation to them are described therein. With regards to Mr Steafel, it has been clear since 25 October 2024 (the date that Annex 1 to the EDQ was circulated) that Mr Steafel was not proposed to be a custodian for electronic searches. There was no objection to this by any Claimant. Unless a convincing

case is made out for doing so, it would be disproportionate for Associated now to be required to extract Mr Steafel's electronic data for this purpose.

267. The Claimants submit:

(1) The £650 cash payment shows payment for information specifically relating to Sir Simon and Nick Clegg. Given their prominence (Deputy Leader of the Liberal Democrats and Deputy Prime Minister, respectively), this payment directly supports Sir Simon's pleaded allegations that Associated paid third parties, including TPIs, to gather private information.

(2) It is improbable that such a cash payment was made without generating additional contemporaneous documentation or email correspondence, such as requests for payment, editorial approval, reporter notes, or draft stories. Indeed, the disclosed ledger explicitly shows the payment was approved by John Steafel.

(3) Sir Simon seeks an order requiring Associated to confirm whether further documentation relating to this payment exists. If no adequate search has yet been conducted, Associated should perform a reasonable search.

(4) Associated's argument that disclosure should not be provided because it is not set out in the pleaded case raises "*serious concerns about the test of relevancy applied*". The Claimants' case is that records for "*special*" services are often indicative of UIG and so further documentation relating to is not just likely to be relevant but likely to be highly relevant.

(5) This targeted disclosure order simply for a reasonable search is necessary and proportionate because clarifying the nature of the July 2010 payment is likely to reveal critical evidence supporting Sir Simon's allegations of wrongdoing.

(6) As to the application for searches of additional custodians, due to their senior roles between 2006-2014, the Claimants believe that they are likely to possess relevant documentation about payments to private investigators and internal responses to allegations of UIG.

268. Associated's evidence states that three of the custodians targeted by Sir Simon's Application have been searched. If that is so, there can be no justification for a further order. Neither the evidence in support of Sir Simon Hughes' Application nor the Claimants' skeleton argument suggests that this is wrong. It can be clarified when judgment is handed down. In relation to Mr Steafel, as he was not previously identified as a custodian, I am not persuaded that the costs and inconvenience is presently justified by the evidential value of what Sir Simon suggests may be found. The cash entry shows a payment being made for "*special assistance*" in connection with an investigation (and potentially an article) concerning Sir Simon. Further disclosure in relation to this *may* assist Sir Simon in demonstrating that he was the target of UIG, but this is somewhat speculative.

269. In their skeleton argument, the Claimants asked for what they submitted was a "*targeted keyword search*" of the following

(1) Simon AND Hughes: for Mr Steafel and Mr Garside for 1 June to 31 July 2010, which is specifically aligned to the timeframe of the £650 payment. As set out above, this cash payment was made directly in relation to Sir Simon for "*special*" services and is likely to result in the disclosure of relevant documents.

(2) Miskiw: for Mr Dillon and Mr Wellington from 2006-2014. "*Miskiw*" is sufficiently distinctive to ensure relevance.

(3) Anderson AND Miskiw: for Mr Dillon and Mr Wellington from 2012-2019, to identify discussions linking journalist Chris Anderson and Greg Miskiw, particularly around police inquiries or subsequent public allegations of phone hacking.

270. I am satisfied that a targeted further search is justified in the terms of the proposed paragraph (1) (although not a search of Mr Steafel), but the other two searches are too wide. They are not limited to Sir Simon's case and are, in fact, train of inquiry searches designed to support the generic case. Even the first search is at risk of falling into this category. The Claimants' submission that the disclosure is likely to demonstrate that Associated paid third parties, including TPIs, to gather private information, is to return to the territory of a public inquiry.

271. Save for those specific orders, Sir Simon Hughes' Application is refused.

F: Summary and next steps

272. For the reasons set out above:

(1) The Claimants' Unredaction Application succeeds to the extent set out in [108].

(2) The Claimants' Burrows Application succeeds to the extent set out in [114].

(3) The Claimants' Phone Data Application is refused.

(4) Associated will attempt to locate the exhibit to Katie Nicholl's witness statement (see [130] above), beyond that the Claimants' Katie Nicholl/Lee Harpin Application is refused.

(5) The Claimants' C&LS Application is refused.

(6) The Claimants' Disclosure Information Application is refused.

(7) The Claimants' Data Storage Information Application is refused.

(8) The Claimants' Further Custodians Search Application is refused.

(9) The Claimants' Train of Inquiry Application is refused.

(10) Associated's Third-Party Disclosure Applications are granted.

(11) Associated's Knowledge Disclosure Application is granted in the terms sought in [187].

(12) Associated's Research Team Application is granted in the terms set out in [232]. The parties should attempt to agree wording of the order and the deadline for compliance.

(13) Associated's Third-Party Support Application is granted in the terms identified in [251].

(14) It does not appear that any order is required on the Mulcaire Notes Application, but if that is not correct it can be addressed when judgment is handed down.

(15) Associated's Amendment Application is allowed in part – see [261].

(16) Sir Simon Hughes' Application is granted to the extent identified in [270].

273. When this judgment is handed down, the Court will direct a timetable for compliance with the orders that the Court has made. After that, the Claimants will need to provide draft Amended Particulars of Claim. The Court will decide any disputed amendments at the Third CMC on 1-2 October 2025. The current directions towards trial require that witness statements are to be exchanged in advance of the Third CMC. I am not presently minded to vary that timetable. Instead, and subject to the parties' further submissions, any further witness evidence that is necessitated by amendments would be dealt with in consequential directions given at the Third CMC. If the Claimants find themselves under something of a time pressure over the summer, that will largely be because of their failure to propose amendments at the Second CMC, in breach of the First CMC Order. At the hearing, I warned the Claimants that they should ensure that they utilised the time before judgment was handed down to prepare the amendments that they would seek to make to their claims.

274. Finally, when the Claimants provide their proposed amendments, they must ensure that the Amended Particulars of Claim removes all references to "*pending disclosure*". The parameters of the Claimants case will be clearly fixed prior to trial (subject only to any further amendment).

ANNEX 1: The terms of the specific disclosure order sought by Associated against the Claimants

[see [33(2)] in the main judgment]

Knowledge Disclosure Orders

1. The First Claimant shall search for (to the extent not done already), disclose and produce for inspection all documents containing or referring to the information relied upon and pleaded at §20 of the Reply whether provided to her directly or through any legal adviser or other representative and from which it is alleged she discovered she may have a worthwhile claim against Associated.

2. The Second, Third, Fourth, Sixth and Seventh Claimants shall:

   (a) Each search for (to the extent not done already), disclose and produce for inspection all documents relating to, evidencing or referring to the point in time when they each first became aware directly or through any agent of any potential unlawful information gathering by the Defendant, including all documents relating to their alleged Personal Watershed Moments as pleaded at §20 of their respective Replies.

   (b) Each search for (to the extent not done already), disclose and produce for inspection all documents that contain or refer to the information provided to them directly or through any legal adviser or other representative at or around the time of their alleged Personal Watershed Moments and from which it is alleged they discovered they may have a worthwhile claim against Associated (in so far as not included in response to 2(a) above).

3. The Fifth Claimant shall:

   (a) Search for (to the extent not done already), disclose and produce for inspection all documents evidencing the information provided at or in advance of or following (i) the meeting in or around early April 2016 that was arranged between him and Dr Evan Harris and Mr Graham Johnson; and (ii) the meetings referred to at §22(a)(i) and §22(b)(ii) of the Reply in relation to his alleged Personal Watershed Moment.

   (b) Search for (to the extent not done already), disclose and produce for inspection all documents that explain, evidence or refer to the "*Mail business*" referred to in the email from Dr Harris to the Fifth Claimant dated 3 March 2016 in connection with the meeting arranged in or around early April 2016.

   (c) Disclose and produce for inspection the witness statement he provided to the Leveson Inquiry quoted from in the Byline Investigates article entitled "*Phone hacker emailed Mail on Sunday executive Chris Anderson with updates during complex eavesdropping operation on Simon Hughes MP*", written by Mr Johnson and published on 28 July 2020, or any other document containing the quoted words, or any other document in which the Fifth Claimant and/or HJK raised their suspicions, during the Leveson Inquiry, that journalists engaged by the Defendant had been involved in unlawful information gathering or that formed the basis of those suspicions.

(d) Disclose and produce for inspection the further and better particulars provided by Mr Thomson to the Leveson Inquiry of a paragraph in his witness statement that read: "*It is clear that from the evidence that has been disclosed and/or the evidence that I have obtained in the phone hacking litigation, this activity was not confined to one newspaper or one newspaper group but common industry practice. Paul McMullan admitted as much in his meeting with Hugh Grant, which was the subject to matter of an article a copy of which is exhibited at Tab 6 of MT1*".

(e) Disclose and produce for inspection documents evidencing who he followed on his social media accounts and when he followed them in the period from January 2011 to October 2016.

4. Insofar as may be appropriate, a determination pursuant to CPR 31.19(5) that the Claimants' claims to withhold inspection of any document or category of documents containing or referring to the information provided to them when they each first became aware of potential unlawful information gathering by Associated (including, without limitation, at their Personal Watershed Moments) on the ground of legal professional privilege, is not upheld.

Inducement Disclosure Orders

5. Each of the Claimants shall:

(a) Confirm in writing with a statement of truth that all disclosable documents obtained or created by the "research" team (including those documents adverse to the Claimants' case) were disclosed and produced for inspection on 21 March 2025.

(b) If they have not already done so, search for and disclose any documents that relate to payments, royalties or inducements paid, provided or offered, or any demands or threats made, in order to obtain documents, information or other cooperation from pleaded third party information gatherers ("TPIs") or any person who worked with any TPI in relation to the provision of information relating to the Defendant (excluding sums properly payable under *Mulcaire Notes Disclosure Orders* Civil Procedure Rule 34.7).

6. The Fifth Claimant shall:

(a) Disclose and produce for inspection all versions of each of the pages of the notes of Mr Glenn Mulcaire (the "Mulcaire Notes") relied on by the Fifth Claimant which are in his possession or control.

(b) Confirm, with a statement of truth: (i) when each version of each page of the Mulcaire Notes came into his possession or control and their source; (ii) when each version came into the possession or control of the Mobile Telephone Voicemail Interception Litigation against News Group Newspapers ("NGN") ("MTVIL") claimant group and their legal advisers; and (iii) when and by whom the amendments to page P112Q of the Mulcaire Notes concerning HJK (disclosed by the Fifth Claimant at Document 19) were made and when and with whom they were shared.

(c) Disclose and produce for inspection a copy of WAB 92 p113 provided to him by the Metropolitan Police Service ("MPS") on 16 September 2011.

(d) Confirm that he has searched for any notes that were made by him, his legal advisers or the head of his office who attended the meeting with the MPS on 25 May 2011.

(e) Disclose and produce for inspection all versions of the 2006 email exchange between Mr Greg Miskiw and Mr Chris Anderson (the "2006 Emails") in the Fifth Claimant's possession or control.

(f) Confirm, with a statement of truth: (i) when each version of the 2006 Emails came into his possession or control and their source; and (ii) when each version of the email exchanges came into the possession or control of the MTVIL claimant group and/or the legal advisers to the MTVIL claimant group.

7. The Seventh Claimant shall:

(a) Disclose and produce for inspection all versions of each of the pages of the Mulcaire Notes relied on by her in her possession or control.

(b) Confirm, with a statement of truth: (i) when each version of each page of the Mulcaire Notes came into her possession or control and their source; and (ii) when each version came into the possession or control of the MTVIL claimant group and their legal advisers.

(c) In respect of the document disclosed by the Seventh Claimant listed as "*Sadie Frost v (1) NGN and (2) Glenn Mulcaire - Met Disclosure including additional disclosure (11 pages)*", (a) confirm that the disclosure referred to in this document (other than the "additional disclosure (11 pages)") refers to MPS disclosure in 2011 and (b) explain what is meant by 'additional disclosure', including when and by whom it was provided and with whom it was shared and when.

(d) Disclose and produce for inspection a copy of the covering letter(s) from the MPS which provided disclosure pursuant to the Order(s) of Vos J dated 15 April 2011 and 7 October 2011 in the Seventh Claimant's claim against NGN and Mr Mulcaire and any additional disclosure.

(e) Disclose and produce for inspection the documents referred to at (b) in the application notice at Document 26 of the Seventh Claimant's disclosure: "[NGN and/or Mr Mulcaire] *specifically targeted* [the Seventh Claimant]*: her name is included on a 'project' document and also a list of targets along with Simon Hughes MP who I also act for"*.

(f) Disclose and produce for inspection all versions of the 2006 Emails in her possession or control.

(g) Confirm, with a statement of truth: (a) when each version of the 2006 Emails came into her possession or control and their source; and (b) when each version of the email exchanges came into the possession or control of the MTVIL claimant group and/or the legal advisers to the MTVIL claimant group.

Additional Claimant Disclosure Orders

8. Where the Claimants (or any one of them) has produced a document for inspection otherwise than in its original form, that relevant Claimant shall produce for inspection copies of the relevant document disclosed in its original form.

9. The Second Claimant shall search for (to the extent not done already), disclose and produce for inspection: (i) her letters of claim in respect of her claims against NGN and Mirror Group Newspapers ("MGN"); and (ii) her Particulars of Claim in respect of her claims against NGN and MGN.

10. The Third and Fourth Claimants shall search for (to the extent not done already), disclose and produce for inspection: (i) their letters of claim in respect of their claims against NGN and MGN; and (ii) their Particulars of Claim in respect of their claims against NGN and MGN.

11. The Seventh Claimant shall search for (to the extent not done already), disclose and produce for inspection her Particulars of Claim in respect of her claim against NGN.

12. The Fifth Claimant shall disclose and produce for inspection a signed copy of Mr Miskiw's affidavit dated 20 August 2019.

ANNEX 2: The Unredaction Target Schedule

[see [62] in the main judgment]

1. PI material marked for the attention of Caroline Graham (see main judgment [87]).
2. Capitol Inquiry Invoices.
3. Backstreet Investigations/Investigator's Support Services/British American News invoices/reports.
4. Schedule to JJ Services invoices.
5. Alma Security invoices.
6. Jonathan Stafford invoices.
7. System Searches invoices.
8. Email from Sharon Churcher to Sian James and Su Blanch of 12/12/2004 re payments to Capitol Inquiry.
9. ELI Invoices.
10. Payments to Greg Miskiw.
11. Cash payment chits.
12. Mike Behr invoice.
13. List of petty cash payments.
14. Email from Sharon Churcher to Su Blanch dated 11/02/2009, subject line "FW: Hanks bill".
15. Payment slip to Warner Detective Agency.
16. *Daily Mail* 2009/10 Petty Cash Week 42/2010 (see main judgment [85]).
17. Charles Garside's Investigations Given to Legal 16/9/11.
18. John Wellington's papers on Whittamore spreadsheet.
19. ELI Ledger Card.
20. *Daily Mail* Green Book.
21. *Daily Mail* Yellow Book.
22. Record of interview with Neil Sears re use of Whittamore.
23. Record of interview with Amanda Perthen re use of Whittamore.

24. Record of interview with various journalists re use of Whittamore.

25. Email from Mike Behr to Sam Greenhill, with the subject RE: [Redacted] words dated 22/11/2013.