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KB-2022-003404

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 October 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**,
Hannah Glover and **Ben Gallop** instructed by **Baker McKenzie LLP** for the **Defendant**

Hearing dates: 1-2 October 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 10 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Nicklin :

1. At a hearing on 1-2 October 2025, the Court held a third substantial Case Management Hearing in this litigation. It followed the first Case Management Hearing on 26-27 November 2024 (“the First CMH”) and the second 2-day Case Management Hearing on 6-7 May 2025 (“the Second CMH”). At this third Case Management Hearing, the Applications issued by the parties, and the issues to be resolved, exceeded the time available to deal with them. I have adjourned the outstanding Applications to a further hearing to be fixed in early November. The trial is fixed to begin on 14 January 2026.
2. This judgment deals only with the Claimants’ application to make amendments to their Particulars of Claim, and an overlapping application by the Defendant (“Associated”) to strike out various parts of the Claimants’ statements of case. I shall refer to these as the Pleadings’ Applications. In view of the impending trial date, the Pleadings’ Applications require resolution urgently. This urgency, and my other judicial commitments, means that I have had less time than I should have wished to prepare this judgment.

A: The parameters of the litigation

3. Various Applications that were resolved by the Court at the Second CMH required me to set out to determine the broad parameters of the litigation; what it does concern and what it does not. This judgment must be read in conjunction with the decision handed down on 11 July 2025 ([2025] EWHC 1716 (KB)) (“the July Judgment”) and I shall use the same definitions in this judgment. In Section E of the July Judgment, I set out my decision and reasons for resolving the various applications at the Second CMH. Importantly, before turning to the individual Applications, Section E(1) ([36]-[61]) set out my decisions as to the proper scope of the litigation. Those decisions were critical to the determination of several individual applications.
4. For example, I refused applications for strictly limited disclosure in support of the purely generic case. I accepted that disclosure should be given of material that might assist the Claimants to advance a case that a Pledged Journalist had a propensity to use UIG. However, I held that [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 no 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.”

5. Paragraphs [36]–[61] of the July Judgment do not contain a case management decision. Rather, they reflect a legal determination applying the test of relevance to the scope of the litigation – specifically, what may or may not be established through propensity evidence. This constitutes the first stage of the analysis.
6. If the Court finds that propensity evidence is both relevant and admissible, it may yet exclude it on case management grounds. This is the second stage, where the Court assesses whether the burden of investigating and resolving the alleged facts is disproportionate to the evidence’s likely value: see paragraphs [48]–[52] of the July Judgment for further detail.
7. No party has sought to appeal the decisions made at the Second CMH consequent upon my decisions as to the proper parameters of the case. At this hearing the Claimants have, instead, invited me to “*reconsider*” what is described as my “*proposed approach*”. Although Mr Sherborne refused to confirm whether the Claimants contend that my earlier decision on the parameters of the litigation was wrong, the general thrust of his submissions on behalf of the Claimants was fundamentally to challenge these parameters, particularly in relation to the limits of propensity evidence.
8. I am doubtful that it is open to me to “*reconsider*” my earlier decision as to the proper parameters of this litigation – which logically would also require me to revisit whether I should make different orders for disclosure than were made on the previous occasion. Nevertheless, even if I could “*reconsider*” what was decided in the July Judgment, I am not persuaded that I should do so. I remain satisfied that it is the correct approach.
9. Mr Sherborne takes as his starting point the decision of the House of Lords in ***O’Brien -v- Chief Constable of South Wales Police* [2005] 2 AC 534** as to the admissibility in civil proceedings of similar fact evidence.
10. In ***O’Brien***, the claimant had brought a claim for misfeasance in public office and malicious prosecution against the Chief Constable of South Wales police. As part of his case, the claimant alleged that named police officers had been guilty of similar misconduct in other cases. The House of Lords held that the test of admissibility of similar fact evidence in a civil action was of relevance only, namely that the material to be adduced was potentially probative of an issue in the action. Where that test was met, the Judge with management of the litigation would then consider whether to admit the evidence, having regard to the overriding objective of achieving a just result through a trial process that was fair to all parties. The Court would assess the potential significance of the evidence in the context of the case as a whole, weighing its potential probative value against its capacity both to cause unfair prejudice and to increase disproportionately the length and complexity of the trial. The judge would not admit the evidence unless satisfied that its probative cogency justified any risk of prejudice and, where it concerned collateral matters, that it would not distract attention from the central issues.
11. Lord Carswell quoted (at [72]) with approval what Lord Denning had said about the admissibility of similar fact evidence in ***Mood Music Publishing Co Ltd -v- De Wolfe Ltd* [1976] Ch 119,127**:

“The admissibility of evidence as to ‘similar facts’ has been much considered in the criminal law... The criminal courts have been very careful not to admit such

evidence unless its probative value is so strong that it should be received in the interests of justice: and its admission will not operate unfairly to the accused. In civil cases the courts have followed a similar line but have not been so chary of admitting it. In civil cases the courts will admit evidence of similar facts if it is logically probative, that is, if it is logically relevant in determining the matter which is in issue: provided that it is not oppressive or unfair to the other side: and also that the other side has fair notice of it and is able to deal with it.”

12. **O’Brien** decided that there was no special rule for admissibility of similar fact evidence in civil claims. To be admissible, the evidence had simply to be logically probative of an issue to be determined in the proceedings. So, in the police cases, evidence that a police officer had fabricated evidence on another occasion was admissible to seek to demonstrate a propensity on his/her part to do so. In turn demonstration of such a propensity was capable of providing evidential support that s/he had done so in the immediate case. **O’Brien** is not authority for the proposition that proving propensity for misconduct against employee A is logically probative of whether employee B is guilty of such misconduct. Mr Sherborne has not been able to identify an authority for such a proposition.
13. Applying the two-stage test from **O’Brien**, I have decided that proving that Journalist A has a propensity to use UIG cannot be probative of whether Journalist B had such a propensity. In other words, such a case falls at the first hurdle to be admitted as similar fact or propensity evidence; it is not logically probative. It is not necessary to consider whether the alleged propensity evidence should be excluded on case management grounds. In the example I have given, that stage is not reached.
14. I regard this as a clear – and straightforward – issue of principle. Mr Sherborne however has sought to rely upon decisions in the Mirror and News Group litigation as establishing a “*practice*” of admitting general evidence of misconduct of employees of the two newspaper groups. In the July Judgment, I explained why I did not derive much assistance from general comparison between this litigation and previous cases – see [38]. Undeterred, Mr Sherborne has, at this hearing, referred me to several decisions from these earlier cases. I have read the decisions carefully. For the reasons I shall explain briefly, I am not persuaded that these decisions assist me in resolving the proper limits of evidence of propensity. They are decisions on the particular facts of those cases in circumstances where the Court had permitted the ‘generic case’ to remain as a core part of the litigation.
15. In **Gulati -v- MGN Limited [2013] EWHC 3392 (Ch)**, Mann J was considering the defendant’s application to strike out the generic case in a claim alleging phone-hacking. In [17], the Judge referred to and relied upon what Lord Steyn had said in **O’Brien** [4]-[5]. It is clear from [18] that the Judge was considering the particular phenomenon of phone-hacking, how it was done, and industry knowledge of the practice. Although the Judge did refer to “*the ability and propensity*” to hack phones, he did not consider the point that I have had to resolve as to whether proving that Journalist A had a propensity to hack voicemail messages is relevant to whether Journalist B did so. In summary, therefore, Mann J’s decision does not resolve the point.
16. Importantly, in the context of allegations of phone hacking, Mann J held ([21]) that it was “*not of the essence of a claim... that the individual perpetrator has to be identified*”, and he drew an analogy with a case where someone is run over by a van, the owner of

which can be identified but the precise driver at the time cannot. Those cases are rather different. In phone-hacking, it was possible to demonstrate, principally by telephone records, that a particular mobile telephone voicemail was probably hacked, even if it was not possible to show by whom. The current case is different. Proof of the UIG alleged by the Claimants is not straightforward. A propensity case relied upon to seek to demonstrate that Journalist A used UIG on a particular further occasion requires a focus upon Journalist A, not others.

17. As to the importance of the ‘generic case’, Mr Sherborne has relied upon the judgment following trial in the ***Gulati*** case: [2016] FSR 12. Mann J observed that it was “*plainly relevant to form some idea of [the] scale [of hacking]*” ([37]), but as liability had been admitted by the defendant, that exercise was relevant only to damages. Mr Sherborne has also relied on later decisions in the continuing Mirror Group and News Group litigation: [2020] EWHC 341 (Ch) [12], [20] and [2020] EWHC 533 (Ch) [37]; 14 July 2020 (HC-2000-000004) [6]. None of those decisions resolves an issue of principle that assists me in this litigation. Again, and at the risk of repetition, this was different litigation, concerning different allegations, raising different issues, against different defendants. As that litigation moves into its second decade, the generic case appears to be an embedded and accepted feature in those claims. In this litigation, the role of the generic case is challenged by Associated, and it falls to me to decide its proper parameters.
18. Mr Sherborne also cited Fancourt J’s decision in ***Jeffries -v- News Group Newspapers Ltd*** [2021] EWHC 2187 (Ch) as to the importance of recognising that a claimant may need to assemble pieces of an evidential jigsaw to demonstrate that UIG was used on a particular occasion. The Judge said:

[22] ... The claimants argue that there is relevance if the document contains information that may enable a claimant to add a piece to the jigsaw and, in particular, if it relates indirectly to unlawful information gathering from the particular claimant or their associates, even if not directly related to one of the articles...

...

[25] ... I also agree with the claimants that a wider test of relevance is appropriate, and I am not clear that NGN’s solicitors have been applying that wider test. The test is not whether a document on its face relates to an article of which a claimant complains or demonstrates unlawful conduct: it is sufficient if a document contains something relating to a payment to a contributor or supplier for a publication or intended publication, or for the acquisition of information, about a claimant or one of his or her associates.”
19. This is a particular decision in the context of ongoing litigation as to the scope of disclosure. It is difficult, therefore, to extract much by way of general principle. It does not deal with the point on propensity. But I see no tension between this approach and the approach I have adopted. I have held that evidence that tends to demonstrate that a Plead Journalist has a propensity to use UIG may, subject to any case management considerations, be part of the evidence (a piece of the jigsaw) upon which the Claimants rely to show that s/he did so on the disputed occasion. But each piece of the evidential

jigsaw sought to be relied upon must itself be relevant and logically probative. If evidence is not relevant or probative it is not available as a piece of the jigsaw.

20. For the reasons I have expressed in the July Judgment [47], I am not persuaded that it can assist in the fair resolution of these claims to embark on the exercise of trying to establish the scale of UIG (if any) at Associated Newspapers, and whether it was “*widely and habitually carried out*”. Even if it were possible to do that, it would be an enormous exercise which, based on my conclusions as to the limit of what propensity evidence can prove, provides little if any assistance in resolving the Claimants’ individual claims. Quite simply, establishing whether UIG was widespread and/or habitual at Associated is the territory of a public inquiry. It is not necessary to determine that issue for the fair resolution of the Claimants’ claims.
21. In these civil claims, it is for the Claimants to demonstrate that they were victims of UIG in the ways that they allege. Subject to exclusion on case management grounds, the Claimants will be permitted to rely on any admissible and relevant evidence of propensity that they can advance against the particular individuals who were concerned with each Pled Article (or specific incident), but it is irrelevant to consider alleged wrongdoing wholly unconnected with the specific claims.
22. One of the planks of the Claimants’ opposition to Associated’s striking out application is that the generic case has been a feature of the pleaded case since the outset and that it is too late for Associated to seek to strike it out. I disagree. With the benefit of hindsight and now having specifically considered the issue, the way in which the ‘generic case’ has been pleaded and pursued in this litigation was always likely to obstruct the fair resolution of the claims. The fact that the implications of the generic case (and particularly the limits of what any propensity case can prove) are only belatedly coming into sharp focus, is not a justification for simply carrying on. Exercising the Court’s case management powers, and consistent with the principles I identified in the July Judgment ([53]-[57]), it is my duty to ensure that this litigation is confined within manageable and economic bounds. I shall do that by excluding from the case allegations which are not relevant and probative; by preventing the litigation from descending into an uncontrolled and wide-ranging investigation akin to a public inquiry; and by striving to manage the case to exclude peripheral material which is not essential to the just determination of the real issues between the parties and the examination of which would be disproportionate to its importance to those issues.

B: The Claimants’ Amendment Application

23. The Claimants’ Amendment Application was issued on 22 August 2025. It is supported by evidence in witness statements from the Claimants’ solicitors. Amendments are sought both to the ‘generic case’ and to various Claimants’ individual claims. Associated has filed evidence in response to the Amendment Application in the 17th Witness Statement of Francesca Richmond. Associated has consented to some of the amendments, but in respect of those which are opposed, Ms Richmond provided a Schedule to her witness statement. Largely, the grounds of opposition overlap with the grounds on which Associated seeks to strike out sections of the Particulars of Claim (see Section C below).
24. The Claimants’ Amendment Application is late. The timetable set by the Court at the First CMH anticipated that the Claimants were expected to seek to amend their

Particulars of Claim following disclosure by Associated. At the First CMH, I ordered that any application by the Claimants to amend their Particulars of Claim should be made, following disclosure, at the Second CMH. The Claimants did not comply with that order (see July Judgment [35]). One immediate impact of the Claimants' default is that the Court is now considering fundamental issues as to the scope of the Claimants' case with only just over 3 months to go before a 9-week trial is due to commence.

25. More generally, however, Associated complains that only a small fraction of the substantial number of amendments for which the Claimants seek permission to amend arise from Associated's disclosure. In her 17th Witness Statement, Ms Richmond states that only 22 of some 300 amendments sought by the Claimants arise from unredaction of documents in Associated's disclosure. Associated complains that the Claimants have provided no adequate explanation for the delay in applying to amend in respect of material that they have had for a considerable time. Whilst the overriding objective is always to deal with cases justly, delay is a relevant factor when considering whether to permit an amendment, particularly if the application is made close to the trial date. The implications of allowing the amendment, particularly its impact on the trial date and the other party's ability to deal with the amendment in the time available are relevant factors. An applicant is in a weaker position if s/he has 'sat upon' an amendment that could have been made much sooner.

C: The first strike out Application – the parameters of the litigation

26. Associated issued its Application seeking to strike out parts of the Particulars of Claim on 10 September 2025. It was supported by the 16th Witness Statement of Ms Richmond. Again, Ms Richmond provided a schedule identifying the grounds upon which Associated seeks the striking out of the various parts of the Particulars of Claim. As with the resistance to the Amendment Application, Associated has grouped together the striking out targets into broad categories.
27. Evidence in answer to the striking out Application has been filed by the Claimants' solicitors.

D: The second strike out Application – the Ward Allegations

28. Associated issued a separate Application Notice, also on 10 September 2025, seeking to strike out the part of the Claimants' Particulars of Claim that alleges that Associated's UIG included commissioning "*burglaries to order*". Despite use of the plural, the only alleged instance of this form of UIG is an allegation that, in 1992, two *Mail on Sunday* journalists, Lawrence Lever and Clive Wolman, had burgled the home of Michael Ward and stolen some documents ("the Ward Allegations"). The Ward Allegations are relevant only to the generic case.
29. Associated sought to strike out the Ward Allegations from the Particulars of Claim at the First CMH. At that stage, I refused the Application. In a judgment given at the First CMH, I held:

[17] I can understand the Defendant's concerns about the proportionality of litigating this incident. It is potentially quite divorced from the focus of the rest of the litigation. 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.

[18] In my judgment, it is likely that disclosure provided by the Defendant in relation to this allegation is likely to shed light as to whether it really is capable of supporting the Claimants' generic claim. I am satisfied that at this stage it would be wrong to exclude it as a matter of case management.

[19] My conclusion therefore is that [the Ward Allegations] cannot be excluded on the basis that, even assumed true, it is not probative. And it cannot, in my judgment, properly be excluded on case management grounds at this stage. It will be something that, I suspect, the Court will need to come back to after the phase of disclosure has been completed, but for those reasons I refuse the Defendant's application.

30. By the second strike out Application, Associated contends that:

- (1) the Ward Allegations, because they are relied upon as propensity evidence, are incapable of providing any evidential support for each of the Claimants' claims because Mr Lever and Mr Wolman are not alleged to have played any part with any Pleded Article; or, in the alternative,
- (2) amendments made to the Reply concerning the Ward Allegations are inconsistent with the case that is advanced in the Particulars of Claim (contrary to CPR 16 PD §9.2); and, in any event
- (3) resolution of the Ward Allegations would be disproportionate to the evidential value of what they could prove in relation to the Claimants' claims.

E: Resolution of the Amendment and first strike out Application

31. As I have noted, in schedules to her witness statements, Ms Richmond has identified broad categories into which fall Associated's objections to the parts of the Particulars of Claim targeted in the strike out application and the amendments sought by the Claimants which are opposed.
32. It is convenient here to summarise Associated's position on these issues of principle and the Claimants' summary response.

Category	Associated's objection	Claimants' response
(1)	Pleded Journalists against whom there is no pleaded allegation of involvement in a specific instance of UIG for Associated.	There are pleaded incidents and/or clear instances tied to relevant pleaded journalists. The Claimants' generic case and the interplay between the desks and journalists within them are a fundamental component of this litigation and is a

		sufficient and necessary basis from which the Court can draw inferences about specific incidents.
(2)	Pleaded TPIs against whom there is no pleaded allegation of a specific instance of UIG commissioned by Associated.	Specifics are pleaded and in circumstances where records are very limited, ledgers/invoices and usage volume allows the Court to draw an inference of commissioning by Associated, especially in the context of the <i>modus operandi</i> of the Private Investigators.
(3)	Activities of Pleaded Journalists or Pleaded TPIs at other newspapers (all of which are opposed as a matter of principle, and on grounds of fairness and because they are very late and could have been pleaded at the outset in reliance on the Claimants' own documents).	Unlawful activities of journalists who then moved to or from Associated is plainly relevant, as are facts demonstrating the <i>modus operandi</i> of PIs at the same desks for journalists and desks targeting the same individuals or classes of individuals for these other newspapers, and there is no suggestion from Associated that these PIs operated in a different way when working for Associated (which included individuals who also worked at these other newspapers).
(4)	Operation Oxborough.	The activities of Systems Searches go to the central issue of Associated's editors and journalists knowing what was being bought, and forms part of the Claimants' generic case about the unlawful nature of these activities, including the work done by System Searches being unlawful.
(5)	Third parties alleged to have been targeted by Pleaded Journalists or Pleaded TPIs but without any particulars being provided.	These paragraphs are again links in the chain that evidence a pattern and knowledge by the same journalists and desks who targeted Claimants and Associates. In respect of Daniel Hanks the Claimants have proposed

		further particulars relating to Mr Hanks' activities.
(6)	(see [33] below)	
(7)	Late addition of an alias or similar matter related to a Plead TPI that could have been pleaded at the outset.	The Claimants no longer pursue the related amendments, save for those relating to ELI/TDI/BDI. Regarding the latter, Associated has provided disclosure in relation to BDI, including financial records, and in those disclosed documents BDI was equated to ELI. Therefore, it has only been possible to plead BDI, the successor to TDI/ELI, now that the Claimants are aware that Associated instructed them (i.e. since that disclosure.
(8)	Specific allegations of UIG that do not relate to any journalist pleaded as involved in a Schedule B or C article.	The Claimants repeat the matters set out in relation to Category 1 above.
(9)	Alleged use of a pleaded TPI by a journalist not pleaded as involved in a Schedule B or C article and without specific allegation of UIG.	The Claimants repeat the matters set out in relation to Category 2 above.
(10)	Alleged use of a pleaded TPI by a journalist who is pleaded as involved in a Schedule B or C article but without any specific allegation of UIG.	The Claimants repeat the matters set out in relation to Category 2 above.
(11)	Allegation of use of a TPI that has some pleaded examples of UIG by Associated but, in the case of the amendment proposed, no specific allegation of UIG is made (including where the allegation is simply that the TPI was used frequently by ANL).	The Claimants rely on the related facts and matters in support of their inferential case that pleaded journalists commissioned TPIs to carry out unlawful activities for Associated. Frequency is tied by the Claimants to named desks and journalists and to contemporaneous documents, including invoices and

		records: the Claimants submit that this is probative of propensity and knowledge.
(12)	Amendments requiring foreign law analysis.	The Claimants are willing to narrow the issue arising under this category by confining the relevant pleading to rely on English law for Associated's misuse only. The Claimants submit that the nub of the issue is propensity.
(13)	No real prospect of success.	The Claimants submit that D has not adduced any evidence sufficient to show that the proposed amendments have no real prospect of success.
(14)	Proportionality, lateness, case management, public inquiry and impact upon trial.	This is a compendious category. The points above in relation to D's other categories are repeated. Each of the Cs' proposed amendments will need to be considered individually, on a case-by-case basis.
(15)	Other inadequate or unnecessary pleading.	This category largely encompasses pleaded facts and matters relating to the use of cash payments and the term 'special'. These matters are very important to the Claimants' inferential case on the use of UIG by Associated. The question of disclosure is distinct from the issue of pleading: even if the Court is not minded to order Associated to search the five lever arch files of cash book chits dating from September 2006 – June 2011, and the cash book chits from 2000 – 2001 and January 2010, the pleading of these important matters should be permitted.

33. Relying on what I said in the July Judgment ([19] and [274]), Category (6) was an objection that the Particulars of Claim, even after amendment, continued to use language that extended the potential ambit of what was being alleged beyond the

specific particulars given (e.g. by use of “including” or “an example”). The Claimants have accepted that such words must be struck out from the Particulars of Claim.

34. The Appendix to this judgment contains a table identifying the amendments sought to the Particulars of Claim and the parts sought to be struck out. I have removed from the table those to which objection is taken solely in Category (6) as the Claimants accept that these parts of the Particulars of Claim must be removed. Beyond that, the approach adopted by the Claimants to these applications has required me to rule individually on each amendment/strike out. My decision on each amendment is shortly stated in the final column in the table. Where it is necessary to explain the reasoning in more detail, I set out below the key reasons for the decisions I have made. This exercise has been time-consuming and frequently repetitive. A more focused and constructive approach by the Claimants would have saved a lot of time at the hearing and in terms of the time it has taken to write this judgment.
35. The guiding principle that I have applied is that it is potentially probative of the Claimants’ case on propensity if they can demonstrate that a Pleded Journalist has been involved in one or more incidents of UIG. In that respect, the Claimants may rely upon incidents of UIG involving Pleded Journalists at another newspaper. Consistent with the limits of what can be relied upon to establish propensity, what is required, however, is specific incidents not general allegations.
36. The propensity case against Pleded TPIs is one step removed from the journalists. There is a corresponding need to keep this aspect of the case under strict control, otherwise it risks descending into a public inquiry as to what the various TPIs were doing generally, when this only has limited potential bearing on the issues to be resolved.
37. As a matter of principle, it is legitimate for the Claimants to seek to establish – if it be a matter of dispute – that the Pleded TPIs were offering services which included UIG. In this area, however, it is important to limit the field of inquiry to what the Pleded TPIs were engaged in UIG for Associated. It is necessary however for the evidence to establish a probability of UIG being used on any particular occasion, otherwise the evidence is equivocal. Many of the Pleded TPIs carried out research/inquiries that was lawful at the relevant time. It is therefore necessary to focus on examples that are alleged to prove UIG, not the work of TPIs generally. Finally, the number of examples that can be given will be limited on case management grounds. As noted in the July Judgment ([106]), where other matters are relied upon to demonstrate propensity – *“it is the cogency – rather than number – of the incidents relied upon that is likely to be key”*.
38. Each Particulars of Claim includes a general allegation that Associated “targeted” the relevant Claimant and subjected each to UIG. In support of this general case, the Claimants rely on the existence of payments, often in cash or linked to “special” activities, as indicators of UIG. However, unlike phone hacking, such payments – even with these characteristics – do not in themselves prove UIG. At most, they raise a suspicion that UIG may have occurred.
39. If time and resources were unlimited, it might be possible to investigate each instance further to determine whether UIG took place. However, this would entail a vast and potentially unmanageable inquiry. The principles of proportionality and the overriding objective – see July Judgment [53]-[57] – require that time, cost, and resources be

carefully considered in defining the scope of civil litigation. These principles also call for a pragmatic and realistic approach in a case of this scale. It is expected that the Claimants will exercise restraint accordingly. If they do not, the Court will intervene to impose appropriate limits.

40. In relation to this general case of ‘targeting’, the Claimants generally cannot specify what information was obtained (if any), by whom, for what purpose, or whether it was published. Therefore, the mere fact of a payment to and use of a TPI cannot, itself, establish UIG. While such payments may suggest that a Claimant was targeted, they do not amount to proof of UIG. It is UIG that must be established to support a civil claim.
41. Disclosure has now been provided. With the benefit of that disclosure, the Claimants have been able to allege further specific incidents of UIG. These specific allegations will be determined at trial. It is neither proportionate nor necessary – except in relation to a properly defined and limited propensity case – to conduct a broader inquiry into general targeting of the Claimants.
42. Finally, it is necessary to explain why I have refused to allow parts of the Claimants’ case that Associated has deliberately destroyed documents to form part of the case going to trial.
43. The amendments sought to Paragraphs 16A and 16B advance a contention that TPI payment records and emails held by Associated should have been retained, but have been destroyed. The Claimants contend that the alleged destruction of documents is relevant, potentially, to inferences that could be drawn as to what the documents would have shown and also to the deliberate concealment case advanced to defeat Associated’s limitation defence.
44. Neither of these provides a justification for the amendments sought. Payment records could only demonstrate the broad scale of the use of TPIs. In some instances, the documents may shed light on the sort of inquiries that were carried out. But this is all too speculative. The Court could not safely draw inferences of fact, relevant to each Claimant’s case, from the general destruction of these documents as to what they would have shown had they been available. As to the concealment case, the only documents the destruction of which could be relevant would be documents that relate to the causes of action relied upon by the Claimants. The destruction would have to be alleged to have been deliberate and for the purpose of concealing the facts relevant to the claims. The focus would therefore have to be upon those alleged to have been involved in the Pleading Articles (or other incidents). As Associated argued, the Claimants’ pleading does not allege deliberate conduct, and does not identify the relevant individuals or allege the specific intent required for concealment under s.32(1)(b) Limitation Act 1980: see *Potter -v- Canada Square Operations* [2024] AC 679 [108]-[109]. The individuals within a company alleged to have done the relevant acts with the necessary state of mind must be identified: *Duchess of Sussex -v- Associated Newspapers Limited* [2020] EMLR 21 [48]-[49]. For these reasons, permission to amend to add Paragraphs 16A and 16B is refused.

F: Resolution of the second strike out Application concerning the Ward Allegations

45. Although Associated relied upon several reasons why the Ward Allegations should be struck out, I can deal with this shortly.

46. Even if proved true, they cannot assist in the fair resolution of the Claimants' claims. It is not alleged that this incident has any connection with any Claimant, or any Pleading Journalist. On that basis alone, and consistent with the parameters of the litigation and propensity evidence, the Ward allegations are therefore irrelevant and will be struck out.
47. Even had there been some nexus between the Ward allegations and any of the Claimants' cases, I would nevertheless still have struck out the allegations. Fair resolution of the Ward allegations has now become extremely complex. The events took place over 30 years ago. This is not a small area of the case. It is now a substantial dispute of fact. The costs and resources that would be devoted to resolving the factual dispute would, I am satisfied, be out of all proportion to any possible evidential value. Put bluntly, it has become a complex and involved side-show. I would have excluded it on case management grounds had I not been satisfied that it should be struck out on the grounds of relevance.
48. Finally, it is simply too late and too much of a distraction to pull this issue into shape before the trial in January. The Claimants' unorthodox approach to pleading – by running a materially different case in the Reply from what is alleged in the Particulars of Claim – I would not have allowed to stand. It would have been necessary to order the Claimants to go back to scratch and amend their Particulars of Claim to set out their case. That would then have necessitated potential amendments to the Defence.
49. The Claimants' insistence on maintaining the Ward Allegations as part of their case reflects a continued and fundamental misunderstanding of the proper scope of this litigation – despite the clarification provided in the July Judgment. It also reveals an unreasonable approach to the costs implications of litigating in this way.

G: Consequent striking out of passages in the Replies

50. Attached to Associated Skeleton Argument for this hearing was a schedule identifying 8 further passages in the Replies which, if Associated's submissions in relation to striking out passages in the Particulars of Claim were upheld, Associated contended also fell to be struck out by parity of reasoning. This schedule is reproduced in Part 2 of the Appendix to this judgment.
51. At the hearing, no particular attention was paid to the Replies.
52. Following the hearing, on 4 October 2025, Baker McKenzie sent a further copy of the schedule which had been overlooked in the combined schedule that had been submitted by the parties. In response, on 6 October 2025, Callum Galbraith sent an email to the Court:

“We note that the Defendant seeks to strike out material relating to the Replies on the basis that it is said that this *“falls within any of categories 1-6 of ANL’s strike out application dated 10 September 2025”*. No Application Notice was issued in this regard and the Court directed it would only entertain applications at the CMC that had been issued before its commencement nor have the Claimants responded to this. As such, the Claimants object to the Defendant’s attempt to get the same determined in these circumstances and respectfully submit that it would be unfair for the Court to do so.”

53. I disagree that there would be any unfairness. Although it is technically correct that Associated had not issued an Application Notice seeking specifically to strike out the identified parts of the Replies, the grounds on which objection is taken to these few sections are the same as those advanced in respect of the Particulars of Claim. In other words, there is no prejudice or unfairness occasioned to the Claimants by the Court resolving the consequential impact on the Replies of the Court's determination of the Pleadings Applications. Indeed, one would have expected the Claimants to have wanted the Court to resolve all outstanding issues in relation to the pleadings so as to ensure that there is no risk to the trial date.
54. I am satisfied that the sections of the Replies identified in the schedule should be struck out for the same reasons that similar paragraphs have been struck out of the Particulars of Claim.