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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: 10 November 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

Mr Justice Nicklin :

1. This is the second judgment of the Court following the third substantial Case Management Hearing in this litigation on 1-2 October 2025. The first judgment, handed down on 10 October 2025 ([2025] EWHC 2573 (KB)), resolved applications by the parties for permission to amend, and to strike out, parts of the Particulars of Claim (and Replies).
2. This judgment deals with the position of documents held by the Claimants’ “Research Team” (referred to as the Research Team – see further [3]-[7] and [12]-[13] below), and whether they are in the Claimants’ control for the purposes of the Claimants’ disclosure obligations. The issue has come into sharp focus following the Case Management Hearing on 6-7 May 2025 (“the Second CMH”), when the Court made an order requiring the Claimants to disclose documents held by the Research Team that fell within standard disclosure. Associated’s position is that the Claimants have failed to comply with that order, and it seeks an unless order to require full compliance by the Claimants.

A: Background

(1) The Research Team

3. The previous evidence relating to the Research Team, its engagement by and activities on behalf of the Claimants is set out in [209]-[217] in the judgment that followed the Second CMH ([2025] EWHC 1716 (KB) (“the July Judgment”)).
4. At the November 2024 Case Management Hearing, the Claimants’ Costs Budget sought significant provision for the costs of the Research Team. I was told by Mr Sherborne that:

“[The Research Team’s] role is in identifying witnesses, identifying individual journalists, private investigators who will give evidence in support of the generic case. That is one of very important roles that they perform. ... They are specialists as former journalists, two of them, and been involved... in this litigation for many years”.

“What their specialism is, ... is dealing with the disclosure, dealing with the documents, what the significance of documents are and their experience is based on something like 13 years’ involvement in this litigation, involved in the Mirror Group litigation and the News Group litigation”.

5. At the recent hearing, I set out for consideration by the Claimants my attempt to describe the Research Team and its activities. I proposed the following:

“The Research Team has been engaged by the Claimants to provide assistance in the litigation. For that they are remunerated. They are not legally qualified, so they are not providing any legal advice or engaging in the conduct of the litigation. They have been engaged because of their specialist knowledge and experience of unlawful information gathering in newspapers, at least in part gained through their own investigations. As part of those investigations, they have obtained, in whatever role, evidence relevant to the claims of UIG.

In their capacity as members of the Research Team they have provided at least some of that evidence to the Claimants in these proceedings”.

6. Following the hearing, the Claimants’ solicitors sent an email saying that the final two sentences “*do not accurately reflect the Claimants’ position*”. They suggested that the final two sentences should be replaced with the following:

“As part of those pre-engagement investigations, the members of what became the Research Team, obtained evidence relevant to the claims of UIG. Prior to their engagement they provided that evidence to the Claimants in these proceedings. After their engagement they provided all evidence of UIG obtained by their researches to the Claimants”.

7. This revised wording largely reflects, and is informed by, the Claimants’ position on whether documents held by the Research Team are within the Claimants’ control (which is the question to be resolved in this judgment). I am satisfied that my description of the Research Team is accurate. I am not persuaded that it is accurate to say that “*prior to their engagement [the Research Team] provided that evidence to the Claimants*”. It is clear, from the evidence that has been provided by the Claimants, that only *some* of the material held by the Research Team was provided to the Claimants at that stage (see [29]-[33] below).

(2) Order made at the Second CMH

8. At the Second CMH, I determined Associated’s Application seeking an order that the Claimants should confirm that all disclosable documents obtained or created by the Research Team, that fell within the terms of standard disclosure, had been disclosed by the Claimants. The Application is dealt with in Section 12(c) of the July Judgment. I was given a broad assurance by the Claimants at the hearing that documents held by the Research Team were in the Claimants’ control and therefore subject to the Claimants’ disclosure obligations (see [225]-[226]). I found that (1) the disclosure provided by the Claimants had failed to deal adequately with documents held by the Research Team; and (2) it appeared highly likely that members of the Research Team did hold documents that fell within the Claimants’ standard disclosure obligations, and which had not yet been disclosed: [230]. I made clear what was required [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”.

9. Included within the Order made consequent upon the Second CMH were the following paragraphs (“the Research Team Order”):

“(14) By 4pm on 1 August 2025, the Claimants must file and serve evidence, by witness statement(s) made by the solicitor(s) with conduct of these proceedings on their behalf, and approved by a partner at each firm representing the Claimants, which

- (a) confirms (if it be the case) what the Court 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 the Claimants’ control for the purposes of disclosure in these proceedings or (if what the Court was told is not accurate) provides a full explanation of why documents held by the Research Team are not within the Claimants’ control for the purposes of disclosure in these proceedings; and
- (b) provides a full account of the approach taken by the Claimants to the search for and disclosure of documents in the possession or control of all members of the Research Team and any claimed limitations or restrictions on such searches and disclosure.

(15) The witness statement must:

- (a) be made by the relevant solicitor after making reasonable enquiries of each member of the Research Team;
- (b) provide full details of the disclosure searches previously undertaken of each member of the Research Team’s electronic and hard copy documents, identifying in particular (i) the hard copy documents searched, (ii) the devices and accounts searched in relation to electronic documents; (iii) how those devices and accounts were identified for, or excluded from, search; (iv) the search terms used; (v) the date range or ranges for the searches; and
- (c) explain, to the extent applicable, the Claimants’ reasons for limiting searches of or excluding from searches documents within the control of any (and if so which) member/s of the Research Team including identifying (i) any temporal or other restriction which the Claimants contend prevents search for or disclosure or inspection of documents; and (ii) the extent to which any (and if so which) member/s of the Research Team has objected to the grant of access to his/her documents.

(16) By 4pm on 1 August 2025, each Claimant must:

- (a) conduct a reasonable search of documents, held by the Research team, within the Claimants control, and disclose (by list) and produce for inspection all documents which fall within the test for Standard Disclosure; and

- (b) search for and disclose any documents, not already disclosed, upon which the Defendant could rely in advancing a case that potential witnesses have (whether directly or indirectly) been paid or offered financial incentives or other inducement to provide information or evidence in support of allegations of unlawful information gathering against the Defendant”.

10. Paragraph 19 of the same Order also directed Sir Simon Hughes to:

- “(a) search for, and insofar as not already disclosed, 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; and
- (b) search for, and insofar as not already disclosed, disclose and produce for inspection all documents that explain, evidence or refer to the “*Mail business*” referred to in the email from Dr Evan Harris to the Fifth Claimant, dated 3 March 2016, in connection with the meeting arranged in or around early April 2016...”

(2) Purported compliance with the Research Team Order: the Second Witness Statement of Mark Thomson

11. In purported compliance with Paragraph 14 of the Research Team Order, the Claimants filed a witness statement of Mark Thomson (his second), dated 8 August 2025. In this statement, provided on behalf of all Claimants, Mr Thomson confirmed that his statement was made following several meetings and telephone calls with the members of the Research Team, the members of which are Dr Evan Harris, Graham Johnson and Dan Waddell.

12. Mr Thomson explained the background of the three members of the Research Team.

- (1) Dr Evan Harris was involved with founding the Hacked Off campaign in 2011 and worked with the campaign until around 2018. For much of this time he was Hacked Off’s Executive Director. He first became involved in the News Group Newspapers (“NGN”) litigation, assisting on a voluntary basis one of the solicitors’ firms. From mid-2017, Dr Harris was more formally engaged as a paralegal by one of the firms. Dr Harris carried out a similar role in the Mirror Group Newspapers (“MGN”) litigation from the latter half of 2017.
- (2) Graham Johnson is an author, television documentary producer, reporter and investigative journalist. Mr Johnson worked as a features, news, crime and investigations journalist at the *News of the World* from 1995 and then the *Sunday Mirror* from 1997-2006. After that, he worked on a freelance basis for various titles/organisations including *The Sun*, *The Mail on Sunday*, *The Observer*, *The Guardian*, *BBC Panorama*, *ITV*, *Channel Four* and *ARD* (Germany). He now works as an investigations reporter, primarily for *BylineInvestigates.com* (also known as *Expose.news*). He runs an independent TV production company and was a consultant producer on two recent documentaries about phone hacking, *Scandalous* (BBC) and *Tabloids on Trial*

(ITV). Mr Johnson told Mr Thomson that he came to know Dr Harris, in his role at Hacked Off, in 2014 after he had come forward voluntarily to give the police information about an incident of voicemail interception in which he was involved at the *Sunday Mirror* in 2001. Mr Johnson has given several witness statements in the MGN/NGN litigation and gave evidence in the recent trial in the claim brought by the Duke of Sussex against MGN.

- (3) Dan Waddell is a journalist. In around early 2017, having previously written for Byline.com, Mr Waddell started to assist Mr Johnson with some research and investigative work for BylineInvestigates.com with a view to publishing stories about Associated's titles. Mr Waddell's involvement in NGN/MGN litigation began in the late summer of 2017. Working with Dr Harris he assisted in the NGN litigation in a paralegal role under the supervision of the Lead Solicitor for the claimants. He discharged a similar role in the MGN litigation from January 2019.
13. As to the documents held by the Research Team, in summary Mr Thomson confirmed that they came from four broad sources:
 - (1) Dr Harris's work at Hacked Off, between 2011–2018.
 - (2) Work carried out by Dr Harris and Mr Waddell as part of their support of solicitors acting for the Claimants in MGN and News Group litigation, from 2017 onwards.
 - (3) Freelance journalism by Mr Johnson and Mr Waddell.
 - (4) Work undertaken for the Claimants in the current litigation pursuant to instructions given by the Claimants' solicitors.
 14. In a departure from what the Court was told, on instructions, at the Second CMH, Mr Thomson stated not all documents currently held by the Research Team are within the Claimants' control. He sought to draw a distinction between documents received and held by the Research Team in their capacity as individuals engaged as part of the Research Team for the current litigation (which it was accepted were within the Claimants' control) and documents from their previous or other roles (which Mr Thomson maintained was not within the Claimants' control).
 15. In his Second Witness Statement, Mr Thomson also provided an explanation of the disclosure searches carried out in relation to documents held by the Research Team. It appears, from this evidence, however, that no independent search was made of any documents held by the Research Team for the purposes of the standard disclosure exercise in March 2025. The only search made of documents held by the Research Team was one conducted by the Research Team itself in 2021, which was at a stage before they were engaged by the Claimants in April 2022.

B: Associated's Application for an unless order to ensure compliance with the Research Team Order

16. Associated were not satisfied that the Claimants had complied with the Research Team Order. As a result, an Application Notice was issued, on 10 September 2025, seeking

an unless order to force compliance with the Research Team Order. The Application was supported by the Fourteenth Witness Statement of Francesca Richmond.

17. To understand the Research Team Order and its importance to the issues in the litigation, Ms Richmond set out evidence which, she argued, demonstrated that the Research Team is likely to have documents that would fall within the ambit of standard disclosure and which should have been disclosed by the Claimants. Associated's key focus is upon the limitation defence, and particularly the knowledge of each Claimant of facts that should have alerted them that they had a viable claim ("the Knowledge Issue"). From disclosure that had been given by the Claimants, Ms Richmond suggested that there were "*serious questions*" as to the evidence previously given by or on behalf of Sir Simon Hughes and Ms Frost Law, particularly relevant to the Knowledge Issue, both in their witness statements in connection with the Limitation Application (see judgment of 10 November 2023 [2024] 1 WLR 3669; [2023] EWHC 2789 (KB)), and in each of their Amended Replies. Ms Richmond contended that selective and incomplete disclosure by both Sir Simon and Ms Frost Law showed they were aware of their potential claims against Associated years earlier than they have previously claimed – in Sir Simon's case at least nearly three years earlier than he had claimed, and in Ms Frost Law's case as early as April 2016. Ms Richmond suggested that there was a "*continuing failure or refusal*" by the Claimants to search for documents held by members of the Research Team.

(1) The position of Sir Simon Hughes and Sadie Frost Law

(a) Sir Simon Hughes

18. So far as concerns the Knowledge Issue, Sir Simon's case, pleaded in his Reply, is that he was "*first made aware of potential unlawful information gathering targeted against him by Associated in around July 2020*".
 - (1) In July 2020, Sir Simon states that he "*was contacted by Graham Johnson of Byline Investigates who told him that he had been targeted by hacking by the Mail on Sunday. He told the Claimant that Byline intended to publish an article about the matter*".
 - (2) An article was subsequently published in Byline, on 20 July 2020, with the headline "*'SWARMED': Former Justice Minister Simon Hughes was phone hacked for the Mail on Sunday – After being blackmailed by The Sun with illegally-obtained phone bills*". A further article making similar claims was published on 27 July 2020.
19. Sir Simon's case is that he first realised that he had a worthwhile claim to bring against Associated after the following events in early 2022:
 - (1) Sir Simon's solicitor was provided with evidence from Graham Johnson, namely email exchanges between Greg Miskiw and Chris Anderson of the *Mail on Sunday* from on or around 19 April 2006 ("the Miskiw/Anderson Emails") which suggested UIG by Associated and included a transcript of a voicemail.
 - (2) At about the same time, Sir Simon was also told by Glenn Mulcaire that he had undertaken phone hacking for Associated and Graham Johnson provided a

payment record from Greg Miskiw dated 7 June 2006 which indicated the payee was “MoS” and the subject was “*Simon Hughes boyfriend / Sadie Frost Tips*”. It is alleged that *this payment record*, for the first time, provided Sir Simon with the link between Associated and the activities of Mr Mulcaire.

20. In a witness statement, served earlier in the proceedings, responding to the Limitation Application, Sir Simon referred to the information that he received in early 2022 and stated (§§58-62a):

“This material, which I have only recently seen, explains for the first time the connection between me and the *Mail on Sunday*... and the activities of Glenn Mulcaire and explains the cryptic and previously opaque references in the Mulcaire notes... As soon as I was aware of this, I realised I might have the basis for bringing the claim that I do now... I did not believe and was not aware that I might have any claim, let alone a worthwhile claim, until I was provided with the material referred to above from Greg Miskiw, Glenn Mulcaire and Graham Johnson... I repeat that I was not aware and could not have been aware of the Miskiw/Anderson emails until 2022”.

(b) Ms Frost Law

21. Ms Frost Law’s pleaded case as it relates to the Knowledge Issue is as follows:

- (1) In January 2019, she learned that private voicemails that she had left for her children’s then nanny, Jade Schmidt, in April 2006, were the subject of the Miskiw/Anderson Emails. She learnt about this because those emails had been published by Byline Investigates (“Byline”) in redacted form. On 1 January 2019, *Byline* had published an article written by Mr Johnson about Sadie Frost Law which referred to the Miskiw/Anderson Emails. The article was headlined “*Mail on Sunday Phone Hacking – ‘smoking gun’ emails quoted messages to top editor*”. It referred to “*explosive emails obtained by Byline Investigates*” that were “*a series of messages between convicted Fleet Street phone hacker Greg Miskiw and former MoS ‘number three’ Chris Anderson*”. The article included various pictures of parts of the Miskiw/Anderson Emails (with certain sections relating to Sir Simon Hughes redacted), suggesting that Mr Johnson had obtained (or had access to) copies of the emails at some point prior to 1 January 2019. It included quotes from Glenn Mulcaire explaining various of his notes and referring to him as a “*notorious private eye-turned-whistleblower Glenn Mulcaire*”.
- (2) On 4 January 2019, Byline Investigates published an article in which Ms Frost Law said that she would be taking legal advice in relation to *The Mail on Sunday*.
- (3) These events, in January 2019, constitute Ms Frost Law’s Personal Watershed Moment, that is the moment at which she discovered that she might have a worthwhile claim against Associated.
- (4) Associated’s “*deliberate acts of concealment*” prevented her from being on notice of a need to investigate her claims at any point earlier than her Personal Watershed Moment.
- (5) Following her Personal Watershed Moment in January 2019, Ms Frost Law subsequently instructed her lawyers to conduct further investigations and during

these preliminary investigations, Ms Frost Law “*for the first time saw the unredacted emails between Mr Anderson and Mr Miskiw*”.

(2) Evidence from disclosure

22. Associated contends that the case advanced both by Sir Simon and Ms Frost Law on the Knowledge Issue has been “*fundamentally undermined*” by documents disclosed by the Claimants in July and August 2025.

(a) Sir Simon Hughes

23. Associated relies upon the following:

- (1) On 11 July 2019, at 12.56, Dr Evan Harris (a member of the Research Team) sent an email to Sir Simon (copied to Graham Johnson, another member of the Research Team):

“The Mail hacking claims are being developed, and will be ready to launch soon. To deter the Mail from arguing ‘limitation’ (ie you knew about this 6 years ago) Atkins Thomson think it best for stories to be written in Byline which can be referred as the basis for claims being raised.

Graham – copied in – has already done a number of Mail stories which can be found here <https://www.bylineinvestigates.com/mail>. The hacking ones are listed under “voiceMail” (gerrit?!). These include stories on Sadie Frost and Heather Mills

He has written a story on your Mail case (from public domain and legally sourced material) to follow in the series. It is his approach to check with the target of the Mail the text of the story in case you have ways you rather it was phrased. I have asked him to send you the draft after it has been legalled. Of course, it is not ideal to re-air these matters but the website is not one that the papers care to report from, so there is very little visibility. The virtue is that it puts the material into the public domain which will help the litigation.

- (2) At 14.04 on 11 July 2019, Mr Johnson responded to Sir Simon and Dr Harris:

“I attach THREE draft stories: Part 1, Part, 2, Part 3 of an investigative series, about how you were hacked by the MoS - and The Sun and the NoTW - at the same time.

Please note, that in January this year, we ran similar series about Heather Mills and her associates, Sadie Frost and MoS columnist/ hacking mastermind Tina Weaver, who was summarily sacked by Lord Rothermere, personally.

I would like to publish the stories about you on [bylineinvestigations.com](https://www.bylineinvestigations.com) and [byline.com](https://www.byline.com) over two or three weeks.

Is that OK?

You may change the copy, add or delete as you see fit, in track changes, if you will.

In addition, you may consider supplying a comment for each story.

Please let me know what you think.”

- (3) The three draft articles attached to Mr Johnson’s email contained the following (amongst other information):
- a) An allegation that “*The Mail on Sunday targeted [Sir Simon] using phone hacking*”.
 - b) “*Associate Editor Chris Anderson was in email contact with Greg Miskiw, a freelance journalist who specialised in selling hacked stories*”. Associated suggests that this is a reference to the Miskiw/Anderson Emails.
 - c) “*Miskiw paid private investigator Glenn Mulcaire to listen to Hughes’ voicemails, and those of his then boyfriend, and reported the findings back to the Mail on Sunday*”, including quotations from Greg Miskiw admitting to having engaged Glenn Mulcaire for such purposes and quotations from Glenn Mulcaire confirming the same.
 - d) “*Notes that were seized by the police Mulcaire [sic] in Operation Carytyd in August 2006 back-up his claims. One note has a name in the top left-hand corner – where Mulcaire wrote down the name of the tasker – which resembles the letters ‘Mos’.*” There were quotations from Mr Mulcaire explaining his notes.
 - e) “*Byline reporters have seen six emails between [sic] which mention Simon Hughes and ex-his [sic] boyfriend at the time they were being hacked. The messages were between Mail on Sunday Associate Editor Chris Anderson and Greg Miskiw...They are dated between Tuesday 25th April 2006, and Tuesday May 2nd 2006*”. The third draft article described the Miskiw/Anderson Emails in detail.
 - f) “*Hughes later made a witness [sic] stating: ‘I believe that The Mail on Sunday was also trying to write a story about (the boyfriend) and me. I remember that both of us had reporters turn up on our doorstep on the same day trying to find out information’.*” Associated contends that it is clear, following Sir Simon’s disclosure on 25 July 2025 (pursuant to paragraph 19(c) of the Order) that this was a quotation from paragraph 5 of the Confidential Annex to the Witness Statement of Sir Simon dated 14 December 2011 in proceedings between Sir Simon and News of the World and Glenn Mulcaire. Based on the confidentiality of the annex (and the apparent lack of reaction from Sir Simon to it being quoted in the draft article), Associated suggests that the witness statement (including the confidential annex) had been provided directly or indirectly to Mr Johnson by Sir Simon, possibly at or around the time of the meeting between Sir Simon, Dr Evan Harris and Graham Johnson in April 2016 to discuss “*the Mail business*”.

- g) *“On Tuesday May 2nd 2006, Miskiw asked for £500 payment from the Mail on Sunday, half of which was for his work on the Simon Hughes story.”*
 - (4) On 20 July 2020, Dr Evan Harris emailed Sir Simon, attaching four draft articles and stated, *“Please find attached the 4 part story that Byline was ready to run in January 2020 but held off because you were starting or applying for a new job.”* Dr Harris asked Sir Simon for any thoughts he had on the drafts and whether he would like to offer a comment. The four draft articles, sent by Dr Harris to Sir Simon on 20 July 2020, were substantially the same in content as the three draft articles sent by Mr Johnson to Sir Simon on 11 July 2019, but which had not been published at that time. Between 20-28 July 2020, *Byline* subsequently published four articles substantially the same in content as the four draft articles sent to Sir Simon by Dr Harris.
24. Based upon these disclosed documents Associated contends that:
- (1) nearly three years before what Sir Simon Hughes claims was his personal watershed moment, his *“hacking claim”* against Associated was being prepared and would be *“ready to launch soon”*;
 - (2) what Mr White KC described as *“limitation camouflage”* was being considered in 2019, by means of a *Byline* article; the camouflage only being required because it was recognised that Sir Simon had known for some time the core facts about Associated’s UIG; and
 - (3) the documents cannot be reconciled with Sir Simon’s position that he was *“first made aware of potential unlawful information gathering targeted against him by Associated in around July 2020”* when he *“was contacted by Graham Johnson of Byline Investigates who told him that he had been targeted by hacking by the Mail on Sunday”*.
25. Associated also contends that there is evidence that Sir Simon was informed (or could with reasonable diligence have learned) about the Miskiw/Anderson Emails, the content of the Mulcaire Notes and the explanations of them given by Mr Mulcaire and Mr Miskiw, by at least early 2016.
- (1) Dr Harris emailed Sir Simon, on 3 March 2016, seeking to set up a meeting to discuss *“the Mail business”*. That meeting was scheduled to take place on 5 April 2016.
 - (2) Sir Simon knew, or anticipated, that *“the Mail business”* that he would discuss with Dr Harris would relate to potential claims that he may have against Associated, and specifically in relation to the incident in 2006 regarding HJK (referred to in Sir Simon’s Particulars of Claim):
 - a) Sir Simon prepared for the meeting by emailing HJK on 4 April 2016, asking him if he could recall *“the name of the journalist who tried to link you and me for the papers all those years ago”*.

- b) HJK responded on the same day *“Is that our friend Evan Harris asking you? He asked me already.”* He further stated that *“I know he had a source that the DM or MOS was implicated”*.
 - c) Sir Simon responded on the same day confirming that he was speaking to Evan Harris in relation to that incident: *“Yes – exactly so. I am meeting Evan tomorrow”*.
 - d) HJK responded the same day and speculated that the “source” that Evan Harris had may be Glenn Mulcaire: *“I am sort of concerned that his witness is Mulcair [sic]: Mulcaire had access to my litigation file part of the the [sic] litigation (he was a defendant).”* HJK wondered *“if Evan has a better case now”* and added that *“I would love it if we can prove the DM has lied in court (Leveson and all). That would be fun. And I would love to sue them. You know my statement at Leveson implicated them”*.
- (3) Sir Simon exchanged messages with Dr Harris on 4 April 2016, in advance of the scheduled meeting on 5 April 2016:
- a) Dr Harris stated, *“I am bringing my investigative journalist Graham [Johnson] who got the whistleblower stuff”*.
 - b) Sir Simon anticipated – as speculated by HJK – that Dr Harris had obtained information from Glenn Mulcaire as he responded *“Not Mr Mulcaire?”*.
 - c) Dr Harris responded and confirmed that Glenn Mulcaire was *“one of”* the people who had provided information to Graham Johnson: *“Glenn is one of his sources – he’ll explain”*.
- (4) Mr Johnson appears to have obtained a copy of the Miskiw/Anderson Emails in or around mid-2015 and Mr Miskiw and Mr Mulcaire were assisting the claimants in the proceedings against NGN, by providing both documentary and witness evidence, since at least 2015. In her evidence, Ms Richmond had identified the following facts:
- a) Mr Miskiw began working with Mr Johnson in around mid-2015, when he provided various documentary evidence to Mr Johnson that enabled the claimants pursuing claims against NGN to elaborate their claims against the Sun.
 - b) The documentary evidence provided by Mr Miskiw in relation to *The Sun* formed the basis of articles written by Mr Johnson published by *Byline* from 2015, which in turn led to Mr Miskiw working *“directly”* for the claimants in the NGN litigation.
 - c) Mr Miskiw (as well as Glenn Mulcaire) was working directly with claimants in the NGN litigation no later than January 2016. In the case of Mr Mulcaire, it appears from the book he has published with

Mr Johnson that he was paid to assist and provide evidence on hacking claims from 2011.

- d) On 28 April 2016, in the NGN litigation, Mann J handed down judgment ([2016] EWHC 961 (Ch)) in relation to the claimants' application to amend their general Particulars of Claim to elaborate their claim against the Sun newspaper (to extend their pleading that Mr Mulcaire arranged with the News of the World to carry out information gathering activities for them to include the Sun). Both Mr Miskiwi and Mr Mulcaire provided witness statements as well as documentary evidence in support of the claimants' application (see [29] and [41(ii)]). At the time of the amendment application, the claimants were represented by Hamlins LLP, who acted for the Sixth and Seventh Claimants in these proceedings until 3 April 2025.
 - e) In an article published in *Press Gazette* on 5 March 2025, Mr Johnson stated that the evidence that Mr Miskiwi provided to him in mid-2015 – that formed the basis of the claimants' amendment application against NGN – is the “*same evidence*” that he published in his *Byline* articles and upon which, in turn, “*the Mail litigation is almost entirely based on*”.
 - f) In the summer of 2016, Mr Johnson approached Chris Anderson. Mr Anderson reported that Mr Johnson had said that he was “*authorised to guarantee*” that if Mr Anderson cooperated with Mr Johnson's “*wider enquiries into the Mail group*” then the Miskiwi/Anderson Emails would be “*kept private*”.
- (5) An email dated 25 April 2016, disclosed by Ms Frost Law, appears to show that in the week commencing 11 April 2016 (i.e. around a week after the meeting between Sir Simon, Dr Harris and Mr Johnson on 5 April 2016), Dr Harris met with Ms Frost Law and her then solicitor, Mark Thomson, to discuss potential claims that she might have against Associated by reference to the Miskiwi/Anderson Emails. In the email, Dr Harris circulated a list of actions arising from a meeting between (it appears) Dr Harris, Ms Frost Law and Mr Thomson that took place “*the week before last*”. Associated contends that the list of actions strongly suggests that the focus of the action points was informed by the Miskiwi/Anderson Emails. If that is correct, then Associated suggests that, by April 2016:
- a) Dr Harris and Mr Thomson (whether via Mr Johnson/Dr Harris and/or through his representation of claimants in their claims against NGN and Mr Mulcaire) had obtained or seen a copy of the Miskiwi/Anderson Emails;
 - b) before, during or after that meeting, it is likely that Ms Frost Law was given, shown or else told about the Miskiwi/Anderson Emails;
 - c) if Dr Harris was meeting with Ms Frost Law in April 2016 to discuss potential claims against Associated in relation to the incident and in reliance upon the Miskiwi/Anderson Emails, then it is likely that he would also have given, shown or explained the Miskiwi/Anderson Emails

to Sir Simon at their meeting about “*the Mail business*” the previous week; and

- d) given that Mr Mulcaire was acting as a “*whistleblower*” and a “*source*” for Mr Johnson prior to the meeting with Sir Simon on or around 5 April 2016, he is likely to have provided copies of the Mulcaire Notes, his explanations of the same and any payment records in relation to the 2006 incident to Mr Johnson, and it is likely that Graham Johnson had given, shown or explained the same to Sir Simon at the meeting on 5 April 2016.

(b) Ms Frost Law

26. Following the Order made at the Second CMH, on 30 July 2025, Ms Frost Law disclosed further documents. Associated relies upon the following:

- (1) Relying upon the same evidence as advanced in respect of Sir Simon Hughes’ case (see [25(4)]-[25(5)] above), Ms Richmond suggests that it is likely that the documentation that Mr Miskiw provided to Mr Johnson in mid-2015 included the Miskiw/Anderson Emails, or that Mr Johnson relied on information from Mr Miskiw to obtain the emails from some other source by early 2016 at the latest. Mr Johnson later referenced and included the emails in redacted form in his article “*Mail on Sunday Phone Hacking – ‘smoking gun’ emails quoted messages to top editor*” published by *Byline* on 1 January 2019. It is this article that Ms Frost Law says triggered her Personal Watershed Moment.
- (2) In April 2016, Ms Frost Law attended a meeting at which Ms Richmond suggests, based on the disclosed documents, the Miskiw/Anderson Emails were shown to her and/or she was given copies and/or they were discussed. Ms Richmond relies, particularly upon the 25 April 2016 email from Dr Harris (see [25(5)] above).
- (3) On 22 August 2017, Dr Harris emailed Ms Frost Law:

“... I will discuss with Mark [Thomson] meeting about the Daily Mail (Mail on Sunday in fact) hacking issue as we have gathered more evidence since we last spoke, and will need you to speak to Kate who was also targetted.”

Ms Richmond has highlighted the reference to “*more evidence*”, which, she contends, suggests that previous evidence had been presented/discussed.

- (4) A further email, dated 31 December 2018, sent by Dr Harris to Ms Frost Law at 10.37:

“You may recall that I mentioned to you at Atkins Thomson’s office a couple of years ago that we were investigating suggestions that the Mail on Sunday were involved in hacking voice mail messages you had left or which were left you. We discussed that there was a potential claim there, that Kate Moss was also targeted and that a lot more digging will be needed.

Well, that research has been done and this note below from the investigative journalist sets out what has been done so far.

As you are aware, Byline Investigates has started to publish a series of stories exposing the Mail on Sunday for phone hacking.

Here are the links to the first three stories:- [links provided]

These stories also appear on Byline.com.

The fourth story, about the hacking of Sadie Frost and her associates, is slated for publication shortly.

This story is particularly important because it reveals compromising emails between a hacker and an MoS exec, evidencing criminal knowledge at the MoS, which - for six years - it has denied.

Please note that Byline have taken steps to protect Ms Frost's privacy and that of her associates.

It may be prudent to inform Sadie Frost of this development. Are you able to make contact with her please?

The story in its current form (not yet published is below).

The journalists have been very responsible with the redactions so as to ensure there is no further intrusion.

They have also let Mark Thomson know.

These investigator (sic) work closely with us, and with Atkins Thomson in fact, and they would be happy to show the material that they have got, so you can decide what to do next. There are five or so others who have been notified and I think they are suing Paul Dacre's outfit.

Please feel free to discuss this with me.

Byline would be grateful for a short reaction from you, perhaps saying how concerned you are that anyone should be n [sic] to private emails and that there should be a full investigation if there is evidence that the Mail were involved".

The "*five or so others who [had] been notified*" have not been identified, but Associated invites the inference that one of them is likely to have been Sir Simon Hughes in light of the other evidence that has emerged from disclosure.

- (5) Ms Frost Law responded at 12.32: "*Yes I can respond – shall we do a quick call? Should I also speak to Mark [Thomson]*".
- (6) Dr Harris replied at 13.06, providing his telephone number and added:

“I know Mark is aware of this and, though he is on holiday at the moment, I know he would be happy to speak as soon as [he] is back.

A possible quote, which does not commit to any action, might be

‘I am shocked/appalled and upset/distressed to hear that the Mail on Sunday were discussing my private voicemails with phone hackers with a view to writing a story about my and my family’s personal business. There was no public interest justification for any of this snooping and hacking. I will be taking legal advice on this and expect the Mail to start giving some answers.

But its entirely up to you”.

- (7) Ms Frost did not respond, so Dr Harris sent a further email, “*I will send you the full emails (ie not the redacted ones in the article) if you like. Do you have a quote/comment?*” Ms Frost Law responded suggesting that the proposed quote from her needed to be shorter. Dr Harris replied (at 20.47):

“Right, how about this?

‘I am appalled to hear that the Mail on Sunday was discussing my private voicemails with phone hackers with a view to writing a story about my and my family’s personal business. There was no public interest justification for any of this snooping and hacking, and I will be taking legal advice’

The story is below – at the foot of this email. The quote will be inserted in the middle somewhere.

I will send you the emails that the researchers got hold of.”

No further emails from Dr Harris have been disclosed by Ms Frost Law. Ms Richmond suggests that Ms Frost Law did not take up the offer of being sent/shown the emails because she already knew what they contained, having seen them (it is argued) in April 2016.

27. Associated contends that Mr Thomson and/or Dr Harris and/or other “*researchers*” working “*closely*” with Atkins Thomson and Dr Harris had evidently been carrying out such investigations on Ms Frost Law’s behalf for several years prior to the January 2019 *Byline* articles.

C: The Claimants’ response to Associated’s Application and evidence

(1) Whether documents held by the Research Team are in the control of the Claimants for the purposes of disclosure

28. Mr Thomson has provided two further witness statements – his Twelfth and Fourteenth – seeking to answer Ms Richmond’s criticisms of his Second Witness Statement and to address the issue of the documents held by the Research Team and whether they are within the control of the Claimants for the purposes of disclosure.

29. In summary, in his Twelfth Witness Statement, Mr Thomson says the following (more by way of argument than evidence) about the documents held by the Research Team:
- (1) The only documents within the Claimants' control (for disclosure purposes) are (a) documents produced after the formal engagement of the Research Team by the Claimants, which began in April 2022; and (b) documents voluntarily provided by members of what became the Research Team to the Claimants prior to their engagement
 - (2) Documents obtained, accessed or held by members of what became the Research Team before their engagement (i.e., before April 2022) are not within the Claimants' control, save for those documents in (1)(b) above.
30. In his Fourteenth Witness Statement, Mr Thomson apologises for the “*shortcomings*” in his Second Witness Statement (but without identifying what they are said to be). Although relying upon the engagement of the Research Team in April 2022 as being significant to whether documents are within the control of the Claimants, the Claimants have refused to provide a copy of the agreement between them and the members of the Research Team (“the Engagement Agreement”). In his Fourteenth Witness Statement, Mr Thomson stated, simply: “*The Claimants consider documents underpinning the engagement of the Research Team to be plainly privileged*”, later in the statement, Mr Thomson added: “*The formal arrangement between the Claimants and the Research Team is subject to Litigation Privilege*”.
31. Across Mr Thomson's three witness statements, there are some consistent themes:
- (1) **Definition of Control:** All three statements maintain that only documents produced or obtained by the Research Team after their formal engagement by the Claimants (in April 2022) are within the Claimants' control for disclosure purposes. Documents obtained before this date are not within the Claimants' control unless they were voluntarily provided to the Claimants' legal team.
 - (2) **Voluntary Provision of documents:** All statements refer to a voluntary search and provision of Associated-related documents by individuals who later became the Research Team, starting in May 2021. It is accepted that these documents are within the Claimants' control.
 - (3) **Pre-Engagement Material:** Documents obtained by the Research Team members in other capacities (e.g. as journalists, in the Hacked Off campaign, or as paralegals in other litigation) are not within the Claimants' control unless voluntarily provided.
 - (4) **Supervised Searches:** All statements describe supervised searches of the Research Team's electronic and hard copy documents for material within the Claimants' control, confirming that all relevant material has been provided to the Claimants' solicitors.
 - (5) **Limitation Issue:** All three statements refer to additional, supervised searches for the Fifth and Seventh Claimants (Sir Simon Hughes and Sadie Frost Law) to address limitation issues, including pre-engagement material.

32. There is however a potential area of inconsistency/ambiguity between the witness statements (which may be the “*shortcomings*” to which Mr Thomson referred, but this is unclear). It relates to the scope of the 2021/2022 voluntary search carried out by those who were later to be engaged as the Research Team.

- (1) In his Second Witness Statement, Mr Thomson stated:

“Upon the Claimants’ instruction, during the early investigations into these proceedings, Dr Harris, Mr Waddell and Mr Johnson searched all their documents and provided those documents to the Claimants in around 2021 to 2022. This complete repository of documents formed the basis of the disclosure searches carried out for the purposes of standard disclosure in all the claims with respect to the Dr Harris, Mr Waddell and Mr Johnson. No material falling within the wide scope of the search was withheld, save for a small amount of confidential material obtained by Dr Harris in the course of his work at Hacked Off, which had been provided by a whistleblower under the assurance it would not be used for any purpose beyond its use by Hacked Off to further its campaign.”

- (2) In his Twelfth Witness Statement, Mr Thomson stated that the only “Research Team material” within the Claimants’ control is material produced after the engagement of the Research Team by the Claimants (April 2022), and Associated-related material voluntarily provided prior to engagement. Material obtained by members before engagement is not within the Claimants’ control, except for Associated-related material voluntarily provided from May 2021 onwards.
- (3) In his Fourteenth Witness Statement, Mr Thomson restated the position set out in his Twelfth Witness Statement and stated that the voluntary search, starting in May 2021, resulted in Associated-related documents being provided to the Claimants in early 2022, which are within the Claimants’ control.
33. The Second Witness Statement could be read as suggesting that the Research Team searched “*all their documents*” and provided a set to the Claimants. The Twelfth and Fourteenth Witness Statements state that only Associated-related material was provided, not all documents from all roles or workstreams.

(2) The specific responses of Sir Simon Hughes and Sadie Frost Law

34. As noted (see [10] above), the Order from the Second CMH required Sir Simon to carry out a specific search for documents relating to the “*Mail business*” and the meeting on 5 April 2016. Sir Simon has disclosed no further documents pursuant to that Order.
35. Although not strictly relevant to the determination of whether documents held by the Research Team are within the Claimants’ control for the purposes of disclosure, it is right that I set out, briefly, the responses of Sir Simon and Ms Frost Law
36. Sir Simon Hughes had not provided a witness statement in response to the documents identified in Ms Richmond’s Fourteenth Witness Statement (see [23] above). Mr Thomson, Sir Simon’s solicitor, has provided several witness statements since Ms Richmond’s Fourteenth Witness Statement but in none of these does he address or provide any explanation for the emails relied upon by Ms Richmond. Sir Simon’s

position is that he will explain any apparent inconsistency between the documents and his case on his personal watershed moment in his trial witness statement. Mr White KC submitted that this answer was inadequate and that Associated needed proper disclosure of all documents relating to the “*litigation camouflage scheme*” from all relevant custodians, including Dr Harris and Mr Johnson.

37. Ms Richmond’s evidence was addressed on Ms Frost Law’s behalf in the Fourteenth Witness Statement of solicitor, Callum Galbraith. Mr Galbraith states that Ms Frost Law was not told about, shown or given copies of the Miskiw/Anderson Emails before her Personal Watershed Moment in January 2019. In response to Ms Richmond’s points, Mr Galbraith argues that the documents do not undermine Ms Frost Law’s position:

- (1) The reference to “*more evidence*”, in the email from 22 August 2017 (see [26(3)]) does not support the conclusion Associated seeks to draw. It implies the key evidence (the emails) had not yet been seen by Ms Frost Law.
- (2) Offers made by Dr Harris, in his emails on 31 December 2018, to provide the unredacted Miskiw/Anderson Emails are equally consistent with Ms Frost Law not having previously seen or received them, and the tenor of the emails suggests that the material was new and had not previously been brought to Ms Frost Law’s attention.

(3) The Claimants’ voluntary disclosure of documents held by the Research Team

38. As noted already, the Claimants have refused to disclose the Engagement Agreement on the grounds that it is privileged. There is force in Mr White KC’s submission that the Engagement Agreement is likely to contain terms that would have a bearing on the status of documents held by the Research Team and whether the terms of the Engagement Agreement provide the Claimants with an enforceable right of access to documents held by the Research Team. Mr White KC argued that it is difficult to see how the Engagement Agreement between the Claimants and the Research Team could be privileged, especially when a solicitor’s retainer letter is not generally privileged (unless it contains legal advice, which can be redacted). He suggested that the Claimants are seeking to rely on the Engagement Agreement to limit the scope of disclosure whilst at the same time refusing to disclose it, which he contended was impermissible.
39. Nevertheless, Mr White KC argued that, even absent the Engagement Agreement, the evidence of voluntary access and cooperation by the Research Team members supported a finding of practical control by the Claimants over the documents held by the Research Team.
40. Mr Sherborne did not advance any legal argument seeking to justify the claim to privilege over the Engagement Agreement. He submitted that the Claimants were not relying on the terms of the Engagement Agreement to define control, but only on the date of engagement to identify the point at which documents held by the Research Team became subject to the Claimants’ disclosure obligations. Mr Sherborne’s main response was, like Mr White KC, pragmatic: the Research Team had voluntarily offered to provide access to documents, so the court did not need to resolve the privilege issue concerning the Engagement Agreement.

41. The extent to which members of the Research Team have, on the Claimants' case, voluntarily provided documents to the Claimants is potentially of relevance to whether documents held by the Research Team are, as a matter of reality, within the control of the Claimants for the purposes of disclosure in these proceedings.
42. The evidence from Mr Thomson's witness statements (particularly Twelfth and Fourteenth), shows that, in 2021, prior to their formal engagement, the members of what became the Research Team carried out a voluntary search of the material they held in hard copy and electronic form and provided some of it to the members of the Claimants' legal team.
43. In his Fourteenth Witness Statement, Mr Thomson confirmed that:

“... all three individuals [Mr Johnson, Mr Waddell and Dr Harris] have agreed to allow full access to their document stores, email accounts and mobile app message stores for the period prior to the engagement of the Research Team, for supervised searches (relating to the limitation issue in respect of the Fifth and Seventh Claimants) to be carried out by a Claimant's legal team of these sources of documents, and agreed to provide any relevant documents to the Claimants (who would then provide disclosure as appropriate to Associated).”
44. Whilst the parameters of any search will be determined by any order of the Court, not the members of the Research Team, it is clear that, as a matter of fact (and irrespective of whether the Engagement Agreement provides the Claimants with an enforceable right to obtain access to documents held by the Research Team), each member of the Research Team has agreed to allow access to his documents for the purposes of such disclosure searches.

D: Legal Principles

(1) Unless orders

45. The Court has powers to make orders to control its own process and procedure to ensure the effective conduct of litigation. CPR 3.1(3)(b) specifically provides that the Court may specify a sanction that will apply in the event of non-compliance with an order.
46. The imposition of a sanction of striking out a statement of case is one of the most powerful weapons in the court's case management armoury. It is likely only to be imposed for a serious and deliberate breach, and the court must consider very carefully whether it is appropriate, proportionate and justified in all the circumstances of the case: *Marcan Shipping -v- Kefalas* [2007] 1 WLR 1864 [36]; *Global Torch Ltd -v- Apex Global Management Ltd and Others (No.2)* [2014] 1 WLR 4495 [23]-[24].

(2) Control of documents in the context of a party's disclosure obligations

47. CPR 31.8 provides:
 - “(1) A party's duty to disclose documents is limited to documents which are or have been in his control;
 - (2) For this purpose a party has or had had a document in his control if –

- (a) it is or was in his physical possession;
- (b) he has or has had a right to possession of it; or
- (c) he has or has had a right to inspect or take copies of it.”

48. A party has control over a document held by a third party either if there is (a) an enforceable right to obtain access to the document or (b) a practical arrangement where that third party allows access to the document, as explained in *Various Airfinance Leasing Companies -v- Saudi Arabian Airlines Corpn* [2022] 1 WLR 1027 [21]:

“Insofar as a document is in the physical possession of a third party, meaning a person who is not a party to the action, that document is in the control of the party to the action not only where the party has a legally enforceable right to obtain access to such a document, but also where there is a standing or continuing practical arrangement between the party and the third party whereby the third party allows the party access to the document, even if the party has no legally enforceable right of such access... However, in order to establish that there is such a standing or continuing arrangement or even a specific, time-limited arrangement, whereby a third party allows a party to the action access to the document which the third party has in its possession, it is not generally sufficient to demonstrate that there is a close legal or commercial relationship between the party and third party, such as parent and subsidiary companies or employer and employee relationships; something more is required; there must be more specific and compelling evidence of such an arrangement ...”

49. As a matter of the general law of agency the principal has access to documents in the possession of the agent relating to the activities carried out by the agent on behalf of the principal, and therefore control over the documents for the purposes of the principal’s disclosure obligations: *Matthews & Malek on Disclosure* (6th edition, Sweet & Maxwell, 2024) at §§5-89 and 5-99; *Fairstar Heavy Transport NV -v- Adkins* [2013] 2 CLC 272 [50]-[56]; *Amec Foster Wheeler Group Ltd -v- Morgan Sindell* [2015] EWHC 2012 (TCC) [26]-[36]; *North Shore Ventures Limited -v- Anstead Holdings Inc* [2012] EWCA Civ 11 [40].

50. As recognised in the *Saudi Arabian Airlines* case, control is not limited to situations where there is a legally enforceable right to access the documents. It is sufficient for disclosure purposes if they are under the practical control of the party as a matter of factual reality: *Ardila Investments NV -v- ENRC NV* [2015] EWHC 3761 (Comm) [10]-[11]; *Berkeley Square Holdings Ltd -v- Lancer Property Assets Management Ltd* [2021] EWHC 849 (Ch) [46].

51. The authors of *Matthews and Malek on Disclosure* (6th edition) summarise the principles relevant to the determination of whether the documents held by a third party are within a party’s control as follows (at §5.97, footnotes omitted):

“...under the CPR a broader approach has been taken [to control] and an understanding or arrangement falling short of a legally enforceable contract or obligation has been held to be sufficient. The courts are prepared to look at the reality of the situation to look at whether a party has access and the quality of such access. In determining whether documents held by one person are under the

control of another where there is no legally enforceable right to access the documents, the following principles have been derived from the authorities:

- (1) The relationship between the parties is irrelevant. It does not depend on there being control over the holder of the documents in some looser sense, such as a parent and subsidiary relationship;
- (2) There must be an arrangement or understanding that the holder of the documents will search for relevant documents or make documents available to be searched;
- (3) The arrangement may be general in that it applies to all documents held by the third party or it could be limited to a particular class or category of documents. A limitation such as an ability to withhold confidential or commercially sensitive documents will not prevent the existence of such an arrangement;
- (4) The existence of the arrangement or understanding may be inferred from the surrounding circumstances. Evidence of past access to documents in the same proceedings is a highly relevant factor;
- (5) It is not necessary that there should be an understanding as to how the documents will be accessed. It is enough that there is an understanding that access will be permitted and that the third party will co-operate in providing the relevant documents or copies of them or access to them;
- (6) The arrangement or understanding must not be limited to a specific request but should be more general in its nature”.

52. In *Loreley Financing (Jersey) No.30 Ltd -v- Credit Suisse Securities (Europe) Ltd* [2023] EWHC 548 (Comm), Cockerill J reviewed the relevant principles ([11]-[22]). She noted that a “*degree of stringency*” is required in the concept of control and emphasised (as Males J had done in *Adila Investments*) that the element of practical control required evidence of the requisite degree of control; a right of access that provided effectively “*unfettered access*”: [13], [15]. The right of access can be predicated on an agency relationship, but it goes beyond that and embraces any understanding or arrangement whereby the party with control can access the documents: [17]. In that respect, a key consideration may be whether access has been permitted in the past: [19].
53. On the facts in *Loreley*, Cockerill J held that the evidence did not show the requisite hallmarks of control. As well as being agents of the claimant, L30, the third parties were also employees of a company, KfW. A key factor in the decision on control was the capacity in which the third parties held the documents. The Judge held that [27]: “*These are not documents which [the third parties] have access to as agents of L30; they have access as employees of KfW*”. It was a “*question of [the] hats*” that were worn by the third parties, and meant that the claimant did not have the required element of control: [28]. The decision does show, however, that wearing different “*hats*” does not necessarily preclude a finding of the necessary degree of control. It depends on the particular factual relationship.

E: Submissions

54. Mr White KC argued that, leaving aside whether, by dint of the Engagement Agreement, the Claimants have an enforceable right of access to documents held by the Research Team, they are clearly under their practical control as a matter of factual reality. Although the members of the Research Team may have originally obtained the documents wearing different “hats”, they *now* hold them as individuals and members of the Research Team specifically engaged by the Claimants in part because of their knowledge and experience. Mr White submits that, when these claims were issued, the Claimants themselves (as opposed to the Research Team and/or their legal representatives) did not hold key documents that were relied on to draft the Particulars of Claim. For example, Mr White KC submitted that Sir Simon Hughes (on his case) did not physically have copies of the Mulcaire notes said to be critical to his Personal Watershed Moment. Ms Frost Law was not personally provided with copies of the Miskiwi/Anderson Emails until early 2022. Mr White KC contends that it appears that Claimants have been briefed on and able to access the documents held by the Research Team and that the Research Team have co-operated in providing access as and when the Claimants required.
55. Mr White KC submits that there is, in reality, no distinction as to the capacity in which members of the Research Team hold various documents. Mr Johnson may well have obtained documents in his capacity as a journalist, but that fact alone does not exclude them from being within the Claimants’ *de facto* control. Relying upon the Claimants’ disclosure, Mr White KC argues that no such distinction has been maintained by the Claimants and that, in reality, the Claimants have had free access to the documents Mr Johnson has obtained, including with Dr Harris. As to Dr Harris’ role with Hacked Off, which Mr White KC was inclined to accept was the strongest example of one of the Research Team wearing a particular “hat”, Mr White KC submitted Dr Harris had left Hacked Off in 2018. Whatever documents Dr Harris acquired in his role at Hacked Off, the real question is what he still retains now. Dr Harris’s historic role in Hacked Off does not put him in the position of the third parties in *Loreley*. More importantly, Mr White KC argued, there can be no impediment to the provision of documents to the Claimants on the grounds of the “hats” they have worn because otherwise the members of the Research Team would not have been able to make the offer that they have made to search the documents they hold.
56. In his skeleton argument, Mr Sherborne submitted that the only documents held by the Research Team that are within the control of the Claimants for the purposes of disclosure are the documents that were “*obtained or accessed by them under any engagement or instruction by the Claimants in these proceedings*”. At the hearing, Mr Sherborne’s submissions on control over the Research Team’s documents centred on the contention that the members of the Research Team operate in multiple capacities (the “hats”), and that the legal and practical control over their documents depends on these roles. He distinguished between their roles as independent researchers, agents of the Claimants, or as individuals acting under the instruction of solicitors. When acting as agents for the Claimants or under the instruction of solicitors, their documents may be within the Claimants’ control for disclosure purposes. When acting independently, or holding documents not created for the litigation, the documents may not be within the Claimants’ control.

F: Decision

57. The authorities demonstrate that the Court must carefully assess the nature of the relationship between the third party (who it is alleged has relevant documents) and the party in the litigation who is subject to the disclosure obligation to determine whether the documents fall within the party's control under CPR 31.8.
58. In my judgment, the following features of the relationship between the Claimants and the members of the Research Team are important:
- (1) The three members of the Research Team – Dr Harris, Mr Johnson and Mr Waddell – have been described by the Claimants as “*specialists*” who have been involved in UIG litigation for well over 10 years. I have no difficulty in accepting this description as accurate. Dr Harris is the former Executive Director of Hacked Off, who has worked closely with solicitors acting for claimants in the NGN and MGN litigation. Mr Johnson is a journalist who has been investigating UIG for a considerable period of time. He has published a very large number of articles in *Byline*, largely reporting the fruits of his research. He has also worked closely with solicitors for claimants in the NGN and MGN litigation and has given evidence as a witness. From 2017, Mr Waddell had been assisting Mr Johnson with his investigations, including into UIG at Associated. He worked with Dr Harris in the NGN and MGN litigation providing support to the claimants' solicitors.
 - (2) The Research Team has been formally engaged by the Claimants in this litigation since the Engagement Agreement in April 2022. From that point onwards, members of the Research Team have acted as the agents of the Claimants. Under that agreement, which the Claimants have refused to disclose, the Research Team have agreed to provide assistance in the current litigation, for which they are remunerated. The members of the Research Team are not simply discharging the role that any paralegal could discharge. They have been engaged by the Claimants because of their specialist knowledge and experience in UIG, at least in part gathered as a result of their own investigations.
 - (3) Prior to their formal engagement as the Research Team, the three constituent members have, since at least 2015, been working closely with the Claimants' solicitors. With those solicitors, they have been actively engaged in investigating whether proceedings for UIG could be brought against Associated and gathering evidence potentially to support such a claim.
 - (4) Dr Harris and Mr Johnson have been directly and specifically involved in incidents involving Sir Simon Hughes and Sadie Frost Law, between March 2016 and July 2020 (see [23] and [25]-[26] above). These incidents have a direct bearing on the Knowledge Issue for the purposes of Associated's limitation defence to the claims of Sir Simon and Ms Frost Law. Based on the evidence I have set out, it is highly likely that both Dr Harris and Mr Johnson will have documents that are likely to bear materially on the issue of whether Sir Simon Hughes and Sadie Frost Law knew (or could with reasonable diligence have learned) that they each had a viable claim of UIG against Associated. Further, the reference in Dr Harris' email of 31 December 2018 to “*five or so others who [had] been notified*” (see [26(4)] above) suggests that others were

actively contemplating litigation against Associated. The identity of these individuals – likely to be revealed in documents held by the Research Team – may well have wider potential significance for the limitation defences relied upon by Associated.

- (5) As to evidence of past access to the Research Team's documents, prior to the Engagement Agreement, from May 2021, the Research Team gave the Claimants access to the documents that they hold relating to Associated. After the Engagement Agreement, there is no suggestion in the Claimants' evidence that members of the Research Team have withheld documents that they hold or that access to those documents has been restricted. In the absence of the Engagement Agreement, but having regard to its nature, purpose and likely scope, I would infer that restrictions on access to the Research Team's documents would be likely to be inconsistent with the spirit of the Engagement Agreement if not a direct breach of its terms. This conclusion is also consistent with the Research Team's recent offer to allow full access to their documents for searches by the Claimants (see [43] above).
 - (6) The primary purpose of the Engagement Agreement is for the Research Team to assist the Claimants in this litigation. That includes giving them unfettered access to their documents. I readily infer that the documents held by the Research Team was a fundamental part of why they were engaged by the Claimants.
59. As the Claimants have refused to disclose the Engagement Agreement, I cannot resolve whether the Claimants have an enforceable right, under that agreement, to obtain access to the documents held by the Research Team. However, I am satisfied that the Engagement Agreement reflects the fundamental cooperative working relationship between the Research Team and the Claimants (and their lawyers). That relationship is based on an arrangement (perhaps expressly reflected in the terms of the Engagement Agreement) or at least a clear understanding that the Research Team will provide effectively unfettered access to the documents that they hold relevant to the litigation against Associated. It may be that some of the documents held by the Research Team are subject to restrictions (whether arising in the context of other litigation – imposed by CPR 31.22 – or in respect of journalistic sources), but that does not undermine the basic nature of the relationship of cooperation between them and the Claimants.
60. This case is not an example of the position in *Loreley* where the third party held the documents in a specific capacity that was wholly separate from his role as the agent of the party against whom disclosure was sought. None of the Research Team presently holds documents in a capacity which would negate a finding that they are effectively and practically within the control of the Claimants. The evidence advanced by the Claimants in Mr Thomson's witness statements does not suggest that the members of the Research Team have withheld documents from the Claimants on such a basis. The status of each member of the Research Team when he *originally* took possession of the documents does not govern whether they are *now* in the practical control of the Claimants. That latter question is to be assessed by looking at the position of each member of the research team now, not when they originally obtained the documents. The fact that Mr Johnson and Mr Waddell may have come into possession of documents as a result of their journalistic investigation does not now put them beyond the control of the Claimants. So too any documents that Dr Harris has retained from his time at

Hacked Off. There is no suggestion that Dr Harris has retained documents to which he had no entitlement, and he does not presently hold any such documents as an employee of Hacked Off; he ceased to be an employee in 2018.

61. The circumstances in which each member of the Research Team came originally to hold the relevant documents *may* be relevant to whether, within the process of standard disclosure, inspection of a particular document can be withheld in these proceedings (see what I said in [227] in the July Judgment). Importantly, however, the Court can ultimately resolve any objection to inspection which is challenged, for example by releasing restrictions under CPR 31.22.
62. For these reasons, my conclusion is that the documents held by members of the Research Team (including documents that came into their possession prior to the Engagement Agreement) are within the control of the Claimants for the purposes of standard disclosure, those documents must be properly searched and such documents that fall within the terms of standard disclosure must be disclosed. The terms of the search are not to be limited to searches relating to particular Claimants or particular issues, e.g. the Knowledge Issue. The Knowledge Issue has been the principal focus of Associated's application, but it is not the sole focus and the Research Team Order was not so limited.
63. I have narrowly been persuaded by the Claimants that I should not make an unless order, at this stage. Whilst there is obvious urgency, in view of the trial date, this is not an instance of a party defying an order of the Court. The Claimants have raised the issue of the extent to which the Research Team's documents are within their control. I have ruled that the assessment that they made was erroneous. There is no basis upon which to conclude that the Claimants will not now comply with the order that will be made requiring a proper search of the Research Team's documents to be made and appropriate disclosure to be provided. The Court has received assurances that the Research Team will cooperate to enable a proper search to be made. The sanction of striking out the Claimants' claims would, at this stage, be disproportionate. The impending trial date means that this task must be completed quickly, and the Court is likely to be unsympathetic to any delay or non-compliance. Ultimately, the Court will achieve compliance with its orders. If that requires a sanction to be imposed, then that may well be the next step. As I say, at this stage, I see no reason to anticipate non-compliance on the part of the Claimants.