MR JUSTICE VOS

Introduction

1. Guardian News & Media Limited ("GNM") issued an application notice dated 15th February 2012 for an order under CPR 5.4C(2) and/or (6) and/or the inherent jurisdiction of the Court that GNM be permitted to obtain copies of the following 4 documents referred to in open court at the Pre-Trial Review in this action on 19th January 2012 (the "PTR"), from the court records or from a party to the action:-

   (1) a statement of case described as the "generic Particulars of Claim" which is to be used for all or some of the claims in this action due to be tried [or rather that was due to be tried] on 13th February 2012 (the "Generic Particulars of Claim");

   (2) the Notice to Admit served by the Claimants on the First Defendant (the Notice to Admit");

   (3) the 1st Defendant's document setting out its response to the said Notice to Admit, also described as "generic admissions" (the "Response");

   (4) the document described as the "generic list of issues".

   The first three of these documents are together called the "3 documents", and all 4 are called the "4 documents".

2. I should record immediately the following events that took place last Thursday 23rd February 2012 (the day on which the argument was heard):-

   (1) No objection was taken by any party to the disclosure to GNM of the generic list of issues, the 4th document in unredacted form. Accordingly, that document has already been made available to GNM.

   (2) At the end of the hearing, and in the light of the course it had taken, I asked the parties whether there would be any objection if GNM were to be provided immediately with copies of the 3 documents, redacted to exclude all the passages to which either the 1st Defendant, News Group Newspapers Limited ("NGN"), or the 2nd Defendant, Mr Glenn Mulcaire ("Mr Mulcaire") had taken exception. No objection was taken to this course, and accordingly such redacted copies were provided to GNM.

   (3) After the hearing, I received a letter from the Editorial Legal Director of the Daily Telegraph, whose representative had been

present in Court at the hearing. He sought copies of the same documents that I had indicated should be made available to GNM. I acceded to his request and made it clear to the parties, through my clerk, that what applied to GNM applied to the media generally, so that the parties should make available such copies to any media organisation requesting them. The same will apply if, pursuant to this judgment, further material is made available to GNM. It would be wholly disproportionate and inappropriate to require each media organisation to make its own separate application, although if the parties are faced with an application by a third party that they believe raises different issues from this application, it will be open to them to apply to me for a further determination.

3. Stripped of the peripherals, the nub of the issue, therefore, that I now have to decide is whether certain material concerning Mr Mulcaire contained in the 3 documents should be redacted before those documents are disclosed to the press. Mr Gavin Millar QC and Ms Alexandra Marzec, counsel for Mr Mulcaire, have contended before me that reporting of some parts of the 3 documents will create a substantial risk that the course of justice in the further criminal proceedings that Mr Mulcaire may face will be seriously impeded or prejudiced.

4. This application should, according to Mr Millar, be seen alongside the application that Mr Mulcaire had previously made for a postponement of reporting order under section 4(2) of the Contempt of Court Act 1981 ("COCA"). That application was due to be heard on Thursday and Friday 23rd and 24th February 2012, on the basis that the trial of the remaining telephone interception claims were fixed for a trial that should have commenced today. But since all those claims have now settled and there will be no trial – at least at this stage - Mr Mulcaire's application for a postponement of reporting order became unnecessary, and was not brought on for hearing.

5. The grounds of GNM's application are stated on its face as follows:-

   (1) "*The [4 documents] and their content entered the public domain when they were referred to and relied upon compendiously but extensively by counsel and also referred to and read by Mr Justice Vos during the course of submissions at the PTR on 19 January 2012. Extracts were also read out. The documents were in the bundles used by the Judge for and at the hearing. The hearing was held in public and the press and public were present throughout. No reporting restrictions were made so far as material to this application. Examples of the references to the documents are found in the transcript of the*

hearing at pages 1, 4, 8, 9, 10, 12, 13, 14, 22, 34, 35, 37, 38, 44, 46, 48, 55, 58, 59, and 61.

(2) [GNM] wishes and requires to obtain copies of the documents because without them it is unable to (a) understand fully the submissions that were made at the PTR, and (b) understand the issues more generally which are and are not in dispute in this action, particularly for the purpose of being able to follow the forthcoming trial, as to which the issues in the documents referred to above are centrally relevant.

(3) Ordinarily pursuant to CPR 5.4C(1) a non-party can obtain a copy of statements of case from the court records as of right unless an order has been made which prevents this.

(4) In this action an order was made by Mr Justice Vos dated 15 April 2011 which at paragraph 2 appears to prevent [GNM] from obtaining as of right the document in (i) above, and also those in (ii) and (iii) if, as [GNM] will submit, they are also properly to be classified as statements of case. [GNM] applies for permission to obtain copies of these documents pursuant to CPR 5.4C(6) or the inherent jurisdiction.

(5) A further order was made by Mr Justice Vos on 20 May 2011 which set out the process by which the parties to the action should proceed in relation to what they consider to be confidential documents.

(6) Further or alternatively, GNM applies for permission to obtain the documents in (ii) to (iv) pursuant to CPR 5.4C(2)".

(7) *The Claimants' solicitors have confirmed that they consent to this application.*"

6. Before dealing with the details of the application, I should set out briefly, some of the essential background chronology.

Background chronology

7. On 18th April 2011, I made an order restricting the inspection of documents on the court file as follows:-

"*1. These directions shall be directions in the Current Claims and, where appropriate in future claims issued against one or both of the Defendants in which allegations of breach of confidence and/or misuse of private information arising out of*

interception of phone voice messages are made ("the Future Claims")

2. No one shall be at liberty to inspect or obtain any document from the court record or any documents referred to during this Case Management Conference, including any skeleton arguments that have been served, unless an application for the same is made and granted …".

The intention of this order was to hold the ring whilst the parties negotiated and agreed an appropriate confidentiality regime. Some of the parties to this application seem to have thought that this part of order continued, but in fact it did not survive beyond 20th May 2011.

8. On 20th May 2011, I made an order restricting access to the court file as follows:-

"*2. Until 10am on Monday 6 June 2011 (when the Order in this paragraph will cease to apply), no one shall be at liberty to inspect or obtain any document from the court record or any documents referred to during this Case Management Conference, including any skeleton arguments that have been served, unless an application for the same is made and granted …*

4. Until 10am on Monday 6 June 2011 the Claimants have permission to consider the material on their individual court files and to place any material they consider necessary in a Confidential Schedule, subject to them first sending a copy of the Confidential Schedule to [NGN] and [NGN] agreeing to the same.

5. Until 10am on Monday 6 June 2011 [NGN] has permission to consider the material on their individual court files and to place any material they consider necessary in a Confidential Schedule, subject to them first sending a copy of the Confidential Schedule to the Claimants and the Claimants agreeing to the same.

6. No document in the Mobile Phone Voicemail Interception litigation may be placed on the Court File until 7 days after it has been served on the other parties to the litigation, with liberty to apply in default of agreement. This shall not preclude any party from taking a step in the litigation, whether by issuing claims or issuing applications or otherwise, prior to the expiration of that 7 day period, save that no confidential

> *information may be included in any document so issued. Documents shall be hand delivered to Chief Master Winegarten or the clerk to Mr Justice Vos (Robin Cliffe) in a sealed envelope marked "Confidential – Voicemail Interception Litigation – Not to be disclosed without permission of the Court" where they are (i) agreed confidential documents, or (ii) documents lodged at court prior to the expiration of the 7 day period*".

9. This regime was intended to ensure that confidential information that had been the subject of repeated hearings did not come into the public domain: prime examples of the information that the court had in mind included: journalists' "corner" names, the identities of other victims of telephone interception, and private DDN numbers, mobile telephone numbers, passwords and PIN numbers. It has remained in place since 20th May 2012, and has worked reasonably effectively. It did not provide and was not intended to give rise to any changes to the usual rules under which the press could report these proceedings. I have made clear throughout these proceedings that, so far as the court is concerned, save for material that has been the subject of specific orders, the usual rules apply to the reporting of these proceedings and to the obtaining of documents from the court file. I am keen to repeat that formulation this afternoon.

10. On 5th July 2011, after news had emerged of the alleged hacking into Millie Dowler's telephone, Mr Mulcaire made a public apology which received widespread media attention as follows:-

> "*I want to apologise to anybody who was hurt or upset by what I have done … I have gone to prison and been punished. I still face the possibility of further criminal prosecution … working for the News of the World was never easy. There was relentless pressure … a constant demand for results. I knew I pushed the limits ethically. But, at that time, I did not understand that I had broken the law at all*"

11. On 13th July 2011, the Prime Minister announced a two-part inquiry to be headed by Lord Justice Leveson, investigating the role of the press and the police in voicemail interception.

12. On 7th December 2011, Mr Mulcaire was arrested on suspicion of attempting to pervert the course of justice and unlawful interference in communications. He was bailed to re-attend at Sutton Police station in March 2012. He was not charged. 15 other persons have been arrested in Operation Weeting, none of whom has as yet been charged.

13. It is, of course, well known that:-

(1) On 29th November 2006, Mr Mulcaire pleaded guilty to an offence of conspiracy to intercept communications contrary to section 1(1) of the Criminal Law Act 1977 in respect of the interception of the voicemails of 3 members of the Royal Household. Mr Mulcaire pleaded guilty also to 5 further offences contrary to section 1(1) of the Regulation of Investigatory Powers Act 2000 relating to the interception of voicemail messages left for 5 non-Royal, but high profile personalities being Mr Max Clifford, Mr Gordon Taylor, Mr Simon Hughes M.P., Mr Skylet Andrew, and Ms Elle MacPherson.

(2) On 26th January 2007, Gross J sentenced Mr. Mulcaire to 6 months imprisonment. The total period of criminal activity covered by the 2006 prosecution was 8 months between November 2005 and June 2006.

14. On 19th January 2012, I held the PTR at which a number of statements in open court were read concerning individual settlements. I heard a contested disclosure application, deciding that certain computers held by NGN should be searched and disclosed. In the course of that hearing, the 3 documents were referred to in open court, and two short passages from each of the Notice to Admit and the Response were cited in my judgment. The passages that I referred to concerned NGN's statement that it consented to the assessment of aggravated damages on the basis set out in paragraph 52(a)-(d) of the Notice to Admit namely that the senior employees and directors of NGN knew about its wrongdoing and sought to conceal it by putting out public statements they knew to be false, deliberately failing to provide the police with all facts of which it was aware, deliberately deceiving the police in respect of the purpose of payments to Mr Mulcaire, and destroying evidence of wrongdoing.

15. On 25th January 2012, GNM wrote to the parties indicating that they intended to apply to the court for an order that they be permitted to take copies of the 4 documents.

16. On 31st January 2012, Payne Hicks Beach, Mr Mulcaire's solicitors, wrote to GNM objecting to its application.

17. On 3rd February 2012, Mr Mulcaire issued his application notice seeking a postponement of reporting order under section 4(2) of COCA

18. On 8th February 2012, I held a further pre-trial review:-

(1) Further statements in open court were read concerning individual settlements.

(2) I vacated the existing trial date of 13th February 2012, and re-fixed the trial of the only claims remaining for trial at this time - namely those brought by Ms Charlotte Church and her family - with an estimate of 2 weeks for 27th February 2012.

(3) I directed that Mr Mulcaire's application for a postponement of reporting order under section 4(2) of the Contempt of Court Act 1981 should be heard on Thursday and Friday 23rd and 24th February 2012.

(4) I also directed that any application by a non-party for access to copies of documents on the court file should come on at the same time. Mr David Glen, who represents GNM on this application, appeared at that hearing representing, as I recall, both GNM and the BBC.

19. On 15th February 2012, the GNM made this application.

20. On 17th February 2012, NGN applied with little or no notice for further directions concerning a medical examination of Mrs Church. At that hearing, I made it clear that the trial would start on 27th February 2012.

21. On 20th February 2012, GNM wrote to the Defendants and to the Metropolitan Police and the CPS, specifically seeking Mr Mulcaire's consent to the release of the 4 documents.

22. On Tuesday 21st February 2012, Payne Hicks Beach wrote a lengthy letter to GNM arguing that the Guardian had reported the proceedings on 19th January 2012 fully despite the fact that it said it had not had sight of the 4 documents. Effectively, Mr Mulcaire was querying that point, asking the Guardian to confirm that it had not already seen the 4 documents, and contending that it had been able, in fact, to understand fully the submissions made at the pre-trial review, without further access to documents. The present position is that the lawyers for Mr Mulcaire and GNM have agreed, very sensibly, that GNM's lawyers could have access to the unredacted versions of the 4 documents for the purposes of this hearing on strict undertakings as to confidentiality.

23. Also, on Tuesday 21st February 2012, media reports emerged suggesting that the Church case might settle.

24. During Wednesday 22nd February 2012, the parties to this application tried to adjourn it for a week or more so that they could discuss agreeing an appropriately redacted version of the documents to be provided to GNM. I was informed of this proposal by Ms Zoe Norden of GNM, but I responded unreceptively.

25. At about 5pm on Wed 22nd February 2012, my clerk wrote to the parties indicating, in effect, that open-ended adjournments could not be agreed without the court's order, and that proper applications should be made. My concern was the court should not be required to allocate unlimited court time to this or any litigation without regard for other court users. A two-day slot had been allocated for this application and the COCA application, and it was simply unacceptable to adjourn it for an unspecified period whilst the parties discussed whether or not a compromise could be arrived at. As a result, the hearing came on as planned on Thursday 23rd February 2012 and occupied only half a day of court time.

26. On Wednesday 22nd February 2012 at 22.48 hours, the Claimants informed the Court finally that the Church cases had settled, and that an announcement to that effect would be made on Monday 27th February 2012.

The relevant provisions of the CPR

27. CPR Part 5.4C provides as follows:-

"*(1) The general rule is that a person who is not a party to proceedings may obtain from the court records a copy of –*

(a) a statement of case, but not any documents filed with or attached to the statement of case, or intended by the party whose statement it is to be served with it;

(b) …

(2) A non-party may, if the court gives permission, obtain from the records of the court a copy of any other document filed by a party, or communication between the court and a party or another person.

(3) …

(4) The court may, on the application of a party or of any person identified in a statement of case –

(a) order that a non-party may not obtain a copy of a statement of case under paragraph (1);

(b) restrict the persons or classes of persons who may obtain a copy of a statement of case;

(c) order that persons or classes of persons may only obtain a copy of a statement of case if it is edited in accordance with the directions of the court; or

(d) make such other order as it thinks fit.

(5) A person wishing to apply for an order under paragraph (4) must file an application notice in accordance with Part 23.

(6) Where the court makes an order under paragraph (4), a non-party who wishes to obtain a copy of the statement of case, or to obtain an unedited copy of the statement of case, may apply on notice to the party or person identified in the statement of case who requested the order, for permission".

28. The notes at Part 5.4C.3 in the CPR include the following:-

"*… The meaning of "statement of case" is found in rule 2.3 (interpretation) (see para. 2.3.13 above) where it is said that it means (amongst other things) a claim form, particulars of claim (where these are not included in a claim form) and defence. The result is that, under r.5.4C(1), a non-party may, without applying for permission, obtain a wider range of pleading documents than previously (**being documents that may well continue to evolve as the issues are refined up to the time of the trial***" …. (emphasis added).

29. The notes continue at Part 5.4C.7 with the following passage:-

> "*A non-party has no right to documents on the court file except where the rules so specify. Rule 5.4C(2) gives the court a discretion to be exercised in accordance with the overriding objective (r.1(2)). The discretion is to be exercised after taking into account all the circumstances, including the applicant's reasons (Dobson v Hastings [1992] Ch. 394 (Sir Donald Nicholls V-C); Dian AO v Davis Frankel & Mead, op cit). **The principle of open justice is a powerful reason for allowing access to documents where the purpose is to monitor that justice was done, particularly as it takes place (see further para 5.4C.10 below). Where the purpose is not to monitor that justice was done, but the documents have nevertheless been read by the court as part of the decision-making process, the***

court should lean in favour of disclosure if a legitimate interest can still be shown for obtaining the documents" (emphasis added).

30. The notes at Part 5.4C.10 under the heading: "Open justice-availability of documents to non-parties" include the following:-

"***The general rule is that court hearings (both interlocutory and trial) should be in public (r.39.2). That rule is in accord with the principle of open justice, as derived from the common law and as guaranteed (to parties and to the public) by art.6 of the Convention (Right to a fair trial) (see commentary following r.39.2)***. *In a given case, the question whether the court should not sit in public may be affected, not only by that principle, but also by whether and how other articles of the Convention are engaged; in particular art.8 (Right to respect for private and family life) and art.10 (Freedom of expression), for example, where an application is made for an injunction restraining the publication of confidential information.* ***An order made by the court under r.5.4C(4), preventing a non-party from obtaining from court records copies of documents to which he would otherwise be entitled, is in derogation of the principle of open justice and must be granted only when it is necessary and proportionate to do so, with a view to protecting the rights which applicants (and others) are entitled to have protected by such means*** *(G v Wikimedia Foundation Inc [2009] EWHC 3148 (QB), December 2, 2009, unrep. (Tugendhat J.)). Where such orders interfere with freedom of expression they should only be granted in circumstances which provide maximum protection for the persons or classes of persons affected, and the least interference with the right of freedom of expression necessary to protect the applicant's rights (ibid.). See also ABC Ltd v Y. [2010] EWHC 3176 (Ch), December 6, 2010, unrep. (Lewison J.), and authorities referred to there.*

Increasingly, in making their decisions in cases coming before them, judges rely on papers prepared by the parties and not read out in open court (including disclosed documents, witness statements and skeleton arguments). Such documents may be among the types of documents referred to in Practice Direction 5A (Court Documents), para.4.2A, in r.5.4B or r.5.4C, but they need not be. They may or may not be documents correctly described as documents "filed by a party". If not, they are not documents to which a non-party may have access, even with permission under r.5.4C The courts have recognised that it is necessary to give the public access to documents that contain

> *material that has been placed before the judge, but not read out in open court as would once have been the case. …*
>
> *This modern practice raises new questions as to the extent to which, either by recourse to r.5.4C or by other means, non parties should be given access to such documents in the hands of the parties … It has been said that these questions have to be resolved in the light of the policy of the law that, so far as possible, litigation should be conducted under public gaze and under the critical scrutiny of all who wished to report legal proceedings (R. v Secretary of the Central Office of the Employment Tribunals (England and Wales) Ex p. Public Concern [2000] I.R.L.R. 658 (Jackson J.)). The general tenor of the authorities is to favour disclosure to the public of materials which in proceedings in open court entered into the public domain (though perhaps not actually read out in court). There should be as few impediments as possible to the reporting of cases, not only by specialist law reporters, but also by the national and local press. … It has been said that the starting point is the basic principle that practices adopted by the courts and parties to ensure the efficient resolution of litigation should not be allowed adversely to affect the ability of the public to know what was happening in the course of proceedings (Barings Plc v Coopers & Lybrand [2000] 1 W.L.R. 2353, CA …)*" (emphasis added).

31. CPR Part 2.3(1) defines "Statement of Case" as follows:-

> "*In these Rules – …'statement of case' – (a) means a claim form, particulars of claim where these are not included in a claim form, defence, Part 20 claim, or reply to defence; and*
>
> *(b) includes any further information given in relation to them voluntarily or by court order under rule 18.1*"

32. CPR Part 31.22 provides as follows in respect of disclosed documents:-

> "*(1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where –*
>
> *(a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;*
>
> *(b) the court gives permission; or*

(c) the party who disclosed the document and the person to whom the document belongs agree.

(2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to, at a hearing which has been held in public.

(3) An application for such an order may be made –

(a) by a party; or

(b) by any person to whom the document belongs".

Authorities relevant to this application

33. In GIO Personal Investment Services Ltd v. Liverpool and London Steamship P&I Association Ltd [1999] 1 WLR 984, Potter LJ (with whom Sir Patrick Russell and Butler-Sloss LJ agreed) said this at page 995F-996F:-

> *"So far as concerns documents which form part of the evidence or court bundles, there has been historically no right, and there is currently no provision, which enables a member of the public present in court to see, examine, or copy a document simply on the basis that it has been referred to in court or read by the judge. If and in so far as it may be read out, it will "enter the public domain" in the sense already referred to and a member of the press or public may quote what is read out, but the right of access to it for purposes of further use or information depends upon that person's ability to obtain a copy of the document from one of the parties or by other lawful means. …*
>
> *… Mr Edelman QC for GMR has emphasised the primary but limited purpose of the "public justice" rule, namely to submit the judges to the discipline of public scrutiny. As he neatly put it, it is designed to give the public the opportunity to "judge the judges" and not to judge the case, in the sense of enabling the public to engage in the same exercise of understanding and decision as the judge. That of course is true. However, the confidence of the public in the integrity of the judicial process as well as its ability to judge the performance of judges generally must depend on having an opportunity to understand the issues in individual cases of difficulty. As Lord Scarman observed in Home Office –v- Harman at 316D*

> *"When public policy in the administration of justice is considered, public knowledge of the evidence and arguments of the parties is certainly as important as expedition: and, if the price of expedition is to be the silent reading by the judge before or at trial of relevant documents, it is arguable that expedition will not always be consistent with justice being seen to be done."*

This is particularly so in a case of great complication where careful preliminary exposition is necessary to enable even the judge to understand the case. Until recently at least, the opportunity for public understanding has been afforded by a trial process which has assumed, and made provision for, an opening speech by counsel. Further, the introduction in the Commercial Court, followed by general encouragement, of the practice of requiring skeleton arguments to be submitted to the court prior to trial was, as the name implies, aimed at apprising the court of the bones or outline of the parties' submissions in relation to the issues, rather than operating as a substitute for those submissions. While it is a requirement of the Practice Direction (Civil Litigation: Case Management) of 1995 that the opening speech should be "succinct", the essential distinction is preserved in paragraphs 8 and 9. If, as in the instant case, an opening speech is dispensed with in favour of a written opening, (or a skeleton argument treated as such) which is not read out, or even summarised, in open court before the calling of the evidence, it seems to me impossible to avoid the conclusion that an important part of the judicial process, namely the instruction of the judge in the issues of the case, has in fact taken place in the privacy of his room and not in open court. In such a case, I have no doubt that, on application from a member of the press or public in the course of the trial, it is within the inherent jurisdiction of the court to require that there be made available to such applicant a copy of the written opening or skeleton argument submitted to the judge".

34. In SmithKline Beecham v. Connaught [1999] 4 All ER 498, Lord Bingham CJ gave the judgment of the court (including Otton and Robert Walker LJJ) saying this at pages 508j-509d:-

> "*When as in Home Office v Harman, documents or the material parts of them are read aloud in open court it is plain that the implied obligations binding on the party to whom compulsory disclosure had been made comes to an end, in the absence of any contrary order by the court. The same result must follow if*

> *counsel in open court draws the attention of the judge to a document which the judge then reads to himself. These are the simplest cases. The present appeal obliges the court to consider the application of the rule in less obvious cases and in doing so to take account of changing forensic practice. For reasons which are very familiar, it is no longer the practice for counsel to read documents aloud in open court or to lead the judge, document by document, through the evidence. The practice is, instead, to invite the judge to familiarise himself with material out of court to which, in open court, economical reference, falling far short of verbatim citation, is made. In this new context, the important private rights of the litigant must command continuing respect. But so too must the no less important value that justice is administered in public and is the subject of proper public scrutiny.*
>
> *Derby & Co Ltd v Weldon establishes that Ord 24, r 14A applies even though a document is not read in open court if it is pre-read by the court and referred to by counsel in a skeleton argument which is incorporated in submissions in open court, or if the document is referred to (even though not read aloud) by counsel or by the court. We have no doubt this is a correct approach. If counsel did not summarise their submissions in a skeleton argument, and if the judge did not pre-read material before coming into court, it would be necessary for counsel in open court to make his full submissions orally and to read aloud to the judge or refer him to each page of the material relied on. In this way everything read or referred to would fall within Ord 24, r 14A and would be treated as having entered the public domain. To apply Ord 24, r 14A to such material does not derogate from the private rights of the litigant and preserves the rights of the public in a changed environment of practice."*

35. Lord Bingham continued at pages 511j – 512f as follows:-

> *"Since the date when Lord Scarman expressed doubt in Harman v Home Office as to whether expedition would always be consistent with open justice, the practices of counsel preparing skeleton arguments, chronologies and reading guides, and of judges pre-reading documents (including witness statements) out of court, have become much more common. These means of saving time in court are now not merely permitted, but are positively required, by practice directions. The result is that a case may be heard in such a way that even an intelligent and well-informed member of the public, present throughout every hearing in open court, would*

be unable to obtain a full understanding of the documentary evidence and the arguments on which the case was to be decided."

In such circumstances there may be some degree of unreality in the proposition that the material documents in the case have (in practice as well as theory) passed into the public domain. That is a matter which gives rise to concern. In some cases (especially cases of obvious and genuine public interest) the judge may in the interests of open justice permit or even require a fuller oral opening and fuller reading of crucial documents than would be necessary if economy and efficiency were the only considerations. In all cases the judge's judgment …should provide a coherent summary of the issues, the evidence and the reasons for the decision.

"Nevertheless the tension between efficient justice and open justice is bound to give rise to problems which go wider than Order 24, rule 14A. Some of those problems were explored in the judgment of Potter LJ in GIO Personal Investment Services Ltd v Liverpool and London Steamship Protection and Indemnity Association Ltd (FAI General Insurance Co Ltd Intervening) [1999] 1 WLR 984. As the court's practice develops it will be necessary to give appropriate weight to both efficiency and openness of justice, with Lord Scarman's warning in mind. Public access to documents referred to in open court (but not in fact read aloud and comprehensibly in open court) may be necessary, with suitable safeguards, to avoid too wide a gap between what has in theory, and what has in practice, passed into the public domain. Our ruling in this case permits SmithKline to use documents otherwise than in the revocation petition which gave rise to disclosure, but does not in any way oblige SmithKline to make such documents available to the public if they do not wish to do so."

36. In Dian AO v. Davis Frankel & Mead [2005] 1 WLR 2951, Moore-Bick J (as he then was) said this at paragraphs 28-30:-

"*28. I would accept at once that the highest importance is to be attached to the principle of open justice, but I think it is important for the purposes of the present application to understand what end it is intended to serve. For the reasons set out in the speech of Lord Shaw in Scott v. Scott it has long been recognised that if justice is to be properly administered it is essential that the decisions of the courts and the decision-making process itself be open to public scrutiny. It is for that reason that in all but exceptional cases hearings are conducted*

> *in public, judgment is delivered in public and proceedings can be freely reported.*
>
> *29. It is for the same reason that, as the use of written rather than oral procedures have become more widespread, the courts have recognised that it is necessary to give the public access to documents that contain material that has been placed before the judge, but not read out in open court as would once have been the case. The two most obvious categories are statements of witnesses who are called to give evidence at trial and advocates' skeleton arguments. Both were considered in the Gio case and the position of skeleton arguments was considered again in the Law Debenture Trust case. The principle was recognised in Derby v. Weldon (The Times, 20th October 1988) and more recently in the Barings case as extending to copies of documents that the judge has been invited to read in the privacy of his room. Without access to material of this kind a member of the public attending the hearing could not form any reliable view about the propriety of the decision-making process.*
>
> *30. In my view, however, this has a limited bearing on the first of the two issues before me. It could be argued that the principle of open justice demands that the court records be open to all and sundry as a right in order to enable anyone who wishes to do so to satisfy himself that justice was done in any given case. But that has never been the law and it is not what rule 5.4 says. I accept that the line of authority on the principle of open justice was not specifically drawn to the attention of Sir Donald Nicholls in Dobson v. Hastings, but I am unable to accept that he was not well aware of it. It clearly did not strike him as odd, however, that the court's permission should be required in order to obtain access to the record. The principle of open justice is primarily concerned with monitoring the decision-making process as it takes place, not with reviewing the process long after the event…"*

37. In Chan U Seek v. Alvis Vehicles [2005] 1 WLR 2965, Park J explored the principle of open justice, and emphasized that good reasons had to be shown if the court was to be persuaded to depart from it. (see in particular paragraphs 22, 27, 30, 31, 37-8, and 42).

Authorities relevant to the application for a postponement of reporting order

38. Section 4(2) of COCA provides as follows:-

> "*… the court may, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publications of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose …*"

39. In R v. Sherwoood ex parte the Telegraph Group plc and others [2001] 1 WLR 1983**,** the Court of Appeal set out a three stage test for a postponement of reporting order under section 4(2) of COCA. Longmore LJ giving the judgment of the court (including Douglas Brown and Eady JJ) said this at paragraph 22:

> "*(1) The first question is whether reporting would give rise to a 'not insubstantial' risk of prejudice to the administrator of justice in the relevant proceedings. If not, that will be the end of the matter.*
>
> *(2) If such a risk is perceived to exist, then the second question arises: would a section 4(2) order eliminate it? If not, obviously there could be no necessity to impose such a ban. Again, that would be the end of the matter. On the other hand, even if the judge is satisfied that an order would achieve the objective, he or she would still have to consider whether the risk could satisfactorily be overcome by some less restrictive means. If so, it could not be said to be 'necessary' to take the more drastic approach...*
>
> *(3) Suppose that the judge concludes that there is indeed no other way of eliminating the perceived risk of prejudice; it still does not follow* "necessarily" *that an order has to be made. The judge may still have to ask whether the degree of risk contemplated should be regarded as tolerable in the sense of being "the lesser of two evils". It is at this stage that value judgments may have to be made as to the priority between 'competing public interests'.*

40. A reporting restriction was granted in The Telegraph Group plc with Longmore LJ finding that there was "*a clear danger that an impression will have become irretrievably embedded in the public consciousness as to where the blame lies for a tragic turn of events*". The facts were unusual, because there was a charge of murder against

a police officer, who was accused of shooting a naked and unarmed man in the bedroom of his flat. Longmore LJ held at paragraph 9: "*in the present case … even fair and accurate reporting of Mr Sherwood's trial could easily generate a powerful head of steam in the form of public resentment towards them*".

41. In Re MGN Ltd and Others [2011] 1 Cr. App. R. 31, Lord Judge CJ, giving the judgment of the Court of Appeal, applied the three stage test enunciated in the Telegraph case saying this at paragraph 15:-

> "*… The first question is whether the reporting would give rise to a not-insubstantial risk of prejudice to the administration of justice. The second question is whether an order under s 4(2) would eliminate that risk. If not, there would be no necessity to impose such a ban. Again, that would be the end of the matter. If, on the other hand, an order would achieve the objective, the court still has to consider whether the risk could satisfactorily overcome by less restrictive measures. Third, even if there is no other way of eliminating the perceived risk of prejudice, it still does not follow necessarily that an order has to be made. This requires a value judgment. The court highlighted the need for care to avoid confusing the senses in which the word "necessary" is used in the legislation. Adapting Viscount Falkland's famous aphorism, the court's approach should be that, unless it is necessary to impose an order at all, it must go no further than necessary. In summary, an order under s 4(2) of the 1981 Act should be regarded as a last resort*".

Public domain information about Mr Mulcaire

42. GNM has placed great emphasis on the fact that Mr Mulcaire has become notorious. Mr Millar has pointed out that that has been in no small part due to the Guardian's own efforts since 2009, but he accepts it is true nonetheless. Mr Millar submits, however, that the matters that are already in the public domain are rather less detailed and extensive than what is contained in the parts of the 3 documents which he seeks to protect from publicity.

43. Mr Glen has relied on a lengthy schedule to his skeleton argument containing highlights from the publicly available information about Mr Mulcaire's involvement in telephone interception. I shall not lengthen this judgment by setting out all the extracts at length, but will refer only to the following most significant passages. It will be noticed that some of the passages are in the form of allegations made

by the media or other third parties, and some are in form of reports of admissions made by NGN.

44. The statement in open court made in the case brought by Baron Prescott of Kingston Upon Hull on 19 January 2012 said:-

> "*On 13 December 2011 the first defendant admitted a list of matters including that it had entered into an agreement with the Second Defendant and* ***paid him hundreds of thousands of pounds to obtain information about specific individuals for use by the News of the World journalists and publication in the newspaper****. It admitted that certain of its employees were aware of, sanctioned and requested* ***the methods used by the Second Defendant which included the unlawful interception of mobile phone messages and obtaining call and text data (which methods are known as "phone hacking"); obtaining information by "blagging: and, in one case, unlawfully accessing emails****. It also admitted that the Second Defendant had provided journalists at The News of the World with information to enable the said journalists themselves to intercept voicemail messages, the First Defendant accepted that some information unlawfully obtained by the Second Defendant was used to enable private investigators employed by The News of the World, including Derek Webb, to monitor, locate and track individuals and place them under surveillance*".

45. DAC Akers made a witness statement for the Leveson inquiry in which she said that:-

(1) Operation Weeting had to date established that arrangements existed between September 2001 and January 2007 whereby Mr Mulcaire was paid weekly sums totalling several hundreds of thousands of pounds by NGN to obtain information about identified persons with a view to publication in the News of the World.

(2) Documents seized in 2006 by Operation Caryatid included Mr Mulcaire's notebooks which ran to some 11,000 pages. The number of potentially identifiable persons who are contained within the documents seized (and who therefore may be victims) where names (a surname and at least an initial) are noted is 5,795.

(3) It has also been established that the person being "targeted" by Mr Mulcaire, may not always have been the person identified in the document, as often the hacking was directed at associates

of the true target with a view to finding information about the true target.

(4) The range of the persons contained within those documents is extensive and not only include politicians, members of the Royal Household, high profile figures such as sports personalities and actors, but also victims of crime, other journalists (e.g. from the News of the World itself) and police officers, including very senior officers such as a previous MPS Commissioner.

(5) It is a general matter of concern and legitimate public interest as to how Mulcaire obtained these details and this is a strand that is under active investigation.

46. Mr Mulcaire was himself recorded in the Independent newspaper as having said: *"Anything that involves the Royals or the Establishment has me twitchy straight away, but I was under contract and you just have to switch off about the specifics and be professional. That's what you have to be to be a good private investigator and I considered myself to be among the best*".

47. Various newspapers and media organisations reported the Guardian journalist, Nick Davies's evidence to the Leveson inquiry that:-

(1) Mr Mulcaire facilitated the hacking by one or more News of the World journalists… And our understanding of the facts is that it was one or more of the News of the World journalists who then had to delete the messages in order to enable more to come through… He does not actually, on the whole, do the listening to the messages himself.

(2) It was Mr Mulcaire's job was to enable them to do [hacking] where there's some problem because he's a brilliant blagger, so he could gather information, data from the mobile phone company.

48. Mr Max Mosley gave written evidence to the House of Commons Home Affairs Committee in December 2010: "*It was evident at Mulcaire's trial that journalists other than Goodman were involved. Even a cursory examination of these papers [taken from Mr Mulcaire] will have identified a number of NOTW journalists who had commissioned potentially illegal investigations by Mulcaire. Evidence emerging in litigation involving News Group suggests that at least two senior members of the NOTW staff were involved, namely: the NOTW news editor Ian Edmondson and NOTW chief reporter Neville Thurlbeck*"

49. The BBC reported that the Leveson Inquiry had heard that the Police believed that 829 people were likely victims of phone-hacking by newspapers, and that these victims were those whose names and other details appeared in documents belonging to Mr Mulcaire.

The nature of the material that is sought to be redacted

50. Mr Millar identified three main types of material in the 3 documents that he wanted redacted as follows:-

(1) Allegations suggesting a specific arrangement to act unlawfully, bearing on a possible criminal charge (category 1).

(2) Allegations as to the extent of Mr Mulcaire's unlawful activities and the detailed nature of those activities (category 2).

(3) Allegations relating to Mr Mulcaire involving particular people who have not been the subject of criminal proceedings, whose telephones have not given rise to particular charges against Mr. Mulcaire in 2007, or who have not been the subject to statements in open court (category 3).

51. NGN put in at the beginning of the hearing versions of the 3 documents highlighting the redactions they wanted made. Many of these redactions were in a 4th category, namely concerning the level of seniority at which the allegedly unlawful activities were approved.

52. I do not need to set out the specific passages that Mr Mulcaire and NGN seek to redact in this judgment, which is being given in public. The annex to this judgment indicates which of the three categories each redaction falls into.

The issues

53. The issues may be summarised as follows:-

(1) Are the 3 documents statements of case?

(2) If so, how should the court exercise its discretion to allow inspection of the documents?

(3) If not, how should the court exercise its discretion to allow inspection of the documents?

(4) Should the 3 documents be redacted and if so how?

Issue 1: Are the 3 documents Statements of Case?

54. There is a clear distinction between the Generic Particulars of Claim on the one hand and the Notice to Admit and the Response on the other hand.

55. The Generic Particulars of Claim were indeed, as Mr Millar pointed out, served after a great deal of disclosure had been provided. But that does not, in my judgment, change the quality of the document. It was drafted as the statement of case that was intended to be used at the trial that was due to start today. "Particulars of Claim" are specifically mentioned in CPR Part 2.3(1), albeit that they are referred to followed by the limiting words: "*where these are not included in a claim form*". I imagine (but do not know for certain) that in some of the 60-odd cases, there will originally have been claim forms without separate particulars of claim. But that does not seem to me to be the point. The real question is whether the definition is intended to include amendments to the documents mentioned or not. In my judgment, it must have been intended to encompass the pleadings mentioned and subsequent amendments to them. Otherwise, Part 5.4C and many other rules in the CPR would be needlessly confined. I am fortified in this conclusion by the notes at Part 5.4C.3, which, as I have said, give a clear indication that that was what was meant, by saying that "*The result is that, under r.5.4C(1), a non-party … may obtain a wider range of pleading … than previously (**being documents that may well continue to evolve as the issues are refined up to the time of the trial" (emphasis added)***" (emphasis added)**.**

56. Thus, I have no doubt that the Generic Particulars of Claim are indeed a statement of case within Part 2.3(1), and that, therefore, a non-party is prima facie entitled to a copy of it under Part 5.4C(1), subject to an order being made to restrict or prevent such access under Part 5.4C(4).

57. The Notice to Admit and the Response to it are, as I say, in a different category, first, because they are not expressly referred to in the definition of "statement of case", which only includes claim forms, particulars of claim, defences, Part 20 claims, replies further information provided under Part 18.1. But Mr Glen argued that they are in the nature of a pleading, because they are provided to define and confine the issues, so having precisely the same objective and purpose as a pleading. That is true, but it seems to me that I must be guided by the words of the rule, which make it reasonably clear that the only documents to be provided automatically are those expressly

mentioned. It would have been easy enough for the Rules Committee to include some general words such as "and other like documents" had it meant so to provide.

58. Moreover, it seems to me that notices to admit and other documents aimed at confining the issues would ordinarily be provided if an application were made under Part 5.4C(2), all other things being equal. The rule seems to me, however, to be aimed at retaining control over all other documents not specifically mentioned in Part 5.4C(1). In my judgment, therefore, the Notice to Admit and Response are not automatically to be provided to GNM under Part 5.4C(1).

59. I must, therefore, deal with GNM's application as if it were in effect:-

(1) An application by Mr Mulcaire (and by NGN in certain limited respects) under Part 5.4C(4)(c) to order that GNM may only obtain a copy of the Generic Particulars of Claim if they are edited in accordance with the directions of the court.

(2) An application by GNM to obtain unredacted copies of the Notice to Admit and the Response under Part 5.4C(2). That application is opposed by Mr Mulcaire as to both documents unless they are redacted in numerous ways, and by NGN as to the Notice to Admit only unless it is redacted in limited ways.

I will come in due course to the nature of the redactions that are sought by Mr Mulcaire and NGN respectively.

Issue 2: How should the court exercise its discretion in dealing with the application by Mr Mulcaire and NGN to redact parts of the Generic Particulars of Claim?

60. Mr Glen submitted that there was a presumption that the press should be entitled to see any statement of case; in this case, the Generic Particulars of Claim, in unredacted form. I agree that that is the effect of Rule 5.4C(1). But that does not mean that the Court does not have properly to consider Mr Mulcaire's contention that press reporting of the parts of the Generic Particulars of Claim of which he seeks redaction will create a substantial risk that the course of justice in the criminal proceedings he faces will be seriously impeded or prejudiced. That is an important factor to be considered under Part 5.4C(4).

61. Ultimately, the outcome of this application turns in my judgment on the strength of this factor. If it were shown that publication now of the redacted parts of the Generic Particulars of Claim would be likely to jeopardise a fair trial of any charges that may later be brought against Mr Mulcaire, there would need to be very powerful public interest reasons to counter-balance that factor.

62. The factors that need in my judgment to be taken into account are, therefore, much the same as would have to be considered upon an application under section 4(2) of COCA. It is for that reason that I cited the main authorities on that section earlier in this judgment.

63. Where the applicant is entitled to the document as of right under Part 5.4C, it seems to me that the reasons why it wants it are of little or no importance unless it can be said that the document is sought for some improper purpose. That is not, of course, this case, albeit that Mr Millar pointed to the fact that the Guardian had been able fully and properly to report the PTR hearing on 19th January 2012 without apparent access to the 4 documents at all.

64. I will turn now to the position under Part 5.4C(2).

Issue 3: How should the court exercise its discretion in dealing with the application by GNM to obtain unredacted copies of the Notice to Admit and the Response?

65. The position under CPR Part 5.4C(2) is not exactly the same as that under Part 5.4C(1). That is because the burden of proof is reversed. There is not, contrary to what Mr Glen submitted, any presumption under Part 5.4C(2) that disclosure will be permitted. It is true that the court will lean in favour of allowing disclosure of documents that have been read out in open court or documents that have been read by the judge in the course of the decision-making process. That is the principle of open justice referred to in the authorities and in the extract from the notes to CPR Part 5.4C that I have already read.

66. But the court needs, in my judgment, as those extracts also show, to take into account other factors as well. Of course in this case, the contention that disclosure would jeopardise the fairness of Mr Mulcaire's future criminal trial will be of great importance, just as it is under Part 5.4C(1). But here, the court must also look at the reasons why the documents are sought, and the use to which they will be put. It will also be necessary to consider how far the documents are truly required (in this case in their unredacted form) in order

properly to understand and report the court proceedings in which they were referred to and relied upon.

Issue 4: Should the 3 documents be redacted and if so how?

67. That brings me, then, to the discretion that I have to exercise. I have to consider the outcome separately for the Generic Particulars of Claim on the one hand, and the Notice to Admit and the Response on the other hand, since different tests apply. The most important factor in this case is, however, common to both. That is the putative prejudice to Mr Mulcaire's criminal proceedings.

68. In that regard, it is very clear, in my judgment, that Mr Mulcaire has become publicly notorious as the person alleged to have been the main person undertaking telephone interception. The few press reports that I have referred to make that clear. But it is abundantly clear that they represent only the tip of an iceberg. The press has, put bluntly, had a field day in relation to telephone interception generally and the Leveson inquiry in particular, and it would be quite remarkable if anyone remotely interested in these matters did not know Mr Mulcaire's name and alleged extensive involvement in and responsibility for the alleged widespread phone hacking. Even beyond these proceedings and the Leveson inquiry, the closure of the News of the World and the appearance of leading figures before the Commons Select Committee has provided further huge publicity for Mr Mulcaire's activities.

69. It is true also, of course, that Mr Mulcaire was only prosecuted in 2006 on very limited charges, and that no other offences have been proved against him. He has not even been charged with further offences; though Mr Millar's concern is that he may, very soon now, be charged with a conspiracy to undertake unlawful phone interception, and that the passages in the 3 documents might give the public more details of the allegations that might prejudice a trial. Mr Mulcaire is bailed until a date in March 2012.

70. Mr Millar submits that the Generic Particulars of Claim and the Notice to Admit contain some details of the precise *modus operandi* that Mr Mulcaire is alleged to have operated. But most of the passages in question do not actually provide anything like a blueprint for phone hacking. They simply say what he is alleged to have done – namely blagging etc, as has already been very widely reported.

71. Moreover, most of these matters are already in the public domain. The concerns that Mr Millar really has, namely that the documents

allege the details of a conspiracy to use illegal methods to obtain information, are really somewhat technical legal ones. I do not think the general public will understand the finer points of the law of conspiracy. And I would expect a properly directed jury faced with specific charges, when and if they are laid, to be perfectly capable of focusing on those charges and excluding the noise of the extraordinary publicity surrounding Mr Mulcaire's activities. It is unlikely that such a trial will take place for many months, and there will be an element of 'fade' in the public's awareness. It is unlikely that even if, as Mr Millar asks me to assume, GNM or other media publish all the details that he would wish to be redacted, the public will recall much of what is written by the time of Mr Mulcaire's trial. In reality, all people are likely to retain is what they know already that Mr Mulcaire was the man at the centre of the phone hacking scandal.

72. I see some genuine distinction between the documents that make allegations, and the documents that constitute admissions by NGN as to Mr Mulcaire's activities. Dealing first, however, with the Generic Statement of Case: that is just a series of allegations by the Claimants, and can only properly be reported as such. I have considered the allegations that are made in the relevant passages of that document very carefully, and I cannot see, with only one main exception, that making those allegations public now, in any of the 4 categories I have defined, are likely to prejudice Mr Mulcaire's fair trial. There is nothing very new in any of those allegations. It is true that the allegations are specific in some respects, and it is true that it is suggested that Mr Mulcaire was engaged solely in illegal activity. But that is the perception that anyone reading the existing blanket publicity would already have gained.

73. The exception relates to the specifics of the methods that Mr Mulcaire is said to have employed. Allegations concerning detailed method are only contained in paragraph 21 of the Generic Particulars of Claim. I think that publicity about these details could be damaging to the administration of justice in Mr Mulcaire's trial, because of the level of detail involved which could specifically impact on one or more charges ultimately brought against him. The general allegations of "blagging" and the like are already in the public domain and do not carry any real risk to a future fair trial. They are simply labels as to what the trial is about.

74. I turn then to consider the material that causes Mr Mulcaire concern in the Notice to Admit and in the Response. The Response is, as I have already said, in a rather different category from the Generic Particulars of Claim and the Notice to Admit. The latter are allegations, whilst the former are admissions by NGN who ought to

know, and will be seen by the public as knowing, what Mr Mulcaire actually did. Whilst that factor does make it very marginally more likely that a member of the public reading a detailed account of the admissions made by NGN might approach Mr Mulcaire's future trial with some pre-conceived notion of what he did or did not do, I still take the view that the material contained in the Response, again with one exception, is unlikely to be sufficiently closely connected with the specific charges that may be brought. Even if there were general charges of conspiracy to pervert the course of justice and of conspiracy to intercept communications, the fact that NGN had admitted that they had worked with Mr Mulcaire in specific ways would hardly be likely to influence a jury more than the blanket publicity already in the public domain. Moreover, it will be recalled that NGN has not admitted that Mr Mulcaire only engaged in unlawful activities for it, even if that may be the thrust of the Claimants allegations.

75. Mr Millar also submitted that the court should err on the side of caution just before the publicity spike that is likely to accompany Mr Mulcaire's bail date, when he may be charged, as may others of the 15 arrested persons. It may not be long, he says, before the court will be able to see what further charges (if any) Mr Mulcaire faces, and therefore to know how this kind of material might impact on his criminal trial. I see the force of this point, but it seems to me that GNM has a right to have its application determined on the present material. As Mr Mulcaire's trial draws closer, there may indeed be different considerations that arise. At the moment, his trial is some way off, and any publicity now is likely, as I have said, to suffer from a considerable degree of fade by the time a jury has to decide on the case against him.

76. In the context of the application under Part 5.4C(2), I have also to consider the reason why GNM has applied for these documents and the purpose for which it intends to use them. GNM says that it wants the unredacted documents so that it can properly understand the issues that were debated at the PTR. I find that argument hard to accept. It is clear to me from looking at parts of what the Guardian reported about the PTR (and since) that the Guardian had little difficulty in following what was argued and decided at the PTR. That was a question of disclosure of NGN's laptops and computers, and really nothing to do with any alleged wrongdoing by Mr Mulcaire. The passages in the Notice to Admit and the Response that were read out and included in my judgment concerned matters such as the destruction of relevant evidence in the hands of NGN, again nothing to do with Mr Mulcaire.

77. GNM also said in its application that it wanted the documents so that it could understand the arguments at the trial. That point will still be valid in relation to a subsequent trial, but not the one that was due to start today and has not happened.

78. The truth is however, as it seems to me, closer to what Mr Millar contended, namely that GNM want to publish any material they can about this litigation, and will use whatever extracts from the 3 documents that they think will make a story. But that fact does not, in my judgment, mean that GNM's application is doomed to fail, any more than it makes GNM's motivation an improper one.

79. This litigation has been conducted in a glare of publicity ever since it began more than a year ago. It has, justifiably I think, attracted widespread public interest and attention. The litigation has had wider consequences beyond the narrow ramifications of the damages claims themselves. It would not be unfair to say that it was the catalyst to many important events, not least of which has been the Leveson inquiry, which has itself resulted, as I have said, in a huge amount of publicity in relation to the issues surrounding this case.

80. There is a distinct and crucial public interest in scrutinising the decision-making process in this case, and in knowing the facts on which the decisions are being made. This remains as true now as it was before the last of the first wave of cases settled. The fact that the trial of the generic issues did not start this morning, as had been planned, makes little or no difference in my judgment. The 3 documents will still occupy a central place in the cases that are still to be tried. All that has happened is that the trial has been delayed somewhat. There remains a real and vital public interest in the dissemination of accurate information about the course these proceedings are taking, the settlements that have been entered into, and both the allegations that are made by the Claimants against the Defendants, and the admissions made by the Defendants.

81. For all these reasons, it seems to me to be entirely legitimate for GNM and other media organisations to wish to see unredacted copies of the core documents on the basis of which these proceedings have been and are being conducted. The fact that the Notice to Admit and the Response has been referred to in open court makes it all the more important that they are made available to the public for the reasons given in the authorities I have cited.

82. If the three stage test, applicable if there had been a live section 4(2) application, had had to be applied to the unredacted versions of the 3 documents, it seems to me that the following answers would have been provided. First, so far as can be judged today, reporting of the

parts of the 3 documents that Mr Mulcaire wishes to see redacted would not, with the one exception already mentioned, give rise to a 'not insubstantial' risk of prejudice to the administration of justice in Mr Mulcaire's future trial (if there is one). Put without a treble negative, such reporting would not, I think, give rise to a substantial risk of such prejudice. In those circumstances, the second and third parts of the test do not arise. But if they had, I would, very likely, have reached (again with one exception) the conclusion that disclosure was the lesser of two evils, because there is such a strong public interest in accurate information about these proceedings being available – and any jeopardy to Mr Mulcaire in his possible future trial is uncertain in so many ways that it cannot weigh heavily in the balance.

83. I should mention, as is well known to those that have followed the course of these proceedings closely, that I place great store by open justice. I have sought to ensure that the public and the media could have access to court hearings and to any material that is not so confidential that it must be protected. The kind of material that is in that category includes the identity of 3rd party victims of telephone interceptions, the DDN, telephone numbers, passwords and pin numbers of victims. The police have been keen to keep the names of individual journalists and named executives of NGN protected from further publicity, even if they are already in the public domain. That was the reason for the regime created by my order of 20th May 2011 to which I have already referred.

84. As will therefore already have been apparent, I have also considered the specific allegations in the parts of the Notice to Admit and of the Response very carefully, and have concluded, that taken alongside the other factors that need to be considered under Part 5.4C(2), there is no adequate reason, with one exception, to redact the parts that concern Mr Mulcaire, before making the documents available to GNM and any other media organisations that request them.

85. The exception again concerns Mr Mulcaire's alleged *modus operandi* in respect of which some detailed admissions are made in paragraphs 8, 11 and 12 only. Again, I think the publication of these details, as admissions by NGN, could impede the administration of justice and have an adverse impact on Mr Mulcaire's trial. This is only because of the level of detail contained in these few paragraphs, none of which I should say is needed for there to be fair and complete reporting of the issues at stake in the litigation. The remaining paragraphs relating to method deal only with generalities that are already fairly well known.

86. I will, therefore, hold that, save in the respect mentioned and in one other respect, unredacted copies of the 3 documents should be provided to GNM. The other respect in which the documents should be redacted is to replace the names of journalists and NGN executives with ciphers in the passages that were sought to be redacted (i.e. those paragraphs mentioned in the annex to this judgment). The ciphers should follow the normal scheme used in the case, whereby a name is replaced with "journalist 1", "journalist 2" or "executive 1" and "executive 2" etc. There will be no need in this instance for a confidential schedule to decode the ciphers, because unredacted copies will be available to the court and the parties.

Conclusion

87. For the reasons I have given above, I intend to order that GNM should be provided with unredacted copies of the 3 documents, save for (i) the redaction of paragraph 21 of the Generic Particulars of Claim and (ii) paragraphs 8, 11 and 12 of the Response, and (iii) the use of ciphers in place of specific journalists' and specific executives' names where they appear in the paragraphs in the annex to this judgment. That does not, however, mean that all the redactions sought by NGN will be allowed. I would be grateful if the solicitors for NGN would undertake the process of permitted redaction, which they themselves have sought. They should then provide GNM and the other parties attending this hearing and the court with appropriately redacted versions.

88. I will hear counsel on the question of the appropriate form or order and costs.

Annex to judgment

1. The Generic Particulars of Claim:

   (1) Paragraph 12 redaction suggested by Mr Mulcaire: category 1.

   (2) Paragraph 18 redaction suggested by Mr Mulcaire: categories 1 and 2.

   (3) Paragraph 18 redaction suggested by NGN: category 4.

   (4) Paragraph 20 redaction suggested by Mr Mulcaire: category 1.

   (5) Paragraph 21 redaction suggested by Mr Mulcaire: category 2.

   (6) Paragraph 34.9 redactions suggested by NGN: categories 3 and 4.

2. The Notice to Admit:

   (1) Paragraph 1 redaction suggested by Mr Mulcaire: category 1.

   (2) Paragraph 3 redaction suggested by NGN: categories 3 and 4.

   (3) Paragraph 4 redaction suggested by Mr Mulcaire: category 1.

   (4) It is now agreed that the schedule of payments referred to in paragraphs 5 and 6 should not be publicly available.

   (5) Paragraph 7 redaction suggested by Mr Mulcaire: category 1.

   (6) Paragraph 15 redaction suggested by Mr Mulcaire: category 3.

3. The Response to the Notice to Admit:

   (1) Paragraph 1(b) redaction suggested by Mr Mulcaire: category 2.

   (2) Paragraph 4 redaction suggested by Mr Mulcaire: category 2.

   (3) Paragraph 8 redaction suggested by Mr Mulcaire: category 2.

   (4) Paragraphs 9-13 redaction suggested by Mr Mulcaire: category 2.

   (5) Paragraph 16 redaction suggested by Mr Mulcaire: category 2.

   (6) Paragraph 21 redaction suggested by Mr Mulcaire: categories 1 and 2.

(7) Paragraph 23 redaction suggested by Mr Mulcaire: categories 1 and 2.

(8) Paragraph 24 redaction suggested by Mr Mulcaire: categories 1 and 2.

(9) Paragraph 25 redaction suggested by Mr Mulcaire: categories 1 and 2.

(10) Paragraph 31 redaction suggested by Mr Mulcaire: categories 1 and 2.

(11) Paragraph 33 redaction suggested by Mr Mulcaire: categories 1 and 2.

(12) Paragraphs 43-50 redaction suggested by Mr Mulcaire: category 3.