

**IN THE HIGH COURT OF JUSTICE**

**Claim Nos: Various**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**IN THE MATTER OF THE MIRROR NEWSPAPERS HACKING LITIGATION**

**4<sup>th</sup> WAVE**

**BETWEEN:**

**VARIOUS CLAIMANTS**

**Claimants**

**- and -**

**MGN LIMITED**

**Defendant**

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**CLAIMANTS' SKELETON ARGUMENT  
for the Trial commenting on 10 May 2023**

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**Before the Honourable Mr Justice Fancourt, Managing Judge**

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## A. INTRODUCTION

1. This is the trial of the common/generic case and four claims in the 4<sup>th</sup> Wave of the Mirror Newspapers Hacking Litigation (MNHL). The trial is set down for seven weeks.
2. These actions are brought by the Claimants, four individuals (selected from over 100 live claims currently on the 4<sup>th</sup> Wave Register of the MNHL):
  - a. Prince Harry, Duke of Sussex – a senior member of the Royal Family.
  - b. Nikki Sanderson – an actor best known for her roles as Candice Stowe and Maxine Minniver in the hugely successful, long-running television programmes Coronation Street and Hollyoaks respectively.
  - c. Michael Turner – an actor best known for his role as Kevin Webster in the long-running television programme Coronation Street.
  - d. Fiona Wightman – a private individual and ex-wife of the comedian Paul Whitehouse.
3. The claims are brought against MGN Limited (“MGN”), the proprietor and publisher of three very popular tabloid newspapers: the *Daily Mirror* (formerly *The Mirror*), the *Sunday Mirror* and *The Sunday People* (formerly *The People*), as well as their online versions, which were easily accessible on the internet. On any view, these were high circulation publications which were bought or accessed and read in their millions at the time.
4. The Claimants claim that they were the victims of a number of different unlawful information-gathering (“**UIG**”) activities by or on behalf of journalists working for MGN’s three national titles, some of which resulted in the publication of articles which contained the information obtained through and would not have been published but for this UIG. These activities included mobile telephone voicemail interception, the obtaining of information by deception or “blagging” and the use of private investigators for unlawful activities (“PIs”), as well as other activities, which will be addressed in more detail in Section B below.
5. The Claimants’ case is that UIG was both habitual and widespread across all three of the MGN titles, starting as early as 1991 and continuing until at least 2011. Furthermore, members of the Board of MGN’s parent company Trinity Mirror plc (“TM”) (now Reach plc) and the Legal Department of MGN and TM knew or were aware of the use of these unlawful activities from at least as early as 1999. Despite this knowledge or awareness, Senior Executives not only failed to take steps to stop these unlawful activities but

instead sought to conceal them, and deliberately lied to and misled the public, the Leveson Inquiry and Trinity Mirror's own shareholders by falsely denying their existence.

6. As the Court rightly accepted in its judgment following the first trial in the MNHL, **Gulati and others v MGN Limited [2015] EWHC 1482 (Ch)**, (“the Gulati judgment”), each occasion of voicemail interception, blagging, use of a PI or other UIG gives rise to a separate cause of action or claim, and was subsequently endorsed by the Court of Appeal.
7. In addition to the underlying unlawful activities, the Claimants also complain that a number of stories containing information obtained, generated or verified through these unlawful methods were published by MGN's newspapers, would not have been published but for these unlawful methods and that such articles are the direct product of such unlawful activity.
8. The Claimants plead 207 articles in total (140 in Duke of Sussex, 37 in Sanderson, 28 in Turner and 2 in Wightman), with publication dates spanning from January 1995 to December 2010. At the Pre-Trial Review on 8 March 2023 it was determined that only 33 of the articles relied on in the Duke of Sussex's claim will be dealt with at this trial, meaning that a total of 100 articles are to be resolved. In respect of the vast majority of articles relied on by the Claimants, MGN denies that they were a product of, involved or would not have been published but for voicemail interception or other UIG:
  - a. In the Duke of Sussex's claim MGN “*non-admits*” six articles (Articles 80A, 113, 120, 127, 129, 130) and denies the rest.
  - b. In Ms Sanderson's claim MGN admits one article (Article 7), non-admits two (Articles 8 and 24) and denies the rest.
  - c. All articles relied on in the Turner and Wightman claims are denied.
9. MGN advances limitation arguments in two of the four claims. In both Sanderson and Wightman claims MGN advances a limitation defence (having failed in their summary judgment applications in relation to both claims in [June] 2022), asserting that these Claimants knew or could with reasonable diligence have discovered that they had worthwhile claims against MGN more than six years prior to issuing their claims. It should be noted that in all four claims MGN admits concealment of the UIG at the time of commission.

10. The issues for determination at this trial are therefore broadly as follows:
  - a. The extent of liability (i.e. the full extent of MGN's unlawful activities relating to the Claimants and misuse of the Claimant's private information).
  - b. Whether the pleaded articles were the product of, or involved, UIG (whether as the original source, or to verify or corroborate some other 'legitimate' source or as an additional strand of information in the article).
  - c. The limitation arguments run by MGN in the claims of Sanderson and Wightman.
  - d. The appropriate awards of damages for each Claimant (taking into account all the separate torts for which MGN is found to be liable, as in the Gulati judgment), including the amount of aggravated damages for each of them, and the appropriate non-pecuniary remedies.
11. This Skeleton Argument deals first with the Claimants' case on the common (or generic) issues that relate to all claims in the MNHL, including an overview of UIG at MGN, a section on knowledge and concealment of wrongdoing by the Board of TM and Legal Department of MGN/TM, and a section on the issue of limitation from a common perspective. Next the individual claims are addressed individually as to liability, and the final section addresses the issue of damages (although the latter will be addressed in more detail in closing submissions).
12. There remain a number of small outstanding housekeeping matters. If these are not capable of resolution between the parties, then the Claimants will serve a supplemental Skeleton Argument addressing any outstanding housekeeping matters by 10am on Tuesday 9 May 2022 (unless the Court wishes it sooner).

## **B. OVERVIEW OF UNLAWFUL ACTIVITIES AT MGN**

13. The Claimants' case on the use of unlawful activities by MGN is set out in their Re-Amended Generic Particulars of Claim ("**RAGPOC**") or, as it has been defined by the Court in this litigation, the Re-Amended Particulars of Common Facts and Issues ("**POCFI**") [1/1/1].

14. The Claimants' case is that UIG such as voicemail interception and blagging, and the instruction of PIs and other third parties to conduct UIG was both habitual and widespread across all three of the MGN titles, not only from 1999 until 2006 – the period covered by the **Gulati** judgment (“the *Gulati* period”), but also starting as early as 1991 and continuing until as late as at least 2011.
15. These UIG activities were carried out, commissioned or sanctioned by numerous MGN employees including journalists working on the News, Crime, Investigations, Showbiz, TV, Features, Picture and Sports Desks, as well as by the Editors, Deputy Editors, Heads of Content, Desk Heads and executives of MGN's national titles.

### **B1. The importance of the generic case**

16. As the Court held in **Gulati**, before assessing the individual claims it is important first to consider the generic evidence of the use of these UIG activities at MGN's titles. This will heavily inform the Court's assessment of the probability, scale and frequency of such activities in the case of each of the individual Claimants. The explanation for this approach was given by Mann J in **Gulati** at [35], [37]-[38]:

The case of the claimants seeks to establish the scale of phone hacking (and other illicit activity) in the MGN with a view to showing that it was very widespread indeed, and to suggest that general evidence about that scale can be used to inform a judgment as to the scale of the activities in relation to individual claimants. In principle that approach is a legitimate one, though of course care must be taken in drawing inferences in any individual case. Accordingly evidence as to scale is relevant. ...

Some inferences can be drawn from the evidence, both as to the general scale of hacking and the extent of hacking against any given individual. It is in my view plainly relevant to form some idea of scale. The defendant has admitted hacking and other activities in terms which usually involve the word “substantial”. That is a broad term, capable of covering something more than small scale (distinguishing it from “insubstantial”) to very great. It is not clear how far it goes. The claimants seek to establish that the activity was very great indeed, and that that translates into its being great in relation to each claimant (which, if true, is what matters for each of their respective claims). I agree that that inquiry is a relevant one. The greater the degree of hacking, the greater (potentially) the invasion of privacy and therefore the damage to the claimants. Mr Nicklin submitted that that was irrelevant since at the heart of the claims was damage to feelings, which arose from perception of the extent not the actual extent. In a later section of this judgment I deal with this point. For present purposes it is sufficient to say that I consider it to be wrong.

It is therefore relevant and necessary to consider the evidence about the scope of invasions, and the scope of the practice in the newspaper, generally in order to inform a judgment about the scope in relation to any given individual.

### **B2. The Gulati findings**

17. In Gulati the Court considered the general practices at MGN's titles (and thus the general factual background to all claims in the MNHL) and made a number of findings which can be summarised as follows:
- a. The evidence demonstrated a widespread culture of phone hacking at these three different MGN titles, extending from journalists up to more senior staff, who not only knew about the practice, but were likely to have conducted it themselves (at [71]).
  - b. MGN's use of phone hacking (as well as other illegal activities) as a journalistic tool was found to be: extensive, routine, embedded, run of the mill and frequent ([55], [57], [58] and [68]).
  - c. Not all the information that was obtained from phone hacking was usable for a story. If it was it would be passed to other journalists (who would often not know where the story came from). Those journalists would investigate through more legitimate means and, if possible, write the story (at [50]).
  - d. Information that was obtained from hacking would, if published, have its source disguised by attributing the source to a 'friend' or 'pal' (at [50]).
  - e. The Court accepted the generic evidence which Dan Evans, a former journalist at the *Sunday Mirror*, gave about the modus operandi of MGN's journalists and the use of these unlawful activities (at [40]).
  - f. Having successfully hacked some phones and acquired targets Mr Evans then listened to their messages to see if there was anything of interest. He was expected to check the phones most mornings (from his home) and then in the evenings as well. If he heard a call of interest he could get the incoming number from the voicemail system and he would then try to hack that phone as well. If it was not clear from whom that message came then he could, and did, instruct PIs to find out where it came from (by asking them to identify the owner of the number). If the hack was successful he might, and often could, get information from messages left on that second number by his intended target. He called this process of acquiring groups of targets "farming". Thus, he could listen to messages left by, as well as for, his intended victim, and extend the reach of his information source. He managed to crack at least 100 PINs. Sometimes his exploitation of his phone hacking database took several hours a day (at [47]).

- g. If Mr Evans got useful or interesting information from listening to a message he would pass it “up the chain of command” (which meant to Nick Buckley (Head of Content), Richard Wallace and James Scott (successive Deputy Editors) and Tina Weaver (the Editor), for consideration of what action to take about it (at [47]).
- h. Not only was Dan Evans’s time as a journalist completely taken up with phone hacking, but he was aware of many other journalists who were doing it. The activity was happening on ‘a very large scale’ (at [55]).
- i. Dan Evans was instructed by MGN (specifically by Ms Weaver) to cover his tracks, including by (i) not deleting or listening to messages until they had been listened to by the victim, (ii) using burner phones, (iii) not recording PINs electronically, destroying old copies of his back pocket list and tapes of any recordings, (iv) ceasing targeting of MPs to avoid the attention of the security services, and (v) not referring to phones, messages or hacking in emails (at [53]).
- j. Steps were taken to disguise the source of information, and Mr Evans said that in some cases a week would be spent putting in place other plausible sources of the story to achieve the disguise (at [54]).
- k. The Court also accepted the unchallenged evidence of James Hipwell as to phone-hacking activities at the *Daily Mirror* while he worked there between April 1998 and February 2000, particularly at the Showbiz Desk, where he said it was ‘rife’ and ‘endemic’ by 1999, naming eight individuals including writers and more senior staff who were involved in it, and saying that several of the Showbiz Desk journalists got a large proportion of their stories from phone hacking (at [41], [59]-[60]). It also accepted his evidence of the Newsdesk’s knowledge of and involvement in hacking (at [62]), and stated that his evidence as to the Editor, Piers Morgan’s, knowledge of hacking was “convincing” (at [63]), but made no specific finding in that regard.
- l. MGN also deliberately suppressed evidence of phone hacking by using pay-as-you-go (“PAYG”) phones to carry out the hacking (at [84]).

- m. Knowledge of, and participation in, phone hacking existed at a senior level on the journalism side of the business (at [58]).
- n. Phone hacking was also rife and endemic at the Showbusiness Desk, and also used at the News Desk (at [60] and [62]). Senior journalists knew of the hacking and accepted its fruits (at [63]).
- o. In relation to the claimants who were on Mr Evans' back pocket list, they will have been hacked at least twice a day (with more frequent hacking if the journalists were alerted to potential stories). That was the purpose of the list (at [99(i)]).
- p. Journalists other than Mr Evans are likely to have been hacking as well. The practice was so widespread and so frequent that it is likely that some of them will have hacked, though not all the time. That conclusion was justified by the **Armory v Delamirie (1722) 1 Strange 505** principle (at [99(ii)]). The effect of this principle is explained in more detail below.
- q. Considerable areas of the private life, or the private affairs, of each of the individuals who were hacked will have been revealed, going a long way beyond stories that were published. It was likely that a very substantial amount of this material will have passed to journalists other than those who listened to the voicemails. It was likely that there will have been discussions about it amongst the journalists either as a matter of salacious gossip, or as part of discussion as to whether to publish or develop a story. In all events, aspects of their private lives will not have been confined to single journalists actually listening to the voicemails. This was a sensible inference anyway, but was strengthened by the **Armory v Delamirie** principle (at [99(iii)]).
- r. MGN admitted paying over £2.25m (in over 13,500 invoices) to certain named private investigators in the years from 2000 to 2007, and admitted that "*an unquantifiable but substantial*" number of the inquiries made of the agents is likely to have been to obtain private information that could not be obtained lawfully (at [51], [52] and [79]). The agents obtained all kinds of data, including credit card data and medical data (at [80]). The activity was part of a large-scale pattern of the unlawful obtaining of private information (at [81]). Each



private investigator invoice which can be matched to a claimant represents an invasive activity (at [93(iv)]).

- s. Wrong, not just disingenuous, statements were made to the Leveson inquiry by at least 2 deponents on behalf of MGN and Trinity Mirror and that some of those witnesses were aware of David Brown's allegations by the time of the Leveson inquiry if not before (at [214]).
- t. The Claimants also rely on the Managing Judge's summary of MGN's admissions at [24]-[25].

18. The Claimants rely on all of these findings in support of their individual claims.

### **B3. MGN's formal admission extending the *Gulati* findings to all other desks**

- 19. The extent of these generic findings that such unlawful activities were widespread and habitual throughout the three newspaper titles during this period has now been accepted by MGN as applying to its sports desks as well as the news, show business and other desks.
- 20. On 19 July 2017, MGN filed a Notice of Admission making the following formal admission ("**the Generic Admission**"), placing beyond any doubt the applicability of the generic findings in **Gulati** to **all** desks (including the sports desks) of **all three** MGN titles:

The Defendant admits that the generic findings in *Gulati v MGN Ltd* [2015] EWHC 1482 (Ch) operate across the newspapers (the *Daily Mirror*, *Sunday Mirror* and *Sunday People*), including the sports desks of those newspapers; but does not admit that those findings extend to any particular journalist, or to any particular method of unlawful information gathering.

- 21. The significance of the Generic Admission as to the reach of the **Gulati** findings of habitual and widespread use of UIG is considerable. In summary, in view of the evidence as to the way in which the articles were put together and published, using these unlawful means in different ways, namely as (a) original 'tips' or 'sources', (b) verification or corroboration of other sources, and (c) separate strands of information within articles, and the fact that all of this (including information passing back and forth between different desks such as news, features, showbiz, TV and sports) was fed into these articles, with the input and 'supervision' of department heads and editors, the Generic Admission raises a heavy evidential presumption that individual articles complained of *were* the product of, or involved, these UIG techniques.

22. The inevitable consequence of this is that it is not sufficient, even where an article carries a particular byline (and *a fortiori* where there is no byline), for a single journalist to give evidence to the effect that he or she did not hack a phone or that he or she personally had a 'source' for the story. That is necessarily only part of the picture, since even if the Court accepts the evidence that the particular journalist was unaware of hacking or even had a legitimate 'source', that does not exclude:
- a. other illegitimate 'sources' or information obtained from unlawful means having been used for the article either as (i) an original 'tip', (ii) a way of standing up or verifying a 'legitimate' source, or (iii) a further strand of information to be included; or
  - b. the input or involvement of the relevant desk editor (or deputy editor), head of content (such as Nick Buckley) or editor (such as Tina Weaver), who were habitually using, or ordering the use of, these unlawful means for the purpose of getting the best stories or 'exclusives' into the newspaper as against their rivals.
23. The position is all the more significant given (a) the general paucity (and often complete absence) of documents surrounding the preparation or publication of stories disclosed by MGN, and (b) the way in which MGN has deliberately chosen to plead its case, using either non-admissions or denials based on circumstantial evidence, rather than detailed evidence from the journalists and desk heads involved.
24. This applies with even greater force in those claims where MGN has failed to call *any* journalist at all (whether bylined or on the relevant desk) in relation to a given article, since the Court is entitled to draw a reasonable inference from the absence of any evidence of a legitimate source for the story complained of (particularly given the generic **Gulati** findings).
- a. The **Gulati** findings of widespread unlawful activity, together with the generic case further developed since, give rise to an inference (or at least a heavy presumption) that UIG in respect of the article is likely, and it is very difficult for that to be displaced if no journalist attends Court to explain on oath whether he or she got (or confirmed) the tip or story from UIG or some legitimate source

(in circumstances where it has been established that UIG was used to confirm legitimately sourced tips/stories.

- b. Merely adducing press cuttings from other publications around the same time cannot displace the inference or presumption referred to above, at least not without a journalist coming along and saying that he or she saw those press cuttings and copied (or “lifted”) them without further activity. Alternatively, practically no weight is to be given to any reliance which MGN may seek to place purely on contemporary press cuttings.
- c. Similarly, contribution requests (whether to named or confidential contributors) cannot, by themselves, be relied on as being evidence that information was legitimately obtained. Without witnesses providing detail, MGN cannot prove what information was obtained from the named contributor, nor what precise use was made of it in the relevant article, and in any event it does not contradict the generic findings of journalists either obtaining information through UIG and then ‘laundering’ it through legitimate sources, or corroborating legitimately-obtained information through UIG.
- d. In the light of MGN failing to call the obvious witnesses, namely journalists (including desk executives) who can attest to how the information in the article was obtained, the **Armory v Delamirie** principle applies (as it did in **Gulati**), which means that the Court should draw the most favourable inferences in favour of the Claimants’ case.
- e. It should also be recalled that the Claimants have only received disclosure of a fraction of the available evidence in terms of contemporaneous emails, call data and PI invoices, and therefore the mere fact that there is no ‘smoking gun’ document in respect of a given article should not be held against the Claimants.

#### **B4. The widespread and habitual use of unlawful activities by MGN**

25. The Claimants’ common case on the use of unlawful activities by MGN, as set out in their POCFI, is that

UIG such as voicemail interception and blagging, and the instruction of PIs and other third parties to conduct UIG was both habitual and widespread across all three of the MGN titles, not only from 1999 until 2007 – the period covered by the **Gulati** judgment

("the *Gulati* period"), but also starting as early as 1991 and continuing until as late as at least 2011.

26. These UIG activities were carried out by numerous MGN journalists and executives, working on the News, Crime, Investigations, Showbiz, TV, Features, Picture and Sports Desks, as well as by the Editors, Deputy Editors and Heads of Content of MGN's national titles.
27. Although it is impossible to get a full picture due to their concealed nature, the Claimants rely on the following as providing some indication of the true scale and extent of UIG activities at MGN's titles:
  - a. the very large number of MGN's victims;
  - b. the substantial number of calls made to the Orange mobile platform number;
  - c. the sheer volume of instructions and/or payments to PIs or other third parties to blag or otherwise unlawfully obtain personal information about individuals;
  - d. the large number of journalists and editorial staff at MGN's titles involved in UIG; and
  - e. the volume of articles published in MGN's titles derived from, containing or corroborated by information obtained through UIG.

*(a) The very large number of MGN's victims*

28. Over the course of the MNHL, MGN has disclosed the contents of a number of Palm Pilot or other contact lists held by a number of individuals who are known to have been involved in voicemail interception and/or other UIG at MGN's titles, namely the following:
  - a. Dan Evans – Mr Evans's evidence at the **Gulati** trial as to his heavy engagement in voicemail interception and other UIG at the *Sunday Mirror* was accepted (at [40]). He worked under the instruction of Editor Tina Weaver and Head of News Nick Buckley, who provided him with hundreds of mobile phone numbers and other details, such as dates of birth (which, if necessary, were useful to cracking PIN codes). Mr Evans is very frequently involved in emails discussing hacking and targets (e.g. [70]), and was also a heavy user of the Orange platform number ([76(iii)]). In **Gulati** Mann J summarised Mr Evans's evidence as to his Palm Pilot as follows (at [48]):

48. Mr Evans collated his information on a Palm Pilot, a handheld device capable of storing (inter alia) address information in various fields. It synchronised to a desktop application. His Pilot was used to store names and numbers, and some addresses, but not PINs. Not every number on the Pilot was a successfully hacked

number, but some were. His Palm Pilot records have survived, and have been used as an indicator of hacking or attempts to hack.

See also the “*one for the palm pilot*” email from Mr Evans to James Scott dated 2 September 2004 (**Gulati** at 70(iv)). Mr Evans’s Palm Pilot **[8b/21/236]** contains over 800 entries. Mr Evans also kept a back pocket list of regular targets, which he updated from time to time and was never stored digitally in line with “*security considerations that he was told to adopt*” (**Gulati** at [49]). At the height of his activities he said that he probably had 100 targets on his list, and checked them daily. He shared his back pocket list with Mr Buckley and James Scott. Mr Evans reported on his findings to Ms Weaver, Mr Buckley, Deputy Editors Richard Wallace and Mr Scott (**Gulati** at [46]-[47]).

- b. Nick Buckley – Mr Buckley, who was also a prolific hacker himself, was Head of News (called “Head of Content”) at the *Sunday Mirror* and, when Deputy Editor and regular phone-hacker Mark Thomas departed to become Editor of the *People* in 2003, Mr Buckley and Ms Weaver taught Mr Evans how to access voicemail messages and provided him with hundreds of mobile phone numbers and other details, such as dates of birth. Mr Buckley is very frequently involved in emails discussing hacking and targets (e.g. [70], [301]), and was also a heavy user of the Orange platform number ([76(iii)]). Mr Buckley’s Palm Pilot data **[8b/22/321]** is essentially a list of the names of targets of UIG, numbers and other details which runs to over 80 pages.
- c. James Scott – Mr Scott was also a prolific hacker himself and regularly communicated with Mr Buckley and Mr Evans as to phone hacking and information obtained through it. Mr Evans described Mr Scott as having a bigger database than he did (**Gulati** at [301]). Mr Scott is very frequently involved in emails discussing hacking and targets (e.g. [70], [301]), and was also a heavy user of the Orange platform number ([76(iii)]). MGN has disclosed:
  - i. The James Scott Palm Pilot<sup>1</sup> **[8d/29/3 – 8e/29/402]**, containing over 800 pages worth of entries containing names and targets, telephone numbers and other details.

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<sup>1</sup> Despite locating and reviewing the James Scott Palm Pilot in 2014, incredibly MGN did not disclose it until 2020, and even then in a manner which Mann J held was “calculated to obscure the existence of another Palm Pilot” and a breach of their disclosure obligations.

- ii. An Apple address book **[8b/17/152]** containing a list of names and telephone numbers running to 22 pages. A number of these targets can be linked to invoices from PIs such as TDI/ELI, commissioned by Mr Scott,
  - iii. A document titled “*Winslet notes*” **[8b/26/445]**, with a number of names and numbers, the first appearing to relate to the famous actor Kate Winslet.
  - iv. A document titled “*Amma notes*” **[8a/3/385]** containing a list of numbers, names, addresses, “*Top ten numbers*” and dates of birth relating to Amma Antwi-Agyei, a contestant on Big Brother.
- d. Mark Thomas – Mr Thomas was Dan Evans’s predecessor as a key phone-hacker at the *Sunday Mirror*, and kept a large database of names, mobile numbers and other details (**Gulati** at [43]), then became Editor of *The People* in 2003. Email evidence also shows Mr Thomas being involved in hacking, including while he was Editor at *The People* (**Gulati** at [261], [325], [375], [489], [503]). MGN has disclosed a two-page document belonging to Mr Thomas entitled “*mmmnnnn*” and containing names and telephone numbers **[8a/4/388]**.
- e. James Saville - Mr Saville, a news desk executive on the *Sunday Mirror*, is involved in numerous emails discussing hacking and targets (e.g. **Gulati** at [70], [375]), and was also a frequent user of the Orange platform number ([76(iii)]). MGN has disclosed (i) a two-page document relating to Mr Saville containing names and numbers which appear to relate to targets **[8b/24/441]**, (ii) a two-page self-described “*hitlist*” consisting of a list of names of well-known individuals **[8b/25/443]**, and (iii) and an email listing a target’s most frequently dialled numbers **[9b/41/376]**.
- f. Terry O’Hanlon – Mr O’Hanlon, a journalist on the *Sunday Mirror*, is known to have used a number of PIs, including Jonathan Stafford, ELI, Gwen Richardson and System Searches. MGN has disclosed two contact lists **[8c/28/3]**, running to a total of over 400 pages, containing names, telephone numbers and other details, including the names and numbers of many Claimants such as John Leslie, as well as many private investigators such as ELI, Lloyd Hart, System Searches, Gwen Richardson and Jonathan Stafford **[8c/28/199]**. Indeed, under Jonathan Stafford it contains the words “*40 for ex-d; 50 for ex and address; and*

150 for bill” (plainly signifying the cost of these services at the relevant time) **[8c/28/12, 100]**.

- g. Anthony Harwood – A contact list extracted from Mr Harwood’s Palm Pilot **[8b/19/188]** runs to just over 20 pages and, although almost entirely redacted, contains names and telephone numbers for PIs such as Dan Hanks, Gwen Richardson, Malcolm and Jackie Scott of System Searches, Severnside, Jonathan Stafford, Celebrity Services and Ken Cummins, as well as well-known victims individuals (who have successfully brought claims against MGN) such as Denise Van Outen, Ian Wright, Gabby Logan, Heather Mills, Michael Owen, Paul Burrell and James Hewitt, as well as Rio Ferdinand.
- h. Others – There are other contact lists containing similar details (relating to Robert Hutton, Jon Clements, Richard Wallace, Fiona Cummins, Neil Silver, Martin Lipton, and a person referred to as “Ivor”<sup>2</sup>) within bundles **[8a-8c]**. MGN have refused to disclose the Palm Pilot belonging to Alun Palmer.

*(b) The substantial number of calls made to the Orange platform number*

- 29. As was established in **Gulati** (at [75]-[76]), there was a very large number of calls from MGN’s telephone numbers to the Orange platform number, a number which could be dialled from any phone in order to access voicemail messages relating to any Orange mobile number. There were almost 13,500 calls, including over 12,000 between June 2002 and 2008, with a very sudden and dramatic drop after 8 August 2006, the date on which Glenn Mulcaire and Clive Goodman were arrested for phone hacking for the *News of the World*. MGN accepted at the **Gulati** trial that substantial hacking could be inferred from this material, and Mann J drew such an inference, while bearing in mind that the landline was only *one* of the routes into this platform, whereas journalists could also use “burner” PAYGM phones without leaving a trace, and therefore Mann J held that the landline data was aptly described as “*the tip of the iceberg*”. Orange was also only one of the four main mobile phone providers at the time.
- 30. Calls from Mr Scott’s, Mr Saville’s, Mr Buckley’s and Mr Evans’s landlines accounted for a significant proportion, but by no means the majority of the total calls to the Orange

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<sup>2</sup> This is clearly the Deputy Picture Editor at the *Sunday Mirror*, Ivor Game (Johnson 8 §74 **[3/8/127]**). It contains two entries relating to the flight blagger Dave Parker (see Johnson 8 §§71-77 **[3/8/126]**).

platform number (Gulati at [76](iii)). It should also be noted that the data only commences some way into 2002, and Mann J held that hacking was “*by then, a common activity*” (Gulati at [76(v)]).

*(c) The volume of instructions/payments to Pls and other third parties to carry out UIG*

31. The disclosure obtained through repeated disclosure applications by the Claimants (strenuously resisted by MGN), incomplete though it is, demonstrates a staggering volume of instructions to Pls to conduct UIG for MGN’s titles.
32. Throughout the period 1991 to 2011, Pls were habitually instructed by journalists (and Editors and Deputy Editors) at the News, Crime, Investigations, Showbiz, TV, Features, Picture and Sports Desks of MGN’s titles to obtain private information such as mobile and ex-directory landline phone numbers (and the reverse the subscriber details of such numbers), itemised phone billing records, lists of BT “friends and family” numbers, the owner of vehicle registration numbers, credit references, residential addresses, forwarding addresses, utility bills, credit card bills, banking information, medical records and criminal records. The Pls’ methods included interception of landline phone calls, landline and mobile voicemail interception, interception of analogue mobile phone calls, placing of bugs in or near to rooms and residences and planting bugs or tracking devices on cars.
33. These activities were, by their very nature, unlawful, as was the accessing of private social media accounts without proper consent, and location and other searches done through the misuse of credit reference agency licenses or unlawful access to, and/or use of, the electronic Electoral Roll. MGN admits that obtaining criminal record checks and itemised phone bills without consent was likely to be unlawful (RAGD §15.3.5(e)(i) [1/2/81]), but denies that any other activities were unlawful (without providing any explanation or basis for that denial).
34. A very large number of different companies and individuals were used for these activities. It is only through their sheer persistence in applying for disclosure, against fierce resistance by MGN, that the Claimants have been able to uncover the huge (but still partial) amount of instructions which they have received in generic disclosure. This has been a staged process, due to MGN’s stubborn insistence throughout the MNHL that it is unable to identify Pls used by its journalists (despite having a searchable database of payments to Pls and voluminous evidence of their use, as well as being able to ask editors, journalists and staff from the time). The stages have been as follows:



- a. MGN admitted to the use of just 4 PIs (and some aliases) in December 2014.
  - b. The Court ordered disclosure in relation to use of (but not the payments to or invoices from) 14 PIs and some aliases in December 2018 (despite MGN's resistance). It also ordered disclosure of the payments records for those PIs ("**Leveson PIs**") disclosed to the Leveson Inquiry (which were initially provided in redacted form in January 2019) after the Claimants discovered that MGN had disclosed their use to the Leveson Inquiry in October 2011 on a confidential basis, but withheld their disclosure in the MNHL for almost eight years after that (including through the **Gulati** trial).
  - c. The Court subsequently (in June 2019) ordered disclosure of the unredacted Leveson PIs, as well as the payment records relating to the 14 PIs, (and a further three PIs and aliases), again despite MGN's resistance.
  - d. The Court ordered disclosure in January 2020 (again despite MGN's resistance) of the payment records relating to the four PIs which were the subject of admission in December 2014.
  - e. The Court ordered disclosure relating to further PIs and bloggers and some aliases in July and October 2020, again despite MGN's resistance.
  - f. The Court ordered disclosure relating to further PIs and bloggers in 2022 after the Claimants' amendment of the RAGPOC to include them.
35. In total, from the invoices and payment records so far disclosed, it is clear that over £9.7million<sup>3</sup> was spent on the suppliers listed in 8.3(fc) – (fg) of the POCFI [1/1/11] in the period 1996-2011, including more than £2million<sup>4</sup> on TDI/ELI alone between July 1999 and October 2006. This demonstrates that the TM Board (which was aggressively seeking to cut costs and save money during this period) must have been aware of these activities, which were recognised as unlawful by senior members of MGN and TM management.
36. Taking just one example, the PI Steve Whittamore's "Red Book" (containing instructions by MGN journalists between 1999 and 2003) contains thousands of instructions by

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<sup>3</sup> MGN calculates the figure to be just under £9million.

<sup>4</sup> MGN calculates the figure to be just under £2million but does not dispute the Claimants' figure for the MNHL.

journalists at the *Daily Mirror*, the *Sunday Mirror* and *The People* to target individuals and obtain their private information using UIG.

37. The Claimants rely on five general types of arrangement between MGN's titles and PIs which were entered into with a view to the investigation, preparation and publication of stories in MGN's newspapers including UIG of private information. These were as follows:

- a. **Hacking and blagging** – With the PIs (including blaggers) listed in POCFI §8.3(fc) [1/1/11] for unlawful activity (e.g. interception of landline phone calls, landline and mobile voicemail interception, interception of phone calls through analogue technology, placing of bugs in or near to rooms and residences and planting bugs or tracking devices on cars), and obtaining and supplying other personal information (e.g. ex-directory landline phone numbers, mobile telephone numbers, PIN numbers, itemised telephone billing records, lists of frequently called numbers, subscriber information for telephone numbers, credit card bills, utility payment records, bank records (and other financial information), travel plans, hotel and restaurant bookings, medical records/information, national insurance numbers and social security/benefits information).
- b. **PIN/Security question cracking** – With the PIs (including search agents, tracing agents and process servers/) listed in POCFI §8.3(fd) [1/1/12] for tracing individuals and obtaining personal information (e.g. dates of birth, new addresses, former addresses and the names of household members), through unlawful searching (e.g. non-consensual use of credit reference checks and impermissible use of electronic electoral rolls). Such unlawfully obtained information was then used by MGN journalists directly or by PIs and blaggers to “crack” PIN numbers or “beat” security questions to access phone messages or blag private information. This also included the lawful obtaining – for example by the Teviots or Tony Bassett - of birth, marriage and death records (which in particular provided maternal maiden names which was a useful resource for potential passwords or security questions), property ownership and company director information which was then used by MGN journalists directly or via PIs for the same unlawful purposes.
- c. **Freelancers** - With the freelance journalists (including foreign-based “stringers” and former MGN or other Fleet Street paper journalists) listed in POCFI §8.3(fe) [1/1/13] for unlawfully obtaining information (such as the information listed in (a) and (b))

above) about individuals. The Claimants also specifically rely on Greg Miskiwi (on his own or via his employer for a time, Mercury Press), selling stories based on the unlawful activities of Glenn Mulcaire to Gary Jones of the *Daily Mirror*, Sarah Arnold of the *Sunday Mirror* and Chris Bucktin of *The People* (Johnson 8 §§56-58 [3/10/122]).

- d. **Unlawful photographers** - With the freelance photographers and agencies listed in POCFI §8.3(ff) [1/1/14], whereby the individual would unlawfully obtain, either directly or by using a PI or blagger, private information about individuals in order to find out their location, movements and/or travel/accommodation plans. This would enable the photographer to obtain exclusive pictures of the targeted individual, including in circumstances giving rise to a reasonable expectation of privacy. This type of arrangement was found to have occurred in **Gulati** at [325], and there are many examples of the use of UIG to obtain photographs in the disclosure. For example, an email of 21 June 2003 in which Mark Thomas, the editor of *The People* forwards a list of mobile numbers of targets, provided to him by James Scott, to the photographer Scott Tillen of Tillen & Dove [ **10a/59/987-98**]
  - e. **Bin-spinning** – With Benji Pell (of Langley Management Services) and Simon Lloyd (POCFI §8.3(ff) [1/1/14]), to obtain private information from documents stolen from domestic and commercial waste left for collection.
38. MGN also made payments in cash to unknown entities which included PIs and blaggers such as those referred to in the POCFI paras 8.3(fc) to (fg) and others, to carry out similar activities without leaving a financial trail evidencing the UIG.
39. The systemic, extensive and routine use of these PIs is demonstrated by the following:
- a. MGN made extensive use of the blagger, Christine Hart (who also provided services for other tabloid newspapers), in order to obtain highly personal and sensitive medical information through blagging GP surgeries, clinics and hospitals, as well as other information. By way of example, this included her obtaining information: (a) about the post-natal depression of a famous female television presenter for *The People*; (b) about whether the wife of a television comedian was pregnant for the *Sunday Mirror*; (c) about a well-known pop star entering rehab for alcohol and drug addiction for *The People*, and (d) about a football manager having therapy for the *Sunday Mirror*. Ms Hart was regularly instructed from at least 1998 by MGN

journalists such as Doug Kempster, Matthew Bell (*Sunday Mirror* News Desk), Ian Hyland, Dennis Rice (*Sunday Mirror* News Desk), Andrew Buckwell (who subsequently became a freelancer), Rupert Hamer, Sean Hoare, Bridget Rowe (*Sunday Mirror* Editor), David Wooding (*The People* News Editor and now Editor of the *Sunday Express*), and Paul Field (*Sunday Mirror* News Desk). Her contact number also appears in Nick Buckley's *Palm Pilot* [8b/22/359].

- b. Despite claims to the contrary, MGN continued to make use of PIs until at least late 2011, even after the announcement and setting up of the Leveson Inquiry (at which such use was denied). MGN, and in particular *The People* which was edited by Lloyd Embley (now Editor-in-Chief of Reach Plc, MGN's parent company) at the time, instructed Tillen and Dove on numerous occasions from July to December 2011. Further, both the *Daily Mirror* and the *Sunday Mirror* continued to instruct the well-known blagger, Jonathan Stafford/Newsreel Ltd, who was regularly used by MGN for many years and appears in the Nick Buckley *Palm Pilot* [8b/22/388], during 2011, making 42 payments to him up until September of that year. Some of these payments were authorised by prolific hackers such as Mr Buckley and James Scott. Newsreel Ltd (Mr Stafford's company) is one of the PIs whose MGN payment records since 2005 were released to the Leveson Inquiry by Mr Vickers and Vijay Vaghela (Group Finance Director and fellow member of the Executive Committee with Mr Vickers and Ms Bailey), who were therefore well aware of their existence at the time of Trinity Mirror/MGN's statements to the public in 2011 claiming that its journalists operated within the law.
- c. MGN chose to use the following PIs even though (as MGN, and in particular its Legal Department, was aware) these investigators had been convicted for illegally obtaining private information:
  - i. Rachel Barry, who despite being convicted in October 1997 for blagging mobile phone bills and obtaining ex-directory phone numbers for newspapers (as was reported in the press) was continually used by MGN including by the *Daily Mirror*, the day after her conviction, including in relation to James Hewitt. Ms Barry is included in Dan Evans' *Palm Pilot* under the entry "Rachel Blag" [8b/21/244], as well as in Nick Buckley's *Palm Pilot* [8b/22/334]. Ms Barry continued to be used by senior MGN journalists such as the *Daily Mirror*'s Gary Jones (now Editor of *Express Newspapers*); *The People*'s David Jeffs and Lee Harpin; and Mark Thomas (as Features Editor

at the *Daily Mirror*, Deputy Editor at the *Sunday Mirror* and as Editor at *The People*) until at least 2006.

- ii. Steve Whittamore (JJ Services), who despite his being raided by police in 2003, his arrest in 2004 and conviction in April 2005, was used by MGN to unlawfully obtain private information, for example by the *Daily Mirror* until at least December 2005 and by *The People* until at least October 2006.
  - iii. Southern Investigations, who - despite the arrest of Jonathan Rees (as well as MGN journalist Doug Kempster) and his conviction in 1999 -, MGN continued to use under several of its aliases (Media Investigations, Law and Commercial, The Investigation Company and Planman).
- d. As a result of generic disclosure applications by the Claimants (again, resisted by MGN), MGN was required to disclose call data from MGN's landline extensions to a selection of PIs. The disclosure shows for example almost 5000 calls from MGN journalists to the known blagger Jonathan Stafford, including calls from the extensions of Managing Editors or editorial management staff, and Picture Desk executives; and calls to another known blagger, Rob Palmer, by an extension linked to a member of MGN Legal Department, Rachel Welsh.
40. A number of the Claimants' witnesses have given evidence as to the activities of PIs on the instruction of MGN journalists. The Court is respectfully requested to read the following evidence:
- a. Dan Evans - On Mark Hinchcliffe and his company MSH, who was Mark Thomas's "go to" blagger at the *Sunday Mirror* according to Tina Weaver (Evans 5 §§12-14 **[3/7/86]**).
  - b. Graham Johnson - On Tillen & Dove; Danno Hanks; Ken Cummins and Capitol; Greg Miskiw, Glenn Mulcaire and Mercury Press; Paul Hawkes and Research Associates; Paul Samraj; Kenrick Associates, George Rickman and Steve 'Sid' Creasey; Simon Lloyd; and Dave Parker (Johnson 8 §§19, 46-77 **[3/10/114]**).
  - c. Steve Whittamore (Whittamore 1 **[3/14/176]**), a retired PI who ran his own firm, JJ Services Ltd, who testifies that:

- i. He started working for newspapers, including MGN titles, in the mid-1990s, and could have several requests a day, a decent proportion of which were for obtaining ex-directory numbers. His services included mobile and landline conversions, criminal records, blags/pretext calls such as benefits or bank details lags, telephone bills and billing data, BT “friends and family” (“F&F”) numbers, obtaining ex-directory numbers and vehicle registration numbers or vehicle owner details, addresses. He did so using sub-contractors using PAYG phones (Whittamore 1 §6-10 [3/14/177]).
- ii. In March 2003 his office was raided by the ICO as part of Operation Glade and he was charged with conspiracy to commit misconduct in public office in relation to arranging access to the Police National Computer. He was convicted in April 2005 on the lesser charge of breaching section 55 of the Data Protection Act 1998, and was given a conditional discharge (Whittamore 1 §11 [3/14/178])
- iii. He recorded commissions from MGN titles from 1999 to 2003 in the “Red Book” and from MGN and other newspapers between 1997 and 2003 in another book which has since come to be known as the “Orange Book”. The Orange Book features instructions from at least 16 MGN journalists. There are also three even earlier books, covering the period 1995 to 1997, which have come to be known as the “early Blue Books”, and contain occasional MGN entries. The inside page of “Blue Book 3” dating from March 1997 contains a draft of a letter sent by Mr Whittamore to the *Sunday Mirror* and *The People* offering and listing his services, which included obvious UIG (Whittamore 1 §§20-24 [3/14/180]).
- iv. Some newspapers continued to instruct him after his conviction, including the *The People*. His contact list from 2007 – which contained the names of persons who had used him *after* his original contact list was seized by the MPS, contains the names of Tina Weaver, James Saville and Jill Main of the *Sunday Mirror*, Anthony Harwood, Euan Stretch, Anton Antonowicz, Barbara Davies and Caroline Evans<sup>5</sup> of the *Daily Mirror*, and Ben Proctor, David Jeffs, Dean Rousewell, Lee Harpin, Chris Bucktin and Roger Insall of *The People*. His contact list seized by the MPS in 2003 contained mobile and extension

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<sup>5</sup> Next to her name was the word “*invoices*”, which Mr Whittamore believes means that she processed invoices.

numbers for dozens of MGN journalists, including 54 at the *Daily Mirror*, 18 at the *Sunday Mirror* and 45 at *The People* (Whittamore 1 §12-16, 30-33 **[3/14/179]**).

- v. He denies MGN's assertion in its Generic Defence that only a limited proportion of the instructions to him were to unlawfully obtain private information, stating that the majority of the instructions were to obtain information using the services summarised above (Whittamore 1 §§25-27 **[3/14/182]**).
  - vi. He is in no doubt that all journalists who used his services regularly, or who worked in newsrooms who were regular users, knew that the information was obtained through illegal means (not least because of its very nature), and says that the email address he used to invoice the papers (and also included on invoices) was [blag2049@hotmail.com](mailto:blag2049@hotmail.com). The nature of his work was also broken down and detailed on cover sheets sent with invoices to MGN, which would have made his work clear to those checking and paying the invoices (Whittamore 1 §§34-36 **[3/14/184]**).
  - vii. He explains that the invoices disclosed by MGN in the MNHL go back to 1998 (with Sun Accounts payments dating from 1996-1998), whereas the material seized by the ICO in its raid of his office contains payments going back as far as 1991 (Whittamore 1 §§28-29 **[3/14/182]**).
- d. Daniel Portley-Hanks ("Danno Hanks") (Hanks 1 **[3/3/29]**), who testifies that:
- i. He had access to a number of databases in the US containing personal information about individuals which he was only supposed to access and use for legitimate purposes as a licensed PI, but he instead used the databases illegitimately to obtain information for, and sell to, media publishers (Hanks 1 §§3-8 **[3/3/30]**).
  - ii. That access permitted him to obtain phone numbers and conversions, social security numbers (which allowed him to access and obtain other restricted information such as legal names, dates of birth and birth certificates), voter registration details, driver licence information and advanced vehicle information including car registration plates and vehicle sightings using

automatic licence plate recognition, all of which was not authorised for media use (Hanks 1 §§4-5, 9 [3/3/30]).

- iii. He sold personal data obtained through illegitimate access of US databases to British newspapers, including MGN's titles. The *Daily Mirror* and *Sunday Mirror* were "*main clients*" of his, and he would receive instructions from Nick Buckley and James Saville, among others. He frequently received emails and calls from Mr Buckley (Hanks 1 §§8, 12 and 15 [3/3/31]).
- iv. He also obtained information such as unlisted telephone numbers and billing data through blagging (Hanks 1 §9 [3/3/31]).
- v. He gives the example of an email exchange with Nick Buckley of the *Sunday Mirror* dated 24 January 2006 in which he told him that the mobile phone bill for an individual, Oliver Martinez (who was the boyfriend of Kylie Minogue), was being generated and would be available the next day, and confirms that he did provide a copy of the bill (although the follow-up email providing the bill has not been disclosed by MGN) (Hanks 1 §9 [3/3/31]).
- vi. He gives the further example of an email exchange with Mr Buckley dated 3-4 November 2005 in which he "*cracked*" a mobile phone number i.e. obtained the identity of the owner of the number) (Hanks 1 §11 [3/3/32]).
- vii. He confirms that he is sure that UK newspapers knew what he was doing (Hanks 1 §15 [3/3/33]).
- viii. He also provided similar information to British stringers and agencies in the US (including Paul Henderson, Paul Thompson, Annette Witheridge of Big Apple News, Coleman-Rayner and Splash News) who then sold the resulting stories to UK newspapers including MGN's titles, and although the freelancers would commission him, he would invoice the end-user (Hanks 1 §13 [3/3/33]).
- ix. He states that MGN also used a blagger (or "spoofers") called Ken Cummins (Hanks 1 §16 [3/3/34]).
- x. As various scandals were exposed in the British press, British newspapers asked Mr Hanks to 'wash' the product of his services and give them the appearance of legitimacy or reduce the indicators of illegality. That practice started in 2000, so he was encouraged to invoice as "British American News



Service” instead of as “Backstreet Investigations”. They wanted all mentions of ‘investigator’ or ‘detective’ removed from invoices, emails and reports to disguise his true modus operandi. The cover up increased in 2011/12, with papers asking him to put disclaimers on his paperwork stating the information was obtained legally, despite knowing that nothing had changed. He was never asked to change his product or methods, which they knew to be illegal (Hanks 1 §§17-18 [3/3/34]).

- e. Derek Haslam (Haslam 1 [3/8/93]), a retired police officer and undercover operative, who testifies that:
- i. He infiltrated Jonathan Rees’s firm Southern Investigations at the behest of the MPS for nine years between 1997 and 2006 (Haslam 1 §2 [3/8/93]).
  - ii. when he was a police officer, he came across Mr Rees several times. In 1997, long after Mr Haslam had retired from the MPS on medical grounds, he agreed to work undercover and gather intelligence from Mr Rees and his business partner, and former police officer, Sid Fillery about the murder of Daniel Morgan. He befriended Rees, and to a lesser extent Fillery, and reported his intelligence back to the MPS. He reported that Mr Rees and Mr Fillery were deeply involved in the business of corrupting serving police officers and acting as a conduit between them and organised criminals (Haslam 1 §§3-7 [3/8/93]).
  - iii. He also discovered the connections between Southern Investigations and the newspapers, which involved the harvesting and supply of confidential information which had been obtained unlawfully, via phone tapping, computer and phone hacking, bribing police officers and a whole range of other UIG. Mr Rees boasted about accessing banking account records, NHS medical records and the Police Witness Protection Scheme. He even boasted that he could get the Queen’s medical records. He bragged about working for the *Daily Mirror* and *Sunday Mirror* (Haslam 1 §§8, 10 [3/8/96]).
  - iv. Mr Rees and Mr Fillery admitted to Mr Haslam frequently that they worked for the MGN titles, selling tips and leads to them as well as regular PI services such as hacking and blagging. Mr Rees introduced Mr Haslam

to journalists from MGN titles, such as Gary Jones of the *Daily Mirror* and Doug Kempster of the *Sunday Mirror*. Both were clearly good customers of Mr Rees and Southern Investigations and Mr Rees spoke about them often. Mr Rees often spoke to Mr Haslam about the work he had done for MGN, for example that he had sold information to the *Daily Mirror* for a story about Prince Michael of Kent being in debt to a bank (Haslam 1 §§17-19 [3/8/99]).

- v. Mr Rees once asked Mr Haslam if he could blag the financial records of an ex-husband of Jacqui Hames, presenter of *Crimewatch*, by calling the pensions department of the MPS in Cardiff. Mr Haslam also managed to catch Rees commissioning unauthorised criminal record checks from corrupt police officers. Mr Rees also: (1) obtained the list of Royal Family contacts via a corrupt police officer, (2) obtained a list of Government ministers' and other important email addresses from a former BT engineer who stole them from BT, (3) had two "bent" BT engineers on his payroll and would sell numbers to newspapers or use them to get information himself and sell it to newspapers, (4) used BT engineers to tap landline phones, and (5) obtained bank accounts through bank managers (Haslam 1 §§20-23 [3/8/100]).
- vi. As part of Operation Two Bridges, Mr Rees was arrested and charged with perverting the course of justice in late 1999 and was in prison until 2005. He was still involved with Southern Investigations during that period, and Mr Haslam visited him in prison. Mr Haslam's cover was blown in 2005 (Haslam 1 §§11-12 [3/8/97]).
- vii. Another PI and former corrupt policeman, John Ross, also specialised in selling information from corrupt police officers to newspapers, including MGN titles (Haslam 1 §9 [3/8/96]).

*(d) The large number of journalists and editorial staff at MGN's titles involved in UIG*

41. The Claimants also rely on the large number of journalists and editorial staff at the *Daily Mirror*, the *Sunday Mirror* and *The People* involved in the use of UIG throughout the period. This is apparent from the various sources of evidence, which give a strong indication as to the scale of UIG at MGN's titles, but are nevertheless incomplete or

fragmentary, given MGN's concealment of these activities and the destruction or loss of documents over time.

42. As well as MGN's admissions, in its Generic Admissions (**[1/3/162]**, **[1/4/164]**, **[1/5/170]**, **[1/6/174]**, **[1/7/179]**, **[1/8/182]**, **[1/9/186]**, **[1/10/191]**) and in its generic and individual defences, the Claimants rely on the following documentary evidence:

A) Emails

43. There are many emails disclosed in the litigation referring directly to UIG or targets of it. This includes a selection of generic emails that an external American firm of criminal solicitors acting for MGN (K&L Gates) had handed over to the MPS in 2014 and were disclosed prior to the **Gulati** trial (and are referred to in **Gulati**). Having sought (unsuccessfully) to enter judgment against itself and then opposed any generic disclosure being provided (on the basis that it was irrelevant), MGN was ordered to provide copies of the selection of documents which had been produced to the police. This selection was the result of what was described as 'the *Sunday Mirror*-centric' focus of the Memorandum of Understanding (see **Gulati** at [71]) with the MPS, a document which defined the nature and scope of searches which it was agreed MGN would carry out in relation to Operation Golding and the evidence given by Dan Evans as to what had taken place during his time at the *Sunday Mirror*.
44. Many more emails have been disclosed since through generic disclosure applications brought by the Claimants (and heavily opposed by MGN). The emails show a very large number of individuals at all three titles involved in UIG on an industrial scale.
45. There are also examples of MGN's efforts to conceal their tracks or avoid detection, such as:
- a. An email exchange between Tina Weaver, then Editor of the *Sunday Mirror*, and Dan Evans dated 21 November 2003, in which Ms Weaver tells Mr Evans that he should keep checking Abi Titmuss's voicemails for a whole week in order to 'stand up' a story **[7/2/55]**.
  - b. An email from Tina Weaver to Dan Evans dated 2 April 2003, in which she provides him with Robert Ashworth's telephone number, but warns him that "*he's answering..... don't call yet he's answering*" **[7/2/105]**. It is clear from this email that not only is Ms Weaver, the Editor, giving direct instructions to Mr Evans carry out

these illegal activities, but she has also been attempting to hack Mr Ashworth's phone personally. This is just one example of the level and extent to which this illegality reached.

B) Call data

46. This derives from
- a. MGN's landline to the mobile phones of Claimants and a limited number of those connected with them, for at least some time periods.
  - b. MGN's landline to the Orange voicemail platform;
  - c. from some MGN-registered mobile phones;
47. However, the call data disclosed by MGN is very far from complete and is thus merely "*the tip of the iceberg*" (a description which Mann J accepted in Gulati). The disclosed records of calls to Cs and their associates are by no means the totality of the relevant phone calls made by MGN's journalists. For example:
- a. There is no available call data<sup>6</sup> for the period pre-dating mid-June 2002, even though there was admitted unlawful activity in 2000 and 2001 and findings which extend before that period.
  - b. There is no available mobile call data for MGN journalists in the period January 2005 to November 2005, which is a key period covered by most claims.
  - c. MGN's standard disclosure statement says in relation to mobile call data that given  

the historic nature of the data which was stored on disks, some months of which were missing or corrupted, the data set is not complete.
  - d. The vast majority of MGN's hacking took place through "burner" PAYG phones, for which there are no records (Gulati at [73(ii)]).

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<sup>6</sup> Except landline calls to the orange platform number [23/6/11].

- e. Hacking was also carried out through the Orange platform number, which will not show on any individual Claimant or associate's call records. Further, Orange was one of four main mobile phone providers.

C) Expenses for PAYG phones

- 48. Whilst there was no call data from PAYG phones, there has been some (albeit incomplete) expenses disclosure for MGN's journalists relating to their cash purchases of PAYG phones. For the **Gulati** trial this disclosure was only provided in relation to five journalists and for the period 2004 to 2006, but showed at least £7,500 spent in that period in respect of burners and top up call vouchers (**Gulati** at [83]). The Court concluded, on the basis of Dan Evans's evidence, that they must have been used for hacking, and that the hacking activities were much greater than the available data suggested<sup>7</sup>, and many of the vouchers were approved by Ms Weaver and Mr Buckley.

D) PI Payment Records

- 49. These consist of either AP (Accounts Payable) invoices from, and Contribution Requests (CRs) relating to, entities alleged by the Claimants to be PIs or carrying UIG, and are addressed in more detail above.
- 50. CR payments date back to January 1996, although MGN accept that some payments are missing. Hard copy invoices only date back to April 1998, as MGN have destroyed a microfiche of such invoices pre-dating April 1998 at a time unknown to the Claimants

E) PAYG phone call data statistics (referred to above).

F) Palm Pilots and contact lists (as described above).

G) Direct Witness Evidence

- 51. The Claimants also rely on direct evidence from the following individuals as to UIG at MGN's titles during the Relevant Period:

- 1. Dan Evans

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<sup>7</sup> For example, Mr Evans gave evidence that he had used PAYG phones before 2004, even though earlier data was not disclosed relating to him.

52. Mr Evans also gave a second witness statement for the **Gulati** trial (Evans 2 [25b/23/13] where his evidence was accepted by the Court, in which he stated as follows in relation to the use of UIG:
- a. Even where stories would come from a legitimate source, MGN's journalists would "stand up" the story by hacking the phones of the individuals involved or their friends (Evans 2 §§2-3 [25b/23/13]).
  - b. On other occasions MGN's journalists would find out a piece of information from a voicemail message and try and confirm it through other means, for example, by trying to get call data from TDI/ELI, or contacting the individual involved, their PR team, a source or a close friend and trying to get them to confirm the details. MGN would try and be careful not to use the information from a voicemail message if it was obvious that this could be the source (Evans 2 §3 [25b/23/14]).
53. The Claimants also rely on Mr Evans's evidence in Evans 5 [3/7/83], which confirms the points above (Evans 5 §§4-6 [3/7/84]) and makes the following additional points:
- a. In his experience it was not uncommon for UIG to be used in response to stories published in other newspapers or wire stories (Evans 5 §7 [3/7/85]).
  - b. Stories that came into the News Desk (and by extension the Picture Desk) from wires, agencies or other stringers/freelance contributors might be followed up with UIG to try and develop new lines (Evans 5 §9 [3/7/85]).
  - c. When blags and hacks prompted by a news story were carried out, they often did not produce information which was actually published, but were still used to check the story. The publication of a story in a form which looks like a 'paraphrase' or 'lift' did not mean that no unlawful techniques were used (Evans 5 §10 [3/7/85]).
  - d. He sometimes used landline phones for hacking (Evans 5 §15 [3/7/86]). He used Graham Johnson's landline telephone extension to access the Orange platform number, and all or most of the calls misattributed to Mr Johnson at the **Gulati** trial were very likely to be calls made by Mr Evans (which was specifically because of his enormous level of voicemail interception).

- e. He occasionally carried out voicemail interception on landline answerphones (and answering services, such as BT callminder), although overall he did so considerably less than with mobiles. Ex-directory numbers could be obtained cheaply and quickly from PIs. There was very little difference in the method used. This was the purpose for obtaining some of the landline numbers of targets in his Palm Pilot (Evans 5 §§18-20 **[3/7/87]**).
- f. James Scott, Nick Buckley, Euan Stretch and (he believes) Tina Weaver had Palm Pilots issued by MGN, which were used for the same purpose as Mr Evans's. He would expect that it would be standard for other journalists to have them too. Palm Pilots are therefore likely to be highly material to Claimants' cases (Evans 5 §§21-22 **[3/7/88]**).
- g. There was a general modus-operandi of secrecy around UIG and journalists were not in the habit of keeping extensive records, beyond filling the contributors' book/register on the News Desk, which tended to deal directly with billing from UIG suppliers. Nick Buckley told Mr Evans that he had taken steps to mitigate the risk of detection of the work Jonathan Stafford did for the News Desk (Evans 5 §26 **[3/7/90]**).

## 2. Graham Johnson

54. Mr Johnson (Johnson 8 **[3/10/110]**), an author, producer and investigative journalist who worked as Investigations Editor for the *Sunday Mirror* between 1999 and 2005, and is the only journalist to have ever voluntarily approach the police and make admissions. He testifies that:

- a. In October 2001 he was instructed by the Deputy Editor, Mark Thomas (With the knowledge of the Editor, Tina Weaver), to intercept the voicemails of Denise Welch. Mr Thomas was hacking at the same time, in the hope of finding information on a meeting location to be able to instruct a photographer. Mr Thomas had also organised for Ms Welch's hotel room to be bugged by Tillen & Dove. Mr Johnson voluntarily informed the police of this in 2013. Subsequently a series of payments from 2001 disclosed to the Claimants by MGN was entirely consistent with what Mr Johnson said to the police, showing that Tillen & Dove were paid nearly £10,000 for the story. There are also two invoices from Christine Hart which Mr Johnson believes involved blags to trace Ms Welch and obtain private information from her agent, and there is also a payment to Nigel Bowden, a Spanish based blagger. The

- article contained pictures taken covertly and credited to Tillen & Dove (Johnson 8 §§9-13 **[3/10/112]**).
- b. Through his own experiences and sources, he is aware of a very large number of PIs used by MGN, and he sets out detailed information on several of those PIs, including Tillen & Dove; Daniel Portley-Hanks; Ken Cummins and Capitol; Greg Miskiw, Glenn Mulcaire and Mercury Press; Paul Hawkes and Research Associates; Paul Samraj; Kenrick Associates, George Rickman and Steve 'Sid' Creasey; Simon Lloyd; and Dave Parker (Johnson 8 §§19, 46-77 **[3/10/114]**).
  - c. He worked with Paul Smith, Chief Football Writer from about 1998 to 2012, on several stories that involved the dark arts, such as instructing PIs to pull mobile numbers, ex-directory numbers, phone bills, company information, bank information, criminal records and police intelligence reports on instruction from Ms Weaver and Mr Buckley. Mr Smith had direct knowledge of a long-standing and well organised phone hacking conspiracy run by senior Editors in the News and Sports departments of the *Sunday Mirror*, and hacked stories were published under his byline without his permission or knowledge (Johnson 8 §§20-42 **[3/10/115]**).
  - d. He also explains the link between stories from other papers and UIG, explaining that (i) some News Editors identified key points in the article or copy and then used UIG such as bladders, PIs and intrusive surveillance to flesh them out and stand them up, and (ii) some reporters brought cuttings from nationals and locals, wire copy and agency stories and suggested UIG such as pulling mobile numbers or billing data to develop the story (Johnson 8 §§95-107 **[3/10/132]**).
  - e. Mr Johnson also gives evidence as to MGN's use of false allegations to attack his credibility in paras 128-136 of MGN's POCFI **[1/2/150]**, describing him as a prolific phone-hacker, when in fact he only ever hacked phones on a few days in 2001, as he voluntarily admitted to the police and explains in his evidence. In fact the reason for there being a large number of calls to the Orange platform number from his extension is that he shared a desk with Dan Evans, who used his phone extension to call that number. This is confirmed by Mr Evans in Evans 5 §§16-17 **[3/7/86]**. Mr Johnson never called the Orange platform number from that phone extension, and is extremely frustrated that MGN is falsely accusing him of being a prolific hacker based on calls made by Mr Evans (Johnson 8 §§101-107 **[3/10/133]**).



- f. MGN has made further attacks on Mr Johnson’s credibility, including in a witness statement by Mr Vakil dated 29 September 2020. In fact, MGN has failed, throughout the MNHL, to call any evidence to contradict Mr Johnson’s evidence in relation to PIs, which has repeatedly been shown to be reliable, and corroborated by documents, even where they have been disclosed *after* he has set out his evidence in a witness statement (Johnson 8 §§108-115 [3/10/135]). Consistent with its practice, MGN’s attacks on Mr Johnson are plainly attempts to silence a whistleblower who has provided priceless information to claimants which information has repeatedly been shown to be reliable, in the face of repeated attacks by MGN.
- g. An incident with Paul Mottram dealt with in more detail below.

### 3. David Seymour

55. Mr Seymour (Seymour 1 [3/17/200]), Group Political Editor of the *Daily Mirror* from 1993 to 2007, who testifies that:

- a. He witnessed the work and behaviour of Piers Morgan as Editor of the *Daily Mirror* on a daily basis between 1995 and 2004, and came to learn of some of the dubious methods being used to get stories in the *Daily Mirror*. He regards Mr Morgan as unreliable and boastful, and apt to tell untruths when it suited him, and on one occasion witnessed his involvement in relation to an incident relating to phone hacking (Seymour 1 §5-7 [3/18/201]).
- b. On 9 January 2006 the *Daily Mirror* ran a huge front-page picture of Princess Diana crying, headlined “*DIANA WEEPS*”, together with a two-page spread on pages 2 and 3 with an article bylined to Christian Gysin, about how Princess Diana was crying after going to see her friend and therapist, Susie Orbach. There were pictures of her running down the street, visibly upset, and one of her crying in her car. The article suggested to readers that Princess Diana was upset because of the problems she faced in her life, and having unburdened herself to her therapist, and there was a column within the two-page spread by then Royal Correspondent James Whitaker setting out reasons why she might be at a “*low ebb*” (Seymour 1 §§8-10 [3/18/202]).
- c. Mr Seymour recalls seeing Mr Morgan playing, several times, a video taken by a paparazzo of Princess Diana exiting the therapist’s place to a group of people (including Mr Seymour). The video showed that Princess Diana was not upset as

she left the building, and that she ran for cover while being chased by a cat-calling mob of photographers, unable to get to her car. She was clearly distressed by the harassment, which reduced her to tears, and then got into the car and continued to sob. The video demonstrated that the *Daily Mirror* article was false, and Mr Morgan, clearly realising this, stated: “*If this gets out, we are finished*” (Seymour 1 §§11-14 [3/18/203]).

- d. Mr Seymour also records that a colleague of his had reported to him that Piers Morgan had, at a lunch with then Chairman of Trinity Mirror Sir Victor Blank, mocked and taunted Ben Verwaayen, CEO of BT who was present, saying something to the effect of “*you need to tell your customers to change the PIN numbers from factory settings, because otherwise you can just get into their voicemail messages*”. The colleague said that everyone else at the table heard Mr Morgan, including Jeremy Paxman and Sir Victor Blank himself (Seymour 1 §§15-16 [3/18/203]).
- e. Finally, Mr Seymour refers to an article by Mr Morgan in the *Daily Mail* dated 20 October 2006, in which he stated that he was played a tape of a message Sir Paul McCartney had left for his then partner Heather Mills on her mobile phone, in which Mr McCartney had played the Beatles song ‘We Can Work It Out’. Mr Seymour recalls that he was walking through the Newsroom one day, likely in March 2001, and Mr Morgan was standing in the middle with a group of reporters around him holding a tape machine, and played the message to all present a number of times, laughing mockingly. Mr Seymour recalls that the Beatles Song played by Mr McCartney was actually ‘And I Love Her’. Mr Seymour was told sometime later that the recording had been made or acquired by Neil Wallis, the then Editor of the *People*, who had lent it to Mr Morgan, which is why in Mr Seymour said at Leveson that the hacking had nothing to do with the *Daily Mirror*. Witnesses were not permitted to name Mr Wallis at the Leveson Inquiry as Mr Wallis was under arrest and being investigated for activities at the *News of the World* (Seymour 1 §§17-21 [3/18/204]).

#### 4. Omid Scobie

- 56. Mr Scobie a journalist and co-author of *Finding Freedom*, a book about the Duke and Duchess of Sussex (Scobie 1 [3/13/171]), who testifies that:
  - a. As a journalism student he spent a week at the showbiz desk of the *Sunday People*. He was given a list of mobile telephone numbers and a verbal description of how to

listen to voicemails, as if it were a routine newsgathering technique (Scobie 1 §§3-4 [3/13/171]).

- b. In April/May 2002 he did additional work experience on the *Daily Mirror's 3AM* column. He recalls during one of those days in the office the Editor, Piers Morgan, came over to talk to someone about a story relating to Kylie Minogue and her boyfriend James Gooding. Mr Morgan asked how confident they were in the reporting, and was told that the information had come from voicemails. After informing the Claimants about this information, Mr Scobie found an article online dated 11 May 2002 which appears to relate to that discussion. It is bylined to James Scott, who was one of the showbiz journalists in the section of the office where Mr Scobie was based. The article quotes "*Friends*" and refers to contact between Ms Monogue and Mr Gooding. There is TDI invoice addressed to James Scott dated 7 May 2002 for "*K Minogue*", and Ms Minogue and Mr Gooding's names can be found in James Scott's Palm Pilot (Scobie 1 §§3-7 [3/13/171]).

(5)-(7) Daniel Portley-Hanks (Hanks 1 [3/3/29]), Steve Whittamore (Whittamore 1 [3/14/176]), and Derek Haslam (Haslam 1 [3/8/93]) – already summarised above in the section on PIs.

(8) Shobna Gulati

57. Ms Gulati (Gulati 1 [1/1/2]) testifies that:

- a. In October 2011 MGN provided a schedule of PI payments to the Leveson Inquiry, including payments to BDI (UK) Consultancy Ltd ("BDI") (the successor to ELI, which ceased working in 2006). In 2020 MGN provided the Claimants with copies of BDI invoices (in response to a generic disclosure application brought by the Claimants), which included three invoices from 2006/7 relating to Ms Gulati and her associate, Kate Ford, which were plainly relevant to Ms Gulati's claim, and yet were not disclosed to her during those proceedings. No (or no proper) explanation has been given as to why payments to BDI were deemed appropriate for disclosure to the Leveson Inquiry in 2011, but not to Ms Gulati and other Claimants in the MNHL in 2013-4 (and subsequently, until the Claimants applied for them in 2020). There are a large number of PI payment records or invoices relating to the Representative Claimants (and their Associates) in the Gulati trial which were never disclosed to them in their proceedings, ("**the undisclosed Gulati PI payments**").

- b. One of the invoices, dated 1 November 2006, has the description “*Project Shobna*”, and the journalists and dates on the invoices match the journalists and dates in emails disclosed in Ms Gulati’s claim. One email disclosed in Ms Gulati’s claim and dated the same day (1 November 2006) states:

*“We have had a tip on Shobna Gulati new fella, on the list - Scott Young, 36a Garthorne Rd, London, se23 1ew: (07736312547)”*

- c. There are also two entries in the James Scott Palm Pilot including Ms Gulati’s name and mobile telephone number, as well as those of Ms Gulati’s friend Kate Ford. Again, this was not disclosed during Ms Gulati’s claim, and only disclosed to the Claimants on 26 April 2020. MGN claimed, in the First Witness Statement of Alexander Vakil for the 18<sup>th</sup> CMC in July 2020, that although it was first reviewed for disclosure in 2014, the James Scott Palm Pilot was not disclosed earlier because:

*“the potential significance of the file [only] started to be understood in the early part of 2020”*

It is not credible that MGN failed to realise the importance of the James Scott Palm Pilot when it was first reviewed in 2014.

- d. There are four other invoices – from JJ Services, Starbase and Unique Pictures - relating to Ms Gulati and Ms Ford, which were not disclosed to Ms Gulati during her claim. The Starbase invoice is even addressed to the convicted phone hacker Ian Edmondson.
- e. As she describes in compelling detail, discovering now all of this important disclosure of further acts of unlawful information gathering (some of which such as the BDI payments and the James Scott Palm Pilot was actively withheld from her) that was not disclosed to her by MGN during her claim has had a profound impact on Ms Gulati.

(9) Melanie Cantor

58. Ms Cantor (Cantor 1 **[3/2/14]**), testifies that:

- a. She had a long-term working relationship with Piers Morgan, and believed he was trustworthy, although he appeared to have obtained confidential and private information relating to her client Ulrika Jonsson on occasions (Cantor 1 §§11-13 **[3/2/15]**).

- b. There were over 400 calls made to her mobile phone, including from journalists who were heavily involved in phone hacking, such as James Scott, Nick Buckley, David Jeffs, Ben Procter and Lee Harpin, and including so-called 'double taps' (Cantor 1 §21 [3/2/17]).
- c. There are also PI invoices showing that Ms Cantor herself was targeted, including a Southern Investigations invoice indicating that her phone bill, including her most recently dialled numbers such as her parents' landline number, had been obtained taps' (Cantor 1 §§22-23 [3/2/18]).
- d. There are entries in the Nick Buckley and James Scott Palm Pilots containing her name and contact details (Cantor 1 §25 [3/2/18]).

10) Benjamin Wegg-Prosser

59. Mr Wegg-Prosser (Prosser 1 [3/6/78] and Prosser 2 [3/16/195]), was Prime Minister Tony Blair's Director of Strategic Communications at 10 Downing Street from 2005 to 2007, and testifies that:
- a. He went out for a Chinese meal with Piers Morgan at the Labour Party Conference in September 2002 (when Mr Wegg-Prosser worked at *The Guardian*), and during the meal he asked Mr Morgan how the *Daily Mirror* had obtained the story about the affair between the England football manager Sven Goran-Eriksson and the television presenter Ulrika Jonsson. Mr Morgan asked Mr Prosser which network provider he used for his mobile phone and then told him the default PIN for that network, and then explained that the default PIN numbers were well known and rarely changed, which is how mobile phone messages could be accessed remotely. He then said, with a smile, that the story on Mr Eriksson and Ms Jonsson was obtained through that method. During the Leveson Inquiry in 2012, having watched Jeremy Paxman give evidence in May 2012, Mr Wegg-Prosser emailed Counsel to the Inquiry Robert Jay QC on 23 May 2012 and told him about the conversation with Mr Morgan in 2002. (Prosser 1 §§5-6 [3/6/79]).
  - b. In his book, *The Insider*, Mr Morgan says that he called Mr Wegg-Prosser on the evening of 21 December 1998 and that Mr Wegg-Prosser said he would call back, and did so (after Peter Mandelson had called Mr Morgan first). Mr Morgan claims that Mr Wegg-Prosser "admitted" there were doubts as to whether Mr Mandelson

had declared a loan to a building society when he applied for a mortgage, suggesting that Mr Wegg-Prosser was the source of the confirmation that Mr Mandelson had not declared the loan. Mr Wegg-Prosser denies having provided any such confirmation, and is not aware of anyone else in Mr Mandelson's office or circle doing so. The story relating to this was published on 24 December 1998 under the byline of Gary Jones (Wegg-Prosser 2 §§4-7 [3/16/196]).

11) Alastair Campbell

60. Mr Campbell (Campbell 1 [3/4/44]), was Downing Street Secretary and the Prime Minister's official spokesperson between 1997 and 2000 and then Downing Street Director of Communications from 2000 to 2003, who himself was a journalist between 1982 and 1994, mostly with the *Daily Mirror* and *Sunday Mirror*. Mr Campbell testifies as follows:

a. He refers to three documents:

- (i) An invoice from Southern Investigations dated 4 January 1999 addressed to Gary Jones, then Investigations Editor at the *Daily Mirror* (and a trusted associate of the then Editor, Piers Morgan), with the description: "*Re: A J Campbell and Fiona Miller*" (sic) and said to be for "*undertaking confidential inquiries and reporting our findings in detail*". At the time Mr Campbell was working as Chief Press Secretary at Downing Street, and Fiona Millar is his partner. The reference, "*WJR/5683/cm*", appears to refer to Jonathan Rees, the co-owner of Southern Investigations (Campbell 1 §3 [3/4/44]).
- (ii) Another Southern Investigations invoice with the same date and also addressed to Gary Jones with the description: "*Re: Alastair John Campbell*" and for "*undertaking confidential enquiries and reporting our findings in detail*".
- (iii) A handwritten note headed "*FAO JONATHAN*", which was disclosed to the Claimants by Graham Johnson (who in turn received the document from a confidential journalistic source), and which is one of many documents which appear to have been seized by the police in a raid on the offices of Southern Investigations in 1999 by MPS Operation Two Bridges. The document has a phone number at the top which is the fax number of Southern Investigations, and the rest of the note is a mixture of numbers, words and Teeline shorthand (which was taught on the Mirror Group Training Scheme). In the top left quadrant of the

document can be found a series of 5 account numbers. Four out of five of them are mortgage accounts held by Mr Campbell and Ms Millar with Cheltenham and Gloucester (although one number has one digit wrong). To the right of the numbers are the words "*Cheltenham + Gloucester mortgage*". Above the numbers is a shorthand set of characters which Mr Campbell believes say "*I have done*", then the word "*5 accounts*", and after the fifth number "*= extension*". The document also contains (a) a figure which is close to the total value of the mortgage in 2000, (b) an accurate figure for the total monthly payment being made towards the mortgage, (c) two additional figures and the words "*Lloyds Bank*" and "*Holborn*" and a sort code, and (d) the account number for an account held by Mr Campbell and Ms Millar with Lloyd's Bank Holborn branch, from which mortgage payments were made.

- b. He believes the purpose of that investigation was for a story published on 24 December 1998 relating to Peter Mandelson's finances (and with Gary Jones and Oonagh Blackman by-lined), because there are documents showing similar UIG by Southern Investigations in relation to Mr Mandelson's financial information. The documents show that a blagger called John Gunning sent MR Mandelson's private banking and mortgage details to Mr Rees at Southern Investigations, who sent them on to Gary Jones on 23 December 1998. There are a further 5 invoices dated 4 January 1999 which make clear that Southern Investigations had also been paid by the *Daily Mirror* to obtain Mr Mandelson's financial details, and those invoices have reference numbers (19735-19739) immediately preceding the two relating to Mr Campbell and Ms Millar.
- c. Mr Campbell therefore believes that after obtaining confidential financial information relating to Mr Mandelson which it published in the story on Christmas Eve of 1998, the *Daily Mirror* then decided to commission Southern Investigations to look into Mr Campbell's financial information.
- d. Mr Campbell also refers to Piers Morgan's memoirs (The Insider) dealing with late December 1998, which refer to Mr Morgan's involvement in the Peter Mandelson story (and give a false account as to how the information was obtained). Mr Campbell states his belief, based on his own experience at the *Daily Mirror* and *Sunday Mirror*, that Mr Morgan must have known the true source of the Mandelson story.

12) Fiona Millar

61. Ms Millar (Millar 1 [3/9/104]), is Mr Campbell's wife, who confirms and corroborates Mr Campbell's evidence.
62. The significance of all this evidence about the nature, scale and duration of UIG will be clear to the Court. It is even greater in light of the unique and extremely disadvantaged position in which the Claimants find themselves: given MGN's deliberate efforts to cover its tracks and conceal evidence of its wrongdoing, the Claimants can only prove their claims by relying on (a) the disclosure provided by MGN, (b) witnesses such as Dan Evans, James Hipwell, Graham Johnson, Steve Whittamore and Daniel Portley-Hanks, and (c) any other evidence, either of their own or from other victims, that they can gather to piece together the jigsaw.

(H) The volume of articles published in MGN's titles which involved UIG

63. The Claimants also rely on the volume of articles published in the *Daily Mirror*, the *Sunday Mirror* and *The People* throughout the entire period, as identified and complained of in claims against MGN in the course of the MNHL, which the Claimants contend derived from, contained or were corroborated by information obtained through the product of UIG.
64. Many journalists at MGN's titles also worked for *The Sun* and the *News of the World* and used the same UIG activities to obtain similar types of stories for publication in those rival tabloid newspapers throughout the period, including Piers Morgan, Gary Jones, Mark Thomas, James Scott, James Weatherup, Ian Edmondson, Neil Wallis, Sean Hoare, Lee Harpin, Polly Graham, Emma Cox, Dennis Rice, Euan Stretch, Paul Field, Chris Tate, James Desborough, Chris Bucktin, Simon Young, James Mellor, Dan Evans, Graham Johnson, Ben Proctor, Amanda Stocks, Tom Newton-Dunn and Sarah Arnold.
65. It is important to remember that MGN's wrongdoing complained of in these claims was carried out intentionally. These were deliberate torts perpetrated by MGN's journalists, as opposed to liability arising from mere negligence or accident. Moreover, MGN carried out this wrongdoing for cynical commercial reasons – it was done in order to get information or stories that they would not otherwise have obtained, and to make money by publishing them or using them in some way. It is equally notable that there is absolutely no public interest involved in any of these stories. The fact that MGN continued its phone hacking at such volume and over the course of so many years more



than evidences its utility as an invaluable source of information, particularly for preparing and publishing stories in its three most popular newspaper titles. That is why these unlawful activities were continued and condoned of at the highest levels.

### **C. KNOWLEDGE AND CONCEALMENT OF UIG BY THE BOARD AND LEGAL DEPT**

66. Another major element of the Claimants' generic case is that Senior Executives within MGN and TM, namely members of the TM Board and the MGN Legal Department, knew or were aware of the use of these unlawful activities from at least as early as 1999 (and certainly by 2007), and despite this knowledge or awareness, not only did they fail to take steps to stop the UIG, but they even sought to conceal them and deliberately lied to and misled both the public, the Leveson Inquiry and the Court in the MNHL by falsely denying or covering up their existence.
67. The Senior Executives who had such knowledge and engaged in such lies and concealment included in particular:
- a. Sly Bailey (the former Chief Executive of TM and member of the Executive Committee, which had day-to-day responsibility for managing the PLC).
  - b. Paul Vickers (Company Secretary and Group Legal Director between December 1992 and November 2014, Board Member and fellow member of the Executive Committee); and
  - c. Marcus Partington (Deputy Group Legal Director and Deputy Secretary of TM, Head of the Editorial Legal Department who worked closely with and reported directly to Mr Vickers).
68. The Claimants rely on such lies and concealment for the following purposes:
- a. *As proof of MGN's wrongdoing.* The inescapable inference is that Senior Executives took these steps to lie about or conceal evidence of these unlawful activities because they knew that they were widespread and habitual at all three of MGN's newspapers during this period. There would be no other reason to do so.
  - b. *As supporting inferences as to the scale and extent of these unlawful activities within MGN.* In accordance with the principles set out in **Armory v Delamirie (1722) 1 Strange 505**, and in line with **Gulati**, MGN's deliberate concealment of its wrongdoing (including the destruction or deletion of millions of documents)

justifies the most favourable inferences being drawn as to the scope, nature and frequency of MGN's UIG, as well as the likely source of suspicious articles.

- c. *As vitiating any reliance upon a defence of limitation.* MGN's deliberate concealment of its wrongdoing (and thus facts relevant to the Claimants' rights of action) from the Claimants means that under Section 32 of the Limitation Act 1980 the period of limitation does not begin to run until the Claimants discovered the concealment or could with reasonable diligence have discovered it.
- d. *As seriously aggravating the damage caused to the Claimants.* The fact that Senior Executives within the Board and Legal Department were aware of these activities at the time and took no steps to prevent them, and then after the event have sought to lie about and/or conceal them, has greatly aggravated the injury caused to the Claimants. The same is true of the fact that as a result the Claimants have not only been deprived of the opportunity to sue at the time, but have also been unable to ascertain the full extent of the unlawful activities undertaken in relation to them.

69. As well as the deliberate concealment (a) already admitted by MGN in its Generic Admissions, (b) found by the Court in **Gulati** (e.g. at [64], [103]), and (c) described by Mr Evans in his evidence as summarised above, the Claimants also rely on a number of examples of unlawful activities at MGN's titles where it is evident that the Legal Department and/or the Board were aware of MGN's journalists engaging in UIG and nevertheless did nothing to stop such activity, failed to take any action in response to it, deliberately concealed it and/or subsequently lied about it. As the Court is aware, the previous Managing Judge directed that a selection of these examples would need to be made for the purposes of determination of the issue of knowledge and concealment at trial. Each of these selected examples is addressed in turn below.

### **C1. Prince Michael of Kent**

70. On 26 January 1999, the Daily Mirror published a front-page story entitled "*PRINCE'S BANK CRISIS*" [11a/2/14], written by Oonagh Blackman and Gary Jones, which revealed confidential details of Prince Michael of Kent's bank account with Coutts & Co. The article suggested that he had incurred an unauthorised overdraft in the sum of £220,000 through his business, Cantium Services, and was £2.5m in debt to his bank.

71. A follow-up story [11a/3/17] was published in the *Daily Mirror* the next day, on 27 January 1999, again written by Mr Jones and Ms Blackman, which claimed the Prince had been given five years to clear his debts. The newspaper was sufficiently confident in its story that it published it, notwithstanding the fact, as it boasted in the article itself, that “*Prince Michael denied yesterday owing Coutts money*”
72. In fact, this story had been obtained illegally through the use by Mr Jones of private investigator Jonathan Rees and his company, Southern Investigations (“**Southern**”). Mr Rees provided him with the numbers of three of the Prince’s company’s bank accounts, and had commissioned a known blagger called John Gunning (who had also worked for JJ Services and was later convicted of data theft offences in 2005) to blag private financial information from the bank. This is demonstrated by the following:
- a. Call data from January to August 1999 obtained by the MPS during their investigation into Southern as part of Operation Nigeria/Two Bridges. This call data shows frequent calls from Southern to Mr Jones and the *Daily Mirror* in the run up to publication of the articles, as well as to Mr Gunning, who unlawfully obtained the bank information by deception.
  - b. Invoices disclosed by MGN from Southern to the *Daily Mirror* dated 25 January 1999 for £175 and £290 for “*Cantium Services Ltd*” and “*Mr and Mrs Cantium*” respectively [18s/14/1322-3].
  - c. A letter from Mr Rees to Mr Jones at the *Daily Mirror* dated 25 January 1999 [11a/30/172] about the Kents with the account numbers of three bank accounts and details of the bank balance as of 7 January 1999. The information contained in this letter was the basis of the second article published on 27 January 1999. The obvious inference is that this information was set out in a letter by Mr Rees to Mr Jones to provide the corroboration that the *Daily Mirror* and its lawyers required to publish the allegations about the Kents’ finances.
  - d. The blagging of bank accounts by Southern at the request of Mr Jones for the *Daily Mirror* was part of a pattern which included the accessing of private financial information of others including the Governors of the Bank of England (as referred to in POCFI§13), Will Carling, James Hewitt (as referred to in POCFI§11-12), Peter Mandelson, and Alastair Campbell and his wife Fiona Millar (the evidence of the

final two persons has already been summarised above) [17n/173/399 – 17n/174/471].

73. Prince Michael then made a legal complaint against MGN in relation to the story through his legal representatives, Biddle & Co. In a letter of 26 February 1999 [11a/5/23], they stated that *“What is clear is that your newspaper has obtained information in a manner which is not only in breach of confidence but which may well also be in breach of the criminal law.”* In response to that letter, the editor of the *Daily Mirror* Piers Morgan asserted in a letter dated 2 March 1999 [11a/6/27]: *“Further your suggestion that this newspaper, or any of its employees, may have been involved in a breach of the criminal law in investigating the subject matter of these articles is poor and thinly disguised threat that I will not dignify with comment...The allegation that the total debts of HRH Prince Michael and Cantium Services Limited have recently been in the region of £2.5 million comes from an impeccable source who has an intimate knowledge of your clients financial state.”*
74. Mr Morgan, and the MGN lawyers he consulted before writing this letter, knew full well that the information had been obtained unlawfully and that the criminal law had in fact been breached, and the *“impeccable source”* they referred to was in fact Mr Rees. MGN has conspicuously never provided (to Biddle & Co, or to the Claimants in these proceedings) any evidence of (for example a payment to) any legitimate source. Mr Morgan’s response showed an awareness of how the Kents’ accounts had allegedly been restructured and rescheduled - information that could only have come from the information which had been blagged by Mr Gunning, and had been provided to Mr Jones by Mr Rees. It is also entirely consistent with the position in relation to the other examples of Southern referred to above, including Mr Morgan’s knowledge.
75. On 29 March 1999, Biddle & Co complained to the Press Complaints Commission (“PCC”) [11a/8/31] on the basis that the articles had breached the code and that the information had been obtained unlawfully. Biddle’s letter stated: *“Our client’s bank manager received on 6th January 1999 a ‘hoax telephone call from a person purporting to be our client’s accountant and attempting to confirm our client’s bank account number, which the same person had apparently succeeded in discovering by making another hoax call, this time purporting to be a customer of Cantium Services Limited, to our client’s accountant in Brussels.”*

76. It is plain that Mr Gunning had made the hoax call referred to, which is confirmed by the fact that the Kents' accountant's name and number was in the letter sent to Mr Jones by Mr Rees on 25 January 1999 [11a/30/172].
77. The letter from Biddle also stated that Mr Morgan [11a/8/31] had told the Kents' public relations adviser that he was in possession of a "statement" which supported the story of an overdraft £222,000. That was exactly the same figure as the one provided by Mr Rees in his letter to Mr Jones on the eve of publication [11a/30/172]. Biddle's letter further stated: "*We have been unable to discover whether and how these two incidents are related but we consider that the evidence suggests that they are.*"
78. The evidence uncovered by the Claimants demonstrates Biddle's conclusion to be correct and that it is clear Mr Morgan had been provided with the financial information which had been blagged by Southern prior to that telephone call.
79. On 16 April 1999, as has been revealed through material (from the police recording of conversations in the offices of Southern from a covert listening device or "probe") obtained during the course of Operation Nigeria/Two Bridges [9b/9/212-3], Mr Rees spoke to Mr Jones, who wanted him to meet with MGN's legal team to discuss the information Rees had provided to Mr Jones. MGN's legal team wanted Mr Rees to verify the information and state how he obtained it, but Mr Rees refused the meeting.
80. On 20 April 1999, Mr Morgan responded [11a/10/47] to the PCC complaint from the Kents, and maintained that the information had been obtained from two sources "*intimately connected with Coutts and Co*" and asserted – falsely (as he well knew) – that any allegation of unlawful activity was "*unfounded.*" Plainly, given Mr Morgan's repeated assertions of this nature, the legal department with whom Mr Morgan was liaising, was also aware of the unlawful source of the story.
81. Mr Jones continued to use Mr Rees and Southern to target the Kents through UIG even while this legal dispute was ongoing, apparently attempting to stand up the article and fend off the legal complaint. This is demonstrated by:
- a. A Southern invoice [11a/30/173] dated 1 March 1999 for £43 relating to Cantium Services Ltd for "*undertaking a company computerised credit search*".
  - b. A further Southern invoice [18i/2/33] dated 20 April 1999 for £112.50 relating to Cantium Services Ltd for "*... obtaining urgent company details direct from Swansea and undertaking a computerised credit search of same*".

- c. A further Southern invoice [11a/11/50] for £35 dated 22 April 1999 relating to Cantium Services Ltd for “*confidential inquiries*”..

- 82. Shortly after, MGN settled the claim and agreed to publish an apology to Prince Michael and pay his legal costs. The payment was authorised by Mr Vickers. In his witness statement for this trial, Mr Vickers confirms that he authorised the payment but states that he cannot recall any involvement with the articles or any direct involvement with the legal complaint (Vickers 1 §30 [4b/23/433]). The Claimants believe that explanation to be implausible given the seriousness of the complaint, the high profile of the complainants (as members of the Royal Family), and the involvement of the PCC.
- 83. Given the above, the Claimants will contend that the MGN Legal Department (including Martin Cruddace, and Mr Vickers) and the Board (which included Mr Vickers) were aware (or must have been made aware) that private financial information had been unlawfully obtained by Southern and that the claim could not be defended by MGN since it could not rely upon or reveal this ‘source’ of information, and yet the Legal Department and the Board concealed this information at the time and subsequently, and did not take any steps to stop the continued use of such unlawful information gathering techniques by MGN journalists.

## **C2. Arrest of Doug Kempster**

- 84. On 24 September 1999, Doug Kempster, a senior journalist at the *Sunday Mirror*, was arrested by the Metropolitan Police in the course of Operation Nigeria/Two Bridges, which was monitoring the activities of Jonathan Rees, the owner of Southern. Mr Kempster was believed to be involved in an illegal newsgathering conspiracy with Mr Rees and his business partner, Sid Fillery, to corrupt serving police officers, and in the unlawful distribution of confidential documents (editions of the Police Gazette) from the MPS Special Branch.
- 85. On the same day, two officers from CIB3, the MPS’s anti-corruption unit, visited MGN’s offices in person to discuss the arrest of Mr Kempster, where they met with Mr Partington. As a result of that visit, and a phone conversation which followed, Mr Partington wrote to DI Burke of CIB3 on 28 September 1999 [11a/31/174] on “Mirror Group” headed notepaper:

**Doug Kempster/Jonathan Rees**

I refer to your visit to our offices on Friday together with Sergeant Paul Urban. During our meeting you gave me some background on the reasons for the arrest of Doug Kempster and Jonathan Rees. You also informed me that you were seeking from us the Police Gazettes which you believe had been scanned onto our system, as a result of Doug Kempster having bought them, together with details of Doug Kempster's payments to Jonathan Rees.

You also mentioned two other matters. Firstly, that you would like to interview Gary Jones although you mentioned that there was no suggestion that he had committed a criminal offence and, secondly, that Doug Kempster had passed onto Jonathan Rees passwords so that Jonathan Rees could carry out electoral roll and company searches at the Sunday Times' expense.

I have carried out investigations into these matters and as far as I am aware the Sunday Mirror, which is the paper that Doug Kempster works for, does not have any Police Gazettes scanned into its fast photo system.

As regards Jonathan Rees and Law & Commercial the Sunday Mirror has no record of having paid anything to either Jonathan Rees or Law & Commercial. Yesterday you mentioned the names Southern Investigations Limited and Planman Limited to me and I have also checked about those companies and there is no record of the Sunday Mirror having paid anything to either of those companies.

86. Mr Partington's explanation that the *Sunday Mirror* had no record of paying "Jonathan Rees, Law & Commercial Services, Planman or Southern Investigations" was, at best, highly disingenuous. In fact, the *Sunday Mirror*, as Mr Partington would have known, had made more than 100 payments to Media Investigations, a well-known alias of Southern, since at least 1996, including payments authorised by Bridget Rowe, when she was the Editor of the Sunday Mirror, and other very senior executives including Pat Pilton, John Honeywell and John McShane.
87. Mr Partington clearly exploited the fact that the MPS may not have specifically named "Media Investigations" in their initial conversations with him to imply that the *Sunday Mirror* had not paid Jonathan Rees or Southern (which was completely untrue as he would have known) thereby effectively concealing the criminal activity by Mr Kempster and the *Sunday Mirror* during an active police investigation.
88. Further, it is clear from Mr Partington's letter that the MPS had also mentioned to him that the name of Gary Jones, the Investigations Editor of the *Daily Mirror*, in connection with Mr Rees and Law & Commercial (another well-known alias of Southern) and wished to interview him in connection with their Investigation. Judging from the defensive tone of Mr Partington's letter, in which he asked for Mr Jones to be given full immunity from any charges, this was clearly a matter of concern to him and the Legal Department and the Board. It is simply not plausible that the arrest of Mr Kempster by the MPS anti-

corruption unit, the prospect of Mr Jones (a senior journalist, responsible for numerous high-profile stories as referred to above) being interviewed, and the implications of these matters, were not discussed by Mr Partington with Mr Vickers, the Legal Director and Company Secretary, and by him with his fellow members of the Board.

89. Mr Partington must, at the very least, have spoken with Mr Jones about his relationship with Jonathan Rees and the work Mr Rees carried out for the *Daily Mirror* (as opposed to the *Sunday Mirror*) or MGN in general, and carried out a similar check of MGN's payment records for the *Daily Mirror*. This would have revealed that Mr Jones, as well as Mark Thomas, then Features Editor of the *Daily Mirror*, had obtained unlawful telephone and financial information from both Southern and Law & Commercial Services, both companies which were specifically named by the MPS in their dealings with Mr Partington, as well as further payments to the alias Media Investigations for similarly unlawful activity. Mr Partington must have spoken to both Mr Jones and his Editor Piers Morgan (with whom Mr Jones was closely connected) before writing back setting out what his instructions were.
90. Given the seriousness of the arrest and the obvious implications for the newspaper, and the decision taken by MGN to suspend their employee, the Legal Department and the Board must also have investigated the payments or commissions made by Mr Kempster not only to Media Investigations but also to other PIs (including bloggers who are known to have obtained information lawfully, such as Jonathan Stafford and Christine Hart). When they did so they would have discovered numerous payments to PIs by Mr Kempster, and dozens to Media Investigations (including many significant ones within the previous few months)
91. Neither the Legal Department nor the Board took any steps to stop the continued use of such UIG techniques by MGN journalists. Indeed, Mr Jones and Mr Thomas (when he was at the *Daily Mirror* and then after 2001 when he became Assistant Editor of the *Sunday Mirror*) continued to use Law & Commercial Services until March 2002, which was after (a) the Kempster arrest, and even (b) Mr Rees being found guilty in December 2000 of conspiring to plant cocaine on an innocent woman in order to discredit her in a child custody battle and sentenced to seven years' imprisonment for attempting to pervert the course of justice.
92. It is notable that Mr Jones, Mr Thomas and Mr Kempster all joined MGN from the *News of the World*, following their colleague Mr Morgan from that newspaper to the *Daily Mirror*



after he became Editor there in 1995. It is public domain knowledge that Southern's work for the tabloid newspapers involved the *News of the World* through Alex Marunchak, who was Mr Morgan's News Editor at the News of the World in 1994 to 1995.

93. On 21 September 2002, Mr Kempster (as well as Mr Jones) was mentioned in an article, "*Journalists caught on tape bugging*"<sup>8</sup> by the *Guardian's* crime editor, Graeme McLagan, which reported that the *Sunday Mirror* was doing business with Southern:

*Mr Kempster, now a government press officer, was asked what information the Sunday Mirror had purchased from Rees. He said: "It's something we just don't comment on. Rees was a man who put up stories. Where he got them from was up to him. If anyone rings up and gives you info, there's no way of knowing where it comes from."*

94. In February 2015, Paddy French published articles<sup>9</sup> on the news blogsite Press Gang, based on documents from Operation Nigeria/Two Bridges which clearly showed the unlawful activities of Mr Rees, Mr Jones, Mark Thomas and Mr Kempster<sup>10</sup>.

95. MGN's concealment in relation to this matter continued until even 2011, when Mr Partington was approached for comment by BBC for its *Panorama* programme on MGN's use of Southern (referring to the *Guardian* article). In a reply [11a/31/176], of 11 March 2011, sent by Nick Fullagar, Director of Corporate Communications of MGN declared that "its journalists had not used Southern Investigations since 1999". Mr Fullagar, MGN and its Legal Department (specifically Mr Partington), knew this to be untrue because (leaving aside the question of the continued use of Media Investigations – one of its aliases – beyond 1999 and into 2000) MGN had in fact used Southern, in the known guise of Law & Commercial Services, until as late as 2002. This was yet another example of MGN misleading investigators, and ultimately the public, through disingenuous use of aliases.

96. Even after the Board became aware of the role of Gary Jones in the criminal activities of Southern – from newspaper articles, books and blogs (dating back to 2002) – MGN

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<sup>8</sup> <https://www.theguardian.com/uk/2002/sep/21/privacy>

<sup>9</sup> <https://press-gang.org/2015/02/19/rogue-journalists-bent-coppers-2/>

continued to promote him within the business. He was made Deputy Editor of the *People* in 2008 and then appointed Editor in 2016. He was promoted to Editor of the *Sunday Mirror* in May 2016. In March 2018, he was promoted to become the Editor in Chief of the *Express* newspapers (when Reach plc acquired it).

97. Notably, MGN disclosed no other correspondence or documents about this matter in its generic disclosure exercise.

### **C3. Amanda Holden and Les Dennis**

98. On 24 March 2001, the *Daily Mirror* published an article headlined “*Amanda’s fury over her friend’s ‘fondness’ for Les*” [11a/54/211], which was written by prolific phone hacker James Scott. The article reported an alleged falling out between Ms Holden and her friend, soap star, Emily Symons, over her becoming ‘*too close*’ to Les Dennis (Leslie Heseltine, Ms Holden’s then husband), Ms Holden as being ‘*paranoid about Emily*’, and quoting an unidentified ‘*friend*’. This information was largely re-used in the 3am column on 2 April 2001 under the headline, “*The best of Emmernies*” [11a/56/215].
99. On 3 April 2001, solicitors for Ms Holden and Mr Dennis wrote [11a/57/218] to Piers Morgan, Editor of the *Daily Mirror*, making a complaint about the information in the articles, pointing out that the information in the 2 April 2001 article repeated material which had been in the 24 March 2001 article bylined James Scott. The letter stated that it was ‘*astonishing*’ that the newspaper had chosen to publish this information without even attempting to check it first with Ms Holden or Mr Dennis. Neither Mr Morgan or the legal department responded for nearly three weeks, during which they will undoubtedly have investigated the substance of the complaint, the source of the articles, and the underlying newsgathering in order to provide a response.
100. Such an investigation would have revealed that Mr Scott and the *Daily Mirror* paid the PI firm TDI more than £1,000 in the period prior to, or shortly after the publication of the first article on 24 March 2001:
- a. An invoice from TDI for £375 for “L Haseltine (sic)” dated 26 February 2001, commissioned by James Scott.
  - b. An invoice from TDI for £310 for “E Symons” dated 2 March 2001, commissioned by James Scott, authorised by Kevin O’Sullivan.
  - c. An invoice from TDI for £85 for “E Symons” dated 12 March 2001, commissioned by James Scott.

- d. An invoice from TDI for £235 for “A Holden” dated 12 March 2001, commissioned by James Scott.
  - e. An invoice from TDI for £300 for “Symons/Haseltine (sic)” dated 23 March 2001, commissioned by James Scott.
  - f. An invoice from TDI for £240 for “A Holden” dated 27 March 2001, commissioned by James Scott.
  - g. Les Dennis’s mobile and landline numbers are in the James Scott Palm Pilot
101. Despite having been sufficiently confident of its story to publish the articles without even attempting to check the information first with any of those involved, MGN made no attempt to defend the claim, choosing instead to publish an apology on 30 April 2001 **[11a/68/235]** and paying the legal costs of Ms Holden and Mr Dennis solicitors, a payment authorised by Martin Cruddace of the MGN Legal Department. **[11a/65/231]**
102. The obvious inference is that the Legal Department investigated and settled this complaint on MGN’s behalf when it became aware that the ‘source’ of the story was, or involved, voicemail interception by James Scott and/or the use of UIG by private investigators, and therefore that MGN could not defend the complaint.
103. When Ms Holden brought a claim in the MNHL in 2015, she pleaded the article of 24 March 2001 as being the product of UIG. In its Defence of 8 January 2016, MGN admitted that the article had been the product of unlawful activity. When Mr Heseltine brought a claim in 2015 and pleaded the same article, in its Defence of April 2016 MGN made a similar admission.
104. In the Generic Defence (at §34.2 **[1/2/107]**), MGN denies that the admission made in its defence of 8 January 2016 in relation to the article of 24 March 2001, was an admission of phone-hacking, but rather was an admission that the article was the product of UIG based on two proximate TDI invoices. Although this is not accepted, it is in any event a distinction perhaps without a difference, given that all of the material upon which the 2016 admission was made (and more) was available to MGN’s Legal Department in 2001, and indeed was far more “fresh”. What is clear (and not denied) is that any investigation into the two articles published relating to Ms Holden in April 2001 and their sources would have revealed very heavy use of UIG, including six TDI invoices in the space of a less than 30 days and phone-hacking by Mr Scott.

105. The Claimants also rely on the evidence of Mr Heseltine (a previous claimant, the actor, comedian and television presenter Leslie Heseltine (Heseltine 1 [3/15/188]), who testifies that:
- a. Disclosure received in his claim showed that his name appeared in Dan Evans's Palm Pilot and back pocket list; that there was call data to his mobile phone from MGN landlines from 2002 to 2004, and also call data relating to his associates, including his ex-wife Amanda Holden from 2002 to 2010; and that there were 11 PI invoices relating to him and 15 relating to Ms Holden. There was also an email from Mark Thomas, then Editor at the *People*, to James Scott, enquiring about Mr Heseltine's telephone number. Mr Heseltine and Ms Holden were the subject of intense intrusion by MGN in 2000, when they separated due to Ms Holden's affair with another actor, and private information about Mr Heseltine and his relationship appeared in MGN's titles without explanation as to how it was obtained (Heseltine 1 §4-5 [3/15/189]).
  - b. He addresses the *Daily Mirror* article written by James Scott dated 24 March 2001, which MGN admitted in Mr Heseltine's claim was the product of phone hacking or other UIG. The same allegations were repeated in another article in the same title on 2 April 2001. There are two PI invoices dating within March 2001 commissioned by the *Daily Mirror* and addressed to Mr Scott, relating to "extensive enquiries" relating to Ms Holden (Heseltine 1 §§6-8 [3/15/190]).
106. Mr Heseltine recalls that he and Ms Holden were upset by the articles and surprised that they had not been contacted for comment prior to publication. Neither of them had provided the information set out in the articles to MGN. Their solicitors sent letters to the *Daily Mirror's* Editor and contacted the legal department to complain about the articles, sending a letter of complaint dated 3 April 2001. MGN's legal department did not make any attempt to contest the issues or offer a defence. Instead, it settled the claim quickly, including payment of legal costs, followed by an apology published on 30 April 2001. Mr Heseltine recalls being shocked at how easily the claim had been accepted and settled, but he now feels that they must have known that the information in the article had been obtained through UIG, and the claim was settled quickly to avoid further scrutiny (Heseltine 1 §§9-13 [3/15/190]).

#### **C4. Garry Flitcroft**

107. On Wednesday, 18 April 2001, Pamela James contacted Alison Cock, a *People* reporter, to sell a story about a recent relationship with married Blackburn Rovers footballer Gary Flitcroft. Ms James was a lap-dancer who had previously sold a story to Ms Cock when Ms Cock was a reporter on the Daily Star.
108. On Thursday, 19 April 2001 Helen Hammond (as asserted in her letter of 2 May 2001 to the *People* Editor Neil Wallis) contacted the *People* newspaper to also sell a story about her relationship with Mr Flitcroft, which had recently ended.
109. On 20 April 2001, Ms Cock informed her News Editor James Weatherup (subsequently convicted for hacking at the *News of the World*) of the Pamela James story, according to a memo produced by Ms Cock at the request of Marcus Partington shortly afterwards.
110. It appears that *People* reporter Adam Moss encouraged Ms Hammond to phone Mr Flitcroft, on 20 April 2001, while he was recording the call, to see if she could get him to confirm the relationship. This does not appear to have been successful [12c/36/10].
111. Interviews were conducted with Ms James and Ms Hammond and the plan was to publish the Pamela James story or both stories several weeks into the future because Ms James was emigrating to Australia and did not want it published before she left.
112. However, it seems that that timetable was amended because both women made contact with Mr Flitcroft around this time, suggesting – according to Mr Flitcroft – that he buy their silence. These allegations of blackmail were always contested by Ms Hammond and Ms James. However, when it became clear that the *People* was going to print the stories, Mr Flitcroft sought and obtained an injunction on 27 April 2001 preventing publication.
113. Over the next few weeks, in a series of Court hearings, MGN strongly contested the injunction but the interim injunction was finally confirmed in a judgment on 10 September 2001. MGN appealed and the injunction was ultimately lifted by the Court of Appeal on 11 March 2002. The *People* then published a double-page spread about Mr Flitcroft's relationship with both women on 31 March 2002.

114. When the hacking scandal broke in 2011, Mr Flitcroft suspected that at least one of the women had been identified by MGN as a result of phone hacking because it was too much of a coincidence that both would have contacted the same newspaper (*The People*, which was not the biggest spender on “Kiss & Tell” stories ) at almost exactly the same time, when they did not know each other. Because he was contacted by Ms James after he had been contacted by Ms Hammond, he assumed that Ms James had been found by these unlawful means by *The People* after Ms Hammond had gone to them. He gave evidence to this effect at the Leveson Inquiry in 2011.
115. The following year, Mr Flitcroft brought one of the earliest hacking claims in the MNHL, which MGN sought to strike-out by way of an application in early 2013. Mann J dismissed MGN’s application in September 2013. Following the judgment, and just prior to providing disclosure, which was due in September 2014 MGN agreed to settle Mr Flitcroft’s claim (based purely on the one story), with payment of substantial damages. Mr Flitcroft’s solicitor, in both the 2001 injunction proceedings and in the 2011 hacking claim, was Mark Lewis.
116. In July 2019, pursuant to an Order for generic disclosure of PI payments, MGN finally disclosed an invoice relating to Mr Flitcroft. It was a Starbase invoice [12c/68/358] dated 13 August 2001 addressed to James Weatherup, contains the following details: "*Your Ref: JW/20-4/DCS*"; "*Our Ref: SBJ0784*"; "*Consultancy Re: Flitcroft [sic] G*"; "*Tax Point 16/07/2001*", and which is stamped "*Date received 23 Aug 2001*". It was for £150.
117. The Claimants’ case has always been that although the Starbase invoice is dated 13 August 2001 the detail “*Your Ref: JW/20-4/DCS*” indicates that the work was commissioned by James Weatherup (JW) on 20 April 2001, which was the day after Ms Hammond contacted *The People* and also the same day that Ms Cock told Mr Weatherup about Pamela James. The Claimants believe that payment of £150 was for blagging an itemised phone bill of Mr Flitcroft from his mobile telephone provider and/or for evidence of “*call traffic*” between his phone and those of the two women (which was important issue in the case) and/or for phone-hacking his messages, and that this was how *The People* sought to corroborate the story of Pamela James and/or Helen Hammond.
118. The Claimants also rely on the evidence of Mark Lewis (Lewis 1 [3/11/142]) who sets out how, during the injunction proceedings, Mr Partington was both extremely eager and persistent in seeking to obtain Mr Flitcroft’s itemised phone billing from Mr Lewis. This

pattern of behaviour indicated that Mr Partington already knew what Mr Flitcroft's phone billing records would show (as they eventually did).

119. In November 2020, pursuant to an Order for generic disclosure of PI payments, MGN disclosed two further invoices relating to Mr Flitcroft:
  - a. An invoice from Christine Hart (Warner) dated 1 May 2001 which refers to '*Gary Flitcroft enqs*' and is for £195. It named Mr Edmondson (another subsequently convicted phone-hacker) in relation to these enquiries and was addressed to Mr Edmondson and Mr Weatherup.
  - b. An invoice from Christine Hart dated 6 April 2002, addressed to Mr Edmondson, with two enquiries: one for "*Gary Flitlock [sic] Hotel locate*" for £259, and "*Further Flitlock [sic] Enqs*" for £175.
120. The Warner invoice of 1 May 2001 was for unlawful work carried out prior to the originally intended publication date of 29 April 2001. The Warner invoices of 6 April 2002 for "*Gary Flitlock [sic] Hotel locate*" and further "*Flitlock [sic] Enqs*" related to unlawful work carried out during the litigation and for the purposes of the article that was published on 31 March 2002.
121. The three enquiries carried out by Warner (Christine Hart) and the Starbase invoice demonstrate that UIG was used in the preparation of the injunctioned story and of the story as published.
122. The UIG evidenced by the PI Inquiries was known by the Editor of *The People* (Neil Wallis) and by the Legal Department of MGN from the start of the initial injunction proceedings, and withheld from Mr Flitcroft, the Leveson Inquiry and the High Court during the MGN's (thankfully failed) strike-out application of Mr Flitcroft's MGN claim.
123. Despite filing a witness statement in the 2001 injunction proceedings and in the 2013 strike-out proceedings (in relation to Mr Flitcroft's hacking claim), Mr Partington deliberately failed to mention the existence of these payments to PIs, which he must have been aware of from investigating the background to the article and to Mr Flitcroft's hacking claim. It will be recalled that MGN had a searchable database of PI payments at the time (the @work database). MGN also failed to serve a statement at any point in the injunction proceedings from Mr Weatherup (who was subsequently convicted of

phone hacking in relation to his activities for the *News of the World* whom he joined shortly prior to Dan Evans going over there from the *Sunday Mirror*).

124. It is clear that MGN, and specifically its Legal Department, was aware of the UIG that had taken place and yet withheld it from the High Court and the Court of Appeal in the injunction proceedings and from this Court in the MNHL proceedings.
125. The Claimants also draw the Court's attention to (a) the fact that Mr Partington penned an opinion piece for *The People* on 11 November 2001 (prior to the appeal) protesting about the decisions of the first instance judge in granting the injunction, (b) the aggressive way in which the Editor, Neil Wallis, attacked the injunction judgment prior to the appeal on the front page of that edition of *The People* (see *para XX below*).
126. The Claimants also rely on the evidence of Mark Lewis (Lewis 1 [3/11/143]), who testifies that:
  - a. Marcus Partington (MGN's head of legal at the time) was well aware of this MGN's UIG in the Flitcroft story, and was insistent (bordering on obsessive) about Mr Lewis disclosing his client's telephone bills in the injunction litigation, strongly suggesting that he was aware of the content of those bills.
  - b. MGN's settlement of Mr Flitcroft's UIG claim before disclosure, with payment to Mr Flitcroft of substantial damages and his legal costs came despite the then Managing Judge having referred to the claim as 'weak' in his judgment on the strike-out application on the basis of a sworn witness statement provided to the court by Mr Partington about the circumstances in which the relevant article had been prepared.
  - c. Nowhere in that statement did Mr Partington refer to the fact that (as he must have known by September 2001 at the latest) MGN had unlawfully obtained information, including through engaging a PI – Starbase – for which there is an invoice dating the work to 20 April 2001 (the day when, according to Mr Partington's evidence for the summary judgment application, Ms James's allegations were brought to the attention of the News Desk, headed by News Editor James Weatherup, and the day after Ms Hammonds first contacted the newspaper according to her letter to the Editor of *The People* dated 2 May



2001) with the description “*Consultancy re Flitcroft* [sic.]” and the reference “DCS”, and the Christine Hart payments of May 2001 and April 2002.

127. Perhaps most noteworthy is Mr Lewis’s recollection of Mr Partington calling out at him across the Bear Garden at the Royal Courts of Justice on 27 April 2001 and loudly demanding Mr Flitcroft’s telephone records (Lewis 1 §9 [3/11/144]), a request being repeated later that day and made no fewer than 18 times in correspondence<sup>11</sup>, with Mr Partington appearing to know that the requested disclosure would support MGN’s case. Mr Lewis also gives a further example of Mr Partington referring in correspondence to telephone communications between Mr Lewis and his client Mr Flitcroft (Lewis 1 §32 [3/11/150]).
128. Mr Lewis also confirms that Mr Partington had raised a number of evidential points about Mr Flitcroft’s stays at various hotels (Lewis 1 §16 [3/11/146]), and refers to the two invoices from the PI Christine Hart’s company, Warner, for May 2001 and April 2002 showing three inquiries which she was commissioned to carry out on Mr Flitcroft. Ms Hart’s work was not referred to by MGN at all during the privacy claim (despite MGN applying to set aside the original injunction on the grounds of alleged non-disclosures by *Mr Flitcroft*).
129. The Court of Appeal cited the question of whether the information sought to be restrained had been obtained unlawfully as one of the key factors in assisting the Court to decide on whether an injunction was justified ((see Lord Woolf CJ’s judgment at [11(x)]). These PI Payments were kept from the Court by MGN. Ironically, one of the grounds for MGN’s appeal was that Mr Flitcroft had withheld relevant information from the Court at first instance,
130. On 11 November 2001 *The People* published a front page splash with the headline “*GAGGED, This millionaire soccer star plays for one of Britain’s top teams. He’s a hero to fans. But he is a lying, sexual predator who cheated on his wife with TWO lovers. Yet a High Court judge, in a ruling that destroys Press freedom, has banned the Sunday People from telling the truth about him.*” There were also double-page spreads on pages 4-5 and 6-7 protesting vehemently about alleged “ *censorship*”, together with an unflattering profile of the Judge who had granted the injunction and an opinion piece by Mr Partington himself, again protesting that Mr Flitcroft had withheld information from

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<sup>11</sup> See all 18 references set out in Appendix A to Lewis 1 [3/11/158].

the Court – and yet MGN had deliberately withheld from the Court of Appeal the unlawful means used to obtain the story, which would have been relevant to the outcome of the Appeal, as referred to above.

131. Mr Lewis refers to another occasion, this time in December 2001, when Mr Partington appeared to use information about Mr Flitcroft obtained from either Mr Flitcroft's or Mr Lewis's voicemail messages, calling Mr Lewis and asking for more information relating to Mr Flitcroft (Lewis 1 Confidential Schedule A [3/11/154]).
132. Mr Lewis also confirms that he was targeted himself by MGN, as is demonstrated by two ELI Invoices which name Mr Lewis as a target, dated 21 July 2005 and 31 March 2006 (Lewis 1 §§29-31 [3/11/149]). He summarises his involvement in a matter related to Jenny Armstrong, an employee at the Professional Footballers' Association (Lewis 1 Confidential Schedule B [3/11/152]).

#### **C5. Piers Morgan's knowledge of UIG and the Shafta Awards 2002**

133. In 2002, shortly after the *Daily Mirror* had published a sensational story revealing that England football manager Sven Goran Eriksson was engaged in a sexual relationship with Ulrika Jonsson – a story obtained or corroborated through voicemail interception – its Editor Piers Morgan attended the tabloid/showbusiness journalism notorious awards ceremony, the Princess Margaret awards (known as “the SHAFTA awards”) alongside his rival, the Editor of the *Sun's Bizarre column*, Dominic Mohan. During the event, Mr Mohan commented to all present that it was in fact a “*lack of security*” at Vodafone (the sponsor of the event) which had led to the *Mirror's* showbusiness exclusives under Mr Morgan, a joke which prompted the biggest laugh of the evening, according to a report dated 1 May 2002 in the *Guardian*). It is clear from this that many or most of those present, including Mr Morgan, were well aware of the fact that the *Daily Mirror* was habitually using voicemail interception to obtain showbusiness exclusives.
134. Mr Morgan's awareness of (and involvement in) UIG is also clear from the following:
  - a. The highly regarded broadcaster and journalist Jeremy Paxman, in his evidence on oath to the Leveson Inquiry, stated that he attended a lunch on about 20 September 2022, hosted by Sir Victor Blank, then Chairman of the TM Board, which was also attended by Mr Morgan (who was still Editor of the *Daily Mirror*) as well as Ulrika Jonsson. During the lunch, Mr Morgan admitted to those present that it was easy to

access people's voicemail messages, and teased Ms Jonsson about the voicemail messages left for her which he had heard. Paxman considered Mr Morgan's teasing to be close to bullying on account of its persistence. In response to Mr Paxman's evidence to the Leveson Inquiry, Mr Morgan publicly tweeted the words: "*Right – that's the last time I'm inviting Jeremy Paxman to lunch. Ungrateful little wretch*". Morgan's response demonstrates that he accepted that Paxman's account was true.

- b. Mr Morgan has publicly admitted to the fact that he was well aware of the practice of voicemail interception at the time and how widespread its use was, including at the *Daily Mirror*, for example in an article on 19 October 2006 in the *Daily Mail*, in an interview for *GQ* magazine with former supermodel Naomi Campbell published in April 2007, and his Desert Island Discs interview with BBC Radio 4, broadcast on 12 June 2009. The Claimants will provide further detail as to Morgan's clear involvement in and knowledge of UIG (a matter that is highly relevant to the Duke of Sussex's claim as well as the generic claim) in their opening.

135. It is also inconceivable that members of the Board and Legal Department would not have become aware of Mr Mohan's comment, or of Mr Morgan's admissions, both in public and at the dinner with the Chairman of the Board in 2002.

## **C6. Reports of Phone Hacking in 2002**

136. By 2002, reports were beginning to emerge in the industry-read media section of the national press, that voicemail was a common practice among tabloid newspapers, including at MGN – for example, an article published in the *Guardian* on 14 October 2002 entitled "*Celebrity 'phone hacking' on the increase*". Again, as a leading media organisation and public limited company, it is inconceivable that the Board and Legal Department remained unaware of these reports, and the Claimants' evidence is that they were well aware of them. Indeed, even MGN's own witness Mr Partington confirms that he was aware of such reports (Partington 1 §58 [4b/21/412]).

## **C7. Rio Ferdinand**

137. On 19 October 2003, the *Sunday Mirror* published a sensational article teased on the front-page under the headline "*Football in Crisis: Rio phone Sensation*" which alleged that the England and Manchester United footballer Rio Ferdinand, had used his mobile phone in the period when he had missed a random drugs test on Tuesday 23 September

2003. The inside spread contained a sub-article, entitled "*Football in Crisis: Rio phone Sensation: WHY TEXT HIS DOC? First call after Rio misses test*" ("**the First Sub-article**") written by James Saville and James Weatherup (who has since been convicted of phone-hacking when at the News of the World the following year). The First Sub-article, and another related and adjacent article of the same day ("*Football in Crisis: Rio phone sensation: Ferdinand's secret call to mistress*" by Sara Nuwar) ("**the Second Sub-article**") both referred extensively and in great detail to Mr Ferdinand's use of his mobile phone, including times of calls and text messages and references to voicemails, as well as to "*sources close to Ferdinand*". Both sub-articles were obviously obtained through UIG techniques over a period of more than ten days, and this was also something that was clearly known to both the Editor, other senior editorial executives and the Legal Department (Paul Mottram and Marcus Partington).

138. On 9 October 2003, Mr Saville emailed James Ducker, a football writer at the Manchester *Evening News* who covered Manchester Utd FC, and informed him that he was doing some "*probing*" on Rio Ferdinand. He then asked: "*Can you tell me what time United players normally train on a Tuesday at Carrington?*" It is notable that the missed drugs test happened on a Tuesday, and the clear inference is that Mr Saville had already unlawfully obtained a copy of Mr Ferdinand's itemised mobile phone records and was seeking to match the time of calls and texts made by Mr Ferdinand with the time of the training session. Mr Ducker informed him that training was usually between "*usually between about 10/10.30am and 11.30am/12pm.*"
139. Call data from the *Sunday Mirror* news desk extensions shows several calls to Mr Stafford on 8 and 9 October 2003, and on 23 November 2003 Mr Stafford invoiced the *Sunday Mirror* for £4,347.50 for the month ending 31 October 2003. Although the detailed schedules to Mr Stafford's high-value monthly invoices providing a breakdown of the work carried out were destroyed by MGN at the time (a clear act of concealment), the reasonable inference is that Mr Stafford had blagged Mr Ferdinand's itemised phone records at the *Sunday Mirror*'s request.
140. After obtaining Mr Ferdinand's detailed phone records, Mr Saville then systematically worked his way through the people Mr Ferdinand had called and texted on the day of the missed of the drug test. This is apparent from the large number of invoices from ELI, the PI firm who specialised, among other unlawful acts, in 'turning around' phone numbers (identifying the subscriber details from a mobile or landline number by blagging

the service provider), which were commissioned by Mr Saville in relation to a number of Mr Ferdinand's known associates, dated between 10 October and 17 October 2003.

141. All of Mr Ferdinand's associates (including Rebecca Ellison, Lauren Alcorn, Gavin Rose, Rachel Gledhill, Kim Vinnicombe, Sanela "Diane" Jenkins and the Football Association) who were named on the ELI invoices commissioned by Mr Saville and others at the *Sunday Mirror*, were also named in draft versions of the story Mr Saville emailed to Mr Stretch and Nick Buckley on Saturday 18 October 2003. There can be no doubt that for such a high-profile story, these draft articles, with frequent references to voicemails, text messages, times of calls and the identity of the person who was called, were legalised prior to publication by the Legal Department. Any person reading the article (let alone an experienced in-house lawyer) would have been left in no doubt that the data must have come from Mr Ferdinand's itemised phone records, and in the circumstances, must have worked out, or more likely seen, the evidence corroborating the facts in the story.
142. Mr Saville's draft article was eventually split into the First Sub-article and the Second Sub-article for publication. The First Sub-article was carefully rewritten, though it still contained clear references to phone calls and messages, the precise time of those calls and messages, and references to voicemails. It appears that this rewriting was done at the suggestion of the Legal Department, to make it less obvious that the *Sunday Mirror* had somehow obtained Mr Ferdinand's phone records and that both articles were sourced from those records.
143. On 23 October 2003, the *Guardian* reported that Mr Ferdinand's legal teams were concerned that two Sunday newspapers (the other being the *News of the World*) had obtained and published details of his mobile phone records. The article went on to state that "*It is understood that last week someone methodically phoned everyone Ferdinand had contacted via his mobile on September 23, suggesting that the person had access to the footballer's phone records*". This was plainly a reference to Mr Saville.
144. The *Guardian* article also referred to Mr Ferdinand's legal adviser contacting the Press Complaints Commission and that a complaint to the police had not been ruled out. It is implausible that Mr Mottram, Mr Partington and Mr Vickers were unaware of such a complaint and the possibility of a criminal investigation. Nor is it plausible that they took no steps to investigate the article, the information it was based on and how it was obtained, including using MGN's database of contributor and invoice payments.

145. It is noteworthy that in the claim of Lauren Alcorn, at paragraph 17 of her Amended Particulars of Claim, Ms Alcorn pleaded that the article “*Football in Crisis: Rio Phone Sensation*” of 19 October 2003 had been obtained unlawfully. This was the headline of the front page tease for an inside spread consisting of the First and Second Sub-articles. Ms Alcorn did not plead the two adjacent Sub-articles in the inside spread separately. The pleaded article was admitted by MGN in its Amended Defence. In **Gulati**, Mann J found that the article “*seems to have been accepted as the fruit of hacking*”. He also found that the it was “*likely to have been determined by hacking or blagging*” and awarded £10,000 in damages in relation to it (at [266] and [284]).
146. MGN Generic Defence denies the incident is relevant to the issue of Board and Legal knowledge (§66.5 **[1/2/120]**) and does not even admit that the article (either the article as pleaded, or either the First or Second Sub-article) was obtained through UIG. Further stretching credulity, at §66.10 **[1/2/121]**, in relation to the numerous ELI invoices which were commissioned by Mr Saville and others at the *Sunday Mirror* in relation to Mr Ferdinand’s associates, MGN denies (as is standard pleading practice in the Defences served in individual claims brought against MGN) that there are any proximate invoices naming Mr Ferdinand and others named in the article, and an assertion that the reference in the RAGPOC to Mr Ferdinand’s associates is “*unclear*”.
147. MGN’s pleaded position is misconceived and untenable for the following reasons:
- a. The draft article written by Mr Saville identifies many of those named on the ELI invoices, and describes the nature of their association to Mr Ferdinand.
  - b. Mr Saville explicitly states at the start of his email that he has removed some of the names from the second draft articles, presumably on legal or senior editorial advice.
  - c. The Second Sub-article, which was split off from the longer draft article, names Ms Alcorn and Ms Ellison, who were also both named on the proximate ELI invoices.
  - d. The First Sub-article names the FA Liaison Officer Anne Romilly, and there is an ELI invoice for “*Football Assoc*” commissioned by Mr Saville.
148. Furthermore, MGN asserts (§66.9 **[1/2/121]**) that the First Sub-article has never been admitted in the MNHL. This is incorrect. As stated above, MGN admitted this article in

their Amended Defence to Lauren Alcorn's claim, and in any event the Second Sub-article has been determined as the product of UIG in **Gulati**.

### **C9. Operations Glade and Motorman**

149. Between 2003 and 2005, the conduct of journalists from the *Daily Mirror*, the *Sunday Mirror* and *The People* (and other newspapers) was under investigation by the MPS and ICO under Operations Glade and Motorman respectively in relation to their commissioning of private investigator Steve Whittamore (at JJ Services) to unlawfully obtain (often through his network of subcontractors) private information for MGN.
150. During the course of Operation Glade, two former MGN journalists (Euan Stretch and Gerard Couzens of the *Sunday Mirror*) and one current journalist (Michael Greenwood of the *Daily Mirror*) were interviewed under caution in January 2004 for commissioning and making payments to Mr Whittamore to unlawfully obtain confidential information from the Police National Computer ("PNC") – namely "reversal" of VRNs (vehicle registration number plates) and criminal record checks – through corrupt police employees. This information which was then used in published articles. Operation Glade focussed on the unlawful use of the PNC and only covered such activities in 2002-3, because prior to that Mr Whittamore had a source at the DVLA who could "spin" VRNs, and the MPS sought to focus on misuse of the PNC.
151. The interviewing of journalists by the police for criminal offences carried out in the course of their employment by MGN was considered and dealt with by the Legal Department. It also instructed an external solicitor to attend the interviews (see MGN's response dated 23 March 2018 to the Claimants' RFI, §10c [1/12/230]), and the Board was also informed (Partington 1 §37-39 [4b/21/408]). As part of any serious investigation, the Legal Department and the Board would have reviewed MGN's own payment records relating to Mr Whittamore, especially for work commissioned by these individuals.
152. This would have revealed almost 4,700 payments<sup>12</sup> worth a total of more than £420,000 to Mr Whittamore across all three MGN titles, and that serious breaches of the law had been committed by far more MGN journalists than the three who were to be interviewed under Operation Glade. It would also have revealed that the use of Mr Whittamore by MGN journalists extended beyond the unlawful obtaining of criminal record checks and

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<sup>12</sup> Between December 1997 and the end of December 2003

VRNs. It included a range of self-evidently unlawful acts, such as obtaining of itemised phone records and “*Friends and Family*” phone details, numerous different blags, mobile telephone and landline conversions, and the obtaining of ex-directory numbers

153. Further, it would have revealed that Mr Couzens, Mr Stretch and Mr Greenwood had instructed other PIs on hundreds of other occasions, and in relation to JJ Services were not the only MGN journalists who instructed Mr Whittamore to obtain criminal record checks and VRNs unlawfully. Other journalists who instructed Mr Whittamore to obtain the same type of information included, and who were in the employment of MGN in January 2004, included:

David Brown	<i>The People</i>
Dean Rousewell	<i>The People</i>
Graham Brough	<i>Daily Mirror</i>
Jo Merrett	<i>Daily Mirror</i>
Ruki Sayid	<i>Daily Mirror</i>
Tom Newton-Dunn	<i>Daily Mirror</i>

154. It is inconceivable that this information, which was readily available on MGN’s system, was not known by the Editors (Piers Morgan, Tina Weaver and Mark Thomas), the Managing Editors, and the Legal Department including Marcus Partington and Paul Vickers, and the Board. Despite that, neither the Legal Department nor the Board took any action to prevent the continued use of such techniques by MGN journalists. Indeed, MGN journalists continued to use Mr Whittamore until 2006, long after Mr Partington knew (according to his own witness statement - Partington 1 §37-39 [4b/21/408]) of Mr Whittamore’s arrest in 2003, after the interviews under caution in 2004, and even after Mr Whittamore had been convicted in April 2005. None of the former Editors or Managing Editors have been asked or have agreed to give evidence in support of their former employer.

155. Nor were any of the journalists involved sanctioned in any way.

a. Mr Stretch was not employed by MGN at the time he was interviewed by officers from Operation Glade, having moved to the *Sun* in late 2003 from the *Sunday Mirror*, where he had been News Editor. However, he was welcomed back to the *Sunday Mirror* as Chief Correspondent in or around March 2004, a few weeks after his Operation Glade interview, and before the decision was taken not to press charges against him and other journalists. On his return to the *Sunday Mirror*, Mr Stretch,



who was a phone hacker and a prolific user of private investigators to obtain unlawful information, continued to use PIs for unlawful acts on an industrial scale. In 2007 he moved to the *Daily Mirror*, where he became Deputy News Editor. Mr Stretch is not giving evidence for his former employer.

- b. Mr Greenwood was promoted to Assistant News Editor of the *Daily Mirror* in 2006, and in 2014 became the Group Executive Editor of TM, and is the current Head of the Reach News Wire. Mr Greenwood is not giving evidence despite still being employed within the same group as MGN.
  - c. Mr Couzens became a freelancer based in Spain, from where he sold articles and information to MGN newspapers (and continues to do so to this day). Mr Couzens is not giving evidence for his former employer and current business contractor.
156. Despite the fact that MGN, including its Legal Department, were aware from 2003 of the huge scale of the use of Mr Whittamore by many of its journalists, and the unlawful nature of at least some of those uses, and that payments to JJ Services from 1 January 2005 onwards were disclosed by the Board to the Leveson Inquiry in 2011, MGN's Board maintained its denial of UIG in the MNHL until August 2014, and even at that stage bluntly refused to plead to JJ Services beyond a limited admission that some of his activities were unlawful and refused to carry out any investigations into the matter {REF – Defence]. .
157. The Legal Department was aware of some of the articles which were the subject of the police's investigation. An article<sup>13</sup> of 15 April 2005 by Claire Cozens and Chris Tryhorn in the Guardian headlined "*Papers paid for police information*" on the Blackfriars sentencing hearing of Mr Whittamore and his three co-accused, stated

The resulting articles included a story in the Sunday Mirror on May 12 2002 about Ms Wallace, headlined "Kat's guilty secrets. She hides criminal past from EastEnders bosses", and articles in the Mail on Sunday and the Sunday Mirror on May 19 2002 covering the Millwall soccer riots and the suspected involvement of two brothers, John and David Grimwade. Also mentioned were a December 1 2002 article in the Sunday Mirror on Clifton Tomlinson, and a February 2 2003 article in the Mail on Sunday about Mr Crow and his means of transport to work. Ms Karmy-Jones also said the Sunday Mirror reporter, Euan Stretch, had requested information about Anthony Truman, the partner of the EastEnders actress Brooks.

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<sup>13</sup> <https://www.theguardian.com/media/2005/apr/15/sundaymirror.mailonsunda>

158. An informal transcript made by the representative of the ICO at the same hearing gave the following further details.
- a. 12 May 2002 the *Sunday Mirror* featured an article on Jesse Wallace who is known as TVs Kat Slater. The article was entitled "TV Kat's Guilty Secrets" and revealed a fraud conviction on her then boyfriend Paul Whitworth.
  - b. A PNC check was made on John Grimwade on 16 May 2002, again by the *Sunday Mirror*. This related to a violent disorder following a football match, the journalist's name appeared in Whittamore's ledger and below that was an entry in relation to Mr Grimwade's brother, David. On 19 May 2002 an article appeared in relation to a riot between Millwall fans and Birmingham City Fans<sup>14</sup>.
  - c. A PNC check on Anthony ("Tony") Truman (the partner of the actress, Charlie Brooks, who plays Janine Butcher in *EastEnders*) was made on 25 May 2002. Euan Stretch of the *Sunday Mirror* sought the information.
  - d. On 21 July 2002 the *Sunday Mirror* featured an article on Andrew Goody, Jade Goody's father.
  - e. On 1 December 2002 the *Sunday Mirror* ran an article in respect of Clifton Tomlinson, Ricky Tomlinson's son.

#### **C10. Abbie Gibson and the Beckhams**

159. On 10 July 2005, *The People* published an article about David Beckham and his former nanny, Abbie Gibson, who, after leaving their employment, had signed a deal with the *News of the World* in April 2005 to sell her story about life with the Beckhams. Consequently, Mr Beckham and his wife, Victoria, sought an injunction to prevent publication of the story, which was unsuccessful, and the story was printed on 24 April 2005.
160. The *People's* article, under the headline "*Becks Phone Fury*" alleged that since Ms Gibson had left her job four months earlier, Mr Beckham had left a series of abusive

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<sup>14</sup> <http://news.bbc.co.uk/1/hi/england/2256132.stm>  
<https://www.thefreelibrary.com/4+football+riot+thugs+locked+up.-a091513452>

voicemail messages on her mobile phone. The article contained numerous references to the content of these private messages, the timing of the calls, "*sources close to Abbie*" or an unnamed "*friend*". The article even quoted from a voicemail including one referring to Ms Gibson as being "*really sad*".

161. On 12 July 2005, the Beckhams via their lawyers made a legal complaint to MGN. Rather than contest the claim, MGN chose to admit the story was untrue, and agreed quickly to settle the claim and pay the Beckhams' damages and legal costs. The reason for this immediate capitulation was that the information in the article had been obtained unlawfully, and MGN knew it could not defend the claim without revealing that the information was the product of voicemail interception. This conclusion is supported by a former reporter for *The People*, David Brown, in the witness statement he provided as part of his employment claim against MGN in May 2007, in which he stated:

29. The People regularly used information from "screwed" mobile phones, where private citizens mobile phone numbers were hacked into for personal information. One example of this came on July 10, 2005, when an article published in The People under the headline "Beckham's Hate Calls to Nanny." This story was gleaned by "screwing," i.e. hacking, into the phone message bank of the nanny, who was called Abbie Gibson. David Beckham had left a message commenting about Gibson's decision to sell her story. It took the company less than a month to pay David Beckham substantial damages because it knew it could not produce the evidence of tapped mobile phones in any litigation.

162. Documents disclosed by MGN in this litigation corroborate Mr Brown's evidence:
- c. An ELI invoice of 15 April 2005 for £80, for "*A Gibson*", commissioned by Lee Harpin, a prolific phone hacker who worked on *The People's* news desk. In keeping with ELI's usual activity, this instruction must have been to obtain Ms Gibson's mobile number to enable Mr Harpin to hack it.
  - d. Call data between MGN and Ms Gibson's phone, disclosed in January 2019, showed that an extension linked to Mr Harpin (3206) made 29 calls to her mobile in a four-day period from 19-23 April 2005, after she had done a deal to speak exclusively with the *News of the World*. Mr Harpin was plainly hacking her phone to obtain information for *The People*, which they could use to undermine their rival's exclusive front page story.
  - e. A payment to Avalon, company of the blogger Rob Palmer, of £50 dated 28 June 2006, addressed to the *People's* Assistant News Editor David Jeffs.

- f. 20 calls made from an extension linked to *The People* (3966) between 30 June and 9 July 2005, the day before the publication of the article. It is notable that Mr Harpin had called Ms Gibson to put the allegation to her on 2 July 2005, and Ms Gibson said she could not speak about the matter for legal reasons, so these other calls must have been hacks of her voicemails.
  - g. On the eve of publication, Mr Harpin and the *People's* duty lawyer Donal Kerrigan were warned by Ms Gibson's lawyer that it should not publish the story. Despite this, they were so sure of their "source" that they chose to publish regardless.
  - h. Between 12 and 30 July 2005, after the story had been published and Ms Gibson had again informed Mr Harpin (on 9 July 2005) that she could not speak to him for legal reasons, the same extension (3966) made a further 38 calls to her number. It is notable that 12 July 2005 was the date when the Beckhams threatened libel proceedings. The obvious inference is that this was to find further material to support the story and try to contest the legal claim.
163. In 2012, Ms Gibson brought a claim for voicemail interception against MGN in which she pleaded this story. In response, MGN sought to strike out her claim on the grounds it had no reasonable prospect of success. When that strike-out attempt failed, MGN settled Ms Gibson's claim and paid her compensation.
164. In the circumstances, the clear conclusion, as confirmed in the witness statement of Mr Brown, and supported by the documents disclosed by MGN, is that the story was sourced via voicemail interception, which the Legal Department must have known when it investigated following the Beckham's legal complaint. When the source for the story became clear that there was other source for the story, the Legal Department, including Rachel Welsh, Marcus Partington and Paul Vickers, had no option but to advise MGN to settle as expeditiously as possible.

#### **C11. 'What Price Privacy' and 'What Price Privacy Now'**

165. In 2006, the then Information Commissioner, Richard Thomas, published two highly critical reports entitled "*What Price Privacy*" and "*What Price Privacy Now*", in the first of which he detailed the widespread and unlawful obtaining of private information by Steve Whittamore for Fleet Street journalists, and in the second of which detailed the extensive

commissioning of this activity at all three of MGN's titles. It also showed that MGN was the most prolific user of Mr Whittamore's services by volume in the 1999-2003 period covered by the ICO's analysis. It is to be inferred that such a damning indictment of MGN's journalistic activity, including wholesale breaches of the Data Protection Act and invasions of privacy, must have been notified to and discussed by MGN's Legal Department and the Board. In his witness statement for the Leveson Inquiry, Mr Vickers confirms that a meeting was held to discuss the reports and that this was attended by Sly Bailey, Marcus Partington and Eugene Duffy (Managing Editor of Nationals), as well as the three national Editors, Richard Wallace, Tina Weaver and Mark Thomas (again all of whom had themselves been heavily involved in VMI and other UIG). Ms Bailey confirms the meeting in her own statement to Leveson. Despite all of those individuals' awareness of MGN journalists' ongoing use of UIG, neither the Legal Department nor the Board took any steps to stop them.

166. Mr Partington (Partington 1 §40 [4b/21/408]), Mr Vickers (Vickers 1 §38-48 [4b/23/435]), Mr Vaghela (Vaghela 1 §7 [4a/1/3]), Ms Bailey (Bailey 1 §14 [4/3/14]) all confirm that they read (or were at least aware of the points made in) the ICO reports.
167. The systemic and widespread use of PIs by MGN journalists to unlawfully obtain private information was authorised at senior levels, such as by Desk Heads, Editors (including Piers Morgan, Neil Wallis, Tina Weaver, Mark Thomas, Richard Wallace and Bridget Rowe) and, most importantly, Managing Editors or Senior Executives such as Pat Pilton, Peter Willis, and Eugene Duffy. As Managing Editor, Mr Duffy was one of the group of individuals (along with Tina Weaver, Richard Wallace, Mark Thomas, Paul Vickers and Marcus Partington) tasked with dealing with MGN's response to the conviction of Goodman and Mulcaire in 2007 and to the phone hacking scandal in July 2011. Further, Mr Duffy had also repeatedly commissioned work from, and authorised payments to the PIs Jonathan Stafford and LRI (when Glenn Mulcaire worked there) and whilst he was the News Editor at the Daily Mirror.
168. In total, over £9.7million was spent on the suppliers listed in 8.3(fc) – (fg) of the RAGPOC [1/1/11] in the period 1996-2001, including more than £2million on TDI/ELI alone between July 1999 and October 2006. This demonstrates that the TM Board (which was aggressively seeking to cut costs and save money during this period) must have been aware of these activities, which were recognised as unlawful by senior members of MGN and TM management.

169. There is also clear evidence of “board-adjacent” individuals (individuals in high-level management or executive roles who were in regular contact with and had direct reporting lines to the Board) being perfectly aware, in great detail, as to the extensive use of PIs by MGN journalist, and even aware of the illegal nature of the work being carried out by those PIs. One of these is Piers Morgan, the senior Editor at in the TM Group.
170. There are numerous revealing exchanges, demonstrating just how much knowledge MGN’s management (and thus the Board) held as to the use of PIs, such as:
- a. A memo **[10a/3/19]** from Editorial Manager John Honeywell to Managing Editor Pat Pilton on 9 February 1999 about the cost of “*searches*” undertaken by the *People*, in which he recognised that much of the money had been spent on “*illicit*” checks, and therefore could not be saved by using an online search facility.
  - b. Emails **[10a/4/21]** **[10a/5/22]** from Mr Honeywell to John McShane and Jane Watson (cc Tina Weaver) on 17 May 2001 referring to very large payments to TDI, Gwen Richardson, Commercial and Legal, Warner.
  - c. An email exchange **[10a/15/47]** between Mr Honeywell to Elaine Bennett dated 1-2 May 2002 referring to “*receiving a huge number of invoices for authorisation ... Mostly TDI, but also J Stafford etc ... I have not calculated the cost, but it’s frightening*”.
  - d. An email **[10a/42/82]** from Nick Buckley to Elaine Bennett dated 3 January 2003 requesting £8,000 for Jonathan Stafford and ELI/TDI bills.
  - e. An email **[10a/91/141]** from John Honeywell to James Saville dated 20 September 2005 asking for information on who he used and how much he would expect to pay for “*reverse phone look-ups*” and “*ex-directory phone numbers*”, and then saying “*And any other legitimate searches that you can think of. Don’t worry about the dodgy stuff.*”
171. It is inconceivable that the Board of a newspaper group which was aggressively seeking to cut costs and save money throughout that period (as it is clear they were) would allow such amounts to be spent without questioning what they were being spent on.
172. Despite this, Mr Vickers claims that was unaware of MGN’s journalists using PIs unlawfully, and that the extent to which PIs had been used was “*news to me*” (Vickers 1

§41 [4b/23/155]). Even more incredibly, MGN in-house lawyer Paul Mottram asserts that he was unaware of the use of PIs for UIG until “after 2010” (MGN’s response to Claimant’s RFI, Request 23d(b) [1/12/241]).

## **C12. Arrest and conviction of Glenn Mulcaire and Clive Goodman**

173. In August 2005 Clive Goodman, the Royal correspondent and showbusiness columnist of the *News of the World*, was arrested by the MPS along with Glenn Mulcaire for voicemail interception and other UIG. The arrest of such a prominent tabloid journalist for criminal charges relating to his journalism was picked up by the other tabloid newspapers and caused serious concerns.
174. The story was reported in the industry media, and James Hipwell, the outspoken former MGN journalist, spoke to the *Guardian* in an article dated 11 August 2006 titled “*Hipwell: voicemail hacking rife at tabloids*”, stating that phone hacking was “widespread” at tabloid newspapers. In particular, he stated that “many” of the *Daily Mirror* stories would come from hacking, and gave examples of such articles, such as about (a) the Spice Girls (where one *Mirror* journalist had even deleted one of their voicemail messages to prevent his rival at the *Sun* getting hold of it, and (b) the Jonsson/Eriksson affair, which was discovered through a voicemail left by Eriksson on Jonsson’s phone. Mr Hipwell also stated that he was in the middle of writing a book which would describe “*the lengths to which tabloid reporters would go to hunt down stories*”. The *Guardian* reported that it had approached the *Daily Mirror* in order to put this to the newspaper, but it had declined to comment.
175. Such statements being made by a former employee, in the wake of the arrest and charge of Mr Goodman and Mr Mulcaire, must have been discussed within the Legal Department and with the TM Board (including Mr Vickers in particular).
176. Mr Goodman and Mr Mulcaire pleaded guilty in November 2006 and were sentenced in January 2007. Following their conviction, Ms Bailey and Mr Vickers held another meeting, also attended by Mr Partington, Managing Editor Mr Duffy, and the three Editors Mr Wallace, Ms Weaver and Mr Thomas to discuss and investigate these concerns. In her evidence to the Leveson Inquiry Ms Bailey admitted that she might have been aware of what Mr Hipwell was saying back in 2006, and MGN admits that the Board and Legal Department became aware of Mr Hipwell’s allegations at the time (Generic

Defence §99.1 [1/2/138]). Despite the Board and Legal Department's awareness, no steps were taken to stop the continuing UIG at MGN.

### **C13. David Brown's employment claim**

177. Around the same time, David Brown, the former *People* journalist, was bringing proceedings in the Employment Tribunal against MGN following his dismissal in 2006, after an investigatory hearing conducted by Mr Duffy. MGN maintained at the time that the claim had no merit [13/25/63], given that it claimed to have evidence that Mr Brown bought unused *Daily Mirror* stories from a *Daily Mirror* colleague and added his byline", thereby deceiving his superiors.
178. In his signed witness statement dated 16 May 2007 [13/26/67], less than six months after Mr Goodman and Mr Mulcaire were convicted, Mr Brown stated that "*reporters on all of the Trinity mirror titles used illegal information supplied to them by private eyes to get personal data on celebrities and story subjects such as ex-director phone numbers, mobile phone numbers and phone records*". He described how he had personally been sent to Sweden to doorstep a British man living in Stockholm (who was wrongly believed to be Ulrika Jossion's new lover) based on information obtained from "screwing" or "tapping" her "phone's message bank". Mr Brown confirmed that these techniques were widespread at MGN (as was held to be the case many years later in Gulati and is clear from MGN accounting records), and even a number of "*celebrities who were regularly targeted*" which included "*the Beckhams, TV actress Jessie Wallace, former boxer Frank Bruno, Noel Edmonds, Coronation Street star Tina O'Brien, and Big Brother contestant Jade Goody*". He described how MGN "*regularly used information from "screwed" mobile phones*", and gave an example of this with the David Beckham nanny story. As he explained, "*it took the company less than a month to pay David Beckham substantial damages because it knew it could not produce the evidence of tapped mobile phones in any litigation*". Mr Brown also confirmed that the *People* paid "*thousands of pounds*" to PIs, for obtaining information such as car vehicle registration numbers or blagging medical records, and identified Mr Whittamore and ELI/TDI as examples, both of whom were regularly used by MGN (as their accounting records demonstrated).
179. Mr Brown also explained that the arrest of Mr Goodman had caused such concern at MGN that on 8 August 2006 (the day of this arrest), TM's Head of Resources, Jill Harrison, was instructed to contact executives at its newspapers to warn them that if they were asked by other newspapers or trade publications whether they had used



information from “screwed” mobile phones, they should deny it. This indicated that “a major media plc was not only allowing its staff to carry out illegal activity by at best turning a blind eye to it, but also taking part in an organised cover-up of that activity”.

180. By now, after Operations Glade and Motorman, “*What Price Privacy*”, “*What Price Privacy Now*”, the arrests of Mr Goodman and Mr Mulcaire and the allegations of MR Hipwell, alarm bells about UIG at Senior Executive level must have been deafeningly loud. Mr Brown’s evidence about UIG at all three MGN titles, as well as the specific examples he gave (which were correct), must have been investigated or verified by the Legal Department, including Mr Partington, and the Board, including Mr Vickers. In fact, Mr Partington, Mr Vickers and Ms Bailey must have been aware that Mr Brown’s evidence was correct, and that it would be highly damaging to MGN if it was heard at a public hearing. It should be noted that at all times MGN held searchable databases – the Sun Accounts Finance System and the Lotus Notes (@work) databases – of payments to suppliers and contributors, including all payments to the PIs mentioned by Mr Brown (and those relied on by the Claimants in the MNHL).
181. MGN’s response is to state that Mr Brown’s allegations “*did not have the appearance of being first hand or reliable, and nor were they*” (Generic Defence §103.4 [1/2/140]), accusing Mr Brown of attempting to “*embarrass MGN into a more favourable settlement*”. Mr Vickers dismisses Mr Brown’s allegations as “*self-serving*” and “*seemingly designed to squeeze better terms from us and not allegations which had real substance*” (Vickers 1 §27 [4b/23/152]). This is in keeping with MGN’s Legal Department and Board’s practice throughout of vilifying and discrediting whistle-blowers (as they have done with Mr Hipwell, Mr Evans, and Mr Johnson), rather than investigate the allegations, which in fact turned out to be true.
182. MGN admits that Mr Partington and Mr Vickers became aware of Mr Brown’s witness statement on or the date that it was served on MGN or shortly thereafter, but denies that Mr Partington, Mr Vickers or Ms Bailey were aware of widespread UIG (Generic Defence §104.2, 105.2 [1/2/142]).
183. In fact, one of the few contemporaneous documents relating to this issue demonstrates that exactly the opposite was true. A version of the David Brown witness statement held by MGN with markings made by Mr Partington demonstrates not only that Mr Partington (and by extension Mr Vickers and the Board) believed Mr Brown’s evidence to be true, but that they were so concerned about it becoming public that they considered that they had no option but to settle the claim. It does so in two respects:

- a. The bottom left-hand corner of the first page contains a manuscript note (the revelation of which was strenuously resisted by MGN) which reads:

“1.40

Mary: DLA

- *No choice but to settle – as over a barrel*”

- b. The other markings and highlighting made on the statement (inspection of which was provided by MGN in June 2019) demonstrate particular concern about Mr Brown’s evidence in relation to:

- iv. “*screwing mobile phones where private citizens’ mobile phone numbers were hacked into for personal information*”;
- v. “*reporters of all Trinity Mirror titles using information illegally supplied to them by Private investigators, including ELI/TDI*”; and
- vi. “*a major media plc not only allowing its staff to carry out illegal activity by at least turning a blind eye to it, but also taking part in an organized cover-up of that activity*”.

184. Indeed, shortly after service of the witness statement in May 2007, Mr Brown’s claim was settled by MGN, agreeing to pay him compensation of £20,000, on the condition that his evidence would be confidential and not repeated publicly [13/28/86]. It is obvious from the foregoing that MGN settled the claim because Mr Partington and Mr Vickers knew (or discovered after investigating it) that Mr Brown’s evidence of habitual and widespread unlawful activity was true and therefore needed to be concealed. Hence the written comment on the statement.” *No choice but to settle – as over a barrel*”

185. MGN’s disclosure record in relation to the David Brown Witness Statement can only be described as evasive. From the 15<sup>th</sup> CMC in December 2018 until the 24<sup>th</sup> CMC, the Claimants had been seeking to establish who authorised the David Brown settlement payment. TM had been ordered to preserve all documents by the Leveson Inquiry in 2011, and therefore it should have been simple to ascertain who had approved the payment. However, MGN claimed that it was completely unable to find any records as to who authorised the payment. In April 2021 the Managing Judge ordered MGN to set out the searches that had been carried out to find authorisation records. On 15 April 2021, MGN wrote to the Claimants stating that Ian Randall, a former Reach plc Group Systems Accountant, had performed searches and was unable to locate any paperwork as to authorisation of the payment.

186. At the 23<sup>rd</sup> CMC on 16<sup>th</sup> June 2022, the Managing Judge commented “*I find it very surprising that there is no documentary record of any kind relating to authorisation of the payment*”, and required MGN to serve a disclosure statement settling out precisely what searches MGN had carried out in relation to the authorisation information.
187. In a witness statement given pursuant to that order, MGN confirmed that Mr Randall had been unable to find the transaction on the Sun Accounts system and then established the payment was made through MGN’s Natwest account by the Treasury Department. He then located three crates that contained finance documents from that period, but discovered that in July 2019 they had been destroyed with permission from the Legal Department.
188. At the 24<sup>th</sup> CMC the Claimants sought further information as to Mr Randall’s evidence, and in Vakil 22 §10 Mr Vakil confirmed, that the two crates containing potentially relevant financial documents were destroyed on Marcus Partington’s authority during the course of this litigation.
189. It is not clear to the Claimants how two crates potentially containing relevant and disclosable hardcopy records that the Claimants had been seeking since December 2018 were authorised for destruction by MGN’s Legal Department in **July 2019**, particularly after Mann J specifically ordered disclosure of the authorisation documents at the 15<sup>th</sup> CMC (para 3 of the 15<sup>th</sup> CMC Order) in December 2018. MGN therefore frustrated any chance of the Claimants establishing via hardcopy documents the critical issue of who authorised the David Brown payment, in circumstances where electronic records relating to the same issue also appear to be missing.
190. In a letter dated 13 October 2022 MGN stated that £20,000 was well within the authority levels of both Mr Partington and Mr Vickers and that MGN would serve witness evidence for the upcoming trial including the witnesses’ recollections of the circumstances of the David Brown settlement, including the issue of who authorised the settlement payment.
191. Paragraph 1(c) of the 24<sup>th</sup> CMC Order required MGN to provide a list of any persons involved in or made aware of the settlement of David Brown’s employment claim and set out their authority level. MGN finally disclosed (in Vakil 22) that, contrary to what MGN stated in its letter dated 13 October 2022, the only person with sufficient authority to approve the payment of £20,000 was Paul Vickers, and that Mr Partington (and Mr Duffy) only had authority up to £10,000 (the only other person involved/aware, Jill Harrison of

Human Resources, had no authority to make a payment). Further, despite MGN stating in the letter dated 13 October 2022 that it would give evidence at trial as to who approved the payment, none of their witnesses appears to have done so.

192. Given the scale and significance of the UIG alleged, especially in the light of the recent conviction of Mr Goodman and Mr Mulcaire, the settlement of Mr Brown's claim (including his evidence and the results of any investigation into it) must have been discussed with within the Legal Team and at Board level. MGN admits that Mr Partington of the Legal Department and Mr Vickers of the Board discussed it (Partington 1 §44 [4b/21/128]). Despite this, Ms Bailey and Mr Vaghela claim that they had no recollection of being informed at the time of Mr Brown's allegations (Bailey 1 §16 [4/3/20], Vaghela 1 §8 [4a/1/4]). Peter Birch, a non-executive director of TM from October 1999 until May 2007, also states that he was not made aware of any UIG or phone hacking at MGN at any time until his departure in 2007 (Birch 1 [4/2/9]). Mr Vickers positively asserts that he is "sure that I did not discuss these allegations at Board level or with Sly Bailey", as "they just did not merit Board attention" (Vickers 1 §51 [4b/23/158]). It is clear that no steps were taken on the back of Mr Brown's allegations to stop the continued use of UIG.

#### **C14. Sean Hoare**

193. In September 2010, following NGN falsely advancing the 'one rogue reporter' lie and denials by the *News of the World* Editor Andy Coulson, the well-known showbiz journalist publicly confessed in the media to years of phone hacking, and confirming their widespread use within the tabloid industry. Mr Hoare worked at *The People* on its showbusiness section until 2001, when he joined the *News of the World*.
194. In summer 2010 Mr Hoare sent emails to Charlotte Harris, a prominent claimant solicitor who was at the time bringing claims for voicemail interception. One of the emails [10a/114/178], timed at 1635hrs on Wednesday 28 July 2010, had the subject "THIS IS GOING TO ROCK YA BOAT" and stated the following

"I had a long chat with Marcus Partington last week. He has no idea that you and I talk. But he clearly knows the coup. He is a smart, informed man. I needed to talk to Marcus because I trust him and he knows my past — indeed he calls me London's best criminal... on all accounts his advice was excellent, indeed refreshing... Marcus is on vacation but I'll be talking to him again."

195. Given that they worked together at *The People* until 2001, the Claimants infer that Mr Hoare still trusted Mr Partington and sought him out for advice because Mr Partington had been aware of Mr Hoare's involvement in UIG at the time they both worked for MGN.
196. In a separate email sent by Mr Hoare on 2 December 2010 at 1803hrs to the journalist and former Editor of the *Independent* James Hanning, with the subject "*Re Ripples and Waves*", Mr Hoare stated:

As I said during lunch my aim is true and I don't have a problem with you talking to anyone. Marcus (Partington) knows I was sitting with Harpin when he bragged to a Mirror reporter regarding Sven and Piers knows the source too.

197. This was a reference to Lee Harpin, the well-known MGN journalist and phone hacker who was working for the *News of the World* in 2002, and had either boasted over a drink to MGN journalist, James Scott, in Mr Hoare's presence, that he had listened to Mr Eriksson's voicemail message to Ms Jonsson, or had merely disclosed to James Scott of the Daily Mirror that the *News of the World* was interested in Ms Jonsson's whereabouts.

#### **C15. Operation Weeting**

198. In January 2011, the MPS commenced Operation Weeting, an investigation into phone hacking at the News of the World, resulting in the arrest (and conviction) of a number of its journalists including James Weatherup, Ian Edmondson and Dan Evans, all of whom had also previously worked at MGN.
199. In early 2011, with the emergence of public concern about the phone hacking scandal, Mr Vickers called a further meeting with Mark Hollinshead (the managing Director of its Nationals division, to whom Mr Duffy reported) and Nick Fullagar (the Director of Corporate Communications), both of whom were on the Executive Committee with Mr Vickers and Ms Bailey, as well as Mr Partington, Mr Duffy and the three national editors. The meeting was arranged with the express purpose of discussing MGN's position in relation to the use of these activities, the company's reaction to the allegations and the public response which they should release to the media.

#### **C18. Lies at the Leveson Inquiry**

200. As Mann J held in **Gulati**, the public pronouncements by TM gave the clear posture that these activities had not gone on at MGN, which was untrue as it must have been aware by this time:

...wrong, not just disingenuous, statements were made to the Leveson inquiry by at least 2 deponents, and that the newspaper group was indeed putting up what was in effect a strong denial, from which it has had to resile. I also find it likely that some of the witnesses were aware of Mr Brown's allegations by the time of the Leveson inquiry it not before - it is inconceivable that in the face of that inquiry, with senior journalists and executives giving evidence, that some of them did not know about it.

201. It is to be remembered that the **Gulati** judgment was not concerned with specific allegations of concealment, unlike now, and the individual statements made by MGN witnesses to the Leveson Inquiry were not considered in detail, not least because the individual witnesses who gave evidence at the Inquiry did not give evidence at the trial in 2015, as Mann J observed when permitting the Claimants' reliance on its pleaded case of knowledge and concealment in the face of MGN's strenuous opposition.

### **C19. David Montgomery**

202. As a result of the growing publicity surrounding the phone hacking scandal, in about September 2011 onwards (shortly before the start of the Leveson Inquiry), David Montgomery, a former MGN editor and a TM shareholder, became concerned about MGN's involvement in UIG activities and their cover-up by the Board. He therefore compiled a dossier [13/31/98] (at the front of which was a draft letter to the "*Trinity Mirror chairman/non-executive director*" [13/32/106]), which enclosed the witness statement of David Brown from his employment claim against MGN, and referred to a number of matters which caused him concern, and handed it to Mark Lewis, a lawyer acting for claimants, at the outset of the MNHL (Lewis 1 §37 [3/11/151]. The letter dossier also included a document titled "*Background notes prepared September 6, 2011*" [13/33/109]. Within the draft letter and background notes he made the following points:

- a. MGN had settled Mr Brown's tribunal claim before it went to a public hearing. This settlement had been discussed with and known about by "*two main board directors*", namely Sly Bailey and Paul Vickers, as well as the "*in-house lawyer (reporting to PV)*", Marcus Partington, who inscribed on the David Brown statement "*He's got us over a barrel – settle*", and this had been seen by some members of the board.
- b. The tribunal document containing the allegations was removed from internal human resources department files and archived off-site at another lawyer's office.
- c. There appeared to have been no action taken by the company regarding the allegations of phone hacking despite clear indications of criminal behaviour.

- d. He asked whether there was an orchestrated cover-up of the allegation by Trinity Mirror management who apparently did not alert the board or shareholders.
  - e. Mr Montgomery also referred to certain Board directors being well aware of the use of these activities by its editorial executives, citing as examples of this the fact that:
    - (a) Sly Bailey had requested that Eugene Duffy source the name of the owner of a mobile phone number (i.e. the practice of spinning a number), and
    - (b) Sir Victor Blank had asked Tina Weaver for the same.
  - f. This contrasted with the 'public' statements released by Trinity Mirror at the time which gave the clear (false) impression that these activities had not taken place at MGN. Given its status as a public limited company, Mr Montgomery was concerned with the serious (criminal) consequences of misleading the market as well as its shareholders.
203. Mr Montgomery's concerns were correct. It is clear that he had a reliable source at a very high level within MGN, given that he had a copy of the David Brown witness statement, and was even almost exactly right about what Mr Partington had inscribed on it. As former MGN journalists Mr Evans, Mr Johnson, Mr Hipwell and Mr Brown have all confirmed, and as the Court held in Gulati, these unlawful information-gathering activities were rife throughout each of the three MGN titles, involving not just journalists but also editors. MGN's inability to disclose even a record of the payment to Mr Brown or authorisation of the same, and even the inexplicable destruction of documents in July 2019, are all consistent with the cover-up.

## **C20. Dan Evans's evidence**

204. Mr Evans's evidence as to the demonstrations and instructions to conduct UIG, and the instructions to conceal those activities, all of which he received from editorial level (Ms Weaver and Mr Buckley), and as to the widespread UIG at the *Sunday Mirror*, is set out above. He has also given the following evidence as to the legal department itself Evans 5 §§23-25 [3/7/89]:
- a. He has a very clear memory of Mr Partington walking into the office early one Saturday morning in 2004 and saying loudly to Head of News Mr Buckley words to the effect of: "*Hello Nick – have I got any messages this morning?*" (while staring at Mr Evans and smiling). They all laughed. Mr Evans interpreted it as a reference to Mr Partington being aware of his hacking.

- b. He has clear recollections of Paul Mottram of the Legal Department routinely walking slowly around the newsroom scouring pages of copy. Lawyers would also sometime be involved in a story at an early stage, particularly if it was in a grey area.
- c. His realisation that the Legal Department was in the know further tended to normalise his view of the methods he was taught to use, which he describes as “Corporate Grooming” by MGN into its world of unethical and illegal journalism.

### **C21. Graham Johnson’s evidence**

205. Mr Johnson’s evidence as to his own use of PIs and the widespread UIG at MGN’s titles, which is also summarised above, and he too has given evidence as to the Legal Department itself as follows:

- a. Paul Smith told him that he had told two different MGN lawyers – one of which was Mr Partington and one he thought was a barrister – stories relating to the MNHL Claimant Rupert Lowe were clearly ‘tapped’ and hacked, and that he himself did not do the hacking, but that they should ‘look closer to home’ for the culprits, meaning Dave Walker, who by then was Head of Sport across MGN, who had co-operated with the News Desk to place hacked stories (Johnson 8 §§40 [3/10/118]).
- b. On one occasion Paul Mottram, an in-house lawyer at the *Sunday Mirror*, was legalling one of his stories relating to the husband of television presenter, Anne Diamond, Mike Hollingsworth, and an alleged relationship with another female. On being asked by Mr Mottram about his source, Mr Johnson explained to him that he had pulled the phone bills of the two individuals which clearly showed calls between them, and he also showed Mr Mottram the phone bills, which he believed had been blagged by Jonathan Stafford, and the handwritten list of numbers faxed to the News Desk. Mr Johnson initially gave this evidence in his first witness statement of 16 June 2017. Subsequently, in 2019, MGN gave generic disclosure of invoices from Jonathan Stafford, including an invoice and schedule showing that on 16 October 1998 Mr Johnson had indeed commissioned Mr Stafford to provide him with itemised phone bills of relating to the Mr Hollingsworth, and the phone numbers of a female associate (Johnson 8 §43-45 [3/10/118]). Mr Mottram is not giving evidence.



206. Mr Johnson also gives evidence (Johnson 8 §§78-94 [3/10/128]) as to admissions made by the Chairman of the Board, David Grigson, at the reception after TM's Annual General Meeting on 7 May 2015. Having publicly questioned during the AGM why the David Brown evidence had been deliberately covered up in 2007, Mr Johnson raised with Mr Grigson at the post AGM reception, in front of a circle of journalists and others present, the position of Mr Partington (who by then had been promoted to the Board as Legal Director), as follows:

JOHNSON: [Marcus] was told in 2006 that phone hacking was going on in the employment tribunal involving David Brown...

GRIGSON: Yes

JOHNSON: ...and he chose... to pay out and cover it up.

GRIGSON: Right. Yes.

207. Mr Johnson proceeded to enquire of Mr Grigson whether Mr Partington had been asked about the matter and what he said, to which Mr Grigson admitted that Mr Partington had told him: *"that he was aware that things were going on"*, although he *"could not comment on any individual claims as he wasn't in the detail"*.

208. This was consistent with the fact that, as Mr Grigson had publicly stated in his speech to shareholders at the Annual General Meeting the previous year in May 2014 (and as reported for example in The Guardian on 16 May 2014), MGN had claimed to have done everything it could short of *"ripping up the floorboards"* in an exhaustive investigation of the use of phone tracking by its journalists: *"Over the past two years we have built on the work that had already been done by the company to look into the allegations of phone hacking], I can't go into details but as chairman of your company I can assure you of the very extensive investigations that have been undertaken, short of ripping up the floorboards, in a way that would disrupt the good running of the company"*.

## **C22. Legal Department practice**

209. It was common practice for the Editors and the Legal Department at MGN to interrogate and confirm with journalists the source for their stories, and as a result, they were aware of the unlawful methods used to obtain or corroborate them.

210. It is important to bear in mind that Mr Vickers insisted to the Leveson Inquiry (in his witness statement dated 13 October 2021 (§21 [15a/2/34]) that the Editorial Legal

Department reported to him and that he and Mr Partington had a 'no surprises rule' and Mr Partington "*keeps me fully brief on most issues*". He further stated that "*Since around 2004/2005, Mr Partington has had delegated authority to settle smaller claims without referring them to me in advance, but always ensuring I know about them. In practice, Mr Partington does mostly inform me in advance. My approval is still required for major settlements above a specified limit. I receive a copy of a monthly status report on all outstanding legal actions in any event.*" It is clear, therefore, that Mr Vickers, and therefore the Board, were kept informed at all times as to matters of this nature.

211. In addition to the many examples of Legal Department knowledge of UIG set out above and the evidence of Mr Evans and Johnson, the Claimants also rely on Mr Hipwell's witness statement dated 15 December 2014 for the **Gulati** trial, where he stated that it was

...inconceivable that the senior legal managers on the [Daily Mirror] were not asking the showbusiness journalists where they were getting their stories from. An extremely significant editorial concern on all newspapers is whether a contentious story that the paper is considering running would get the paper sued for libel, or force it to publish an embarrassing retraction or apology. For that reason, the Daily Mirror's in-house legal team was also heavily involved in assessing the veracity of journalists' stories given the evidence gleaned from sources. In my experience a journalist is willing to answer the following question when it is put to them by a lawyer working on the newspaper: where did you get this story and what is the evidence that it is true.

212. At trial, MGN deliberately chose not to challenge Mr Hipwell's evidence on this at all (in contrast to his evidence about the involvement of Mr Morgan).
213. Further, according to the Board's own 2011 Review of Editorial Controls and Procedures, the editorial Legal Department were aware of the more significant stories that were planned for publication at an early stage (which would include those that carried a risk of legal action) and would be aware of the provenance of every such story.
214. According to Mr Partington's own evidence (Partington 1 **[4b/21/120]**), he and Martin Cruddace would go to Paul Vickers for instructions/approvals on complaints and litigation while at *The People* from 1994 to end of 2001. He then took over as lawyer for the *Daily Mirror* (Partington 1 §5-7 **[4b/21/121]**). He also accepts that his role was hands-on, confirming the accounts of Mr Evans, Mr Hipwell and Mr Johnson, stating: "*We spent some of our time on the newsroom floors talking to journalists and editors.*" (Partington 1 §9 **[4b/21/122]**)

215. In April 2007 he was appointed Deputy Group Legal Director of Trinity Mirror and head of Group Legal Department, reporting to Paul Vickers, and in April 2008 he was appointed Deputy Secretary/Group Legal Director of Trinity Mirror (Partington 1 §10 [4/21/122]).

216. However, his evidence as to his knowledge of UIG, and particularly the following assertions, are lacking in any credibility, especially given the evidence and contemporaneous documents adduced by the Claimants:

*“I did not possess firm evidence and therefore knowledge that phone hacking was going on at MGN during the relevant period of these claims, as opposed to being aware of rumours and allegations. I did not become aware of firm evidence that phone hacking had occurred until some time after 2012 during the course of this litigation.”* (Partington 1 §17 [4b/21/123])

*“Any other knowledge I may have had of other unlawful information-gathering activities at the time was obtained during the course of my work as a lawyer and is therefore covered by privilege.”* (Partington 1 §18 [4b/21/123])

*“If an editor were to decide to publish a story despite advice that it would, for example, infringe someone’s privacy, be defamatory or a contempt, then that was a matter for them. They did not require legal approval to do that. It was not my job to take steps to stop publication or to prevent certain activities.”* (Partington 1 §18 [4b/21/124])

217. Indeed, the effect of the totality of MGN’s/Reach’s evidence on Board and Legal Department knowledge of UIG is that there was an entirely farcical scenario right at the heart of the controlling minds of this public limited company, where UIG was going on at an industrial scale at all levels across each of its three titles, reports were being published as to widespread UIG at MGN and other newspapers, journalists (including former MGN journalists) were being arrested at other papers and even within MGN concerns were being expressed at the massive expenditure on private investigators and whistle-blowers were coming forwards as to activities at MGN, and yet, despite all this nobody on the Legal Department or Board was (supposedly) aware of that such UIG had been carried out.

### **C23. Trinity Mirror/MGN’s deliberate lies and concealment of its wrongdoing**

218. MGN and TM deliberately sought to lie and conceal MGN’s wrongdoing. As demonstrated by the examples set out above, the Legal Department and Board knew

that the UIG activities were habitual and widespread at the time and not only failed to stop them but failed to investigate the full extent of them. They were clearly incentivised not to take action, given that the UIG activities were highly profitable for the company in that their product was extremely useful for the production or publication of stories, especially exclusive scoops, and thus increased sales.

219. Instead they sought to conceal the wrongdoing, including by settling legal claims or complaints brought against MGN in relation to various contentious articles in order to avoid exposure of the UIG, the most striking example of this being the David Brown employment claim. By concealing the wrongdoing, these Senior Executives, many of whom held shares in TM, had a direct financial benefit from the 'false market' which the concealment from the public created.
220. The Claimants rely on the evidence of Brian Basham (Basham 1 [3/5/53]), a former journalist who, until two years ago, ran an analytical company research business, who testifies that:
- a. He and his team researched TM in late 2011 or early 2012 (Basham 1 §§12-17 [3/5/56]).
  - b. He learned from David Grigson and others that Paul Vickers was unusually powerful on the Board of TM as company secretary (Basham 1 §19 [3/5/58]).
  - c. He spoke to Mirror journalist and witness at the Leveson Inquiry and the Gulati trial James Hipwell, who told him that Piers Morgan was "up to his neck in" the City Slickers scandal, and Mr Basham informed the then TM Chairman Sir Victor Blank. Sir Victor agreed and said that Mr Morgan should be sacked, but investors had put him under pressure not to do so because Mr Morgan was "good for circulation" (Basham 1 §25 [3/5/60]).
  - d. He attended the 10 May 2012 TM AGM personally to ask questions about an alleged pension fund black hole and met Paul Vickers there. He spoke to Mr Vickers and Mr Grigson. He asked six questions relating to the pension issue to the then Chairman of TM. They were answered satisfactorily, upon which he bought £60,000 worth of Trinity Mirror stock, which doubled in value soon after the AGM (Basham 1 §§18-23 [3/5/58]).

- e. Following the AGM, he started to hear that TM had a problem with phone hacking. He spoke to a senior reporter and former employee of MGN, who told him that phone hacking had started at TM, which was the originator and epicentre of it, and then spread to the *News of the World*. He decided to investigate the hacking scandal by speaking to various people in Fleet Street. He learned that James Scott of *The People* was one of the key people heavily involved in large scale phone hacking and was described to him as the “*king of news hacking*”. He also learned that Lee Harpin was the phone hacking “*Dauphin*”, or heir apparent. Paul Vickers was described to him as the “*villain of the piece*” who, with TM Chief Executive Sly Bailey, had orchestrated a cover-up of TM’s phone-hacking. He also heard of Marcu Partington’s quip to James Scott – “*James, I’ve left my mobile at home. Can you tell me if there are any messages on it?*” (Basham 1 §§24-32, 36 [3/5/59]).
- f. He prepared a note on TM’s vulnerability to Leveson and phone hacking, compiling all he had learned through his conversations and research, as well as what he thought TM was facing and what it should do about the problem. He found the information which he had obtained and set out in his note credible and corroborative (Basham 1 §§33, 37 [3/5/62]).
- g. He also found out that the TM lawyers knew that phone hacking was taking place under their watch, and that Trinity Mirror journalists who had been involved in hacking had risen up through the ranks to senior positions in the company .(Basham 1 §34 [3/5/62]).
- h. He believed the phone hacking problem could be contained if TM plc and David Grigson did a proper clean sweep in the next 13 to 14 months before any criminal trials were to take place. (Basham 1 §37 [3/5/37]).
- i. On 3 July 2012 he had lunch with David Grigson, just over a month after Mr Grigson had taken over as Chairman of TM and just after Sly Bailey had left as CEO. Mr Grigson said he was weak on the Board without a CEO. Mr Basham told Mr Grigson about all of the contents of his note, including Mr Partington’s “*joke*” to James Scott and the legal department’s knowledge of phone hacking, and James Scott’s centrality to phone hacking. He advised Mr Grigson to tackle the hacking problem by clearing the decks properly. (Basham 1 §§39-43, 45 [3/5/63]).

- j. Mr Grigson told Mr Basham that Paul Vickers was very powerful on the TM Board, and was the anchor for the Board in the absence of a CEO, which was consistent with what Mr Basham's contacts had told him. Mr Grigson also said that Mr Partington was helping with running the company. Mr Basham stressed the need to have a completely independent person investigate the problem, because the Board was implicated, and later told him by email that the Board was the problem, not the solution. He advocated replacing the whole Board and recruiting a good CEO, instructing independent counsel to investigate with a budget of £200k, and identifying and compensating victims. Mr Grigson did not heed his advice. Mr Basham was particularly concerned at the prospect of a cover-up by the Board, making misleading statements to its investors and the market, being discovered (Basham 1 §§44, 47 [3/5/64]).
- k. Mr Basham was in almost day-to-day contact with Mr Grigson from 3 July 2012 onwards, but Mr Grigson did not seem to do much based on what Mr Basham told him. Mr Grigson did, however, take on board Mr Basham's recommendation of Simon Fox as CEO, appointing him on 30 August 2012, after Mr Basham had recommended him on 6 August 2012. Mr Basham continued to press Mr Grigson about the danger of James Scott remaining an Editor within the group. Grigson said he would discuss the issue with Simon Fox. Mr Basham continued to contact Mr Grigson and press him to do a clean sweep and not ignore the phone hacking problem, and Mr Basham believes that Mr Grigson did discuss his note with the Board, but that he was a weak chairman and had a board that had colluded with the phone hacking scandal and were covering it up (Basham 1 §§49-57 [3/5/66]).
- l. Mr Basham was in regular contact with his friend Maggie Pagano, Business Editor of the *Independent* newspaper. He told Ms Pagano about his conversations with Mr Grigson and the note, which resulted in the *Independent* publishing articles based on the contents of his note on 28 October 2012 and 17 March 2013. On 18 March 2013, the day after the second article, Ms Pagano called Mr Basham in distress because Paul Vickers of TM had complained, saying they had not received the report, threatening to sue in libel and demanding an apology. Despite Mr Basham being willing to give an affidavit confirming that he had given Mr Grigson the note, the *Independent* issued an apology. TM's reaction to the article confirmed to Mr Basham that they had decided to continue covering up the problem rather than dealing with it (Basham 1 §§58-75 [3/5/69]).

- m. Mr Basham also learned that TM's Board was frightened of Lee Harpin, who was blackmailing the company to prevent them from penalising him for his own phone hacking activities by threatening to blow the whistle on everything he knew about their phone hacking problem if they did (Basham 1 §74 [3/5/73]).
221. The Board also knowingly lied to or misled the Leveson Inquiry in 2011 and 2012 concealing or falsely denying the involvement of MGN journalists in UIG. Despite their clear knowledge and in many cases involvement in this wrongdoing, a number of Senior Executives at MGN/TM, such as Tina Weaver, Piers Morgan, Richard Wallace, Paul Vickers and Sly Bailey, gave evidence denying this. At the same time, MGN has adopted a blanket policy of vilifying and attacking the credibility of all whistle-blowers, such as Mr Johnson, Mr Hipwell, Mr Brown and Mr Evans.
222. Specifically, despite Mr Vickers establishing, in the course of preparing a TM Board Review of Editorial Controls and Procedures following the publicity surrounding the hacking scandal in 2011, that MGN journalists had been paying enormous sums to PIs, and that there were inadequate controls over the sourcing of stories from external sources, and then issuing new internal guidance on the use of such 'external contributors', MGN/TM concealed Mr Vickers's findings and the change of company policy.
223. The Board also lied to or misled the public and the London Stock Exchange by putting out press/market statements in which it deliberately sought to create the same false impression (see **Gulati** at [213]-[214]).
224. MGN also deleted or destroyed masses of documents, including emails relating to the period of these activities, despite the complaints of wrongdoing, and failed to take proper steps to preserve documents as required by the Leveson Inquiry, including safely preserving the hard drives of MGN computers so that they could be searched for relevant material.
225. When the MNHL commenced, MGN firmly and publicly created the impression that their journalists had not been involved in UIG . However, in September 2014, without warning, MGN sent letters admitting liability in some but not all of the claims then progressing in the most general terms (but without any specificity at all, as the Managing Judge held).. Shortly after this, MGN sought to enter judgment against itself in the litigation, a step which was as unprecedented as it was unsuccessful. See Gulati at [21]. This was a

blatantly deliberate and tactical attempt to avoid having to provide any generic disclosure and thereby prevent the revelation of the true nature and extent of the wrongdoing on a generic level.

226. Between 2007 and 2010/2011, MGN deleted, destroyed or lost masses of documents including emails relating to the period of these activities, and failed to take proper steps to preserve such documents. This is evident from:

- a. The striking paucity of emails on the Clearwell database, especially for the period from 1999 to 2002, including the emails or mailboxes of key individuals such as Piers Morgan, Neil Wallis and Marcus Partington.
- b. The lack of any telephone call data up until June 2002.
- c. The loss or disposal of the copies retained on microfiche of all PI invoices for the period between January 1996 to May 1998 (backups of which were not kept).
- d. The loss of Contribution Request forms sporadically in the period 1996 to 1998.
- e. The loss or disposal of periodic and other backups of MGN's/TM's servers.
- f. The changeover of MGN's/TM's computer system in 2010, during which hard drives previously used by editorial staff were wiped, reused or disposed of.
- g. MGN's discarding of hard drives into plastic crates without any form of protection from electrostatic discharge, protection from mishandling, protection from the elements, labelling or attempt to safeguard their contents (plainly deliberately rendering it almost impossible to search the hard drives in any meaningful way).

227. To compound matters, during the course of the MNHL, MGN has repeatedly sought to avoid providing generic disclosure which would demonstrate the true extent of its wrongdoing, and in particular PI Payment Records. For example, in late 2014 during the First Wave, MGN sought to give the (false) impression that the disclosure to date was the totality of PI work commissioned by MGN during the period covered. In fact, MGN had chosen not to admit even to the PIs identified (confidentially) by TM Board members Mr Vickers and Mr Vaghela to the Leveson Inquiry, such as Jonathan Stafford/Newsreel, JJ Services, Hogan International, BDI and Global. It was only many years later, when the Claimants obtained disclosure of, and subsequently removal of redactions from,



MGN's reports to the Leveson Inquiry, that they discovered some of these PIs, disclosure of which had been withheld from the Claimants in 2014 and 2015. MGN had also failed to disclose the highly significant James Scott palm pilot and when they did disclose entries in 2020 did so in an underhand manner. See ruling of Mr Justice Mann of 3 August 2020 {C2/46} ;

*I also regard it as regrettable, to use a term which is as low as I can put it, that when the documents were disclosed they were described in the manner in which they were. That is a manner which would be calculated to obscure the existence of another Palm Pilot database.*

228. As Shobna Gulati says in her witness statement [3/1/2], a significant amount of highly significant material was withheld from her in 2014 and 2015, as it was from the other Representative Claimants in 2015, namely undisclosed Gulati PI payments referred to above.

#### **C24. Concealment and the Armory v Delamirie principle**

229. The result of MGN's concealment is that the Court is being asked to draw conclusions as to the extent of wrongdoing in circumstances where it does not have the full facts at its disposal. This was the basis for the Claimants' submission in **Gulati** that the information before the Court was only the "tip of the iceberg" (a metaphor that was accepted by Mann J at [70], at least in relation to the landline call data). The problem presented by these claims when seeking to assess the size of the entire iceberg is trying to work out how much to extrapolate from what is known about MGN's illegal activities as a whole, including the 'generic' case. In **Gulati** Mann J, in recognition of this fundamental problem, accepted the Claimants' submission that he should apply the principle in **Armory v Delamirie**. The Claimants again seek the application of the principle, for the same reasons but based on an even greater and stronger case on concealment, at the trial of these claims and of the generic case. **Schedule D** to this Skeleton Argument is a note on the law relating to inference to be drawn from loss of evidence and a failure to call relevant witnesses.

#### **D. INDIVIDUAL CLAIMS**

230. The Claimants' summary position on each of the individual claims is set out in the following schedules:
- a. **Schedule F** – Duke of Sussex
  - b. **Schedule G** – Nikki Sanderson

- c. **Schedule H** – Michael Turner
- d. **Schedule I** – Fiona Wightman

## **E. LIMITATION**

231. In the claims of Nikki Sanderson and Fiona Wightman, MGN raises a limitation defence, asserting that the Claimants' claims are statute-barred. It is important to note, however, that in both claims (and generally in the litigation) MGN admits, for the purposes of s.32(1)(b) of the Limitation Act 1980, that voicemail interception and other UIG "*was deliberately concealed by the Defendant at the time that it took place*". Nevertheless, MGN argues in both claims that more than six years have expired from the time the Claimants could with reasonable diligence have discovered the concealment.
232. The application of the various stages of the reasonable diligence test involves consideration of the specific factual context of the relevant claim, and therefore can only be applied to each claim on a case-specific basis. The issue of limitation will therefore be addressed in the context of the individual claims. However, the legal principles that apply to the claims are the same, and are addressed in **Schedule E** to this Skeleton Argument. The persistent and deliberate concealment by the Defendant is already outlined in **Section C** above.

## **F. PRIVACY LAW AND DAMAGES**

233. The question of the appropriate level of damages in each claim, considering all the misuses alleged and proved by the Claimants, is one that is best left to be addressed in closing submissions. At this juncture, the Claimants merely wish to refer to three important principles which the Court will have to bear in mind when considering the appropriate damages awards to make in the Claimants' claims for the different torts complained of:
- a. As Mann J held in **Gulati** (at [155]-[159]), it is inappropriate to grant a global sum to compensate the Claimants for the various wrongs sustained. The wrongs have too great a degree of separation, both in terms of time and nature, and articles published are mostly spread over a lengthy period, and thus not analogous to a single libel being published in different newspapers at the same time as part of a pattern of conduct. Furthermore, there are distinct areas of wrongful behaviour which need to be looked at separately, including: (i) general hacking activity, involving acquisition

of information in breach of their privacy (in keeping with the approach of Lord Neuberger MR (as he then was) in **Imerman v Tchenguiz [2011] 2 WLR 592** at [68]), irrespective of whether an article was published, and thus amounts to a separate category of wrong which has to be separately reflected in order to ensure that the objective of the damages award achieves its aim; (ii) PI activity, which cannot be reflected in terms of awards without considering it separately; (iii) articles as the direct product or flow through of the information unlawfully obtained, which should each be treated separately in terms of an award of damages; and (iv) general levels of distress (including distrust of and damage to relationships arising out of the whole pattern of conduct), which again should be reflected in a separate award, while being careful to avoid double counting for particular facets already covered in awards for each article. This 'atomised' approach was upheld by the Court of Appeal. In **Representative Claimants v MGN Ltd [2015] EWCA Civ 1291** the Court of Appeal adopted Mann J's approach in these paragraphs (and also at [229] of **Gulati**) as guidance for any future cases (at [74]), with the caveat that the cumulative effect would mean that additional distress is less rather than increased as a result of repeated disclosures of private information.

- b. It was not appropriate, when dealing with privacy claims, to apply the Vento bands used in harassment claims, because Vento was dealing with its own specialist area, and the multiplicity of factors that make up privacy (and libel awards) make an analytical or allocation into bands approach inappropriate. This was determined by Mann J in **Gulati** (at [185]-[199]).
- c. The invasions of privacy in hacking claims often include invasions on a grand scale which do not result in any form of publication (save for discussions amongst journalists in some instances), which is an important distinguishing factor from other privacy cases and makes the direct application of any of the figures in those cases inappropriate (Mann J in **Gulati** at [184(iii)]).
- d. Unlike the position in **Gulati** (see Mann J [160]-[166]), given that the recovery of success fees is no longer available to all of the Claimants in this litigation, the 10% uplift provided for by **Simmons v Castle [2013] 1 WLR 1239** is applicable (and all the more justified given recent rates of inflation).
- e. The principle that a claimant is entitled to damages suffered as a result of the publication of information, obtained through or using UIG, in the form of an article is

one which relies on well-established principles of the law of tort. For example, where there is reasonable foreseeability of some form of repetition or expansion of the original wrong, this brings the resulting damage within the original wrong: [McManus v Beckham \[2002\] 1 WLR 2982](#) and [Douglas v Hello Ltd \(No 3\) \[2006\] QB 125](#). This was the approach of Mann J in [Gulati](#) at [\[1\]](#), [\[13\]](#), [\[146\]](#), [\[224\]](#), [\[228\]](#) and [\[702\]](#) with damages awarded for articles published, flowing from MGN's admission at [\[24\(vii\)\]](#) that "*but for the wrongfully obtained information the articles would not have been published*".

**DAVID SHERBORNE**  
**JULIAN SANTOS**  
5RB

**4 May 2023**