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

Claim No. KB-2022-003316
Claim No. KB-2022-003317
Claim No. KB-2022-003318
Claim No. KB-2022-003340
Claim No. KB-2022-003357
Claim No. KB-2022-003404

BEFORE THE HON. MR JUSTICE NICKLIN

B E T W E E N :

(1) BARONESS LAWRENCE OF CLARENDON OBE
(2) ELIZABETH HURLEY
(3) SIR ELTON JOHN CH CBE
(4) DAVID FURNISH
(5) SIR SIMON HUGHES
(6) PRINCE HARRY, THE DUKE OF SUSSEX
(7) SADIE FROST LAW

Claimants

-and-

ASSOCIATED NEWSPAPERS LIMITED

Defendant

CLAIMANTS' CLOSING SUBMISSIONS

Following Trial in January – March 2026

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INTRODUCTION

1. These are the Cs' closing submissions following the trial of this action. The Cs refer to and rely on (a) the updated Trial Matrices submitted alongside these Closing Submissions and (b) the Cs' Skeleton Argument and Law Schedule filed at the opening of the trial.

2. Each of the Cs has made good his or her claim. Their claims are for unlawful information gathering ("**UIG**") carried out by D (acting through both its titles, the *Daily Mail* and the *Mail on Sunday*), targeted at each of the Cs in various ways and at various times. The unlawful acts were carried out by a range of characters: professional private investigators, some individuals who acted also as freelance journalists, and D's journalists themselves. The acts also range across types of activity, and along a spectrum of seriousness – from the knowing commissioning of an enquiry agent to obtain an ex-directory number, or making a pretext call (or "blag") to find out who lives at an address, to engaging a middle-man to pay corrupt police officers for information, paying or blagging to obtain someone's precise flight details and seat number, or commissioning a blag call to a hospital to get details of a failed pregnancy. All are unlawful, and all offend the private lives of those at whom they are targeted. D has never accepted responsibility for a single such act. This striking position has been maintained throughout the trial.

3. The claims are demarcated by Unlawful Articles (and in some cases Unlawful Episodes, where no article was eventually published), published or carried out by D, which Cs say represent the product, or outcome, of the underlying intrusions into their private lives. But the articles are only important as a window through which the Court can glimpse the unlawful activity that underlay them. In some cases, the information in the article itself is highly suspicious, for instance where it relates details of precise phone calls, or relates the sums of money in an individual's bank account; sometimes, the article is merely the jumping-off point, and the key to the claim lies in the lack of any credible information as to how the article was sourced, coupled with the habitual and repeated use of UIG by the journalist who wrote it.

4. These Closing Submissions address:

    a. An account of the private investigators ("**TPIs**") involved in the claims, and how the extent and nature of D's use of them became clear over the course of the trial, including an account of the lawful information-gathering resources available to D's journalists and the considerable lacunae in the documentary record of D's payments to TPIs.

    b. Portraits of the four key journalists of D in these claims, focussing on their performance and credibility as witnesses and their propensity for commissioning UIG: Stephen Wright, Katie Nicholl, Nicole Lampert and Rebecca English.

    c. An analysis of each of the Cs' claims, article-by-article or episode-by-episode, not repeating the C's Skeleton Argument and Trial Matrices but setting out how the claims were made good in the oral evidence at trial.

    d. A summary of Cs' case as to the D's limitation defence, as it developed at trial.

    e. Submissions as to quantum when liability is made out.

5. The evidence at trial revealed a number of striking themes.

6. D's employees past and present have, as D proudly submitted in openings, been produced in large numbers as witnesses. But the evidence they gave was in a great many cases not relevant, or simply entirely ineffectual because they claimed not to remember anything material (albeit memories tended to improve when it was put to these witnesses that their conduct might have been less than ideal).

7. Despite the great volume of witnesses, around 70% of the claims come down to the work of the four key journalists of D set out above. Their credibility and propensity for UIG is of huge importance. The Cs submit that the Court simply cannot take their evidence, and D's case in relation to their work, at face value in

light of the incontrovertible evidence that each of them habitually commissioned UIG and should be rejected unless there is concrete contemporaneous documentation to support it.

8. The witnesses D produced, as was clear from their written evidence, had "closed ranks". Repeated and scripted phrases emerged time and again: that enquiry agents were 'only for phone numbers and addresses and family trees' (when the documents show on their face that this was not the case); that the journalist "never asked [the TPI] to do anything unlawful" (when the TPI's work product on its face, or surviving invoices, showed the contrary); the article in question was a "cuttings job" (when over and over the journalist was forced to accept in cross-examination that the articles their legal team had presented them with could not explain away the information in their stories). These crutch-phrases were as suspicious as they were untrue.

9. Even the thin surviving documentary evidence of payments to TPIs contains conspicuous and often shocking evidence of UIG – the Court can and should infer that the true scale of UIG commissioning by D was enormous, and view the evidence of its witnesses, who appear on the face of their written evidence so remarkably innocent, in this light. The more so since D's witnesses ask the Court to imagine that they alone, of all the many journalists whose employers have admitted that the activity commissioned by the same TPIs (in relation to similar targets and stories) was unlawful in previous litigation, had no idea that the activity they paid for was unlawful.

10. As was already clear from the documentary record but became clearer in oral evidence, D had provided an array of cheap (or free) information-gathering resources for its journalists, which provided <u>exactly the same</u> information which the great majority of its journalists said they needed to use TPIs for, from lawful sources such as the electoral roll and directory enquiries. In this light, the frequency of instruction of TPIs, and the sums D was willing to pay out to these

agencies over the years (in excess of £3m in the relevant period), take on a far more suspicious light than D's witnesses sought to portray at first.

11. Given the great number of witnesses D called, the absences of a number of key figures are all the more striking, such as:

    a. Victoria Newton – presently editor of The Sun, working in Central London, and bylined on five of the Unlawful Articles across the claims of Sir Elton John and David Furnish, Elizabeth Hurley, and Sadie Frost Law.

    b. Sharon Feinstein – repeatedly said by Katie Nicholl and Nicole Lampert to have been their key source into the private life of Ms Frost Law, and a freelance journalist.

    c. Sebastian Hamilton – said by Barbara Jones to have been chiefly involved in one of the Unlawful Articles in the Duke of Sussex's claim.

    d. Ben Todd – bylined on two Unlawful Articles in Sir Elton John's and David Furnish's claim.

    e. David Williams – bylined on an Unlawful Article in Baroness Lawrence's claim and on a Schedule C article in all the Cs' claims.

    f. Nadia Cohen – bylined on an Unlawful Article in the claim of Ms Hurley.

    g. Lee Harpin – a sometime journalist and notorious practitioner of voicemail interception, claimed as a source for some articles by Katie Nicholl. Mr Harpin lives and works in London.

    h. Jon Steafel – Deputy Editor at the *Daily Mail* for much of the relevant period.

12. Where a defendant chooses not to call witnesses who would be in a position to provide evidence as to the issues to be resolved in a case, the Court is entitled to draw suitable inferences as to the facts that the defendant has chosen to withhold. The Supreme Court has clarified the position on drawing adverse inferences when a party elects not to call relevant witnesses in ***Efobi v Royal Mail Group Ltd*** [2021] UKSC 33; [2021] 1 WLR 3863 **{AB/92}**. Lord Leggatt JSC (with whom the other JSC agreed) observed at [41] **{AB/92/14}**:

> "*The question of whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in Wisniewski v Central Manchester Health Authority [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules.*"

13. Soole J held in ***Thorley v Sandwell*** [2021] EWHC 2604 (QB) at [56], while this judgment was in relation to an employment case "*these observations were evidently intended to have the widest application*".

14. The evidence upon which a Court may rely in order to draw such adverse inferences need not be *substantial*. There only need be even a scintilla of evidence sufficient to support the inference. See May LJ in ***Hughes v Liverpool City Council*** 1988 WL 624361, Court of Appeal, 1 January 1988.

15. The individuals above, including in particular journalists bylined on relevant articles, obviously have key evidence to give regarding how those articles came to be written and produced. As far as the Cs are aware, the individuals above appear to be contactable (and Cs are not aware of any information from D indicating that they are unavailable to give evidence). The Cs will invite the Court to draw, from these individuals' absence, the adverse inference that the articles in which they were involved were produced using information obtained by UIG and that D was unwilling to present the individual in question at trial so that D's defence could be tested.

USE OF PRIVATE INVESTIGATORS BY D

16. The use of Private Investigators ("**PIs**") by D is addressed in detail in the Cs' skeleton argument. The availability of lawful databases is addressed first, followed by the Experian issue (a lawful database used unlawfully by D) followed by the pleaded PIs in turn.

17. It was established by the evidence heard during Trial that the commissioning and payment of PIs was approved by senior executives, predominantly the Managing Editor at each title and the relevant desk head.

18. PIs such as Jonathan Stafford, TDI/ELI and Christine Hart, who have been found to have carried out extensive unlawful work for other newspaper groups, used the same unlawful methods when working for D. As set out in the skeleton argument, it has been found in other litigation that the substantial or significant majority of the work carried out for other newspaper groups by such PIs was unlawful.[1]

19. As set out in more detail below (and in the skeleton argument) the evidence of numerous witnesses for D that suggest PIs were used merely to obtain simple telephone numbers and addresses in order to locate people to provide comment for articles is unsustainable and contradicted by contemporaneous documents. Even if this had been the purpose, it was not a sufficient justification to obtain such information unlawfully. There was plainly no need to instruct such PIs to obtain the information via lawful methods given the lawful resources available to D's journalists, and certainly in relation to celebrities it is difficult to see why a comment could not be put to an agent or PR, whose contact details were readily ascertainable.

20. As became clear throughout the course of providing their evidence, D's journalists had ready access to a range of databases and resources in-house from which telephone numbers, addresses and other information, including genealogical data such as birth, marriage and death certificates, could be sourced lawfully. Indeed,

[1] Cf. the PI Annex of the Judgment of ***Sussex & Ors v MGN***, and ***Gulati***.

D’s journalists were repeatedly reminded about their inhouse resources by their Managing Editors and the need to avoid instructing outside inquiry agents unless necessary and approved. **{K/328}**.

<u>Pandora’s box</u>

21. As the Court is aware, as a result of the destruction of large numbers of documents, there are limited invoices that remain in relation to PIs, as set out below, and in relation to limited ranges of dates. For example, save for JJ Services, in relation to some of the most significant PIs there have been only a handful of invoices disclosed and across a limited date range:

<u>ELI</u>

9 x invoices 24 October – 19 November 2003

1 x invoice 3 November 2004

25 x invoices 22 April – 19 May 2005

<u>Christine Hart/Warner News/Warner Detective Agency</u>

3 x invoices 20 July – 17 October 2003

<u>Jonathan Stafford</u>

17 x invoices 8 February 2002 – 15 December 2003

<u>JJ Services</u>

124 x invoices 24 June 2001 – 12 November 2006

<u>System Searches</u>

2 x invoices 11 February 2002 and 21 November 2002

22. Nevertheless, one significant event was the late disclosure of highly relevant documents on 24 September 2025 identified by chance by a paralegal from a box **{I/325}**. That box had been recalled from the Crown Archive by an operational assistant in the Managing Editor’s office and kept in a storeroom at D’s offices in

June 2024 prior to scoping for standard disclosure. Cs requested further searches of linked boxes, which resulted in the very late disclosure of a number of previously undisclosed ledgers and other invoices.[2] The contents of this ("Pandora's") box have proved highly significant.

23. These ledgers relating to payments to a number of key private investigators and search agents who were known to operate unlawfully were generated on 10 and 11 June 2011, even prior to the announcement of the Leveson Inquiry in July 2011. Clearly, some form of internal investigation into the use of certain private investigators had been ordered and taken place. Yet no one giving evidence for D was prepared to provide an explanation of why that investigation took place and who was responsible for commissioning it. It is also apparent from the ledgers themselves, that this was only a partial picture of the record of payments made by D to this type of third parties. For example, while a full run of payments to ELI by the *Mail on Sunday* was disclosed, a similar ledger for *The Daily Mail* was not. The same applies to John Ross, while no ledgers at all were disclosed for Christine Hart/Warner Detective Agency (a blagger, like Mr Stafford) or other pleaded TPIs.

24. Notwithstanding the partial picture, this disclosure revealed the enormous scale of payments made across the period. For example, it showed that *The Daily Mail* and the *Mail on Sunday* had spent more than £500,000 on Jonathan Stafford[3] between 1995 and 2006, and that more than £2 million was spent by both newspapers on the services of System Searches between 1994 and 2007.

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[2] Namely those generated in June 2011 **{D/124}**:
{K/1377} John Ross (MOS) 10 June 2011 15:20
{L/682} Jonathan Stafford (Daily Mail) 10 June 2011 15:58
{L/683} Jonathan Stafford (MOS) 10 June 2011 15:59
{K/1577} JJ Services (MOS) 10 June 2011 16:02
{L/684} JJ Services (Daily Mail) 10 June 2011 16:04
{L/683} Rachel Barry (MOS) 10 June 2011 16:17
{L/689} System Searches (MoS) 13 June 2011 11:51
{L/690} System Searches (Daily Mail) 13 June 2011 12:28
{L/688} Summit Credit (MoS) 13 June 2011 12:32
{L/685} ELI (MoS) 13 June 2011 15:13

[3] D's journalists have admitted that Mr Stafford was a blagger – see the evidence of David Dillon (Transcript, Day 37, pp. 109, l. 14-16).

25. Where it has been possible to link up the payments of PIs to invoices or where (by happenstance) a ledger payment names a journalist (as opposed simply to a deliberately innocuous and bland description such as "RESEARCH"), it is invariably the case that the Cs conclusively prove UIG in respect of that article[4]. It should be noted that D redacted the names of targets in the ledger, which further limited Cs' ability to link the ledger entries to articles and piece together further episodes of UIG, which could then have been pleaded and relied on as part of its propensity case in relation to pleaded journalists. It should also be noted that there would have been thousands of invoices underpinning these payments, all of which have been destroyed or not located. The difference between the known universe of payments to PIs, which is vast, and the small number of invoices which have been disclosed is stark in the extreme.

26. The limited picture arising from the loss of such invoices, in circumstances where the UIG was concealed at source, should not, it is respectfully submitted, disadvantage the Cs in proving UIG where the evidential picture is necessarily more limited as a result of this.

Lawful databases available to D's journalists

27. **Directory Enquiries** provided landline phone numbers for those in the UK who were listed in the telephone directory on provision of an address and at a minimal cost. If a number was not listed, the caller was informed that it was ex-directory and the number was not provided. The service offered by British Telecom dates from well before the Relevant Period of these claims, and was in use until December 2003 when several competing services, offering the same information, came into existence.

28. D's journalists at both titles were frequent users of the service to the extent that senior executives sought to reduce the volume of calls to the service and so save

[4] See for example, the two payments to ELI naming Katie Nicholl **{L/685/1}** dated 7 October 2003, which Cs were able to link to entries in Ms Nicholl's notebook, which revealed clear evidence of UIG, and a draft article by Ms Nicholl about Ms Frost Law's ectopic pregnancy.

costs. Prior to the start of the financial year 2001/02, calls to the service were costing ANL £48,000 per annum **{K/328}**. Despite efforts to reduce costs (by the introduction of the Intranet and BT phone disc (see below) this increased to £60,000 in 2001/2002 **{K/328}** and **{K/331}.**

29. None of D's witnesses denied using Directory Enquiries during cross-examination, while a number of journalists from both titles admitted they did use it[5]. Katie Nicholl succinctly explained that if she (or other journalists) were unable to get information via Directory Enquiries because the number was ex-directory then they would use "search agents" to obtain the information (Transcript, Day 35, page 20, lines 2-9).

30. **BT Phone Disc** was a digital directory containing the entire UK phone book on CD-ROM. D provided the service to its journalists on both titles to reduce the costs of calls to Directory Enquiries (with limited success – see **K/328** and **K/331**). As with Directory Enquiries, it did not provide ex-directory numbers or mobile phone numbers. Peter Logue, the Library Manager at Associated, set out in his witness statement that D had access to the UK Electoral Roll and BT phone disc "which allowed you to access people's phone numbers" **{G/23/5}**.

The Electoral Roll

31. "For some years"[6] prior to 2001, at a cost of £500 per annum, D's journalists had access to a searchable database named RollCall Trace, which contained the electoral roll, via a terminal in the newspaper library.[7] This was "in very heavy demand by journalists."[8] Around 2001, for an increased cost of £17,500 per annum, this was upgraded to Rollcall WebTrace, which allowed journalists to access the

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[5] Paul Henderson (Transcript, Day 24, p103 lines 14-15), Charles Garside (Transcript, Day 30, page 31 lines 11-15), Rebecca English (Transcript, Day 32, page 7 , lines 8-9), Richard Simpson (Transcript, Day 34, pages 7-8, lines 23-3), Katie Nicholl Alison Boshoff (Transcript, Day 36, Pages 156-157, Lines 25 – 6), Sam Greenhill (Transcript, Day 40, page 10 lines 22-25).
[6] **{K/163/4}**
[7] *ibid*
[8] *Ibid*. The use of the electoral roll in the library also forms part of the resources guide for journalists in the *Mail on Sunday* Features department **{L/1/5},** which C's believe dates from around 2000/2001.

edited electoral roll[9] via the company's Intranet[10] from their desktop computers. The database was updated four times a year, included home telephone numbers, and provided access to previous electoral rolls going back to 1996.[11] The contemporaneous website advertising RollCall Webtrace **("WebTrace")**, disclosed by Cs, suggests it allowed for flexible searches by various criteria, provided additional information such as residential history, the identities of others living in the same household, and home telephone numbers **{L/370.1/2}.** It was available to journalists across both titles[12].

32. Senior executives were repeatedly urged to remind staff to use it to save (unnecessary) costs. A memorandum of 7 February 2003 from Lawrence Sear, the Managing Editor of *The Daily Mail,* addressed to the newspaper's Heads of Department, including Nicole Lampert, the Showbiz Editor, stated that too much money was being spent on outside agencies to carry out searches which could be carried out "in-house." **{K/348}.** "*We have invested in putting electoral rolls and company search equipment on our systems."* Mr Sear wrote, asking that outside agencies be used a "last resort". In 2002, *The Daily Mail* had spent more than £125,000 on System Searches alone **{L/960/8-17[13]}**. However, despite Mr Sear's exhortations, his newspaper's expenditure on System Searches in 2003 increased to £130,000 **{L/960/17-26[14]}**. The obvious inference is that agencies such as System Searches, JJ Services, and others provided information on addresses, phone numbers and other information which D's journalists were not able to obtain via the

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[9] From 2002, as a result of the Representation of the People Act 2000, each elector was able to "opt out" of their electoral roll being used for certain commercial purposes. This resulted in two versions of the electoral roll: the full electoral roll, which could only be used for permitted purposes (such as vetting applications for credit and other financial purposes); and the Edited electoral roll, which included those electors who had not opted out **{K/5/1}**

[10] **{K/163/4}**

[11] *ibid*

[12] **{K/902/1}**

[13] The amount spent on System Searches by *The Daily Mail* as of 28 December 2001 was £932,688.52. By 20 December 2002 it stood at £1,057,330.16

[14] The amount spent on System Searches of 20 December 2002 was £1,057,330.16. By 30 December 2003 it stood at £1,1187,590.74.

comprehensive databases to which they had access. This was because those agencies obtained the information via unlawful means.

33. In 2006, D introduced Tracesmart to complement WebTrace **{K/902/2}** for its journalists across both titles via the company Intranet**.** Alongside the edited electoral roll, Tracesmart offered a birth, marriage and death database from 1984 to 2004 which was cross-referenced with telephone numbers and ages where available. On 8 May 2006, Alex Bannister, the Managing Editor of *The Daily Mail,* heralded its arrival as "*a much improved version of the electoral roll*" which "*should be everyone's first port of call before phoning System Searches, JJ Services or the like*." **{K/902/2}**

34. D's witnesses accepted they had access to the electoral roll via their desktops[15]. D also provided a witness statement from Peter Logue, the Library Manager at Associated, which sets out the various databases to which D's journalists had access **{G/23/5}** through which "*you were able to access information such as telephone numbers and addresses of individuals*", and confirmed that journalists had access to the Land Registry and company information.

35. Sam Greenhill provided evidence that he and other reporters had a login to Graydons **{G/33/6}**, which provided access to information from Companies House. This would have included the information such as Directors' names and addresses, company accounts, and other administrative documents. D's journalists had access to this service from at least 2002 (as there are payments to Graydons at that time **{K/1561}**) but also had access to "company searches" via its Intranet **{K/348}.**

<u>Genealogical Information</u>

36. Like all members of the public, D had access to genealogical indexes of birth, marriage and death certificates either through subscription websites such as

[15] Nick Craven (Transcript, Day 26, page 8, lines 11-15), Chris Anderson (Transcript, Day 28, page 100, lines 17-20), Rebecca English (Transcript, Day 31, page 7, lines 22-24), Nicole Lampert (Transcript, Day 32, page 32, line 21), Sam Greenhill (Transcript, Day 40, page 11, lines 4-7) and Nick Pryer (Transcript, Day 34, page 147, lines 3-17)

Ancestry or Genealogist[16] or in person at the Family Records Centre in London.[17] Obtaining such documents or building family trees was not a same day service[18], and often required the assistance of specialist researchers. Greenhill 1 refers to the use of John and Elaine Hitchcock, "*a couple who are excellent at researching genealogy records to help compile family trees*."[19] Internal payment ledgers show that in 2005-2006 the Hitchcocks were used frequently by *The Daily Mail* between at least 2005 and April 2007 **{K/1533}** and were paid more than £60,000 for their work in that period. *The Mail on Sunday* used a similar specialist agency named Census Searches in that period **{K/1534}**, spending more than £50,000. Nick Craven of *The Daily Mail* confirmed the use of such genealogists (Transcript, Day 26, page 8, lines 17-19). The Cs submit that given the use of such specialists, there was no need for D's journalists to (nor did they in fact) use agencies such as ELI to build out family trees or other genealogical information, and that they and others, such as JJ Services, Jonathan Stafford, and System Searches, did not provide such a service.

37. In summary, D's journalists had a wealth of publicly available information available to them to enable them to obtain simple telephone numbers and addresses lawfully, cheaply and easily. D has provided no evidence (beyond vague, self-serving claims) that these databases were somehow lacking information, were incomplete, or prone to technical issues. The position was aptly summarised by *Daily Mail* journalist Richard Price, when asked about his use of System Searches (Transcript, Day 34, p.31, ll.1-3):

> *We had all the necessary searches available at our fingertips when we were in an office with internet connection.*[20]

38. As Mr Price implied the use of "search agents" became necessary when such in-house searches did not - or could not - yield the information sought. It follows that the use of ELI, Steve Whittamore/JJ Services, System Searches, Jonathan Stafford

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[16] Logue 1, §20 **{G/23/5}**
[17] **{L/1/5}**
[18] *ibid*
[19] **G/33/6**
[20] Transcript, Day 34, page 31, lines 1-3

and others, whether for "telephone numbers and addresses" or other information, **must** have been for information which was not publicly available and therefore unlawfully obtained. D has provided no evidence that such agencies somehow had access to other, unidentified lawful databases which enabled them to provide information which was not available to D's journalists.

39. Cs' case is that the information these agencies and individuals obtained was blagged (or in the case of System Searches, obtained via the unlawful use of credit reference checks) and that D's journalists and executives were aware that the information was obtained in this way.

Unlawful information gathering

40. From the evidence at trial, it is clear that D used PIs to obtain information that by its very nature, is bound to have been obtained unlawfully in the absence of evidence to the contrary, such as ex-directory numbers, mobile phone numbers, the subscriber name of a mobile phone owner, itemised phone billing data and Friends and Family numbers, amongst other things. This would have been self-evident to D's journalists, desk heads and the executives who approved and signed off the payments. The apparent lack of questioning of that spend is of itself telling, with John Wellington suggesting that he "*probably didn't even read them because I was, you know, busy, and it was quite hard to get through this stuff*" (Transcript, Day 28, pp.71-72).

41. The issue of Experian (a lawful database used unlawfully) is addressed first, followed by the use of private investigators.

Experian issue

42. D had an Experian account. On 25 August 2006, after 'What Price Privacy?', Mr Garside wrote to Experian (and others) asking whether it was acting contrary to the Data Protection Act **{L/424}**. Experian's answer on 3 November 2006 was clear, that information was supplied "*strictly on the basis of you undertaking credit checks on advertisers*" and the "*information is certainly not provided for journalistic purposes*" **{K/978}**. The letter, from the Director of Data Protection and Regulatory Affairs at

Experian, clearly demarcates the permitted purpose and the prohibited purpose. D's journalists had been using Experian from at least 2004 to 2006 **{K/835}**.

43. D conspicuously did not provide an answer to the request from Experian to confirm that the use of the databases was in excess of the legal authority for which it was provided. Accordingly, Experian chased again on 8 December 2006, asking D to confirm that its use was for the permitted purpose identified previously: **{K/989}**. No substantive answer appears to have been provided to Experian, although the fact of the letter(s) appears to be flagged in D's internal logs flagging a "*WARNING*" and that Experian were "*Querying our usage*" **{K/1004/1-2}**.

44. The issue in relation to Experian was identified by the Court on Day 38 (Transcript, Day 38, pp.150-152):

> "MR JUSTICE NICKLIN: I don't expect necessarily an answer immediately now, but I've become aware of what I'll call "the Experian issue", and I think I would like a little bit more clarity, please. It may be that I have the answer somewhere in my papers and I just need to be directed to where it is, but I remember from an earlier part when we were looking at various documents concerning Experian that -- I certainly remember that there's an objection from Experian about how their systems were being used [...] I can see that whereas obtaining friends and family numbers is going to be unlawful almost at origin, if it happened, Experian's a little bit more tricky [...] because it's a breach of the terms and conditions, as I understand it, of Associated's contract with Experian about how they are to use their facility to search the Experian database. They could search it for some limited purposes, but not for others, and the suggestion being made certainly in the evidence, or the way it's being put, is that it was being used outside that permissible scope.
>
> MR SHERBORNE: For journalistic purposes, yes.
>
> MR JUSTICE NICKLIN: Yes. Now, that may have given rise -- I mean, I don't know the answer to this, but that may have given rise to a problem with Experian, and it may ultimately -- I think the threat was: we'll withdraw your ability to use it.
>
> MR SHERBORNE: Yes.
>
> MR JUSTICE NICKLIN: But without more, I'm not quite sure why that's unlawful. I mean, it's unlawful in the sense that it's arguably a breach

of contract, but it's not unlawful in the same way that that -- in the direct way I've said about --”

45. The answer in a nutshell is that D was using Experian, a restricted CRA facility, to obtain personal data for alleged journalistic purposes that was expressly forbidden by Experian, likely criminal under the electoral register regime set out below, and in any event unlawful as a misuse of private information. This point was decided by Fancourt J in ***Duke of Sussex v MGN*** [2023] EWHC 3217 (Ch) (as explained below), in relation to the use by System Searches (AKA, the Scotts or Commercial and Legal) .

46. While it is highly likely to have been a breach of contract, the Experian material shows not merely a simple contractual breach, but use by D of a restricted credit-reference facility to obtain private and confidential information which would not otherwise have been available to D, and for a purpose for which D had no proper authority.

47. Experian was used to access the full electoral register that can only be accessed for specified purposes (not journalistic purposes) per The Representation of the People (England and Wales) (Amendment) Regulations 2002 which came into force in 2002. Provision of the full electoral register was not compatible with Article 8 before 2002 in any event: see *R (Robertson) v Wakefield MDC* [2002] QB 1052 (see Fancourt J’s analysis below). Certainly from 2002, credit reference agencies such as Experian (other than Government and local government agencies) were the only entities with real access to the full electoral register and could only use it for (a) vetting applications for credit; (b) meeting Money Laundering Regulations; (c) statistical analysis of credit risk assessment, when done anonymously, and in 2006 it also became a criminal offence to contravene these regulations by regulation 115. The edited register, by regulation 93, omitted the name and address of anyone who had opted out (which the majority of voters do). By regulation 110, the edited register could be sold to anyone who asked for it, upon payment of the prescribed fee. D had access to the edited electoral register (as noted above) as part of its internal databases. Therefore, use of Experian (and other PIs such as System Searches with access to the full electoral roll via Experian or Equifax, another credit reference

agency) would likely be because the information was not easily accessible by the alternative legitimate means.

48. As identified above, this issue arose in the context of ***Duke of Sussex v MGN*** after Fancourt J identified the same question, and after submissions found that unlawful information gathering extended to "*conducting searches of databases in excess of legal authority*" (see for example at [40]), with Experian expressly mentioned at [1334] (see below).

49. The judgment of Fancourt J in ***Sussex*** answers the point at [40] onwards, in particular:

> 42. The 2002 Regulations permit the supply and use of the full, unedited version of the electoral register for various purposes, including under reg.114 to credit reference agencies. Reg. 96 restricts use of copies of the full register or any information contained in it. So any PI or journalist who has obtained information derived from the full electoral register other than for a permitted purpose and uses that information commits an offence. Paying for information obtained from a credit reference agency, when unauthorised by the subject or otherwise justified by the Regulations, would therefore be a crime. However, MGN points out that illegality in relation to misuse of the full electoral roll cannot predate 31 July 2002, when the 2002 Regulations came into force. The 2001 Regulations did permit broader use and provision of the full register but were held to be unlawful in R (Robertson) v Wakefield MDC [2002] QB 1052.
>
> 43. The 2002 Regulations provide for sale of the full register to certain organisations, including credit reference agencies, for use when performing particular functions only: regs 112(3) and 114(3). It was noted in Experian Ltd v Information Commissioner [2023] UKFTT 0132 that there is nothing to stop a credit reference agency, such as Experian, making use of other sources of information that are open sources and selling them, as part of its business. But that is a different type of business and does not encompass doing full credit reference searches using the full electoral register among other restricted information.

50. This was applied, *inter alia*, in relation to System Searches/C&L in the PI Schedule to that judgment at [41]: "*The advantage in C&L's case was that the most up-to-date*

residential addresses and previous addresses were available from credit reference searches, together with other restricted information, and that the full electoral roll could be accessed by that means", concluding at [59] that "*I consider that the right conclusion is that a substantial amount – by which I mean well in excess of a half – of all the searches done by C&L for MGN were unlawful, and that journalists commissioning these kinds of search would have been aware of that*". The journalists themselves would have understood the position, not least in circumstances where lawful databases were available by the newspaper (see the section on lawful databases set out above): "jo*urnalists and editors would clearly have understood that the searches that C&L were properly to be used for were ones that they could not lawfully do themselves using publicly available databases*". At [1334] he found "*C&L used to a significant extent fuller search capability offered by Equifax or Experian, not just the electoral roll (which was by then available within MGN on Cameo),[21] but the Census search was itself lawful*".

Private Investigators

51. The below exposition focusses on oral evidence at Trial in particular, and should be read in conjunction with the skeleton argument and trial matrices.

52. The below sets out the findings the Claimants will seek in respect of each as pleaded PI (as set out in the skeleton argument and repeated below again for ease):

	Entity	**Activities carried out**
1	**ELI/TDI/BDI (Trace Direct International/Express Locate International/BDI UK Consultancy)**	Unlawful acts including blagging of utility records, bank and other financial information, medical information; and investigations associated with, and/or preparatory to, phone hacking such as

[21] Cameo was the internal electoral roll database to which MGN journalists had access. It also appears to have been available to journalists in the Features department of the *Mail on Sunday*. See **L/1/5** *"Use the electoral roll in the library or ask Clare, Alison or Fiona about Cameo."* However, as has been established during the trial, D's journalists had access to RollCall Trace via a terminal in the library prior to 2001, and RollCall WebTrace via the ANL Intranet after 2001 – see section on Lawful Databases above.

	Entity	**Activities carried out**
	(sequential companies run by **Susie Mallis** and **Lloyd Hart**)	acquiring confidential phone numbers, itemised phone bills, phone subscriber details and voicemail PIN numbers. **{CB/4/5}**
2	**Christine Hart** (Warner Detective Agency/Warner News).	Unlawful acts including the blagging of medical information, utility records, bank and other financial information, phone records and other private information. **{CB/4/10}**
3	**Dan** ("Detective Danno") **Hanks** (also known as **Daniel Portley Hanks**) of **Backstreet Investigations**, **British American News Service**, **Investigators Support Services** (based in the US).	Unlawful Acts including obtaining SSNs, and the obtaining of private information through the unlawful use of restricted databases such as social security numbers, ex-directory telephone numbers (or 'unlisted numbers'), mobile phone conversions (or 'breaking'), bank records, voter registration details, driving licence information, phone records and other private information. **{CB/4/11}**
4	**Glenn Mulcaire** and **Nine Consultancy**.	Unlawful Acts including phone hacking, 'pinging' (the triangulation of location through the use of mobile phone data), the blagging of utility records, bank and other financial information, phone records (subscriber information, itemised bills and voicemail PINs) and other private information. He used "clone hacking" (ie. cloning the identities of 'real people' in senior positions of various key organisations, such as phone networks, banks, tax officials or civil servants, in order to assist in blagging personal information). **{CB/4/14}**
5	**Jonathan Stafford** (and **Newsreel** from 2006).	Unlawful Acts including the blagging or obtaining of utility records, bank and other financial information, itemised phone records, ex-directory numbers and other private information. **{CB/4/16}**
6	**Gavin Burrows** (aka **Gavin Rhodes)**, his companies (including **IIG Europe**, **Rhodes Associates** or '**Assured Legal Investigations'**, **Hawkins Rhodes International**,	Unlawful Acts including phone hacking, landline phone tapping, blagging utility records, bank and other financial information, credit card bills, medical checks, travel arrangements (such as flight and hotel details), phone billing and subscriber records, ex-directory numbers and other private information,

	Entity	Activities carried out
	Meridian Bureau, and **A to Z Private Investigations)**, and his aliases and sub-contractors.	bugging, vehicle tracking and the obtaining of computer records. **{CB/4/20}**
7	**JJ Services** (**Steve Whittamore**), and his network of sub-contractors.	Unlawful Acts including blagging or obtaining of ex-directory phone numbers, BT 'friends and family' number lists, subscriber details from a phone number, itemised phone bills, the "reversal" of vehicle registration numbers, DHSS benefit or bank details, criminal record checks and other private information. **{CB/4/22}**
8	**System Searches** (**Malcolm Scott** and **Jackie Scott**)	Unlawful Acts including the unlawful credit checks (namely without the consent of the subject and/or for an unlawful purpose) and/or unlawfully used the full electronic electoral register for a non-permitted purpose and sold personal information to newspapers. **{CB/4/25}**
9	**Summit Credit & Legal Services**	Unlawful Acts, including the blagging or obtaining of private information including ex-directory numbers and vehicle registration services and unlawful use of the full electronic electoral register . **{CB/4/26}**
10	**Jonathan Rees/ Southern Investigations** (run by **Jonathan Rees** and **Sid Fillery**).	Unlawful Acts including phone hacking, phone tapping, computer hacking, blagging or obtaining medical records, bank and other financial information, telephone billing and subscriber records and PIN numbers and other private information, as well as bugging, bribing police officers and commissioning burglaries in order to obtain private information or place listening devices inside private property. **{CB/4/27}**
11	**Mike Behr** (based in South Africa).	Pretext blagging (including flight blags). **{CB/4/29}**
12	**Capitol Inquiry** (based in the USA)	Unlawful Acts including the blagging or obtaining of phone bills and other private information **{CB/4/30}**
13	**John Ross**	Corrupt payments **{CB/4/30}**

	Entity	Activities carried out
14	**Lee Harpin**	Voicemail interception and itemised phone billing **{CB/4/32}**

ELI/TDI/BDI

53. ELI/TDI/BDI were a private investigator business used by D. It was run by Susie Mallis and Lloyd Hart through sequential companies: TDI (Trace Direct International), ELI (Express Locate International) and BDI (BDI UK Consultancy).

54. The Court held in ***Sussex v MGN*** that these companies undertook UIG on a substantial scale and the majority of work was unlawful (1999-2011): [267].

55. A limited number of invoices have been disclosed in relation to ELI:[22]

9 x invoices	24 October – 19 November 2003
1 x invoice	3 November 2004
25 x invoices	22 April – 19 May 2005

56. ELI was banned on 27 April 2007 **{E/102/690}**. BDI (as it was by then) was written to by D on 27 April 2007 to inform them of the same **{K/1070}**.

57. ELI/TDI ceased trading in October 2006 and BDI was a continuation of the same operation. D has provided only limited disclosure of TDI/ELI documents, despite admitting to using them between 2002 and October 2006 (and BDI beyond this, presumably until at least April 2007).

[22] Payment ledgers disclosed by D show there were numerous payments to ELI by the Daily Mail from September to December 2002 by *The Daily Mail* **{K/1561}**, by the *Mail on Sunday* between June 2003 and June 2005 **{L/685}** and by *The Daily Mail* between January 2005 and September 2006 **{K/1533}**

58. Mr Simpson accepted that ELI gave him mobile phone numbers, while also accepting that ex-directory and mobile phone numbers were not publicly available and suggested he "*gave it no thought whatsoever*" (Transcript, Day 33, p.11, ll.10-11). The same was accepted by Mr Greenhill, who said that ELI gave him "*any numbers*", including mobile phone numbers (Transcript, Day 33, p. 10, ll.8, 21). Even on D's case, ELI cannot be an outsourced version of Directory Enquiries. The process of obtaining even these private numbers was *ab initio* unlawful. It was obvious such information was obtained by blagging, though journalists such as Mr Simpson sought to suggest that they "*didn't think about it at all*" and had "*no understanding*" of their methods in obtaining numbers (Day 33, p.13, l.4, 9). This professed deliberate incuriosity was a theme of witnesses. It is a marker that D's witnesses either knew perfectly well or, at best, deliberately avoided asking about how private information was being obtained given that they knew the answer would be that it was unlawful.

59. D's surviving ledgers record repeated payments to ELI including "*URGENT*" and "*TRACE*" requests **{L/38}**. When Stephen Wright was taken to the series of Cazaly invoices (see **{K/636}** to **{K/644}**) he accepted that he was the individual who commissioned them but was unable to offer any real explanation at all as to what he was paying such substantial sums for, and responded in strikingly defensive terms:

> *Q. You see, it is within your knowledge, Mr Wright, because when you asked ELI to do something for you, they produce an invoice like this, and you sign it to demonstrate that you've commissioned that work. That's what we see in {K/636}, isn't it?*
>
> *A. The point I'm making, Mr Sherborne, is that 21 years on I cannot recall what specific work was done and what information was provided, and I'm sorry, I'm trying to be as helpful as I can, I'm not Mr Memory Man here, and I'd appreciate no cheap remarks about that. I'm not. I think it would be odd if I remembered everything. I think that would probably be even more suspicious, in Mr Sherborne's world anyway.*
>
> *Q. Let's look at another one, for example, {K/637}. You see, all the invoices we have, have these very formulaic and I suggest to you euphemistic*

phrases such as "urgent enquiries". Nothing more specific, such as "county court judgments", or "addresses for Mr Cazaly", or any of that sort of description that you would expect if that was precisely what was being provided by ELI.

A. I think that's a matter for ELI, whoever is around to talk about it. I can't -- I can't comment on that.

Q. You were well aware, weren't you, Mr Wright, when you received these invoices at the time, that they were deliberately vague as to their descriptions of the work that you had asked ELI to do for you?

A. I don't agree.

60. In truth, the vagueness was deliberate to conceal the true nature of the work. Ms Lampert was more candid, and accepted (Transcript, Day 32, p.30, lines 4-6):

> "*we did sometimes use them* [ELI] *for blagging*"

61. Ms Lampert even recalled using ELI to obtain call records as (Transcript, Day 32, p. 46, l.25 to p.47, l.2):

> "*Susie* [Mallis, of ELI] *said that they had -- knew someone who worked in a -- in a phone place*"

62. While Ms Lampert did not recall the cost of services on the ELI menu, it was clear that the payments were substantial, and far larger even than the £20 or so costs charged by the Scotts for a search. As a desk head, Ms Lampert was responsible for approving and signing all invoices apart from when she was on holiday and would have discussed the use of ELI with colleagues (Transcript, Day 32, p.150, lines 7-15). It can be assumed that this was the usual approach of desk heads in relation to the commissioning of such PIs.

63. The most striking example of the use of TDI/ELI/BDI (from such records as still exist) is that of Ms Nicholl in the ectopic pregnancy episode. Though she claims to have no recollection of "*ever dealing with*" TDI/ELI **{G/38/15}** the documentary evidence stands in direct contradiction as her name appears on a ledger (disclosed after Nicholl 1 was served) and the name "Susie" (Mallis) and Lloyd (Hart) appear in Ms

Nicholl's notebook. As set out below in further detail, she had no good answer to why their names appear in her book next to what was accepted to include "*highly private information*" that made its way into the draft article (Transcript, Day 36, p.62, l.20). This was especially the case where, in Ms Nicholl's case, the payment records include payments to ELI on 7 October 2003 for "*KATIE NICHOLLS URGENT ENQ*" and "*K NICHOLLS SEARCHES*" **{L/685}** which can be linked in time to the blagging of termination of Ms Frost's pregnancy and other highly sensitive medical information (**{K/411}**) and the provision of her associates' mobile phone numbers, as recorded by Ms Nicholl in her notebook **{K/402.8}.**

64. Even more inconsistently, despite having suggested she did not recall dealing with ELI, when it was put that Ms Mallis was reporting to her, Ms Nicholl stated "*I -- I don't believe I spoke to Susie for this story*" (Transcript, Day 35, p. 62, l.6). Similarly, when it was put that ELI provided services such as itemised phone bills, Ms Nicholl said "*Well, I would say it could be the case that he was providing some of those things*" (Transcript, Day 37, p.116, ll.10-11) having accepted for the first time that she thought "*Lloyd Hart is another search agent*" (Transcript, Day 37, p. 115, l.12). This volte face was remarkable.

65. When shown an example of where the initials on the reference details of an invoice matched up to the commissioning journalist's full name, Mr Greenhill suggested that the tax date and commissioning date of that invoice was some time apart and so was unwilling to accept his own commissioning related to an article. However, upon a review of the invoices available the clear picture is that where the commissioning date and tax date are visible it is invariably only a matter of days apart, see for example below:

Commissioning Date	Tax Date	Opus Reference
1 November 2003	5 November 2003	**{L/313}**
2 November 2004	3 November 2004	**{L/363}**
20 April 2005	21 April 2005	**{L/372}**

22 April 2005	25 April 2005	**{L/375}**
11 May 2005	12 May 2005	**{L/384}**
11 May 2005	12 May 2005	**{L/385}**
13 May 2005	13 May 2005	**{K/645}/{L/388}**
12 May 2005	13 May 2005	**{K/636}/{K/637}/{K/638}** **{K/639}/{K/641}/{K/642}** **{K/387}/{K/643}/{K/644}** **{K.640}**
17 May 2005	18 May 2005	**{L/394}**

66. Accordingly, the tax date in the ledgers for ELI payments can be closely tied to any commissioning date. The exception to the rule appears to be **{L/383}** which was the invoice Mr Greenhill was shown in cross-examination, and taken to again in re-examination (Transcript, Day 40, p.81, ll.3-25), which exceptionally had a gap of over a week between the commissioning date and the tax date (from 27 April 2005 to 10 May 2005).

67. The use and activity of ELI was evidently known at management level too. Mr Garside accepted signing ELI invoices for various "*extensive*" and "*urgent*" enquiries and gave the obvious answer to why ELI was paid such vast sums: doing business with PIs such as them was simply "*part of the costs of the newspaper*" and the "*gathering of news exercise*" (Transcript, Day 30, p.37, ll.4-5).

<u>Daniel Portley-Hanks / Detective Danno</u>

68. Daniel Portley-Hanks is a California-based private investigator.

69. He sets out in his Amended Second Witness statement that he acted for the Daily Mail and Mail on Sunday for over 20 years and his business was "*mostly illegal*" from

1999 onwards and he received around $1 million for his services from the *Mail* titles over that time **{F/5/1/§3}**.

70. Mr Portley-Hanks sets out in detail in his witness evidence the UIG he undertook on behalf of D **{F/5}**. These included unlawfully obtaining social security numbers (SSNs), unlisted numbers, police records, toll records and licence plate data): **{L/245}**; **{L/541/10}**; **{L/663}**; **{L/666}**. Ms Churcher accepted "*I should have stopped it, and I didn't*", but suggested this was simply because she did not notice the large numbers of SSNs (Transcript, Day 33, p.92, ll.6-9).

71. Mr Portley-Hanks' evidence is that he believes the *Mail* knew what he was doing was illegal for the following cogent reasons **{F/5/12/§38}**, and in particular the fact that:

> "...Sometimes, John Wellington rang up and said, "I do not want to know where the info came from, or how you got it". I understood from this that he did not want to be told explicitly but it was clear to me from this that they realized it was not legal. So, if it was ever questioned, he could try to pretend he never knew."

72. Mr Hanks also explained (Day 12, p. 74, ll.7-75):

> What -- here's what I told them. I had been forever emailing them from my company, Backstreet Investigations. My email address was "detectivedanno@spcglobal.net. And then John Wellington called me, and it was after he told me about this thing called the Leveson Inquiry and that everybody had to stop using private investigators, and then he told, "We have to stop using you if you continue to be a licensed private investigator". They said if I surrendered my licence, they could continue using me. They said, "At the very least, can you change your email to take out the word 'detective'. Can you use 'reporter' or 'hollywood'" or ... and they asked me to create a whole new email to start sending things to them. Now, that, to me, indicated they wanted to continue using me, but they didn't want anybody to know that I was a private investigator, that I was some sort of, you know, reporter located in Hollywood. And, to me, that was -- they were just trying to conceal that they were still using a private investigator. I was blatantly told by Sharon Churcher, "If you can surrender your licence, we'll continue using you", and I said, "Yeah, but then I've got to quit working for all the clients I have here in the US".

73. Having heard Mr Hanks' evidence, Mr Wellington simply said he "*told him he had to be careful to obey the law*" (Transcript, Day 29, p. 22, l.10).

74. However, in particular, Mr Hanks explained that he was expressly told to continue providing SSNs when he stopped doing so (Transcript, Day 12, p.80, ll.1-14):

> Q. Did there come a point where you stopped sending reports with all of that information in?
>
> A. Yeah, I -- I -- you know, I -- when I became aware of what the problem was, I -- I started truncating the numbers. I either -- either it was done automatically by those databases, or I did it manually. But, yes, I stopped reporting that.
>
> Q. And was anything said to you when you stopped using them?
>
> A. Yeah, Mr Wellington called me up and said, "These aren't the same reports you've been sending us. If you want to keep making money, you have to send us the old reports".
>
> Q. The old reports including the Social Security numbers?
>
> A. Yes.

75. In cross-examination on Day 12, Ms Evans put **{K/2302.1}** to Mr Hanks which was a draft affidavit dated November 2021, suggesting it was an unsigned affidavit and the starting point from which to understand later evidence. However that was simply not the sequence at all. **{K/2236.2}** was the original affidavit signed by Mr Hanks on *15 March 2020*. On re-examination it was shown that, when placed side by side, **{K/2302.1}** could not have been the precursor but a later tracked changes version. The later document, **{K/2302.1}** was one that was red-lined and entitled "Dan Hanks affidavit changes for MGN", as identified by Mr Sherborne. That is not only apparent from the dates but also from the text, where the later document removed Meghan Markle material and inserts MGN specific wording. The chronology put forward in cross-examination by D's counsel was entirely wrong. No weight should be placed on any submission that is made by D on the basis of this incorrect chronology.

Christine Hart

76. Christine Hart operated as a private investigator trading as "*Warner Detective Agency*" **{L/108}** and "*Warner News*" **{L/579/2}** (though from some remaining payment records appears to have been sometimes paid under other bases, with separate contributor numbers, such as 'C Hart' **{K/108/3}**). Ms Hart's email address was "christine@warnerpi.demon.co.uk" **{L/410}**. She was primarily a blagger.

77. D has disclosed just three invoices from Ms Hart for the period 20 July 2003 to 17 October 2003.[23]

78. Ms Hart appeared as a "*private eye*" in the Mail on Sunday contact book of the news desk **{L/292/5}** and described herself to the Defendant in 2007 as a "*private investigator who has worked in the industry for over 15 years*" **{L/460}**. D's witnesses sought to soften the use of Ms Hart by suggesting that she was a 'hybrid' of a freelance journalist and private investigator, though this does not stand up to scrutiny, and was even apparent from the name, as Ms Boshoff accepted (Transcript, Day 36, p. 150, ll.1-16):

> Q. Is your evidence that you believe she was only a freelance journalist, or that she did do some writing but she was also an enquiry agent?
>
> A. Yes, she was an enquiry agent and a freelance journalist. I mean, for me, a private detective is like someone who goes around taking pictures of people who are, I don't know, in the middle of a divorce or something, and that wasn't my understanding of -- of Christine. As you can see, she started working for the department a year before I arrived, so she was someone who I or colleagues would go to sometimes to help us to stand up a story, as far as I remember, to verify -- to try and verify things.
>
> Q. Well, let's look back. The name of her agency is Warner Detective Agency.
>
> A. Yes. Yeah, it should have been a clue, right?

[23] Cs have disclosed a number self-billing remittance slips from *The Daily Mail* to Ms Hart's corporate alias Warner Detective Agency dated between 1997 and 1998. D has not disclosed any ledger payments to Ms Hart or her aliases.

79. Mr Bracchi accepted Ms Hart used subterfuge but denied using her to obtain medical and financial information (Transcript, Day 40, p. 101, l.22 to p.102, l.1): "*I've just explained the circumstances in which I think she might have done*" while suggesting he never commissioned her for financial or medical records of celebrities.

80. It is clear that Ms Hart engaged in blagging. She describes in her own words "*pretext calls*" she undertook pretending to be Helen Rossitter from the Food Standards Agency in 2007, for example **{L/460}** in an email to the *Mail on Sunday* Indeed, Ms Boshoff accepted that Ms Hart, as a PI used by the showbiz desk "*did do pretext calls*" (Transcript, Day 36, p. 153, ll.13-14) and gave another example of blagging work undertaken by Ms Hart in her witness statement.

81. The Cs have been provided with scant disclosure in relation to Ms Hart, despite the evidence she, and aliases such as Warner Detective Agency, were paid by D between at least 1998 and 2018. Despite this, the fact that her trade was in UIG was clear. Fancourt J of course made adverse findings in ***Sussex v MGN Ltd*** describing her work in medical-record blagging as "*grotesque*" [1314]-[1317] and that her UIG was "*often blagging of highly sensitive information*" [276].

82. The activities for which Ms Hart was commissioned are most clearly shown from commissioning by Andrew Buckwell which were put to him in cross-examination (where there are surviving invoices because he previously worked at MGN), including medical enquiries, a "*Full M*" for Tymothy Taylor and Des Lynam for £155 each **{K/61.32}** and enquiries into "*Dr Edmonds*" and "*Sloan Hos.* [Hospital]" **{L/78.1}**.

83. The Cs also rely on examples in Schedule C: including payments made in respect of Patsy Kensit and Liam Gallagher **{CB/4/63}**. Ms Kensit's witness evidence in relation to this is conspicuously not being challenged by D at Trial.

84. Ms Hart is directly linked to specific episodes and articles in respect of the Claimants and is addressed in more detail in relation to those specific matters. This includes her providing the information relied on in the first unlawful article in

Baroness Lawrence's claim, as set out below. The evidence and recordings of Mr Hanning at **{F/30}** should be considered in full.

85. Payments made to, or for the benefit of, Christine Hart (and Gavin Burrows) amounting to hundreds of thousands of pounds, were made by D (Transcript, Day 20, pp.73-74), and the Cs invite the Court to consider this as part of the holistic assessment of the available evidence. It is respectfully suggested that the timing, scale and nature of such payments can be taken into account when assessing the evidence.

<u>Glenn Mulcaire</u>

86. Mr Mulcaire, the notorious phone hacker, provided freelance work, via Greg Miskiw, to the *Mail on Sunday*. Mr Miskiw admits to undertaking such work with Glenn Mulcaire supplying the information from phone hacking and other unlawful methods, in his affidavit **{H/14}** as does Mr Mulcaire in the documents appended to his hearsay notice: **{H/16}**, **{H/17}**, **{H/18}**. D did not apply to cross-examine Mr Mulcaire. Mr Miskiw recalls specifically stories relating to hacked or blagged material being given to Ms Nicholl relating to, *inter alia*, Sadie Frost and Chelsy Davy **{H/14/3-4/§§16-24}**.

87. There is clear documentary evidence, relied upon in the claims of Sir Simon Hughes and Sadie Frost, that Mr Mulcaire engaged in UIG in respect of each of these Claimants, including the interception of the voicemail messages of Ms Frost.

88. The episodes are clear examples of voicemail interception and dealt with below in relation to the sections of Sir Simon and Ms Frost.

<u>Jonathan Stafford</u>

89. Jonathan Stafford is a talented voice actor (see **{L/64.3}**) and was a private investigator used by D, specialising in blagging.

90. Only 17 invoices[24] from Mr Stafford have been disclosed and these range from 8 February 2002 to 15 December 2003.[25]

91. An internal aide memoire dated 18 October 2011 states he was "*known in the features department as a blagger*" **{K/1573/2}** and was a preferred PI for the features department.

92. Mr Stafford was plainly also familiar to the *Mail on Sunday's* news department as a blagger, as accepted by David Dillon (Transcript, Day 37, p. 13, l. 8-18).

> Q. *Mr Dillon, we were just dealing with Mr Whittamore and I'm now going to ask you about another enquiry agent. The Mail on Sunday also used Mr Stafford, didn't they, extensively?*
>
> *A. We did use him, yeah.*
>
> *Q. He was a blagger, wasn't he?*
>
> *A. Well, that's your term. I guess, yeah, you could call him a blagger. He did do that kind of thing, yeah.*
>
> *Q. And you used him yourself, didn't you?*
>
> *A. On -- on occasion, yes.*

93. Mr Stafford appeared as a key private investigator available to all on the features desk **{L/1/4}**, as Baroness Sanderson accepted (Transcript, Day 41, p. 13, l.16 to p.15, l.18):

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[24] Of these 17 invoices, only three schedules detailing the work carried out by Mr Stafford have been retained

[25] Payment ledgers disclosed by D show that Mr Stafford was paid on numerous occasions by *The Daily Mail* **{L/682}** between 1995 and 2006, and by the *Mail on Sunday* between 1999 and 2004 **{L/683}** at a cost of more than £500,000.

Q. Can we look at {L/1}, please. This is a document that appears to be a memo for Associated reporters.

A. Mm-hm.

Q. Is that correct?

A. Yes, it was in a -- it was in a black file that was always on the desk if anybody needed to refer to it.

Q. Can I just ask you to turn to {L/1/4}, and there we see that there's a heading "Private Investigators"?

A. Mm-hm.

Q. And we see a reference to a number of individuals there. Then if you look about halfway down, you'll see: "Ex-directory numbers." And then: "Gary ..." And then: "... say you are calling on behalf of Stephen Bevan." And then we have: "The best PI is a contact of Fiona's, but all requests have to go through Fiona or Liz."

A. Mm-hm.

Q. Am right in thinking that "Fiona" is Fiona Wingett?

A. Yes.

Q. And she was a features journalist?

A. Yes.

Q. And "Liz" is you?

A. Yes.

Q. And this refers to Jonathan Stafford, doesn't it?

A. Yes.

Q. And then on {L/1/5}, we see, for example, there's a whole lot of information about services that you can use to obtain, for example, death, marriage, birth certificates, and then there's a reference, under "Finding people ourselves", to the electoral roll and telephone enquiries?

A. Yes.

Q. And they were all available to journalists?

A. Yes.

Q. Can I ask you, if we just come back to -- if we come off the document for a moment -- how did you first come across Mr Stafford? Who introduced you, do you remember?

A. Yes, so he was introduced to the department via Fiona Wingett. As it says there, he was a contact of hers. And it is true, as it says there, that back then I was a junior feature writer researcher, so I would be asked to help the senior feature writers with work on their stories if they were on the road. So the idea was that I would be asked to call him. I mean, the reality is that actually, as time went on, I would say probably most of the features department would contact Jonathan, but that was the intention originally. I don't think it really worked out like that.

94. Indeed, this *Mail on Sunday* black file memo (see in particular pages **{L/1/4-5}),** is likely to date around 2000, and is a highly instructive document in terms of (a) the use of PIs (they are expressly referred to as "Private Investigators" (and not "Inquiry" or "Search Agents" as the party line has been dictated to witnesses by D); (b) the nature of the information which they were obtaining – see for example, The Scotts were obtaining ex-directory numbers, and not just addresses, and references to medical checks too); (c) the fact that JJ Services/Whittamore was providing the names of owners to match to given addresses (i.e. conversion) which is why his "occupancy" searches were so useful – as Severnside could only match properties if given owners' names and (d) the reminder of the lawful databases readily available or available in-house to the *Mail on Sunday* journalists.

95. Baroness Sanderson was a user of Jonathan Stafford. Her use included obtaining ex-directory numbers and an itemised phone bill **{K/361}**. Baroness Sanderson said in relation to **{K/361}** (Day 41, p.18 l.22 to p.19, l.13):

Q. *Yes. Now, this is information you know he couldn't have obtained lawfully, don't you, Baroness Sanderson?*

A. No, I really don't know that.

Q. How would you get someone's itemised phone bills unless they consented to it?

A. Well, I don't recall asking for an itemised phone bill. [...]

Q. You didn't ask yourself how he'd get an itemised phone bill, for example?

A. Honestly, no.

96. Similarly at **{L/129}** ("*XD+CAB*"[26] and "*XD*" **{L/129/2}**), where Baroness Sanderson again was obtaining ex-directory searches, she suggested she was unaware it was unlawful. Despite clear evidence that she obtained itemised phone billing, she still denied he was providing far more than just addresses and simple phone numbers (Day 41, p.20, ll.10-15).

97. Baroness Sanderson also continued to be in contact with Mr Stafford, including in October 2013 **{K/2440}** (rows 288 to 289). Baroness Sanderson did not recall the exchange.

98. The article "*Curse of the trout pout*" about Leslie Ash which Baroness Sanderson bylined is at **{K/314}.** Baroness Sanderson obtained information costing £115 relating to telephone schedule **{K/361}**.

99. Others of the few remaining invoices where the underlying schedule identifying the types of work he was commissioned to provide had not been destroyed demonstrate UIG undertaken such as **"***XD"* and *"item"* (which the Cs infer was for itemised phone billing data, given it appears next to a landline phone number and the cost was £200) **{K/361/2}**. Of course, itemised phone bills cannot possibly have been sought or used as a way of contacting someone in order simply to put a story to them. What it contained was information which was relevant to the content of the story – such as the likely nature, date or period of contact between the target of the story and someone else with whom they were believed or alleged to be in a relationship (whether romantic, such as a partner or lover, close friendship or

[26] The Cs infer that this is a reference to "cable" (i.e. the phone line).

professional – such as a divorce lawyer or medical professional). Alternatively, it could be sought or used as a way of standing up such a story. In any event, such information would sometimes be accompanied with conversions of the phone numbers which appeared in the bill in order to identify the person(s) called by the target.

100. Mr Stafford was not confined to working for Features, and also invoiced the *Mail on Sunday* news desk for substantial sums **{L/275}** and **{L/283}**. The descriptions for Mr Stafford's surviving schedules (such as XD and "item") match those he provided in his work for MGN newspapers **{K/38/15-16}**, and were the basis of the findings that the substantial majority of his work was unlawful. The inescapable inference is that Mr Stafford carried out the same work for D as he did for MGN.

101. Examples of the sort of commissioning Mr Stafford did (is apparent from the schedules to his bills, albeit none survive in this litigation, for example at **{K/38/17}** from the Mirror litigation, which is pleaded as propensity:

<u>Andy Buckwell</u>

3/2	V. Sheen/Berks	Ex D	£40.00
3/2	01344 620028/Hoddle	Tele item	£150.00
25/2	Hayes/Slough	Ex D + 2 lines	£60.00
25/2	Sacher/W9	Ex D + 1 line	£50.00
27/2	J. Stern	4xairline check	£200.00
27/2	J. Stern	E.J.Billing info	£50.00
27/2	J. Stern/SE11	Ex D	£40.00
27/2	J. Stern (1)	Tele item + M.R.	£200.00
27/2	J. Stern (2)	Tele item + M.R.	£200.00

102. This example was put to Mr Buckwell (Day 38, p. 188, l.15 to p.191, l.13):

Q. Can we look at {K/38/17}, please. You see, this is another schedule that accompanied the covering invoice that we have. This is dated 5 March, and there are a number of requests again for work that you asked Mr Stafford to carry out and I'm going to take you through it. We see an ex-directory number, then we see a phone bill relating to someone called Hoddle. Do you remember asking for the phone bill of Glen Hoddle, Mr Buckwell?

A. No.

Q. You see, once again, Mr Stafford is providing you with a phone bill. He clearly was asked by you, wasn't he, to provide phone bills to you for your use?

A. He was clearly asked -- well, he may have been asked, but, no, I -- I have no recollection of this. These documents are from 1999.

Q. You were a regular user of Mr Stafford, weren't you, Mr Buckwell?

A. Well, I've -- I've said that, yes. I said that I used Mr Stafford to help find numbers and addresses and so forth, yes.

Q. Well, let's look further down. So we have two ex-directory numbers, two lines, then another ex-directory number, and then we have an airline check, four airline checks. You were obtaining flight details, weren't you, blagging flight details?

A. I have no recollection of doing that, no.

Q. You asked Mr Stafford, I suggest, to check details by blagging from an airline. That's what you were doing, isn't it, at a cost of £200?

A. You keep saying it cost me. This is –

Q. No, I said "at a cost of £200".

A. Excuse me. Sorry. I mean, I just don't remember, and I think I would refer you back to, you know, what I said before. It doesn't necessarily mean that I commissioned it if my name -- it may relate to a story I was working on, but my name is there and I -- and I am sorry, I can't remember.

Q. And then we see "EJ billing information", and I'm going to suggest to you that that was easyJet billing information, Mr Buckwell. You know that, don't you?

A. No, I don't.

Q. And then there's another ex-directory number relating to someone who is named as "J Stern". And then we have more of these phone bills, itemised phone bills, £200, £200. Again, Mr –

A. Looks like the same thing.

Q. There are two there.

A. Yeah.

Q. One and then two.

A. Sure.

Q. So I suggest to you, you asked Mr Stafford to carry that out for you in relation to this J Stern. Again, Mr Buckwell, you knew, didn't you, that Mr Stafford must have obtained this by subterfuge, itemised phone billing data, airline information? A. I'll say -- I'll say it again that, you know, when is this dated? 1999. I'd been there a year. The use -- Mr Stafford was commonly used by people there, and I thought this was a tool available to people in the newsroom, and it wouldn't be if it wasn't okay to do that. And I -- you know, yes, it was quite unusual to get ex-directory numbers having worked in areas where you didn't, but I thought that, you know, there are ways that you can get ex-directory numbers which, you know, that is not illegal, in an illegal way, and that -- that was my assumption.

Q. And flight information. You could get that legally, could you, Mr Buckwell? A. Well, I don't recall asking for flight information.

Q. Or phone bills?

A. I've answered that question already.

Q. Who was J Stern, Mr Buckwell?

A. I have no recollection.

103. The Court found in ***Sussex v MGN*** that Mr Stafford "*was one of the key blaggers and information providers at the centre of a lot of the unlawful operations*" (1995-2011) [272] and that journalists "*took steps to mitigate the risks of a paper trail of UIG*" [122] to hide UIG and that the "*substantial majority of the instructions to him were for UIG that was in many cases preparatory to conducting VMI*" [124]. Mr Stafford worked across both D's newspaper titles and, as can be seen from the few invoices which have survived, worked across most departments of the *Daily Mail*, including News **{L/303},** Features **{L/304} {L/255}, and** Showbiz **{L/302}.**

JJ Services/Whittamore

104. JJ Services was the trading name of the private investigator Steve Whittamore. He invoiced D with the email *blag2049@hotmail.com* **{F/19/11/§43}**.

105. 124 invoices[27] have been disclosed by D from JJ Services for the period 24 June 2001 to 12 November 2006.[28]

106. Mr Whittamore is a witness for the Cs **{F/19}**. Critically, D deliberately chose not to cross-examine Mr Whittamore, and so Mr Whittamore's evidence stands entirely uncontested and unchallenged.

107. Mr Whittamore's services are explained at **{F/19/3-4/§§9-12}**:

> 9. Amongst the services I provided for Associated's newspapers (directly from myself but mostly via a network of PIs and operatives who I sub-contracted the work to) included the following:
>
> (a) mobile and landline (home phone or "HP") conversions (also called "reversals") which was providing the name and address – subscriber details - of the owner of a phone number provided to me. This information was nearly always obtained via a pretext call by my sub-contractors.
>
> (b) obtaining criminal records of individuals ("CROs"); my subcontractor investigator obtained this through a contact with access to the Police National Computer,
>
> (c) some miscellaneous blags ("pretext calls") - obtaining personal data by deception - such as calling the DHSS (benefits) or bank details. Again, usually through a subcontractor, though I did these myself also. These blags were not usually commissioned in exact terms, but were done to obtain the private information that was commissioned. Where a blag was used to obtain the information, this was identified in the invoices, as I usually charged a higher price for this service.

[27] A significant proportion of the JJ Services invoices disclosed by D do not contain the "Work List" in which Mr Whittamore set out the work he did and the targets of that work.

[28] Payment ledgers disclosed by D show that JJ Services were paid on numerous occasions between 1998 and 2007 by *The Daily Mail* **{L/684}** and between 1998 and 2005 by the *Mail on Sunday* **{K/1756}**

(d) obtaining telephone bills and itemised billing records, also called "telephone accounts". This information was obtained by a pretext call to the phone company by one of my sub-contractors.

(e) obtaining lists of BT "friends and family" ("F&F") numbers (the ten "favourite" numbers nominated by subscribers). Again this information was obtained by a pretext call to the phone company by one of my sub-contractors.

(f) obtaining ex-directory numbers (called "XDs"). This information was nearly always obtained by a pretext call by one of my sub-contractors. In theory, on occasions some ex-directory numbers could be obtained legitimately. For example, if a person moved into a house, and kept the same number as its previous residents, but made it ex-directory, it might be possible to, locate the number listed in a previous hard copy telephone directory which I had access to); however, this was extremely rare, and in my experience most people changed the number when they chose to go ex-directory.

(g) vehicle registration numbers of individuals or – more usually - the owners' details for given vehicle registration numbers. I understand that my sub- contracting investigator initially obtained these through a contact at the DVLA but later obtained them through a contact with access to the Police National Computer.

10. I was also finding addresses (called "Area" and "Occupancy' searches) often through the use of credit reference agencies, such as Equifax, to obtain location and other information. Some addresses could be found on "info-discs" that I subscribed to.

11. Basically, I was working to order. I simply provided the information that these newspapers wanted - whether that be mobile phone number conversions, ex- directory numbers, billing data, criminal records, DVLA etc. I did not attempt to obtain information I was not asked to obtain, nor did I provide additional information beyond what had been requested.

12. As far as I am aware my sub-contractors worked off untraceable pay as you go mobiles using them for example to deceive (or 'blag') BT into providing private information by impersonating BT engineers. I am unaware precisely how my sub-contractors obtained this information.

108. Mr Whittamore states that after Operations Glade and Motorman, and unlike other titles, the *Mail on Sunday* and the *Daily Mail* continued to instruct him **{F/19/4-5/§§13-15}**:

> 13. In March 2003, my office was raided by the ICO. I was subsequently charged by the police under Operation Glade with "Conspiracy to Commit Misconduct in a Public Office" in relation to those examples of my activities which involved arranging access to the Police National Computer (PNC), as requested by journalists. I was eventually convicted in April 2005, alongside 3 others who were involved in accessing the PNC or procuring that access, on the lesser charge of breaching section 55 of the Data Protection Act 1998. We were all given a conditional discharge.
>
> 14. After my conviction, there were some titles who ceased to instruct me, however some newspapers continued using my services despite this, and these included the Mail on Sunday and the Daily Mail. They remained my best customers until April 2007, when the Daily Mail ceased using my services.
>
> 15. I have looked at my contact list from around 2007. For the Daily Mail, I can see it contains the names of the Managing Editor, Alex Bannister, Tony Gallagher, the News Editor, Leaf Kalfayan, the Features Editor, Lisa Collins, the editor of Femail, and a number of reporters including Gordon Rayner, Andy Buckwell, and Paul Bracchi. For the Mail on Sunday it has the names of Sebastian Hamilton (News Editor), Sian James (Features Editor), and Nicholas Pyke (Deputy Features Editor).

109. The books where Mr Whittamore recorded his commissions by the Daily Mail and Mail on Sunday were the Green and Yellow Books. He explains what he recorded in them at **{F/19/56/§§22-23}**:

> 22. In those books, to the best of my recollection, I recorded
>
> (a) the name of the commissioning journalist;
>
> (b) the newspaper they worked for;
>
> (c) the name of the target(s);
>
> (d) the activity commissioned and carried out (eg DVLA, CRO, XD, veh reg, blag, area, occ, etc);

> (e) some of the product of the work I did or sub-contracted (for example phone numbers); and
>
> (f) the name of my sub-contractor
>
> 23. The purpose of these work-books was to enable me to prepare accurate, detailed invoices for payment, to the right desk at the right newspaper.

110. The invoices issued by JJ Services, which are raised in more detail below in relation to the specific articles and episodes (though many lack the second part of the invoice, the work sheet), are explained by Mr Whittamore at **{F/19/8/§§31-32}**:

> 31. When I invoiced Associated (as with all the other newspapers which used my services), my invoices were in two parts: there was a cover sheet, which gave the amount for the work done inclusive of VAT, and referred to the work done as "Confidential Inquiries". This was for the finance department to process and pay. The second part of the invoice was a work-list addressed to the department head (such as the News or Features Editors), and broke down the work done in detail, identifying the journalist who had commissioned the work, the target of the work, the price of each enquiry, and clearly set out the work done to obtain the information requested, for example whether that was an ex-directory search, a criminal records check, a vehicle registration check, a mobile phone conversion or a blag.
>
> 32. The reason I included such details in the work-lists was so there would be no doubt in the minds of those approving payment of the invoice of what I was invoicing for, and who had commissioned it. This would ensure I was paid. There might have been occasions when my invoices were questioned, but I do not recall any instances, and I recall that all my invoices were paid, particularly once I was established and started supplying detailed invoices and work-lists, based on my work-books. Therefore, anyone who reviewed my invoices and the accompanying work-lists, either at the time they were submitted or subsequently, would have seen clearly the nature of the work I was instructed to carry out, and who I had carried it out for.

111. The work after the 2003 raids continued with some distinctions **{F/19/11/§§41-42}**:

> After the raid on my premises in March 2003, I continued carry out work for the newspapers, including Associated. As the charges that I and my co-

> defendants had faced related to unlawful access of the Police National Computer and the DVLA database, I did not continue that kind of work after March 2003. However, as I had not been charged with any offences in relation to the telephone work I carried out, I continued to provide ex-directory numbers, mobile phone conversions, itemised phone billing enquiries and blags using the methods and some of the same sub-contractors I had employed prior to March 2003.
>
> 42. As well as "Line", I have been asked to explain what "Contact" means on the work-lists I sent to Associated in 2006. As I say above, after nearly 20 years, and with no access to the underlying work-books, I can't recall exactly what that description is referring to, or why it was used, but it is likely that I used it instead of "Line" to describe obtaining an ex-directory number.

112. Mr Whittamore noted at paragraph 43 to 45 of his unchallenged statement **{F/19/11-12}**:

> 43. I am in no doubt that all journalists who used my services on a regular basis, or who worked in news rooms who were regular users, knew that the information was obtained through illegal means such as blagging. It was well known that my service was mainly a blagging service. The email address I used to invoice the newspapers was even called blag2049@hotmail.com and was included in invoices and in correspondence with them.
>
> 44. The journalists who used me and the editors who sanctioned this knew full well that I was a practitioner of the "Dark Arts" - this was the term used for all activities not readily available to them. Furthermore, if the information the journalists requested could have been acquired legitimately, as opposed to through blagging or other checks, then the newspapers would have had no need to use my particular services.
>
> 45. As I have explained, when I invoiced Associated newspapers, I sent a cover sheet detailing the totalling amount payable, together with a detailed breakdown of the work I had carried out, the result of my inquiries, the amount to be paid for each inquiry, and the name of the commissioning journalist. There would have been no doubt in the mind of those responsible for checking these schedules, and paying these invoices, what work had been carried out, and therefore it would have been clear what Associated's journalist had asked me to do.

113. Importantly, it is also unchallenged that "*I did not attempt to obtain information I was not asked to obtain, nor did I provide additional information beyond what had been requested*" **{F/19/4/§11}**.

114. Mr Whittamore's 2003 contact list, included many journalists and executives working on both the *Daily Mail* and *Mail on Sunday* and is to be found at **{K/302/4-6, 14}** and in the contacts list from 2007 **{F/19/5/§15}**.

115. The Defendant's commissions of Mr Whittamore include for a "*PO blag*" and "*Frost/Law … Line x2*" requested by Ms Nicholl **{K/412/2}**; "*Four Seasons blag*" **{K/349/2}**; "*Fleming work & home blag*" **{L/246/2}**; "*Account enquiries*" **{K/150/17},**"F & F" **{K/1510/18}**, and "*CR check*" **{L/151/2}** among many others.

116. The *Mail on Sunday* and *Daily Mail* continued to instruct Mr Whittamore after his offices were raided in 2003, he was arrested in 2004 and even after he was convicted in April 2005. Mr Whittamore explains D remained "*my best customers until April 2007*" **{F/19/5/§14}**.

117. JJ Services appears on a list of "*companies we* [D] *are forbidden to use*" on 27 April 2007 **{E/102/691}**.

118. He explains that while he ceased to unlawfully access the Police National Computer and DVLA database (as he was charged with and convicted for those activities) after 2003, but he continued to provide, to D, ex-directory numbers, mobile phone conversions, itemised phone billing enquiries and blags as usual **{F/19/11/§41}**.

119. David Dillon (*Mail on Sunday* News Desk executive) was interviewed under caution by Operation Glade in early 2004 in connection with the use of Mr Whittamore to carry out a vehicle registration check on the Police National Computer, of a motor scooter being used to transport the Union leader Bob Crow. See Mr Whittamore's evidence at **{F/19/8-10/§§33-37}**. Mr Dillon accepted he personally commissioned Mr Whittamore and had approved his commissioning by other journalists (Transcript, Day 37, p.94, ll.8-14), and accepted the specific Bob Crow incident that

the moped driver had been identified following a request to Mr Whittamore (Transcript, Day 37, p.104, ll.2-4). This is fatal to any suggestion that the story can be explained without resorting to JJ Services and the UIG commissioned. Indeed, as Mr Whittamore explains at **{F/19/8-9/§§33-37}**:

> 33. I have been shown an invoice dated 2 February 2003, for "Confidential Enquiries" worth £925.31 (including VAT), addressed to the Mail on Sunday). The accompanying work-list is addressed to Paul Field, who was the News Editor at the time. I knew Mr Field well and liked him. He was a very good customer of mine, at the Sunday Mirror and then at the Mail on Sunday. I went to dinner at his house a couple of times and he also invited me to a posh corporate event as a guest of Associated.
>
> 34. The work-list describes a variety of tasks I had carried out in the week ending 2 February 2003 for three Mail on Sunday journalists, including Katie Nicholl and David Dillon, who was the newspaper's Deputy News Editor. The work-list shows that Ms Nicholl instructed me to find an ex-directory number (and the occupant of the address linked to that ex-directory number) relating to Dan Peppe, at cost of £102.50. The ex-directory number would have been obtained by my sub- contractors, who obtained this information under a pretext. I believe Ms Nicholl must have known this information was obtained this way. If it could have been obtained legitimately, reporters could have done it themselves, and there would have been no need to use my services. 35. Mr Dillon instructed me to obtain the details of the registered keeper of two motor vehicles, at a cost of £200 each. The first of these relates to Emma Beal, the partner of the then London Mayor, Ken Livingstone. I have been shown an article by Christopher Leake and Matthew Nixson, published in the Mail on Sunday on 16 February 2003, in which Ms Beal's vehicle details are referred to. The second instruction related to Adrian Scott. I have been shown an article published in the Mail on Sunday on 2 February 2003, "Well, how else would Bob Crow, scourge of commuters get to work", bylined Christopher Leake, in which Mr Scott is identified as the owner of a scooter which I now understand had taken the union leader, Bob Crow, to work. At the time I did not know who these people were, I just provided the information requested by the people at Associated. 36. In both cases, Mr Dillon would have called me and provided me the registration numbers of the vehicles and asked me to identify the owners. I would have written down the registration numbers in my notebook, and then called my sub- contractor and given him those details. My sub-contractor would then have used his

methods to obtain the name of the registered keeper. In the case of Mr Scott, I know this was obtained via the Police National Computer because that was the one of the charges I was convicted of in 2005. Having obtained the details of the registered keeper, my sub-contractor would have called me back and provided me with the details. I would then have called Mr Dillon and given him the details he had asked for. I would have recorded the details of the taskings in the Green Book (which the ICO seized and was part of the evidence they used to charge me). I then invoiced Associated for the work, stating clearly in the work-list what I had done, including the registration details of the vehicles I had been instructed to investigate, and that it was Mr Dillon who had instructed me. 37. I believe Mr Dillon must have known this information was obtained this way. He provided me with the vehicle registration numbers. If the details of the registered owner could have been obtained legitimately, he could have done it himself, and there would have been no need to use my services.

120. As a matter of practice, David Dillon confirmed "*a reporter could ask Steve Whittamore to carry out a search and then refer them to me as the desk editor dealing with the story. Or I may have asked him to do it myself*" (Transcript, Day 40, p.95, ll.1-4).

121. It is also clear from the evidence that the use of PIs was institutional and structured rather than commissioning on an ad hoc basis. The payment and commission was approved by senior executives: the relevant desk head and the Managing Editor at each of the respective titles. The desk editor might commission a PI him or herself or a reporter could refer to the desk editor in order to commission. Ms Lampert is a good example of desk heads approving and singing invoices (discussing the use and commissioning of the PI with the relevant reporter) see Transcript, Day 32, p.150, ll.7-15. Many appeared in contact lists or Rolodexes and are identified as "*Private Investigators*". For example, Jonathan Stafford was identified as one such PI with commissions to go through Fiona Wingett or Baroness Sanderson. These were a resource deeply embedded in the culture of the desks on both newspapers. This was especially the case where the desk heads and managing editors were well aware what could be obtained lawfully in house. The proper inference to be drawn from the approval of such expenditure on PIs notwithstanding this is that it was not innocent outsourcing but a deliberate and systematic use of external PIs to obtain

information that could not be obtained lawfully in house. The desk system shows how PI use at D was sanctioned and institutional.

122. As Mr Bracchi confirmed, Mr Whittamore's name was "*on a Rolodex*" available to anyone who wished to use it and was normalised (see Transcript, Day 40, p.94, l.25). The desks sanctioned such use when lawful databases did not yield results, and Ms Nicholl stated "*I would have just simply asked, "Is it all right to use Mr Whittamore? I can't get this detail on the electoral roll, I can't get this through the web, Tracesmart. Is it all right to use Mr Whittamore to try and get this number? I need to stand this story up." And more often than not, I would be told "Yes"* --" (Transcript, Day 35, p.41, ll.15-20).

123. At the centre of the operation sits Paul Field (who, as Mr Whittamore gives evidence, was a very good customer of his and with whom he had dinner at his house: see §33 Whittamore, see above). Invoices are often addressed to him and include a variety of unlawful checks (for example **{K/349}**).

124. Many journalists stated they failed to recall the extensive instruction of Mr Whittamore that was undertaken, such as Mr Henderson who despite various examples of unlawful requests said "*I do not remember doing this and speaking to Mr Whittamore*" in respect of any commissioning (Transcript, Day 24, p. 101, ll.3-4).

125. Indeed, as set out above, and in addition to the content of the schedules (few of which have survived the loss and/or destruction of documents), invoices included Mr Whittamore's email *blag2049@hotmail.com* **{F/19/11/§43}**, for example **{L/430}**.

126. D's formula, repeated by many journalists, that JJ Services was simply used for 'phone numbers and addresses' should be rejected. It conceals the true position which is that many numbers were ex-directory or mobile numbers, Friends and Family lists, itemised billing and mobile conversions all of which were unlawful at origin. Addresses were obtained via unlawful methods such as occupancy searches or vehicle registration checks. D cannot avoid the obvious from professed inability to remember. The remaining records are unusually specific and directly link

the journalist with the act they were commissioning. More generally, the clearer documentary records in relation to JJ Services also assist in providing a window into the culture at the *Mail on Sunday* and the *Daily Mail* where obtaining information from UIG was the norm.

127. JJ Services/Whittamore is directly linked to specific episodes and articles in respect of the Claimants.

128. The Court held in ***Sussex v MGN***: "*The majority of the work done ... for all three MGN titles between 1995-2005 was unlawful*": [268].

System Searches

129. System Searches was a private investigator company used by D and was run by Malcolm and Jackie Scott.

130. Only two invoices have been disclosed from System Searches, dating 11 February 2002 and 21 November 2002.[29]

131. Extant ledger cards show heavy use **{L/36}**, **{L/37}**. Katie Nicholl accepts that they were used to obtain ex-directory numbers **{G/38/16/§33.5.6}**.. Others suggested they were for public record searches (such as Richard Price **{G/25/5/§16}** and Richard Kay **{G/21/5/§19}**). Others, such as Barbara Jones, suggested they had "*never heard of System Searches*" **{G/12/8/§18.16}** but accepted in oral evidence that she was aware of the proprietors Malcolm and Jackie Scott (Transcript, Day 24, p. 105, ll.24-25).

132. It was clear that most of the information obtained by System Searches was not freely available material, given the fact that where the Managing Editors spotted freely available information was being commissioned, it was criticised as it could have been taken from Tracesmart, as with Alex Bannister's email to *Daily Mail* journalists **{K/1017}**. The enormous seven-figure expenditure on System Searches

[29] Payment ledgers disclosed by D show that System Searches were used prolifically by *The Daily Mail* and the *Mail on Sunday* between 1994 and 2007 **{L/689} {L/690}** at a cost of more than £2 million.

also suggests it was a well-established and heavily used part of the information gathering machinery at D.

133. System Searches appears on a list of "*companies we* [D] *are forbidden to use*" on 27 April 2007 **{E/102/691}**.

134. The Court found in ***Sussex v MGN*** "*A substantial amount of C&L's/System Searches' work – well in excess of half of all the searches done for MGN – were unlawful because the searches done were illegitimate use of data that was only available for restricted purposes, and not for sale to journalists.*" (1995-2011) [270] of Part II to the PI Schedule to the judgment.

135. System Searches are directly linked to specific episodes and articles in respect of the Claimants.

<u>Summit Credit & Legal Services</u>

136. Summit is a private investigator company whose activities included blagging information such as obtaining vehicle registration services.

137. Summit Credit appears on a list of "*companies we* [Associated] *are forbidden to use*" on 27 April 2007 **{E/102/691}**.

138. The Claimants also rely on in relation to a payment regarding "*DESILVA/DESOUZA*" **{L/688/8}** relating to a story published on 4 December 2005 about Peter Mandelson and his partner Reinaldo de Silva breaking visa rules **{K/699}**. Ms Churcher (one of the bylined authors) says she does not recall instructing Summit and confirmed that in oral evidence **{G/2/13/§13.2}**.

<u>Jonathan Rees / Southern Investigations</u>

139. Southern Investigations was operated by Jonathan Rees and Sidney Fillery. From 1997, the Anti-Corruption Command infiltrated Southern Investigations' premises as part of Operation Nigeria (see **{L/749}**). Derek Haslam provided evidence for the Claimants in relation to Jonathan Rees **{F/1}** and his activities which involved **{F/1/4/§11}** "*phone tapping (meaning the interception of live telephone calls),*

computer and phone hacking, bribing police officers and a whole range of other unlawful activities]".

140. Mr Haslam made clear in cross-examination that the Mail titles were among those he reported to CIB3 (Transcript, Day 17, p.82 l.5 to p.83, l.11):

> *Q. Can I just check with you, just to be clear: is it your case that you reported the allegations which Mr Rees had made to you about the Mail newspapers to CIB3?*
>
> *A. Yes, what -- how it worked was -- I'll try and make it as clear as possible -- when you're doing that role there's certain guidelines, and often something will be said, and you'd love to pick up on it, but you daren't pick up on it, because if you pick up on it and show interest in it, it might show out and make them suspicious. So basically the conversations we used to have, some might be at the office, some might be in pubs or other venues, as soon as I left their company I would go as far as was safe away from where it had been and I would then make a contemporaneous note. Those contemporaneous notes, once they were complete, I would inform my handlers the telephone number that I'd been given. Anything of major importance I would tell them verbally over the phone. We would then arrange to meet at certain areas, certain places that are easy to survey to make sure I wasn't being followed. I would then tell them the contents of those notes, they would write their own notes from those notes, I would take my original contemporaneous note home and burn it, because I was well aware early on they were bragging that they -- they had no compunction about breaking into people's houses, offices and properties to obtain evidence, so I was very aware that I certainly didn't want any written record in my house.*
>
> *Q. Just so that it is clear, are you saying that the Mail newspapers were among those that you reported to CIB3?*
>
> *A. Yes, they would have been.*

141. Rees "*used to brag about working for the Mail newspapers*" **{F/1/4/§12}**. Mr Haslam goes on to explain the work undertaken by Mr Rees and his interactions with D, and his particular focus on Baroness Lawrence.

142. The evidence of Mr Wood (as originally drafted in his witness statement) clearly dissipated under cross-examination, and he accepted while he had no memory of the Mail titles being mentioned "*I couldn't say there was never a mention*" (Transcript, Day 24, p.51, l.23). Mr Wood also accepted that when Operation Nigeria was underway, DSupt Jarratt rather than Mr Wood was Mr Haslam's handler (Transcript, Day 24, p.51, ll.1-5) and so even the lack of Mr Wood's memory does little to undermine Mr Haslam's clear recollection. Furthermore, Mr Wood could not remember the details of his meeting with Mr Haslam in Norfolk in 1997 and his later meetings (Transcript, Day 24, p.25 ll. 3-23).

143. In fact, Mr Wood conceded that, during the period that Mr Haslam visited Mr Rees, "*I wasn't directly dealing with Mr Haslam by that stage…*" (Transcript, Day 24, p.29, lines 23-24). It was put to Mr Wood that he ceased to be Mr Haslam's handler in October 1997, only two months after meeting him. Mr Wood was unable to provide a clear answer, but conceded that "*I thought it was probably a bit later than that, but it could be, yes"* (Transcript, Day 24, p.30, lines 17-20). Clearly, Mr Wood's attack in his witness statement on Mr Haslam's credibility is therefore unfounded, as he himself accepts he only handled him for a fraction of the time that Mr Haslam conducted his intelligence gathering.

144. Mr Wood recalled giving evidence at the Ellison Review. He was asked about the A4 ring binder which contained highly confidential information that went missing during Operation Othona. Mr Wood accepted that *"it's justified criticism of shredding of documents, if that happened, yes… certainly Operation Othona would have had an enormous amount of material, absolutely, if that was all shredded. Yes, I'm not quite sure the extent of what was found, but yes, I mean, it would have been – you know – it's just difficult to imagine why that would be shred*[ded]*."* (Transcript, Day 24, 19 February 2026, p.50, lines 7-16).

145. It was put to him that because such important documents had gone missing, his specific recollection that the Mail newspapers weren't brought to him during Operation Nigeria does not mean that they were not reported. He concedes that while he has no memory, he cannot be certain in saying that it did not happen: *"I*

couldn't say there was never a mention. I've certainly no memory of it and I don't think there was, but it's fair what you say." (Transcript, Day 24, 19 February 2026, p 51, lines 21-25).

<u>Mike Behr</u>

146. Mike Behr was a South Africa-based freelancer used by D's journalists, including Rebecca English, to obtain information for stories involving the Duke of Sussex and Ms Chelsy Davy. He is addressed below in more detail in relation to the claim of the Duke of Sussex and in relation to Ms English. In particular, there is clear evidence of "*airline searches*" **{L/29/5}** and **{L/483}** which were flight blags.

147. In particular, one of his specialisms was obtaining flight blagged information including flight details and even seat numbers which was obviously unlawfully obtained.

<u>Capitol Inquiry</u>

148. Capitol is a Washington DC-based company run by Ken Cummings retained by D to obtain information for D such as call and billing information **{L/232}**.

149. Mr Portley-Hanks gives evidence on Capitol at **{F/5/19/§§65-66}** and **{F/5/7-8/§20}**. Activities included telephone billing and other blagging and cell phone tracing.

150. Capitol was used by Ms Churcher on a number of occasions: for example **{L/117}** and **{L/232}**. Including for "*tracing cell phone number*" **{L/127}**. See also **{L/566}** and **{L/589}**. The UIG is clear on the face of the surviving invoices **{L/232/1}**:

December 31, 2002
In Reference To: Bill for Demian Warner/Halliwall Investigation
Authorization by Sharon Churcher

Invoice #11595

Professional services

		Hrs/Rate	Amount
	Investigator		
9/24/02	September 24, 2002 - September 25, 2002: Checked addresses for K. Newcomb in Virginia and D. Warner. Searched for telephone calls between Newcomb residence and Warner in United States or United Kingdom.		200.00
9/27/02	Checked for cell phones billed to K. Newcomb residence. Traced telephone numbers on Newcomb bill.		150.00

151. Ms Nicholl also used Capitol Inquiry, and Capitol's telephone number (see **{L/232}**: 202 789-1581) appears in her notes **{K/233/5}**, as she accepts **{G/55/3/§7}**.

152. Capitol Inquiry appears on a list of "*companies we* [D] *are forbidden to use*" on 27 April 2007 **{E/102/690}**.

<u>John Ross</u>

153. John Ross is a former police officer turned private investigator.

154. §43 of Mr Haslam's witness statement explains Mr Ross was a corrupt policeman who was involved with Mr Rees **{F/1/10/§43}**:

> "*...Like Rees, he specialised in selling information to the Mail and other newspapers from corrupt, serving officers. Ross was a well- known figure within the police community whilst I was a serving police officer. I got to know Ross during that period. When I started associating with Rees at the request of the MPS, Rees would talk of Ross and how on occasions they worked together on stories on behalf of the Mail and other newspapers. ... I believe, from my recollection of conversations with Rees and Fillery, that Ross also targeted Doreen Lawrence and the investigation into her son's murder.*"

155. The unchallenged evidence of retired senior police officer Robert Quick, explained Mr Ross **{F/20/3/§§7-8}** associated with "*undoubtedly corrupt*" police officers.

156. The June 2011 ledgers show substantial payments from 1991 to 2011 **{K/1377}**, however none of D's witnesses were prepared to explain why these ledgers were sought and produced or what was done with them as a result

157. Mr Ross was paid by D on a number of occasions, and a table of payments is set out at **{K/1653}** (initially heavily redacted) (this document was attached to a covering email dated 26 November 2011 which has been redacted for legal advice privilege from John Wellington to Liz Hartley) **{K/1652}**. Despite the number of articles disclosed in the list attached to the memo demonstrating the repeated use of Mr Ross for stories (as well as the implicit acknowledgement that their internal investigations had demonstrated how suspicious his involvement was), there are few invoices or payment records which have survived deletion, demonstrating that he was likely paid in cash.

158. Each of the payments on **{K/1653}** can be tied to an article, for example **{K/184}**; **{K/356}**; **{K/1245}**, the vast majority of which are reports of crime or crime-related stories, containing information which goes far beyond anything official or coming from stated 'police' sources These documents were compiled as part of an investigation undertaken by Mr Wellington (Transcript, Day 28, p.214, ll.18-20) immediately after Ms Hartley identified that 'Z' was likely to be John Ross and told Mr Wellington to identify payments and articles (Transcript, Day 19, p.171, ll.7-12). Ross, anonymised as 'Z', was dealt with in Chapter 7 of Flat Earth News **{L/495/11-17}**. This chapter was deployed in the Leveson Inquiry before Nick Davies gave evidence **{L/495/17}**. Later, D suggested there was "*little or nothing ANL can do to investigate, let alone refute, Mr Davies's allegations*" **{K/1761/27/§56}**.

159. Stephen Wright, who worked for the *Daily Mail* as Crime Editor, accepts he met Mr Ross and was offered information, but denies wrongdoing or knowledge of any wrongdoing by Mr Ross **{G/16/19-21/§§13.1-13.4}**. He also admits to having been asked by the Deputy Editor, John Steafel, to discuss his use of Mr Ross when Nick

Davies, the respected investigative journalist, presented evidence to the Leveson Inquiry about the corrupt methods in which Mr Ross obtained information from serving police officers, and provided that information to D's journalists. **{G/16/20/§13.4}.**

160. Mr Wright also accepts substantial contact between his mobile number and numbers linked with Mr Ross (over the extant period of 2011 to January 2014 there were 97 calls and 55 texts): **{G/43/13-14/§§9.1-9.3}**.

161. The links between Ross and Mr Wright are further addressed in relation to Baroness Lawrence, in the Claimant specific section of these closing submissions, below.

Lee Harpin

162. Lee Harpin was held by Fancourt J to be the "*Dauphin of hacking*",[30] . Fancourt J also found that in the period he was a freelance journalist between 2003 and 2005 (the period in which he was paid by D on 22 occasions **{K/6}**) the "*obvious inference is that, as a stringer, Mr Harpin continued to hack phones and do other UIG, as he did before then and afterwards at The People*.' Fancourt J referred for example to an email sent by Mr Harpin to the News Desk which made explicit reference to voicemail messages (see §132 and **{L/356}**).

163. Mr Harpin provided information to D's journalists, mainly Katie Nicholl, that bear the clear hallmarks of UIG. The Cs note that when the MPS sought a witness statement from Ms Nicholl as part of its investigation into Mr Harpin's phone hacking activities in 2014, D carried out an internal investigation, in which it found articles related to payments to Mr Harpin **{L/774}.**

164. Ms Nicholl initially suggested Mr Harpin "*occasionally contacted me with tips*" but "*he wasn't someone I dealt with regularly*" **{G/38/28/§35.6.3}**. However, Ms Nicholl accepted in cross-examination that there were a large number of payments made to Mr Harpin in relation to stories he provided her with (Day 38, p.135, ll.4-12):

[30] ***Sussex v MGN***, [349].

Q. Now, Mr Harpin's not coming to give evidence, is he? Are you aware of any reason why he is unable to attend this trial, Ms Nicholl?

A. You would have to speak to Mr Harpin.

Q. What we see is that Mr Harpin is paid at least I think 22 times in relation to stories relating to you over a period of November 2003 to January 2005. That is correct, isn't it?

A. It's -- yes.

165. In the articles which were found, it is clear that the suspicious references to phone contact were specifically identified and underlined in an investigation by John Wellington (or another individual) after the police, namely the Operation Weeting MPS phone hacking team, made enquiries about phone hacking **{L/774/18-24}**, (Transcript, Day 29, p. 34, l.11 to p. 37, l.14):

Q. I suggest to you, Mr Wellington, that what you were doing was plainly identifying those parts of the articles identified by Katie Nicholl that looked like they came from voicemail interception; that's correct, isn't it?

A. What I remember about this is that we -- we were contacted by the police who wanted some information about payments. I produced this list of payments to -- that we'd made to Lee Harpin. I then identified the articles and I then talked to Katie Nicholl about it. I -- these marks that we've seen on these printouts may have been made by me, I -- I don't really remember that, but I would say, yes, whoever made those -- those marks was probably asking themselves could this have been -- could this have been information that had been obtained by -- by hacking, because that's what Lee Harpin was being accused of. So whether it was me or somebody else, I mean, that -- that was the issue we were -- we were addressing.

Q. Well, it plainly is what someone was doing, isn't it? And you knew, didn't you, Mr Harpin's reputation for voicemail interception?

A. No, I didn't. I just told you that. I -- I didn't know his reputation at all.

Q. You say you spoke to Katie Nicholl.

A. Mm.

Q. What did Katie Nicholl tell you about these articles?

A. She told me that Lee Harpin was a journalist who had worked on staff at The Mirror, who had then got freelance, and he was providing her with stories, mainly showbiz-type stories, and she was using him.

Q. And she told you, didn't she, that he used voicemail interception to obtain his information?

A. No, absolutely not. I -- I -- I said -- I told Katie that the reason we were asking these questions was that he was being accused of it, and she was adamant that she had no idea that that was what he was doing, if he was doing it. She -- she didn't think he was, or she had no reason to think he was. She -- she said she didn't -- didn't know anything about hacking phones herself, and she had no idea whether -- whether he was doing it or not.

MR JUSTICE NICKLIN: When you mentioned that he was being accused of phone hacking, was that in the context of the enquiries by the police?

A. Yes, it was.

MR SHERBORNE: Did you discuss this with Peter Wright? No, did you discuss this with the editor at the time? I think Peter Wright was no longer there.

A. Yes, so this was, what, 2014, wasn't it?

Q. Yes.

A. So that would have been Geordie Grieg.

Q. Yes, it would.

A. Possibly. Yes, I'd imagine I would have told him the police were enquiring about this.

Q. Can we go down on the left-hand side a bit further {L/774/22}. It's right at the bottom, sorry. Yes, exactly. Who's Poppy Swan, Mr Wellington? A. She was my PA.

Q. So this was printed out by her?

A. That's right, yeah.

Q. Again, we have this only in hard copy form. Do you know where this document was found?

A. What do you mean, by you, or by ...?

Q. No, it was provided to us by Associated Newspapers in hard copy form.

A. Right.

Q. Which means it doesn't exist in any electronic form. Someone must have retained it in a hard copy form printed out, and I'm asking you whether you remember where that document was stored?

A. No, I don't.

Q. Bear with me one second, please, Mr Wellington. The date is 3 April, which I think is the same day that you were contacted by the police. Is that your recollection?

A. That makes sense.

166. Episodes relating to Mr Harpin are dealt with further below in detail in relation to Ms Berger and Ms Piper, as well as above.

<u>Gavin Burrows</u>

167. Gavin Burrows made a career of undertaking mobile and landline interception, landline tapping and blagging. One of his key clients was D until 2007. He also did work for NGN and MGN.

168. There is a long and unusual procedural history in relation to Mr Burrows, with which the Court is familiar. He gave evidence via remote video link from a location not expressly disclosed to the parties. He was called as the Cs' witness. He was, part way through examination-in-chief, declared as a hostile witness and cross-examined (by both the Cs and D).

169. In 2021 he confessed to the activities set out above and admitted that he carried out them for D, being commissioned by Paul Henderson at the *Mail on Sunday*.

170. A summary of the main witness statements and other oral or written statements made by Mr Burrows in relation to activities undertaken by Associated (or where, as indicated, NGN) is set out below:

(a) 5 March 2021 **{K/2280.1/1-18}** (an affidavit sworn before Kevin Bonavia);

(b) 29 March 2021 **{H/4}**;

(c) 29 March 2021 **{H/3}** (a table of articles);

(d) 13 May 2021 **{L/795/1-4}** (NGN litigation);

(e) 16 August 2021 **{H/2/1-19}** (see also **{K/2294.2.0/1-19}** and tables annotated by Mr Burrows dated 2 May 2021 **{L/782.1/1-12}** and **{E/232/120-141}**);

(f) 28 September 2021 (for the NGN litigation) **{K/2298.1/1-16}** (see also **{L/796/1-15}**);

(g) 19 October 2021 (for the NGN litigation) **{L/797/1-4}**;

(h) 14 February 2022 **{L/792}**; and

(i) 19 April 2023 (transcript of a BBC interview) **{K/2359}** (and associated audio recordings **{L/64.58}** **{L/64.59}** **{L/64.60}** **{L/64.61}** **{L/64.62}** **{L/64.63}** **{L/64.64}**).

The Documentary Evidence of Mr Burrows

171. Mr Burrows swore an affidavit on 5 March 2021 **{K/2280.1}**, and did so in front of Kevin Bonavia, then a solicitor at Taylor Hampton and now a Member of Parliament. In it, he set out his background and activities, including meeting Paul Henderson of the *Mail on Sunday* **{K/2280.1/7/§36}**, and work he did for him **{K/2280.1/12}**. He mentioned one of his companies: IIG Associates **{K/2280.1/15/§106}**. He also included a price menu for what he charged: **{K/2280.1/15/§107}**. Mr Burrows' response in cross-examination did not suggest that the document was forged.

172. On 29 March 2021, Mr Burrows signed a table of article-specific admissions **{H/3}** and made a four-page note **{H/4}**. Ms Sangani confirms that she took evidence from Mr Burrows in person on 1, 8, 15, 22 and 29 March 2021 and saw Mr Burrows wet sign the documents in front of her **{E/394/5-7/§§21-25}**. The documents include admissions

squarely relevant to the claim and the Cs, in particular Ms Hurley, Sir Elton, Mr Furnish and Ms Frost Law.

173. On 13 May 2021, Mr Burrows signed his first NGN witness statement **{L/795}**. Mr Burrows received legal advice on the making of this statement from Counsel (who was also a Circuit Judge at the time). Mr Burrows has provided no evidence to support what he said to justify his resiling from the statement, as he did in oral evidence.

174. On 16 August 2021, Mr Burrows sent an email by link to what became **{H/2}**, the signed witness statement relied upon by the Cs that is challenged. The email chain shows the process by which it was reviewed **{E/292/5}**. Ms Sangani saw the 16 August 2021 email, checked the electronic signature and signed the certificate of compliance **{E/394/3}**. The email from Mr Burrows to Mr Johnson with the link to this witness statement it at **{K/2294.2.0.1}**.

175. On 28 September 2021 and 19 October 2021, Mr Burrows signed further NGN witness statements, endorsed with further statements of truth and with a certificate of compliance signed by Callum Galbraith. They describe methods consistent with **{H/2}**: **{L/796}** and **{L/797}**.

176. Mr Burrows has also made public admissions, in person, in a BBC interview in November 2021: **{H/6}** and **{H/7}** admitting his methods.

177. On 14 February 2022, Mr Burrows emailed Mr Johnson the signed affidavit dated 14 February 2022 **{K/2306.1}** (the affidavit is at **{L/792}**).

178. In November 2022, it also appears that Mr Burrows created his own profile on WikiAlpha **{E/285.2}**[31], a sub-variant of Wikipedia which allows users to write and upload entries without the review and editing procedure demanded by Wikipedia. . That entry states that Mr Burrows carried out work for Mr Henderson and the *Mail on Sunday*.

[31] It should be noted that the user name of the author of the WikiAlpha page was "Gavin Burrows Private Investigator" **{E/285.2, E/285.3}** is the same name Mr Burrows uses on his X/Twitter profile **{H/5}**

179. Throughout this period, Mr Burrows tweeted to garner support for what he was doing in blowing the whistle on the unlawful acts for which he had been commissioned by all three newspaper groups, D, NGN and MGN **{H/5}**.

180. There are a number of factors that corroborate and support the statements made by Mr Burrows in these documents:

(1) all of these documents are highly consistent both in their content and specific details, and are notable in that there are a large number of signed and/or attested documents;

(2) the documents are filled with non-inventible detail, for example he knew that Sir Elton was best targeted through Ms Hurley because Sir Elton did not have his own mobile **{H/2/15-17}**. Mr Furnish was surprised by the accuracy of what he knew "*Burrows even knew (correctly) that Elton didn't have his own mobile phone and that there were several landlines he used to make calls. That was all true.*" **{F/13/3/§7}**. Mr Burrows also knew that Sir Elton's right-hand man Bob Halley lived on a boat and said that he (Mr Burrows) "tapped and hacked his phones" in order to obtain information about Sir Elton **{H/2/17/§64}**[32]**.** The accuracy of this was confirmed by Sir Elton: "*We soon received information about how Gavin Burrows had also hacked and tapped two of our key people for The Mail, our gardener and my right-hand man Bob Halley whose mobile phone I used to make and receive calls and messages on when David and I were not together. Gavin Burrows called Bob 'The Boatman' because he knew he lived on a boat*" **{E/32/3}**.

(3) the documents are striking in their detail and **{H/2}** does not read like invention. It is dense with untidy, specific and experiential detail that only someone with inside knowledge would have about Paul Henderson ('Hendo', his nickname to those in the know, as Mr Henderson admitted in cross-examination), Nigel Bowden

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[32] The contemporaneous memos which Mr Johnson made of his initial meetings with Mr Burrows in late 2020 confirm that Mr Burrows introduced the subject of the "The Boatman" and that he was commissioned to target Sir Elton for the *Mail on Sunday* by Mr Henderson **{N/77/8} {N/83/13-14}.** Those memos also confirm that it was Mr Burrows who told Mr Johnson in 2020 that Sir Elton did not own a mobile phone.

(‘Slippery of the Costas’), details of how to tap BT lines and the process of how his UIG product would be passed to D;

(4) the documents themselves are authentic. There is a sworn affidavit witnessed by Mr Bonavia (which even Mr Burrows eventually accepted was not a forgery but suggests he had little time to read); two wet-signed documents in March 2021 which clearly match Mr Burrows’ written signature, an email chain in 13 August 2021 involving Anne-Marie Harris, an email on 16 August 2021 from Mr Burrows’ own account with a live link and an email on 14 February 2022 with a live Google Docs link, a number of NGN witness statements (which were initially not disputed as being authentic) and signed under statements of truth, multiple public admissions in the BBC, and public admissions of remorse on Twitter. The suggestion that these were all forged or concocted is unarguable;

(5) Contemporaneous documents support and corroborate the original account:

(i) one of Mr Burrows’ companies, IIG, has a website accessible on the Wayback Machine (in 2004) which advertises the same unlawful information gathering methods that he admits to in his various statements: **{H/2/22-31}**. The website advertises services such as “*telephone lines intercepted*” and “*bank accounts traced*” amongst others. Mr Burrows expressly refers to using this company for doing work for NGN in his NGN witness statement [§§5 – 9 **{L/795/2 – 3}**; Mr Waddell addresses the IIG Associates website in **{E/285.1}**.

(ii) Three mobile numbers and one landline number of Mr Burrows appeared in the News Desk contact book of the *Mail on Sunday* with the note “*Private Investigator*” **{L/292/3}** which confirms that he must have been used on a number of occasions to merit being included. See for example the number for Rhodes Associates (one of Mr Burrows’ companies) at **{L/64.53/6}** (07902294376). In oral evidence Mr Burrows did not deny these were his numbers;

(6) the account given by Mr Burrows is also consistent with the articles complained of themselves. The information obtained and published, as set out below in the Claimant-specific sections, is consistent with UIG by the methods admitted by Mr Burrows. The signed admissions table at **{H/3}** aligns with a careful process of identification. **{H/2}** sets out these articles and other information in fuller form;

(7) The convincing and honest evidence of Jerry Yanover **{F/32}**, and the Hearsay Statement of John Ford **{H/11}**, support the admissions made by Mr Burrows in relation to the type of unlawful work Mr Burrows carried out and his working for D in the way he originally described.

181. D has served notices to prove. The question of whether there is credible evidence that the documents are what they purport to be is a simple question. D does not advance a fraud case (and has expressly confirmed such). The contents of the statements of Ms Sangani **{E/291}**, **{E/394}**, and Mr Johnson **{E/292}** dealing with the "authenticity challenge" have not been seriously challenged by D, and the statements of Mr Bonavia **{E/308}**, Mr Schirmeister {**E/289**} and Mr Waddell {**E/285.1/1**} on the matter have been unchallenged by D.

182. D also challenged the authenticity of the affidavit of Alison Gollop, which was signed by her and witnessed by a solicitor on 7 April 2021 **{L/782/2}**. Ms Gollop worked for Mr Burrows and confirmed she understood he was paid by the *Mail on Sunday*, and that Mr Burrows insisted on never keeping records. The challenge to authenticity of Ms Gollop's affidavit is dealt with in a witness statement **{E/289}** which has not been challenged.

Mr Burrows reversal of position and its trigger

183. All of this evidence is consistent with the Cs' case. There was a sea change when Mr Burrows fell out with Mr Johnson, and most particularly, and irrevocably, once Mr Johnson served his Defence on 10 October 2022 which publicly referred to Mr Burrows' threatening activities.

184. Mr Burrows showed himself not to be a credible witness when resiling from the Cs' case at trial. However, the Court can and should distinguish between two phases:

(1) The first phase, from 2021 to the middle of 2022 when he made repeated and consistent confessions which were, in a very real sense, confessions of criminality. He did this in person, in public and across different proceedings in Court.

(2) The second phase, from late 2022 to present. This was after the collapse of his relationship with Mr Johnson and when he sought to retract the statements that he made previously.

185. The Cs' case is that the first phase was truthful. The second phase was not truthful.

186. Mr Burrows and Mr Johnson fell out in 2022, with Mr Burrows bringing a breach of contract claim against Mr Johnson in 2022 **{E/421/6/§16(d)}** (the claim issued on 25 July 2022 is at **{K/2311}** and the Defence dated 10 October 2022 is at **{K/2325}**).

187. Mr Burrows subsequently provided witness statements to D:

(a) 9 March 2023 **{E/56/1-6}** (served by D in relation to the limitation summary judgment hearing); and

(b) 25 September 2025 **{E/232/6-32}**, albeit D deliberately chose not to serve it or adopt its allegations of forgery

188. Mr Burrows was plainly a witness so hostile to the Cs (as a result of his personal vendetta against Mr Johnson) that he was willing to be extremely and repeatedly dishonest when he felt it would damage the Cs' case. He attempted to escape earlier admissions by any means, and collapsed under focussed cross-examination, for example:

(1) He claimed "*I've never done celebrity work, apart from* [...] *one occasion that I did apologise for*" (Transcript, Day 43, p. 31, l.25 to p.32, l.2). In fact, Mr Burrows invoiced the Sunday People for celebrity work on a number of occasions **{L/26/1-6}**. The implausible excuse was he was told by those he was working for would

have been to "*Just stick it under that*" (Transcript, Day 43, p.60, ll.12-14) which made no sense given that the descriptions he was supposedly asked to give plainly suggested unlawful activity by him (which supports the Cs' case as to the nature of his activities)

(2) Another bizarre suggestion, in an attempt to show the email at **{K/2294.2.0.1}** was forged (which showed Mr Burrows sending an email with the 16 August 2021 statement (i.e. **{H/2}**) was to suggest that as it signs off "Regards Gavin Burrows" was not authored by him. Mr Burrows stated "No. And I always signed "Kind regards". You'll never find a document from me just signed "Regards"." However, he was taken to **{K/2334/1-2}** where he signs off two emails with "Regards". His weak explanation was it was "*a private joke*" (Transcript Day 43, p.81, ll.17-18). He did not share what the joke was with the Court, that he was apparently making with Ms Hartley when he first contacted her. It is an obvious lie.

(3) The inconsistency between Mr Burrows' signatures is even apparent from those he accepts were his: cf. **{E/232/41}** and **{E/232/32}**. Leading Counsel for D even had to correct Mr Burrows when he said his signature at **{E/232/41}** was made when "*it was a windy day, we were outside*" (Transcript, Day 43, p.137, l.16). Mr Burrows was perhaps thinking of signing the 29 March 2021 statement. The Court will of course be aware generally that electronic signatures may often appear different to manuscript signatures given how they are made.

(4) Similarly, Mr Burrows accepted that there were "*statements that you're already in possession of from me*" in relation to the *News of the World* (Transcript, Day 43, p.19, ll.2-8). Later, he even denied having signed the NGN statements (Transcript, Day 43, p.53), before immediately changing his position, admitting the witnessed signature was his, and claiming he had been rushed into signing it (Transcript, Day 43, pp.87-88)

(5) He claimed his website, IIG, which advertised UIG services, was just "*a sting*" but refused to elaborate in open court (Transcript, Day 43, p.15, l.2) while elsewhere suggested the "*interception equipment never arrived*" (Transcript, Day 43, p.14,

l.3). He also, implausibly, suggested that the sting was "*pre-9/11*" (Transcript, Day 43, p.17, l.21), though it is highly unlikely his company would have changed its homepage in order to mount a sting, and then left it for three years (the Wayback Machine capturing the screenshot in 2004) (as above, Mr Burrows expressly referred to using this company for doing work for NGN in his NGN witness statement). The clear explanation is that it advertised for services it was actually providing.[33]

189. The critical date of the falling out between Mr Johnson and Mr Burrows was essentially the date of the Defence: 10 October 2022 **{K/2325}**. The same day as the Defence, Mr Burrows published tweets suggesting the evidence in the proceedings was "*false*" **{H/5/55}**,[34] having suggested previously he was assisting the parties including that he "*signed witness statements, ticked spreadsheets and owned up*" **{H/5/51}**.

190. Soon after this Mr Burrows made contact with D's legal team and started receiving paid legal advice (amounting, by the time of trial, to services costing six-figures), as well as paying in cash for 'security improvements' (to an individual who cannot be identified cf. **{K/2403}** and **{J/100}**).

191. It is clear there was a serious rupture. Mr Burrows' later denials must be approached with extreme caution. Throughout his oral evidence he made a series of unprovoked verbal attacks on Mr Johnson and on Mr Johnson's associates (including the Claimants' lawyers), which it is to be inferred reflect their personal falling out and support the conclusion that his retraction of the admissions is clearly as a result of this personal vendetta against Mr Johnson.

192. It is the marker of a catastrophic grievance rather than an honest witness trying to correct a small mistake, and an attempt by Mr Burrows to escape from his earlier truthful admissions.

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[33] It should be noted that the user name of the author of the WikiAlpha page was "Gavin Burrows Private Investigator" **{E/285.2, E/285.3}** is the same name Mr Burrows uses on his X/Twitter profile **{H/5}**

[34] Mr Burrows suggested that Mr Johnson may have created this tweet himself (Transcript. Day 43, p.110, ll.21-25). It is a surprising suggestion that Mr Johnson would publicly accuse himself of perverting the course of justice.

PEN PORTRAITS OF KEY D JOURNALISTS

Katie Nicholl

Introduction

193. Katie Nicholl was cross-examined on Days 35 and 38 of the trial (9 and 12 March 2026). She is bylined on 18 Schedule B articles identified by Cs in these proceedings: seven in the claim of the Duke of Sussex, five in the claim of Ms Hurley, three in the claim of Sir Elton and Mr Furnish, and three in the claim of Ms Frost Law. Ms Nicholl was also involved in one of the two episodes identified in the claim of Ms Frost Law, and has given evidence in relation to the Ninth Unlawful Article in the claim of Ms Hurley.

194. Ms Nicholl began working at *The Mail on Sunday* in 2001 as a showbusiness news reporter. In that capacity, she worked under and reported to the News Desk Heads Paul Field, Sebastian Hamilton and David Dillon. She was appointed Diary Editor in 2004, and subsequently also became Royal Editor. She went freelance in 2012 but has continued to work for *The Mail on Sunday*, as well as for *The Daily Mail*.

195. Ms Nicholl gives evidence regarding her averred practice of "second sourcing" stories at §14 of her First Witness Statement **{G/38/5}**:

> *Part of the practice of writing the Diary involved ensuring that the stories we ran were accurate. 'Standing up' a story would include trying to confirm it via a second source and offering the subject a right of reply. This might be via getting a quote from the subject or their publicist, or perhaps visiting the subject at home or speaking to them if you saw them at a party. It might also involve speaking to friends or family of the subject or, if the story involved a particular incident or event, speaking to other people who had knowledge of the incident or event to see what they knew.*

196. In relation to Lee Harpin, Ms Nicholl says at §35.6.3 of the same statement, and with reference to an article published in *The Mail on Sunday* on 18 July 2004 **{G/38/28}**:

> *... Lee Harpin occasionally contacted me with tips when he was a freelance journalist and I sometimes wrote stories based on those tips. As he wasn't someone I dealt with regularly, I would have asked him where his information had come from and I would have always worked hard to second source his tips. I had no reason to suspect any of the information he gave me was obtained unlawfully. It is important to note that this story pre-dates Mr Harpin's arrest in 2015 on suspicion of phone hacking.*

197. As set out below, the Cs contend that on several notable occasions Ms Nicholl did not "*second source*" information published in certain of her stories because she knew, through its being directly obtained through unlawful means, that it was wholly accurate.

198. The Court is also referred to the section on the use of Sharon Feinstein below.

<u>Propensity</u>

199. The Cs' case is that Ms Nicholl regularly commissioned private investigators who engaged in unlawful conduct, namely Steve Whittamore (JJ Services), TDI/ELI, Glenn Mulcaire / Greg Miskiw, and Lee Harpin.

200. In her First Witness Statement, Ms Nicholl says that she used private investigators "*on occasion... to obtain an address or a phone number (which was sometimes ex-directory)... in order to make contact with who I was writing about in order to ask them questions, discuss the story generally or give them a right to reply*" [§26, **{G/38/9}**]. She says that of the private investigators pleaded by the Cs she "*cannot recall using anyone except*" System Searches ("*the Scotts*") and Steve Whittamore [§27, **{G/38/9}**].

<u>Steve Whittamore</u>

201. Regarding Mr Whittamore, Ms Nicholl says in her First Witness Statement [§29 **{G/38/9}**]:

> *While I cannot recall every occasion that I used Mr Whittamore, I can be quite sure that I never asked him to do anything which I understood was illegal. Additionally I would not have used his services if I had known what he was doing was illegal. Mr Whittamore's services were widely used on my newspaper, and therefore I had no reason to suspect what he was doing was illegal. Because Mr Whittamore was widely used on my newspaper and across other titles, I did not really give much thought to how he got telephone numbers and addresses. I presumed that Mr Whittamore had access to a wider range of databases than we had at the office.*

202. The facts relating to Mr Whittamore admitted by Ms Nicholl during cross-examination (and in her witness statements) included the following:

a. The use of Mr Whittamore was "*widespread*" across *The Mail on Sunday*, with "*everybody*" on the newspaper having knowledge of him (Transcript, Day 35, p.28, lines 19 – 20; p.45, lines 8 – 9; First Witness Statement of Katherine Julie Nicholl, §29 **{G/38/9}**).

b. Ms Nicholl knew that Mr Field, whom she admitted was her "*mentor*"[35], and Mr Dillon both commissioned Mr Whittamore: Transcript, Day 35, pp.27 – 28, lines 25 – 6. (Ms Nicholl answered "*Yes, probably.*" in relation to Mr Dillon.)

c. Ms Nicholl commissioned Mr Whittamore from when she arrived at *The Mail on Sunday*, including in 2002 and throughout 2003: Transcript, Day 35, pp.11 – 13 lines 4 – 12; pp.17 – 18, lines 25 – 2; p.30, lines 14 – 17.

d. Ms Nicholl used Mr Whittamore "*on occasions when I needed to*": Transcript, Day 35, pp.9 – 10, lines 11 – 2. Notably, and implausibly, Ms Nicholl steadfastly refused to admit that she did so "*regularly*", in line with the approach adopted in her First Witness Statement at §29 **{G/38/9}** ("*I used Steve Whittamore's services but not on a weekly or very regular basis*".): see Transcript, Day 35, pp.9 – 10, lines 11 – 2; pp.33, lines 3 – 5. The Cs submit that Ms Nicholl's concerted and deliberate approach in this regard itself further supports the contention that her use of Mr Whittamore was "*regular*" – not least given that from when Ms Nicholl started using Mr Whittamore she used him on more than 50 occasions. (When this was put to Ms Nicholl she replied "*I don't know*".) See Transcript, Day 35, p.19, lines 1 – 4.

e. A "*substantial number*" of the occasions on which Ms Nicholl commissioned Mr Whittamore involved her commissioning him to provide her with ex-directory telephone numbers: Transcript, Day 35, p.19, lines 8 – 11. Mr Whittamore also performed occupancy searches for Ms Nicholl: Transcript, Day 35, p.7, lines 16 – 25; p.15, lines 2 – 4; p.38, lines 20 – 24. Ms Nicholl accepted that if an individual's telephone number was ex-

[35] Transcript, Day 35, p.43, lines 10 – 12); Transcript, Day 38, p.35, lines 10 – 12.

directory this meant that that individual did not want their number to appear in the telephone directory and thereby keep that information private: Transcript, Day 35, pp.23 – 24, lines 25 – 6.

f. Ms Nicholl had available to her as resources Directory Enquiries and direct access in her office to the Electoral Roll, as well as WebTrace and Tracessmart: Transcript, Day 35, p.20, lines 2 – 16; p.23, lines 15 – 18; p.41, lines 17 – 18; First Witness Statement of Katherine Julie Nicholl, §26 **{G/38/9}**.

g. Whenever Ms Nicholl wanted to use Mr Whittamore, she would first obtain the approval of the Head of the News Desk: Transcript, Day 35, p.18, lines 2 – 5; pp.22 – 23, lines 16 – 8; p.27, lines 15 – 19.

203. It is clear that Ms Nicholl knew that the ex-directory telephone numbers and the addresses she commissioned from Mr Whittamore and which he supplied to her were unlawfully obtained by him:

a. Mr Whittamore has given unchallenged evidence in this regard, including specifically in relation to Ms Nicholl: First Witness Statement of Steve Whittamore, §§34, 43 – 45 **{F/19/9, 11 – 12}**.

b. Ms Nicholl's professed assumption, that "*I assumed that he did have access to databases that we didn't, more extensive databases that we did*" is implausible in circumstances where, as set out above, she accepted that if an individual's telephone number was ex-directory this meant that that individual did not want their number to appear in the telephone directory and thereby keep that information private: First Witness Statement of Katherine Julie Nicholl, §29 **{G/38/10}**; Transcript, Day 35, pp.23 – 24, lines 25 – 17. Ms Nicholl must have been well aware that the databases available to her, namely the electoral roll and access to all listed numbers in the telephone directory, were extensive, and if further databases existed, her employers would have purchased them for its journalists to use to save costs.

c. Ms Nicholl's explanation under cross-examination as to why she used Mr Whittamore to obtain addresses of individuals for her instead of obtaining them through her available resources at *The Mail on Sunday* is both vague and implausible. She said "*there were occasions when I may have been out on the road, I may not have been in a position to have logged on and got the address*": Transcript, Day 35, lines pp.25 – 26, lines 23 – 2. Ms Nicholl did not explain why she did not simply contact the Library at D, or the News Desk, and ask them to provide her with the address (at no cost). Indeed, Richard Kay explains in his First Witness Statement that *"Library staff were available by telephone... This was especially useful when out of the office on a story or abroad..."* [§14 **{G/21/4}**]. Peter Logue, the Library Manager at D, provides similar evidence in his First Witness Statement: §18 **{G/23/4}**.

d. Ms Nicholl's evidence, when it was put to her that the reference in the memorandum of John Wellington of February 2004 **{K/440}** to "*special inquiries*" was a reference to unlawful information gathering, was conspicuously evasive. She said *"I -- I mean, I did not write that email. I don't know. You'll have to ask John Wellington what "special inquiries" meant."* Transcript, Day 35, pp.26 – 27, lines 9 – 9. The whole point was that the phrase *"special inquiries"* needed no further explanation for the recipients of the email, as they understood it meant that departmental heads needed to be consulted before these PIs were used. Mr Wellington's oral evidence in this regard, that he didn't remember or didn't know, was obviously wholly implausible. See Transcript, Day 28, pp.126 – 127, lines 6 – 11.

e. Ms Nicholl's evidence that Mr Dillon and Mr Field did not tell her what kind of services Mr Whittamore could provide was inherently implausible, given that (i) she would need to ask the Head of the News Desk for approval to use Mr Whittamore, (ii) Mr Field was, as Ms Nicholl herself described him, a "*mentor*" to her, and (iii) Mr Field himself introduced Ms Nicholl to Mr Whittamore (whose unchallenged evidence was that Mr Field was a very good customer of his, that he knew Mr Field well, that he even went to his

house for dinner and was invited to a corporate event as a guest of D: Whittamore §33 **{F/19/8-9}**), and in light of the matters set out by lead counsel for the Cs regarding the documents **{L/151}** and **{K/339/2}**: Transcript, Day 35, p.18, lines 21 – 22; pp.40 – 47, lines 24 – 25.

f. Ms Nicholl accepted that as a journalist she was "*trained to be curious and sceptical and enquiring*". In these circumstances, her attribution of her lack of interest and knowledge in how Mr Whittamore obtained information to Mr Whittamore's being widely used across *The Mail on Sunday* and other titles is wholly unconvincing: Transcript, Day 35, p.28, lines 14 – 21.

g. When first asked whether she was aware at the time that Mr Whittamore's address had been raided by the Information Commissioner's Office in 2003, Ms Nicholl said "*I have a vague memory of - - yes, of that*". However, when the question was put to her and it was identified that the raid had occurred in the middle of the time when she was using Mr Whittamore, Ms Nicholl changed her evidence, saying *"I don't - - I actually don't know that I was. I cannot remember"*: Transcript, Day 35, pp.30 – 31, lines 14 – 4. Clearly Ms Nicholl would have been well aware of the raid on Mr Whittamore's address in 2003, given that (as she accepts) she was commissioning him throughout that period.

h. Parts of Ms Nicholl's oral evidence in relation to Mr Whittamore were obviously scripted and well-rehearsed. When asked about her use of him, Ms Nicholl within mere minutes conspicuously repeated no fewer than five times a refrain, or minor variant thereof, that "*when we were told to stop using Mr Whittamore, I stopped using Mr Whittamore*": Transcript, Day 35, p, 31, lines 12 – 14, 22 – 23; p.33, lines 5 – 8; p.35, lines 11 – 13; p.38, lines 1 – 3.

i. Ms Nicholl's evidence that she did not recall, or did not believe she had knowledge of, Mr Dillon being interviewed by the police in January 2004 in connection with Mr Whittamore was inherently implausible, given that (i) she was working under Mr Dillon and with the News Desk of *The Mail on*

Sunday and (ii) she was using Mr Whittamore regularly at the time: Transcript, pp.32 – 33, lines 14 – 4.

j. When it was put to Ms Nicholl that Eddie Young, Mr Wellington or Mr Dillon would have spoken to her in January 2004 about the police recovering invoices proving payments to Mr Whittamore, including an invoice indicating that Ms Nicholl had commissioned Mr Whittamore in relation to an ex-directory number and an occupancy request for an individual named Dan Peppe, she simply said "*I cannot - - I cannot remember*" and "*I -- I -- I cannot remember*.": Transcript, Day 35, pp.35 – 39, lines 17 – 7.

k. Ms Nicholl knew what a blag was, and that it involved obtaining information under a pretext: Transcript, Day 35, p.24, lines 18 – 25; First Witness Statement of Katherine Julie Nicholl, §29 **{G/38/10}**. Her evidence that she did not know what the reference to "*PO blag*" on the work list accompanying Mr Whittamore's invoice of 5 October 2023 meant defies common sense and credulity, and should be rejected. So should her evidence that she did not know what it referred to (her commissioning Mr Whittamore to blag the Post Office to obtain information about Lloyd Grossman), not least given Mr Whittamore's unchallenged evidence that he included such details in his work lists so that "*there would be no doubt in the minds of those approving payment of the invoice of what I was invoicing for, and who had commissioned it*": Transcript, Day 35, pp.39 – 40, lines 17 – 22; First Witness Statement of Steve Whittamore, §32 **{F/19/8}**. Her evidence that "*I never asked him to blag anything*" is belied by the clear documentary and contemporaneous evidence to the contrary.

<u>TDI / ELI</u>

204. In her First Witness Statement, Ms Nicholl says "*I don't remember ever dealing with… TDI/ELI… at all.*" [§33.4.5 **{G/38/15}**].

205. In her Second Witness Statement, after she was shown a ledger of payments from *The Mail on Sunday* to ELI identifying her as having commissioned ELI for "*searches*"

(at a cost of £264.38) and "*urgent enq*" (at a cost of £164.50), Ms Nicholl says [§17 **{G/55/6}**]:

> *I do not recall these searches, but if I did commission these searches, they would have been for phone numbers and addresses as that is what I used search agents for. It is also possible that these searches could have been requested by someone on the News Desk, but my name was put against the search because it was for one of my stories.*

206. It is clear that Ms Nicholl *did* deal with TDI/ELI, and that she commissioned them to obtain information other than phone numbers or addresses:

a. Ms Nicholl does not say she never used TDI/ELI: she just says she cannot remember doing so.

b. Lloyd Hart and TDI, and work and mobile numbers for them, appear in the address book at **{L/292/5}**. Mr Dillon's evidence is that this was a shared contacts list kept by the News Desk and that any journalist working on the desk might access or add to it: First Witness Statement of David Kenneth Dillon, §33 **{G/30/9}**. Ms Nicholl accepted that as showbusiness news reporter at *The Mail on Sunday* she reported into the News Desk and worked under the Head of the News Desk: Transcript, Day 35, p.2, lines 16 – 25; p.34, line 21.

c. Ms Nicholls has no explanation as to why her name appears twice on the payments ledger in relation to tasks carried out by TDI/ELI beyond her speculation that it is "*possible*" (i.e. not even probable) that "*someone on the News Desk*" might have put her name down.

d. Ms Nicholl had no proper answer when the relatively substantial sums charged by TDI / ELI, and the implication that the services performed for those sums must have been for information other than a telephone number or address, were put to her, other than to fall back on her position that "*I would only have requested a number or an address*": Transcript Day 35, pp.50 – 53, lines 23 – 11. That evidence can carry little weight given that she claims not to remember the searches at all.

207. As set out below, the Cs rely on these matters in the context of their submissions relating to Ms Nicholl, her credibility, the pleaded articles she was bylined on, and, in particular, the First Unlawful Episode in the claim of Ms Frost Law.

<u>Greg Miskiw</u>

208. Mr Miskiw's affidavit dated 20 August 2019 explains:

   a. that he knew Ms Nicholl personally;

   b. that he provided stories to her while she was at *The Mail on Sunday*;

   c. that those stories included stories based on hacked or blagged material relating to Chelsy Davy; and

   d. that Ms Nicholl would have known that those stories would have involved UIG [§§16 – 24 **{H/14/3 – 4}**.

209. Ms Nicholl does not deny meeting Mr Miskiw – she simply says she cannot remember doing so: First Witness Statement of Katherine Julie Nicholl, §31 **{G/38/1}**; Transcript, Day 35, p.138, lines 14 – 16. She is also conspicuously vague in her statement about whether she did or did not in fact use Mr Miskiw: she simply says that *"He would sometimes call me to try to sell a tip which I may or may not have pursued"* [§30 **{G/38/10}**]. Under cross-examination, she said "*I don't recall dealing with Mr Miskiw*": Transcript, Day 35, p.138, line 3.

210. Ms Nicholl was taken during cross-examination to an ANL payment slip for the week ending 25 November 2007 **{L/488}**. This document records a payment of £250 being made from the News Department to Mr Miskiw for "*help with chelsy davy story*" and approved on 4 January 2008 by Ms Nicholl.

211. This document is proof that, notwithstanding the vagueness of Ms Nicholl's evidence, Mr Miskiw did provide her with stories. Ms Nicholl's evidence regarding this document is again vague. In her First Witness Statement, she says "*I cannot remember what story this relates to having written hundreds of stories about Ms Davy*", before speculating about how she "*would*" have treated any information he provided. Under cross-examination, Ms Nicholl said "*I don't recall dealing with Mr*

Miskiw, as I say in my witness statement, but he's clearly been paid for some contribution to a Chelsy Davy story": Transcript, Day 35, p.138, line 3.

212. Not only does this document establish that Mr Miskiw provided Ms Nicholl with stories, it is also consistent with Mr Miskiw's express evidence that the stories he provided to Ms Nicholl included stories relating to Chelsy Davy. The Cs submit that Mr Miskiw's account of his dealings with Ms Nicholl, and of the state of her knowledge as to the unlawfulness of the activities by which information for stories provided to her was obtained, is plainly to be preferred to that of Ms Nicholl, given the vague and speculative nature of her evidence, her general lack of credibility (as set out above and below), and the inherent implausibility of Ms Nicholl's evidence that she did not know Mr Miskiw was involved in unlawful activities such as voicemail interception: Transcript, Day 35, pp.138 – 139, lines 17 – 11.

<u>Lee Harpin</u>

Luciana Berger

213. Ms Nicholl was taken during cross-examination to an article published in *The Mail on Sunday* on 23 January 2005 under her byline linking Luciana Berger to Euan Blair, the son of then-Prime Minister Tony Blair: **{K/606}; {K/609}**. Among other information, the article:

a. describes Ms Berger as being "*a regular visitor at 10 Downing Street*";

b. revealed that Ms Berger "*even uses the private car park available to the Blairs' guests*"; and

c. described Ms Berger and Mr Blair as being "*in constant contact*".

214. Ms Nicholl accepts that Mr Harpin was paid £750 for this article (the going rate for a lead story in the Diary pages of *The Mail on Sunday* at the time: see **{K/1960/1}**), and that he gave her the tip and provided her with the story: Transcript, Day 35, p.129, lines 11 – 13; Second Witness Statement of Katherine Julie Nicholl, §21.4 **{G/55/7}**.

215. It was put to Ms Nicholl during cross-examination that Mr Harpin provided her with information for this article that he obtained unlawfully through voicemail interception and blagging, and that she had known at the time: Transcript, Day 35,

p.159, lines 21 – 23. It was also put to her that the information that Ms Berger and Mr Blair were "*in constant contact*" was provided to her by enquiry agents: Transcript, Day 35, pp.164 – 165, lines 25 – 13.

216. These matters were put to Ms Nicholl on the following bases, which the Cs submit plainly establish the inferences sought:

a. Ms Berger has given (unchallenged) evidence that "*Mr Harpin could not have known about my calls with Euan, or the details of the entrance and parking arrangements for my visit to 10 Downing Street, from me or anyone close to me as I do not believe I shared that specific information with anyone.*": First Witness Statement of Luciana Berger, §14 **{F/2/4}**. At the conclusion of Ms Berger's statement, which sets out suspicious activity relating to her mobile telephone account the month Ms Nicholl's article was published, explains Ms Berger's subsequent engagement with the police relating to this, and refers to contemporaneous documentation at **{K/589/3}** (a note of the Vodafone call) and **{K/588/11 – 13}** (the complaint to the police), Ms Berger states her belief that "*the information about my visit to Downing Street was obtained on the instruction of Lee Harpin, by a woman pretending to be me, who then changed my PIN number and accessed voicemail messages left for me, including a voicemail from Euan about my visit to Downing Street and the arrangements for parking and visiting Downing Street.*" D has not challenged any of Ms Berger's evidence in these proceedings. (All of these matters were put to Ms Nicholl during cross-examination: Transcript, Day 35, pp.142 – 145, lines 2 – 8.)

b. Ms Nicholl conspicuously sought to distance herself from Mr Harpin and downplay her involvement with him when giving a witness statement on 13 June 2014 to police as part of Operation Weeting:

   i. Despite the police informing D's Legal Department (whom, it is to be inferred, passed this instruction on to Ms Nicholl, as they did to John Wellington) that the information they wanted to receive should contain information as to how the article was written – including, expressly, *"did it arrive pre-written, did it need re-writing [sic] etc.)"*

– Ms Nicholl failed to inform the police in her statement that Mr Harpin had written a draft of the article and sent it to her: **{K/597}**. Ms Nicholl's explanation under cross-examination for this notable omission on her part, that she "*didn't have that information at the time of drafting this statement for the police*", is wholly implausible, not least given that more than two months elapsed between the police request (3 April 2014) and Ms Nicholl's statement (13 June 2014), during which time she spoke with both D's Legal Department and Mr Wellington regarding these matters. See **{K/1962/1}**; Transcript, Day 35, pp.149 – 152, lines 8 – 7; pp.167 – 169, lines 14 – 4.

ii. Mr Harpin provided Ms Nicholl with 22 stories over the course of about a year i.e. one story in every third edition of *The Mail on Sunday*. Ms Nicholl notably failed to make this clear in her statement to the police and downplayed her involvement with Mr Harpin, describing him simply as someone "*who has provided a number of stories to the newspaper*" (again deliberately distancing herself from Mr Harpin as a *personal* source for her, whose methods she would have been familiar with given the number of stories he provided her with, which, tellingly, related to a host of varied targets form very different and separate circles). See Transcript, Day 35, pp.145 – 149, lines 24 – 7; **{K/1958.1/1}**; **{K/1963/2}** §6.

c. Ms Nicholl also stated to the police in her witness statement that *"she sought to obtain a second source to support the story... by paying a visit to a shop in Kensington Church Street which I understood was run by Luciana Berger's parents. As far as I can remember, no one was available to speak with me about the matter."* [**{K/1963/3}** §7] This was false. As was put to Ms Nicholl during cross-examination, the account is completely undermined by the subsequent documentary evidence at **{L/370.4/8}** and **{L/370.4/16}** showing that the visit to Kensington shop took place, at the earliest, in April

2005, nearly three months after the article was published.[36] The Cs submit that the vague and confused nature of Ms Nicholl's evidence when these matters were put to her is itself revealing of the inherent inaccuracy of her evidence to the police: see Transcript, Day 35, pp.152 – 158, lines 22 – 10. The Cs submit that it is obvious that Ms Nicholl did not, in fact, try to second-source this article, because she knew that Mr Harpin had obtained information through intercepting voicemails between Ms Berger and Mr Blair and that that information was therefore completely accurate: see Transcript, Day 35, pp.156 – 158, lines 8 – 10.

d. In her Second Witness Statement, Ms Nicholl says that "*I would have questioned Mr Harpin when he gave me the story to understand the nature of his source and I seem to recall he told me that he had a contact close to Luciana Berger.*" [§21.4 **{G/55/8}**] However, Ms Nicholl has no notes of that conversation and no memory of who any such source was: Transcript, Day 35, pp.152 – 153, lines 8 – 2; pp.159 – 160, lines 24 – 6.

e. Ms Nicholl and *The Mail on Sunday* published the article despite Ms Berger denying the story when it was put to her, as is a feature of Ms Nicholl's articles. The Cs submit that Ms Nicholl did so because, again, she knew that Mr Harpin had obtained information by intercepting voicemails and blagging and that that information was therefore completely accurate. Ms Nicholl's suggestion that Mr Harpin had "*an absolutely cracking source*" is implausible: see Transcript, Day 35, pp.158 – 160, lines 11 – 13.

f. Ms Nicholl accepted that the information that Ms Berger and Mr Blair were "*in constant contact*" was not provided to her by Mr Harpin in his draft of the article. When asked where she obtained it, she effectively suggested that she had invented it, saying it came from *"Supposition. Just - - it's a - - it's something that I might have just supposed and put into the piece".* The Cs submit that this evidence is implausible (particularly given Ms Nicholl's emphasis, in her evidence, on her efforts to ensure accuracy) and should

[36] D's disclosure list dated the recording of Ms Nicholl and Mr Harpin's discussion of Ms Berger, in which they discussed visiting the family shop, as April 2005 **{D.125.10/6}**

be rejected and the Court should draw the inference that Ms Nicholl obtained the information from voicemail interception undertaken by Lee Harpin, not least in light of her use of TDI/ELI to obtain call data in relation to Ms Frost Law, as set out above and below in these submissions. See Transcript, Day 35, pp.164 – 165, lines 25 – 13.

g. It is clear that John Wellington was himself concerned about Mr Harpin's activities for Ms Nicholl following the police request of 3 April 2014, as evidenced by the fact that a clip of articles was printed off that very day, references to telephone calls were highlighted (see **{L/774/18**, **20**, **21**, **22**, **23** and **26}**, including in the article concerning Ms Berger and Mr Blair **{L/774/26}**, and Mr Wellington discussed them with Ms Nicholl. Ms Nicholl's response when these matters were put to her was to say that "*I don't recall the conversations in great detail*", but she accepted that it was "*very likely*" Mr Wellington would have wanted to know from her how she knew the marked-up information regarding the telephone calls. See Transcript, Day 35, pp,169 – 176, lines 5 – 23.

Billie Piper / Chris Evans

217. Ms Nicholl was taken during cross-examination to an article published in *The Mail on Sunday* on 26 September 2004 under her byline about the relationship between Ms Billie Piper and her husband at the time, Mr Chris Evans: **{K/157}; {K/158}**. The article referred to the couple having "*a string of rows over the phone*", as well as to the content of phone calls made by Mr Evans to Ms Piper.

218. Ms Piper has given evidence that the content of those discussions, and of related voicemails left for her by Mr Evans, "*were, and remain, private to Chris and myself*". She explains that she does "*not believe any of the people, close and loyal friends, and family members, in whom I confided about this, would have given this information to Mr Harpin or Katie Nicholl and therefore I do not know how this information was legitimately found out by the Mail on Sunday.*": First Witness Statement of Billie Piper, §§7 – 8 **{F/27/2}**. Again, it is notable that D has not challenged Ms Piper's evidence.

219. Ms Nicholl says in her Second Witness Statement that she does "*not recall this article well at all*". She accepts that Mr Harpin was paid £750 for this story (the going rate for a lead story in the Diary pages of *The Mail on Sunday* at the time), and says in her statement that she imagines "*most of the information came from him*". Under cross-examination, regarding the specific information in the article about the couple having "*a string of rows over the phone*" and the content of Mr Evans's calls, Ms Nicholl stated that she assumed that information "*has come from Lee Harpin*". See Second Witness Statement of Katherine Julie Nicholl, §25.1 **{G/55/16}**; Transcript, Day 35, p.129, lines 11 – 13; p.184, lines 8 – 11. As an explicit reference to the fact, extent and content of phone calls, given Ms Nicholl's stated insistence on checking facts, it is implausible that she did not know this came from UIG.

220. The remainder of Ms Nicholl's evidence, both in her Second Witness Statement and under cross-examination, was entirely speculative and uncompelling (see Transcript, Day 35, p.178 – 179, lines 22 – 2; p.180 – 184, lines 24 – 7; p.184, lines 16 – 18 in relation to what follows):

    a. It was put to Ms Nicholl that Mr Harpin had obtained the information in the article concerning those calls through voicemail interception and by obtaining telephone call data, and that Ms Nicholl had been aware of that fact.

    b. This was put to her on the basis of Ms Piper's unchallenged evidence regarding the private nature of the calls and voicemail messages between her and Mr Evans, and in light of the complete absence of any actual evidence that Ms Nicholl had "*second-sourced*" that information, as she vaguely suggested she "*would*" have done.

    c. The Cs contend, as was put to Ms Nicholl, that she did not in fact second-source the information in the article because, once again, she knew that, as that information had been obtained directly by Mr Harpin through voicemail interception and obtaining call data, it was wholly accurate, and did not need to be verified.

d. Ms Nicholl's suggestion that a source who had provided her with innocuous information for an article published six months earlier about Ms Piper's appearing in the 'Dr Who' TV series might also have provided Ms Nicholl with the obviously different, private and sensitive information concerning the relationship between Ms Piper and Mr Evans and their private communications that Ms Nicholl and *The Mail on Sunday* published is plainly implausible.

e. Ms Nicholl's generalised, speculative evidence that she "*would have grilled Mr Harpin on his sources*" and that "*he would have had a source*" was vague and obviously unreliable.

221. Furthermore, it is again clear that John Wellington was himself concerned about Mr Harpin's activities for Ms Nicholl following the police request of 3 April 2014, as evidenced by the fact that a clip of articles was printed off that very day, references to telephone calls were highlighted, including in the article concerning Ms Piper and Mr Evans **{L/774/21}**.

Leslie Ash

222. Ms Nicholl was taken during cross-examination to an article published in *The Mail on Sunday* on 25 April 2004 under her byline about Ms Leslie Ash and her husband, Mr Lee Chapman: **{K/457}**. The article referred to the couple having had an argument in a restaurant the night before Ms Ash was taken to hospital with various injuries, and quoted words said to have been spoken by Ms Ash to Mr Chapman during their meal. The report of those words, and the article's account of how the couple's evening at the restaurant ostensibly unfolded, is attributed in the article to Mr Harpin, described as "*a fellow diner at the restaurant*".

223. It was put to Ms Nicholl during cross-examination that she and Mr Harpin obtained information for the investigation and preparation of this article through unlawful means, namely blagging and voicemail interception: Transcript, Day 38, lines 15 – 19. This was put to her on the basis that:

a. As Ms Nicholl accepted, Mr Harpin provided information for the article, having been paid £750 for doing so (again, the going rate for a lead story in

the Diary pages of *The Mail on Sunday* at the time): Second Witness Statement of Katherine Julie Nicholl, §§23.1 – 23.8 **{G/55/12 – 14}**; Transcript, Day 38, pp.6 – 21, lines 22 – 21.

b. Ms Ash has provided evidence that had Mr Harpin been in the restaurant at the same time as her and Mr Chapman (as the article suggests), it is highly unlikely that he would have been able to overhear their conversation as the restaurant was extremely busy and noisy: First Witness Statement of Leslie Chapman (Ash), §13 **{F/22/3}**. That evidence is unchallenged by D.

c. As was put to Ms Nicholl, Mr Harpin's being at the same restaurant as Ms Ash and Mr Chapman on the same night as them was plainly not coincidental: Transcript, Day 38, p.9, lines 11 – 24.

d. As was put to Ms Nicholl [Transcript, Day 38, pp.13 – 20, lines 24 – 8], Ms Nicholl's notes relating to this story in her notebook contain information, which, it is to be inferred, came from voicemail interception – most notably the information as to what "excuse" Mr and Mrs Chapman were going to give regarding Ms Ash's injuries before Mr Reading (their spokesman) had in fact publicly released that information, and the suggestion that Mr Chapman had had a liaison with a woman in Leeds: **{K/444/4 – 5}**; **{L/334.4 – 5}**. The Cs submit that Ms Nicholl's suggestion that Mr Reading might have pre-briefed Mr Harpin – a freelance journalist, rather than a staff journalist recognised as being associated with a newspaper – regarding these matters is simply not plausible. Ms Nicholl's unsustainable refusal to accept that the reference in her notebook to "*Lee*" was a reference to Mr Harpin, appearing as it does directly alongside the material relating to Ms Ash and Mr Chapman (who, by contrast, is explicitly referred to in the same place in the note by his full name, namely as "*Lee Chapman*"), further diminishes Ms Nicholl's credibility in this regard.

e. Ms Nicholl's notes even contained the name, address and telephone number of Ms Ash's GP, as well as Ms Ash's date of birth. Ms Nicholl had no answer to the question as to how she had obtained this information or why she had it recorded there next to the GP's details, simply saying she

couldn't "*recall*" her source or reason. The clear inference is that the information was deemed useful in obtaining information through blagging from Ms Ash's GP, given that it was necessary for the purposes of identification when ringing a GP surgery. See Transcript, Day 38, pp.20 – 21, lines 9 – 21.

f. The decision by Ms Nicholl and The Mail on Sunday to publish the article, notwithstanding the legal complaint sent by Ms Ash's and Mr Chapman's solicitors on 24 April 2024, reflects a degree of confidence in the accuracy of the article which, it is to be inferred, derived from the fact that Ms Nicholl knew information provided to her by Mr Harpin had been obtained directly from voicemail interception. See Transcript, Day 38, pp.13 – 15, lines 24 – 17.

224. Again, John Wellington was clearly concerned about Mr Harpin's activities for Ms Nicholl following the police request of 3 April 2014: the clip of articles printed off that day included the article concerning Ms Ash and Mr Chapman, with the article's reference to Mr Chapman's making calls marked up by John Wellington: **{L/774/23}**.

Hugh Grant – Plummygate

225. Ms Nicholl was also taken during cross-examination to an article published in *The Mail on Sunday* on 18 February 2007 under her byline about Hugh Grant and the end of his relationship with Jemima Khan: **{K/1032}**. The article stated that Ms Khan had become suspicious of Mr Grant's conduct due to *"a series of late-night calls from an upper-class female with a 'plummy voice'."*

226. In her First Witness Statement, Ms Nicholl states [§§37.5 – 37.6 {G/38/33 – 34}:

> 37.5 *... For this article I was told that Jemima Khan had told a confidential source of Sharon Feinstein that she was convinced something was going on with a woman she had overheard talking on the phone to Hugh Grant and that this woman had a "plummy voice". Sharon knew that I was writing a piece on Hugh Grant's relationship with Jemima Khan and that I would be interested in a tip on why they had split up, so she called me and told me about it. As mentioned above, I had worked with Sharon on several stories over the years and knew her to be reliable in providing accurate information. She had great contacts and trusted sources who knew*

Jemima Khan well... In the case of the above-mentioned story, I was confident that Sharon's source was very reliable. I also had good contacts of my own for this story including someone incredibly close to the story – and well informed - who spoke to me off the record.

37.6 *In this case, although I did not know the identity of Sharon Feinstein's source, I understood that the information came from someone who had spoken to Jemima Khan directly. Along with some of my own off the record conversations with very reliable sources close to the story, I accepted the tip as true and we ran the piece.*

227. Ms Feinstein has provided no evidence in these proceedings. It was put to Ms Nicholl during cross-examination that Ms Feinstein obtained the information about the female with the 'plummy voice' from listening into voicemails, and that Ms Nicholl knew this at the time: Transcript, Day 38, p.146, lines 21 – 24. This was put to Ms Nicholl on the basis that:

    a. Ms Feinstein's 'source' could not have been someone whom Ms Khan had confided in regarding a woman with a 'plummy voice' because other information provided by Ms Feinstein, by email of 17 February 2007 **{K/1029/1}**, contained errors which no such source would ever make (including the suggestion that Ms Khan had tried to discuss her concerns with Mr Grant's mother, who had in fact died six years earlier: {**L/118.1}**). It can be inferred that Ms Nicholl knew that that information was inaccurate at the time, because the final version of her article conspicuously omitted (that obviously newsworthy information) and altered it to refer to Ms Khan's *own* mother, Lady Annabel Goldsmith: Transcript, Day 38, pp.140 - 144, lines 11 – 13.

    b. Ms Khan makes clear in her witness statement to the Leveson Inquiry that the source of the 'plummy voice' information could not have been someone whom she (Ms Khan) had told about this, as Ms Feinstein wrongly suggested, because the first Ms Khan ever heard about such matters was when she read about them in Ms Nicholl's article in *The Mail on Sunday*: **{L/730/3}**; Transcript, Day 38, pp.146 – 147, lines 3 – 3.

c. What Ms Feinstein was correct about was the fact that a "*plummy voice woman*" had been leaving messages, as the evidence of Tricia Owen to the Leveson Inquiry confirmed **{L/743.1}.**

d. Ms Nicholl did not even put the allegations in her story to Mr Grant or Ms Khan before *The Mail on Sunday* published it (to this Ms Nicholl said "*I can't recall*"). The Cs submit that this is because once again Ms Nicholl knew Ms Feinstein's source for the information about the female with the 'plummy voice' had been obtained by listening into voicemails, and was therefore accurate: Transcript, Day 38, pp.144 – 145, lines 14 –24.

e. When Mr Grant sued D for libel over this article D settled almost immediately and made a statement in open Court. The Cs contend that this was because the source of the 'plummy voice' information in the article was an illegal one and could never be disclosed or referred to: Transcript, Day 38, p.147, lines 4 – 18.

f. Despite this, rather than stop using Ms Feinstein, Ms Nicholl continued to use her on a very large number of stories notwithstanding that D had been forced to settle Mr Grant's claim and the inaccuracy of her information had become clear: see Feinstein payments **{K/1162}.** The Cs contend that this was because they knew she was providing accurate information obtained by voicemail interception which Ms Nicholl wanted for her stories: Transcript, Day 38, pp.147 – 149, lines 19 – 6.

<u>System Searches</u>

228. Further to the above, it is clear that System Searches carried out unlawful activities, notably using unlawful credit reference checks to obtain private information. The Cs further contend that Ms Nicholl was aware of this. When this was put to her during cross-examination she simply replied *"I would have no idea of that at the time"*: Transcript, Day 38, pp.126 – 127, lines 24 – 3.

<u>Capitol Inquiry</u>

229. In the context of the Fifth Unlawful Article in the claim brought by Ms Hurley, Ms Nicholl gives evidence in her Second Witness Statement regarding Capitol Inquiry,

a Washington DC-based private investigator agency whom the Cs contend carried out unlawful acts, including the blagging or obtaining of phone bills and other private information. Notwithstanding the fact that Capitol Inquiry's telephone number appear in Ms Nicholl's notebook next to the words "Private eye" **{K/233/5}**, Ms Nicholl says [§7 **{G/55/3}**]:

> *"... I don't remember Capitol Inquiry at all. I am told they were an agency based in the US. While I can't remember commissioning Capitol Inquiry, it is possible I used them for a number or address in the US. I can see on the same page I was given some information by someone called Caroline. I assume this refers to my colleague Caroline Graham as I remember working with her on stories about Steve Bing. It is possible she gave me Capitol's number in case I needed to contact anyone in the US, like Steve Bing or his agent, but I don't remember whether I used it or not."*

230. It will be seen at once that Ms Nicholl's evidence is entirely speculative. It was put to her during cross-examination that she knew Capitol Inquiry obtained itemised phone bills and that she used them to obtain call data regarding communications between Ms Hurley and Steve Bing, but Ms Nicholl rejected this. The Cs submit that Ms Nicholl's unconvincing lack of memory, and failure to explain this incriminating evidence means that the Court should draw the inferences which the Cs seek based on the contemporaneous documentary evidence.

<u>Credibility</u>

231. Ms Nicholl was simply not a credible witness. Her evidence on a number of important matters was plainly false. For instance:

    a. It is obvious that Ms Nicholl used TDI/ELI and that she commissioned them to obtain information beyond just telephone numbers and addresses, despite her saying "*I don't remember ever dealing with... TDI/ELI... at all.*"

    b. It is obvious that, as set out in detail below in relation to the First Unlawful Episode in the claim of Ms Frost Law, Ms Nicholl's account as to how she came to have in her notebook Ms Frost Law's medical information and information relating to Ms Frost Law's ectopic pregnancy is wholly incredibly and clearly false.

c. Her evidence that Mr Field, whom she herself expressly described as her "*mentor*", and who introduced Ms Nicholl to Mr Whittamore, did not tell Ms Nicholl what kind of services Mr Whittamore could provide, was obviously totally implausible.

d. Ms Nicholl had no answer when asked how or why she had obtained the name, address and telephone number of Ms Ash's GP, as well as Ms Ash's date of birth, simply saying she couldn't "*recall*" her source or reason.

232. In addition to providing the vague, evasive and implausible answers identified above, as well as identified below in relation to the Unlawful Articles in which she was involved, it is notable that during cross-examination Ms Nicholl stated <u>on more than 100 occasions</u> that she did not "*recall*" or "*remember*" a given matter.

233. Further, Ms Nicholl's evidence in her witness statement that she did not "*regularly*" deal with Mr Harpin, and relatedly her credibility, were undermined by the fact that, as she accepted during cross-examination, Mr Harpin was paid at least 22 times over a period of 13 months in relation to stories in relation to her: **{K/1958.1}**; Transcript, Day 38, p.135, lines 8 – 12.

234. Further, parts of Ms Nicholl's oral evidence were obviously scripted and well-rehearsed.

a. When asked about her use of Mr Whittamore, Ms Nicholl within mere minutes conspicuously repeated no fewer than <u>five times</u> a refrain, or minor variant thereof, that "*when we were told to stop using Mr Whittamore, I stopped using Mr Whittamore*": Transcript, Day 35, p, 31, lines 12 – 14, 22 – 23; p.33, lines 5 – 8; p.35, lines 11 – 13; p.38, lines 1 – 3.

b. Similarly, when questioned about the First Unlawful Episode in the claim of Ms Frost Law, Ms Nicholl repeated, no fewer than <u>14 times</u>, a refrain, or variant thereof, that "*I did not commission any medical blagging*": Transcript, Day 35, pp.60 – 61, lines 25 – 2; p.63, lines 16 – 17; p.65, lines 22 – 23; p.66, lines 2, 5 – 6; pp.66 – 67, lines 25 – 1; p.68, lines 2 – 4; p.69, lines 12 – 13; p.71 – lines 2, 3 – 4; p.74, lines 21 – 22; p.75, lines 21 – 33; pp.80 – 81, lines 25 – 1; p.97, lines 14 – 15.

c. Ms Nicholl adopted an approach of repeatedly describing her supposed 'confidential source' for information for the Fifth Unlawful Article in the claim of Ms Frost Law as "*very well connected*" (four times) and "*incredibly well connected*" (three times): Transcript, Day 35, p.105, line 22; p.107, lines 2 -3, 4, 17; p.108, line 13; p.111, line 17; p.116, lines 20 – 21.

d. In relation to private information obtained by Ms Nicholl relating to Baroness Luciana Berger, Ms Nicholl used the phrase *"a family connection"* on four separate occasions (as well as "*a family friend*") to describe Lee Harpin's supposed source for that information: Transcript, Day 35, p.158, lines 8 – 9; p.160, lines 12-13; pp.161 – 162, lines 25 – 1; p.162, lines 18 – 19, 21.

Conclusion

235. For the reasons set out above, and in light of (a) the damning contemporaneous evidence; (b) the unconvincing and vague evidence given by Ms Nicholl; (c) the wide range of lawful information resources available to Ms Nicholl (see above); and (d) the unlawful activities regularly carried out by the private investigators used by Ms Nicholl (see above) the inescapable inference is that Ms Nicholl regularly commissioned private investigators who engaged in unlawful conduct and that she was aware that they obtained information through by unlawful means. More specifically, it is highly probable that she commissioned private investigators to obtain the information contained in the specific articles referred to above through unlawful methods.

236. As set out above Ms Nicholl was not a credible witness. The Cs respectfully submit that, for obvious reasons, this must be borne in mind when the Court is assessing her evidence on contested facts and her evidence as a whole – including Ms Nicholl's evidence relating to the Unlawful Articles in these proceedings in which she was involved.

Nicole Lampert

237. Ms Lampert's witness statement is at **{G/22}**. She gave evidence on Day 32 of the trial.

238. Ms Lampert was showbiz editor at the *Daily Mail* from 2003. She joined the *Daily Mail* in 2002 as deputy showbiz editor (having previously been at the Bizarre column of *The Sun* and the *News of the World*). Ms Lampert remained there until September 2006 and is now a freelance journalist for the *Daily Mail*.

239. Under cross-examination Ms Lampert's evidence was illuminating. Her admissions as to engaging ELI for UIG are certainly remarkable in the sea of failed memory, passing the buck, and head-in-the-sand denial from the majority of D's witnesses.

240. As to the articles she was responsible for, when pressed on matters she could clearly tell were difficult for D she often reverted to denial of uncontroversial propositions, or reached for implausible or novel explanations[37], but in general her memory of relevant matters appears to be so weak that much of her explanation

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[37] For instance at (Transcript, Day 32, pp.87-88), where Ms Lampert changed her evidence on the stand to suggest that a figure in article **{K/707}** (complained of by Sir Elton and Mr Furnish) which her witness statement had attributed to a – incredibly lucky – "guesstimate" might instead have been given to her by Gary Farrow: "*A. I said it was likely to be a guesstimate. I now believe , having read that he –– apparently I got the figure completely right. I imagine that it may well have been from Gary Farrow, who was Elton's spokesman. He's quoted in the article , unlike in the PA article, so I clearly spoke to him. We were, at that point, I think, quite close . We would often go for lunch together, and he was a –– a kind of –– a fan of mine in that, you know, he –– he –– he wanted to help me. So the likelihood is that he gave me that 10,000 figure. Q. That's the first time you've given that evidence, Ms Lampert.*" The actual quote from "a spokesman" (Ms Lampert says, Mr Farrow) in the article was that "of course he is happy to pay. He doesn't want to inconvenience anybody" - a short and entirely anodyne statement. Had Mr Farrow really revealed the, much more sensitive, figure, there would have been no reason not to attribute it to this "spokesman".

See also at (Transcript, Day 32, pp.73-74) in relation to one of the articles complained of by Ms Hurley **{K/338}**: "*A. ...I think there were many stories prior to this which explained how they got together and when they got together, and that is the information that I would have depended on. Q. But you haven't produced a single article which does show that? A. I don't know what to say in response to that. There were –– there were plenty of articles about them, and there's articles in there from the Sunday Mirror talking about their relationship , there's –– so –– and also, of course, we spoke to Arun's mother. Q. It doesn't suggest this comes from Arun's mother, does it? You say "friends said"? A. Yes. I don't know where the information would have come from.*"

for how relevant articles came to be prepared is to be treated with the caution suitable to speculation[38].

241. The Court is also referred to the section on the use of Sharon Feinstein below.

ELI/TDI

242. Ms Lampert addresses her use of ELI at §14 of her witness statement **{G/22/5}**. In oral evidence she agreed that she was responsible for approving and signing all invoices apart from when she was on holiday, and that she would have discussed the use of ELI by her colleagues when she was approving invoices relating to their instructions (Transcript, Day 32, p.150, lines 7-15). As her witness statement states:

> "*12. [...] I would always ask about the source of any story I was given (I wasn't always told the answer), and normally I would attempt to second source the story if required. [...]*
>
> *14. I was introduced to ELI when working on the "Bizarre" column at The Sun – at the time Emma Jones was the Deputy Bizarre Editor. I had never used a search agent before then but I was told that they could help with obtaining addresses and phone numbers. We didn't need to use them much at Bizarre as we were mainly reporting on parties and gossip. I did subsequently use ELI on occasion, including at the Daily Mail. This was a service I thought that journalists properly could use at the time. I knew that you could get names, addresses, telephone numbers, birth, marriage and death certificates through public sources – and searched for that information myself when I worked at the National News Agency as I explain above, but it was time consuming and difficult work and it would take a few hours or even days, and we wouldn't normally have time to do it ourselves. I didn't occur to me to ask, but I simply assumed ELI had access to databases that they could plug into quickly, or make phone calls to get that information including to contacts at the central public offices who would help them. Sometimes ELI could not obtain the address or other information and we would have to find the information ourselves (or just not be able to get the information). I did sometimes ask them to find out information that I suppose, looking back, could have involved them blagging or them not properly identifying themselves when making enquiries – such as phoning up hotels in order to find out where someone was if it was a celebrity staying in the UK. However, I never asked them to find out financial or medical information – or hack phones – and wouldn't*

[38] As Ms Lampert on occasion accepted, for instance in relation to one of the articles complained of by Ms Hurley **{K/283}** when challenged about alternative sources of information she had speculated about on the stand: "*It's – it's all speculation because I can't remember how I wrote this story or why I wrote it – you know, I can't remember where this story came from*" (Transcript, Day 32, p.61, lines 5-7).

> *have imagined that they would have done that (or even been able to do that). I was also aware of instructions to ELI from my team while Showbusiness Editor, because we would agree how to approach a story as explained above or, most commonly, I would speak to ELI myself, and I would approve all ELI's invoices once they came through because I was in charge of the finances for the department and had to sign all invoices.*"

243. Ms Lampert was taken to some TDI invoices from her time at *The Sun* during cross-examination **{K/160.2/1-10; 12}** (Transcript Day 32, pp.11-13). She accepted there was no change between TDI and ELI (Day 32, p.11, lines 22-25) and that she was familiar with the format of these invoices (Day 32, p.11, lines 11-13). Each were for varying sums of money (ranging from under £100 to hundreds of pounds), and show her extensive use of ELI/TDI at *The Sun* – her evidence that "*[w]e didn't need to use them much at Bizarre*" **{G/22/5/§14}** was plainly untrue and an attempt to downplay a familiarity with ELI which Ms Lampert perceived to be unhelpful to her and D. Indeed, if the surviving evidence of the instruction of ELI at *The Sun* is what Ms Lampert considers "not much", all the more likely is it that she was a heavy user at the *Daily Mail* also.

244. In oral evidence, Ms Lampert went further than her cautiously drafted statement that her instruction of ELI "*could have involved them blagging*" and accepted candidly that while at the *Mail*, ELI *were* used for blagging (Transcript, Day 32, p.20, lines 5-9):

> *Q. So your evidence is that you only used them as a shortcut to get publicly available information quicker?*
>
> *A. My evidence was also that* ***we*** *occasionally used them for blagging* (emphasis added).

245. See also at (Transcript, Day 32, p.30, lines 4-6): "*A. As I have said -- already said, we did sometimes use them for blagging, not very often, but that was one other way we used them*", where Ms Lampert was seeking to explain the large and varied

sums paid to ELI which were inexplicable as merely being for telephone number, address, or birth certificate searches[39].

246. In particular, she recalled using ELI for obtaining call data and blagging (Transcript, Day 32, p.46 line 4 - p.47 line 16):

> *Q. You see, the truth is, Ms Lampert, that the type of information which you and your colleagues were getting would have included, wouldn't it, itemised call data?*
>
> *A. Could you explain what that is?*
>
> *Q. Yes, these were telephone bills that identified the calls that were made by an individual to or phones or calls that were received, for example if it was a mobile phone, or a foreign phone number.*
>
> *A. We did that once.*
>
> *Q. And they would also provide you with ex-directory numbers, didn't they?*
>
> *A. Potentially.*
>
> *Q. And bank account details?*
>
> *A. No.*
>
> *Q. Credit card details?*
>
> *A. No.*
>
> *Q. Medical information?*
>
> *A. No.*
>
> *Q. How do you think they were obtaining then? You say that they did on occasion obtain call records. How do you think they obtained that?*
>
> *A. I -- I don't know. I think I asked Susie once and she said that they had -- knew someone who worked in a -- in a phone place.*
>
> *Q. Yes, they were paying someone either at BT or a similar place to provide them with call data, weren't they?*
>
> *A. I don't know.*
>
> *Q. Well, did you think that they were doing this for free?*
>
> *A. I -- no.*

[39] Notably, when under pressure of questions relating to the various lawful resources available to her, Ms Lampert asserted "you're wrong" when asked if ELI were providing more information than that available via the other available lawful databases (Transcript, Day 32, p.43, lines 2-5) – this is clearly inconsistent with having "*used them for blagging*".

Q. But you admit in your witness statement that, as you say, blagging was going on?

A. Yes.

Q. They were, weren't they, ELI, blaggers, effectively?

A. I don't think so.

Q. That's how they obtained their information, by ringing up and by obtaining information by deception, pretending to be something that they weren't?

A. That's not what we used them for in general.

247. However, only limited use for UIG does not tally with the significant sums paid to ELI. Ms Lampert's memory failed entirely when it came to the rough cost of standard instructions to ELI, for example for a phone number, or address (Transcript, Day 32, p.21 line 21 – p.22). She speculated that sometimes ELI were given composite instructions – but *Daily Mail* invoices approved by Ms Lampert such as **{L/306}** show ELI splitting their work into, albeit obfuscatory, classifications (in that case: "trace" and "research") (see **{L/307}** and **{L/309}** for further examples). Ms Lampert commissioned work that resulted in a number of significant payments **{K/1561}** of hundreds of pounds. The Scotts, in contrast, charged £20 or £40 for addresses **{L/130}** and £30 and £25 for dates of birth and "electoral roll[40]" searches **{K/988/1-2}**. Ms Lampert appears on a number of significant requests, including **{L/312}** (£330) and **{L/314}** (£150). Ms Lampert's suggestion in cross-examination that she had simply used this apparently vastly more expensive agency (ELI), despite also using System Searches **{G/22/9/§18.5}** and having multiple free- or almost-free-to-use resources available to her, because the Scotts were "normally busy[41]" (Transcript, Day 32, p.24 line 23 – p.26 line 5) does not bear serious scrutiny.

[40] Cs position is that System Searches had access, via the use of credit reference agencies such as Experian or Equifax, to the unedited electoral roll and impermissibly sold that information to D.

[41] Ms Lampert's assertion that the Scotts were sometimes too busy to carry out searches also does not bear scrutiny. The payment ledgers disclosed by D show them carrying out multiple searches almost every day **{K/1533}** – capacity does not seem to have been an issue.

248. Ms Lampert claimed to have little recollection of the in-house databases (initially stating in her oral evidence that she did "not recall" any resources available at D for obtaining addresses and phone numbers etc. (Transcript, Day 32, p.30, lines 14-18)), but did not seriously resist the suggestion that telephone numbers (that were not ex-directory) were available from lawful sources available on the Intranet or Directory Enquiries as shown at the memo at **{K/328}**[42], and accepted it was likely that she and her colleagues were using resources like Directory Enquiries and had access to the electoral roll (Transcript, Day 32, pp. 31-32):

> *Q. The intranet meant that at your desk, at your computer, you could access databases, didn't it?*
>
> *A. Perhaps, but I don't remember that.*
>
> *Q. You see, you could just make a call to Directory Enquiries. That's what we can see was being done by a large number of your colleagues, wasn't it?*
>
> *A. I'm sure we were doing that too.*
>
> *Q. And of course, when you call Directory Enquiries, they would provide with you a telephone number; correct?*
>
> *A. I can't even remember what Directory Enquiries did, but yes, I guess so.*
>
> *Q. But they wouldn't provide you with an ex-directory number, would they?*
>
> *A. I don't know. I presume not.*
>
> ...
>
> *Q. Of course, in addition to Directory Enquiries, you knew, didn't you, that there was availability or accessibility to the electoral roll; you knew that, didn't you?*
>
> *21 A. I knew there was access to the electoral roll, yes.*

[42] Ms Lampert further accepted the proposition that this document reflected the general concern across D's titles about the costs being incurred by D's journalists in gathering information (Transcript, Day 32, p.32, lines 10-11; see also Day 32, p.38, lines 20-22; Day 32, p.41, lines 19-25 (in relation to **{K/988}**: "*This is a complaint, isn't it , even in relation to System Searches, which, if we go down to the next page {K/998/2}, we can see is only £25 or £30. That shows you how concerned the management were at how much money was being spent on searches that could otherwise be done for free, doesn't it? A. Yes.*"). A similar memo from Mr Bannister was also put to Ms Lampert **{K/1017}**.

249. As well as RollCall WebTrace, which Ms Lampert does not recall using (Day 32, p.33) **{K/163},** she did recall the Land Registry was available **{K/1041}** (Day 32, p. 34, line 1). Ms Lampert's lack of memory and caginess when it came to answering questions about these legitimate resources was tellingly inconsistent with her written evidence that "*I knew that you could get names, addresses, telephone numbers, birth, marriage and death certificates through public sources – and searched for that information myself when I worked at the National News Agency*" **{G/22/5/§14}**.

250. Ms Lampert was sent the memo at **{K/348}** and accepted she received it (Day 32, p. 35, lines 3-4). She suggested it was speed that led to the use of expensive search agents rather than the fact the search agents could provide information that could not be obtained from these legal databases (Day 32, p.36 line 16 – p.37 line 11). However, one of the reasons Ms Lampert proffered for needing to use agencies like ELI was that she didn't have a computer at home to do searches herself in the period before she got into work – but she accepted earlier in her evidence that one of the ways ELI provided information was by fax, which seems even less likely to have reached her at home. **{K/902}** makes clear that the Intranet can provide electoral roll information and was to be the first port of call, and built on the previous system which already provided a great deal of information **{K/163}**.

251. When the obvious point that instructing a search agent, and awaiting their response by fax, or however else, would itself take significant time (Transcript, Day 32, p.44-45) Ms Lampert suggested a novel idea that "*we were probably using* [lawful databases] *available too*" – it is all the more implausible that Ms Lampert and others at D would tolerate instruction of expensive search agents to obtain the same information they were <u>obtaining in parallel</u> and at speed by lawful means, and that she and others would not have realized, if they were indeed using legitimate resources themselves, that ELI were not using unlawful means to obtain the information which she/they could not.

252. Ms Lampert thus accepted in her evidence that she used ELI/TDI in her work for D. It is clear that she did so extensively. She also accepted that she on occasion used

them for plainly unlawful activities – blagging information and obtaining itemised phone billing data. Ms Lampert had no satisfactory explanation at all for, what she suggested was the more normal, use of ELI/TDI for anodyne information such as addresses and directory phone numbers where there were plentiful lawful and cheap resources, and even significantly cheaper enquiry agents, of which she was aware and made use. The Court should approach her input into the articles on which she is bylined with these striking admissions in mind – the probability that she i) used ELI/TDI (or indeed other enquiry agents) in relation to stories she worked on, and ii) commissioned them for UIG when she did so, is clearly increased by such admissions.

253. Ms Lampert was also a frequent user of Sharon Feinstein's services in sourcing her stories, as she admits **{G/22/10-14}** in relation to the Third, Sixth, Seventh and Eighth Unlawful Articles in Ms Frost Law's claim. Ms Feinstein has provided no evidence in these proceedings, but had form in unlawful voicemail interception (see above, where an instance of Ms Feinstein plainly intercepting the voicemails of Hugh Grant and/or Jemima Khan and providing that information to Ms Lampert's colleague Ms Nicholl is set out).

Stephen Wright

256. Mr Wright's first and second witness statements are at **{G/16}** and **{G/43}**. Mr Wright is bylined on each of the five articles in Baroness Lawrence's claim. He gave evidence over two days of the trial (Day 22 and Day 23). Mr Wright was a reporter working chiefly on crime stories for the Daily Mail for many years.

257. Mr Wright was an evasive, aggressive and ultimately an unconvincing witness. In some respects he mirrored D's whole approach to the proceedings in his cross-examination: he appeared outraged to be questioned about matters quite obviously giving rise to inferences of unlawful activity; he relied heavily and selectively on lapses of memory when it came to incriminating evidence but

nonetheless felt able to make broad and emphatic denials of wrongdoing; on a number of occasions he betrayed a troubling lack of familiarity with his own witness statements, and a dismissive attitude to inconsistencies in those and his previous statements. He demonstrated an unhelpful preoccupation with defending (indeed, on occasion burnishing) his own reputation and lashing out at Cs and their legal team, instead of giving straightforward answers to simple questions. This can only be because answering the questions was, in his view, an unattractive course.

258. The Court will have formed its own impression of his character and demeanour, but some illustrative highlights include:

   a. Mr Wright often appeared unfamiliar with, even dismissive of, his own written evidence. There are numerous examples: Transcript, Day 22, p.56, lines 8-25; Transcript, Day 22, p.85, lines 1-11; Transcript, Day 22, p.154, lines 6-19; Transcript, Day 23, p.114; Transcript, Day 23, p.87, lines 10-16; Transcript, Day 23, p.51, lines 6-18. At one point he seemed to suggest that sworn evidence before the Leveson Inquiry was somehow of a lesser quality or importance than his evidence in these proceedings, which reveals a tellingly flexible attitude to evidence and truth-telling in general (Transcript, Day 23, p.47, lines 2-18).

   b. Mr Wright was often highly evasive in his answers, even when on occasion he later conceded the point he was being asked about, for instance in relation to whether a document recording a cash payment was or was not an “expense” slip – on its face an uncontroversial question. Mr Wright initially avoided answering and only very grudgingly conceded (Transcript, Day 22, p.104, lines 2-21, and see also Day 22, pp.112-113, both in relation to **{K/157}** – quite clearly an entry in the cash book).

   c. Mr Wright demonstrated a clearly selective memory. He was able to remember details of his reporting on a case from 2000, but could not even

explain that, or why, he had mentioned a conversation with Jon Steafel from 2011 in his own witness statement relating to John Ross – his plea that "memory is a strange thing" was unconvincing (Transcript, Day 22, p.97, lines 8-21). When it suited him, Mr Wright remembered apparently important details, even of "negative" knowledge – claiming to be certain that he had not been aware that the Metropolitan Police Authority meeting from October (in relation to article **{K/156}** – the front page "*£320,000 for Lawrences*" article) was a closed meeting (Transcript, Day 22, p.162, lines 16-18); yet when it came to inconvenient invoices and payment records, his constant refrain was that it was unfair to ask him to remember matters so far back (e.g. Transcript, Day 23, p.51, lines 6-18).

d. Mr Wright was unembarrassed at the hypocrisy in repeatedly challenging Cs' counsel to make allegations about him outside the courtroom, demonstrating his awareness of privileged statements, but was happy to abuse that privilege by making wild and (racially) offensive allegations about members of the Cs' legal and research teams (e.g. Transcript, Day 23, p.67) calling them "*a mob of shysters, spivs, useful idiots*"[43].

259. Mr Wright's propensity to engage TPIs to undertake UIG has been clearly made out.

<u>ELI</u>

260. As noted in Cs' trial skeleton and matrices, there are before the Court records of a large number of payments attributed to Mr Wright to ELI, and he was an extensive user of that private investigative agency (which even those who claimed to have worked with him on numerous stories over the years – such as Richard Pendlebury who was co-bylined on the Adam Barker story - were wholly unaware

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[43] See also Transcript, Day 22, p.142, lines 22-25, where Mr Wright, having touted his respect for juries' verdicts when it came to explaining his friendship with Mr Ross, said "*Mr Rees is a pathological murderer -- sorry, a pathological liar to remains the prime suspect in an unsolved murder even though he's been acquitted at court.*"

of, thus strongly supporting the illicit and unlawful nature of the information he sought and obtained from ELI).

a. In addition to the ELI instructions and payment records referred to below (and in the Cs' trial skeleton[44] and matrices), the multiple entries on the payment ledger at **{K/1561}** were put to Mr Wright in cross-examination and he appeared to accept they related to him (Transcript, Day 22, pp.25-26, lines 5 – 1). Mr Wright was also taken to **{K/1597}** (Transcript, Day 22, pp.19-22), and accepted that at least at times he had been a "frequent user" of ELI (p.21, lines 5-25).[45]

b. Mr Wright accepted in his written evidence (when addressing payments to ELI in relation to Adam Barker at **{L/38}**) that "*I do remember using a company with a name like that to help on searches as they could help find addresses or telephone numbers or build out family trees. This is the sort of information I might need when reporting a story so as to be able to contact people and speak to them about as well as describe the relationship s of people involved in the story. I thought that they were a search agent that I was allowed to use and that they pulled information from public records*" **{G/16/18/§12.5}**, and later "*I could perhaps have used ELI/TDI when investigating the men suspected of Stephen Lawrence's murder and trying to find people who would speak to me about them in Eltham, but don't remember doing so*" **{G/16/18/§12.7}**. He said also in his second witness statement that "*I thought that ELI were a search agent that I was allowed to use and that the type of information they could provide was addresses or*

[44] Please note the typographical error in Cs' trial skeleton at **{CB/8/26/§68(1)}**, where "{K/1563}" should read "{K/15**3**3}".
[45] The ELI invoices where Stephen Wright is named are **{K/636},{K/637},{K/639},{K/642}{K/643}** and **{K/644}. I**n addition there are 23 ELI ledger entries for Stephen Wright or SW **{K/1597/4}** - (one entry), **{K/1597/6}** - (three entries), **{K/1597/7}** - (three entries), **{K/1597/8}** - (one entry), **{K/1597/13}** - (four entries), {**K/1597/14}** - (five entries), **{K/1597/21}** - (five entries) and **{K/1597/24}** - (one entry).

telephone numbers or to build out family trees using information pulled from public records. I thought it was reasonable and appropriate to delegate that sort of work out" **{G/43/12/§8.5)**.

c. Mr Wright told an in-house lawyer at D (Mr Young) that he "*did not use PIs*" (as recorded in Mr Wright's notes sent to Peter Wright in late 2011 at **{K/1569/50}**). Mr Wright's adamant persistence (Transcript, Day 22, p.43, line 7) that he had told Mr Young the truth in that interview, despite the extensive evidence of his use of ELI and acceptances in relation to the same, was another seriously damaging aspect to his credibility.

d. Mr Wright plainly did not instruct ELI for lawful searches, or only to find basic public information such as names or addresses or to "build out family trees."

    i. It is inherently implausible that he did so in circumstances where D's journalists had access to a wide range of lawful and vastly less expensive means of obtaining the information Mr Wright claims he obtained from ELI (including from Directory Enquiries, electoral roll resources, genealogists such as the Hitchcocks, and so on). Mr Wright was taken through some of these lawful in-house sources but effectively, and incredibly, refused to concede that he knew about them and/or that they had any value (Transcript, Day 22, pp.33-40); while later accepting that he had used other lawful sources, such as the Hitchcocks and Andy Kyle (Transcript, Day 22, p.121, lines 21-24). Mr Wright was in a very rare category of D's witnesses who would not acknowledge the existence and utility of these lawful information-gathering resources which, in most cases, his employer had paid for to assist his work.

    ii. On their face the sums paid to ELI, including in relation to Mr Wright's various instructions of them (often in the hundreds of pounds) were

significantly greater than, not only the cost of using obviously legitimate sources such as directory enquiries or searches of the electoral roll, but even when compared to the amounts charged by enquiry agents like System Searches[46].

iii. On their face ELI invoices are euphemistic, referring consistently, not to innocuous activities such as preparing genealogies, or tracking down public phone numbers and addresses, as Mr Wright claimed they did for him, but only to "URGENT ENQUIRIES" or similar formulations. When confronted with this Mr Wright suggested that specific invoicing details were a matter for ELI and had no explanation why these invoices, addressed to and signed by him, did not reflect the work he says was carried out, but rather plainly disguised it (Transcript, Day 23, p.126, lines 2-25).

iv. The Court held in ***Sussex v MGN*** that these companies "*conducted UIG ... on a very substantial scale ... the substantial majority of all instructions ... is likely to have been for unlawful work*" (1999-2011): [267].

v. ELI appears on a list of "*companies we* [D] *are forbidden to use*" on 27 April 2007 **{E/102/690}**. BDI (as it was by then) was written to by D on 27 April 2007 to inform them of the same **{K/1070}**. The Defendant has provided only limited disclosure of TDI/ELI documents, despite admitting to using them between 2002 and October 2006 (and BDI beyond this, presumably until at least April 2007).

[46] For what appear to be electoral roll searches, and company directorship searches, System Searches were charging £20 in 2002 **{L/130/1-3}**.

vi. As discussed below in relation to the Schedule C articles bylined to Mr Wright, his instruction of ELI in relation to those articles is plainly redolent of UIG and he had no credible explanation otherwise.

John Ross

261. Mr Wright was also a habitual user of John Ross; it is to be inferred for the purpose of engaging him to make payments for information to corrupt police officers.

a. Call data shows extensive contact between Mr Wright and John Ross between 2011 and 2014 **{K/2440}**. Mr Wright and Mr Ross had 97 telephone calls and 55 text messages during that period alone.

b. D has not challenged the extensive evidence proffered by Cs' witnesses as to the character and unlawful activities of Mr Ross, including that he undertook unlawful work for D itself.

i. Mr Ross was a "*corrupt policeman who left the force and became a private investigator*"[47] who according to Derek Haslam[48] specialised in "*selling information to the Mail and other newspapers from corrupt, serving officers*" **{F/1/10/§43}**.

ii. He also worked with Jonathan Rees, who is another former police officer who was in the "*intelligence picture*" and associated with "*undoubtedly corrupt*" police officers, as described by retired Assistant Commissioner of the Metropolitan Police Bob Quick **{F/20/3/§9}**[49].

[47] He was also referred to as such in the Daniel Morgan Report at **{L/784/2/§551}**. Mr Wright refused to accept this classification despite these clear documentary accounts of Mr Ross.

[48] Despite Mr Haslam's evidence not being challenged by D, Mr Wright repeatedly attacked Mr Haslam in highly defamatory terms (which was wholly gratuitous), even while stating that he did not know him personally: "*I don't know the man but he's well known as a fantasist...I reiterate : from my knowledge, he's a fantasist*" (Transcript, Day 22, p.55, lines 9-16). He even likened him to Carl Beech, the individual who was convicted of perverting the course of justice for making false claims of having been sexually assaulted.

[49] Mr Wright at first flatly denied any knowledge of Mr Rees and Mr Fillery's unlawful activities, but when reminded that he had written extensively about them in his own reporting, changed his answer to say that he could not remember whether he knew or not (Transcript, Day 22, p.87): "*3 Q. And you're well aware,*

iii. Mr Rees told Mr Haslam how he and Ross "*on occasions … worked together on stories on behalf of the Mail*" **{F/1/10/§43}**. Mr Rees set up as a private investigator, and Derek Haslam explains how he "*boasted about doing illegal stuff for* [the *Mail* newspapers]" **{F/1/4/§12}** including "*computer and phone hacking, bribing police officers and a whole range of other unlawful activities*" **{F/1/4/§11}**. Mr Rees told Mr Haslam he regularly undertook UIG for the *Daily Mail* and *Mail on Sunday* **{F/1/6/§24}** and Mr Haslam particularly relates Mr Rees's "*lucrative obsession*" with Doreen Lawrence **{F/1/7/§29}**.

iv. Mr Ross also targeted Doreen Lawrence according to Mr Haslam at **{F/1/10/§43}**.

c. As noted in Cs' trial skeleton, the surviving and disclosed records of *Mail on Sunday* payments to Mr Ross by D **{K/1653}** (see **{K/1652}** for the covering email from Mr Wellington to Ms Hartley (now unredacted to reveal the sender and recipient) attaching a list payments to John Ross **{K/1653}** for context) strongly indicate that when he was used by D, he was used to funnel unlawful payments to police officers for information:

i. £1,000 on 11 November 2001. It can be inferred this was an unlawful payment to a police officer for information from the title of the invoice **{K/1653}**, "[Redacted] cousin burgled", and the fact that the *Mail on Sunday* published an article on the same day **{K/184}** headlined "*Robbers target Queen's cousin for second time*", about

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aren't you, of the kind of work 4 they were doing: hacking, blagging, bugging, you name 5 it ? 6 A. No, I wasn't. Not until these despicable proceedings. 7 Q. In the course of your investigations of them, for 8 example, for the 2014 article you're referring to, you 9 didn't look into the type of work that they were doing 10 for newspapers? 11 A. I think, because in 2014 we did a three−part series, 12 myself and my colleague Richard Pendlebury, we did 13 a three−part series, and the focus of it was 14 the overlapping corruption, as we saw it, between 15 the Daniel Morgan case and the Stephen Lawrence case. 16 And Jonathan Rees was a big part of that investigation, 17 he was a big part of it , as was Fillery and some other 18 very dangerous people, I would say. I −− forgive me, 19 I can't recall whether, within those articles , we 20 mentioned what's now generally accepted as the unlawful 21 acts of Southern Investigations, in particular Rees. 22 I 'd have to refresh my memory."

an ongoing police investigation into the burglary at the home of the second cousin of the Queen;

ii. £500 on 16 February 2003. It can be inferred this was for an unlawful payment to a police officer for information from the title of the invoice **{K/1653}**, "*Knifewoman terrorises Jemima*", and the fact that the *Mail on Sunday* published an article on the same day **{K/356}** headlined "*Knifewoman Terrorises Jemima Outside Home*", about an ongoing police investigation into an alleged attack on Jemima Khan;

iii. £700 on 16 May 2010. It can be inferred this was an unlawful payment to a police officer for information from the title of the invoice **{K/1653}**, "PC sold fake goods", and the fact that the *Mail on Sunday* published an article of the same day **{K/1245}** headlined "PC 'SOLD FAKE GOODS HE SEIZED FROM BOOT SALES', about the arrest of a serving police officer.

d. Other contemporaneous documents show clearly that, contrary to Mr Wright's general assertion that Mr Ross was a tipster rather than a private investigator, D itself did not regard Mr Ross as a freelancer at all **{K/1579/203}** (pro forma letter from Mr Garside to D's staff of 8 July 2011). Mr Wright deflected by merely stating that he did not know who compiled the list of recognised freelancers when he was shown this document (Transcript, Day 22, p.70, lines 12-13).

e. Mr Wright accepted in his written evidence that he met Mr Ross and was offered information by him, but denies wrongdoing or knowledge of any wrongdoing by Mr Ross **{G/16/19-21/§§13.1-13.4}**. Mr Wright also accepted that he had made substantial contact between his mobile number and numbers linked with Mr Ross (over the extant period of 2011 to January 2014 there were 97 calls and 55 texts): **{G/43/13-14/§§9.1-9.3}**.

f. Mr Wright's evidence that Mr Ross essentially provided him with Fleet St gossip and discussion about sports **{G/43/13/§9.2}** (albeit "*[a]fter all this time, I cannot now say what each of these calls and texts might relate to or what we might have discussed*" **{G/43/13/§9.1}**) is not credible. D's Defence in the claim of Baroness Lawrence states that Mr Wright received tips from Mr Ross **{CB/5/36}**, but Mr Wright's evidence was that he never paid him for these tips, other than the "price of a lunch", apart from one unspecified occasion . It is inherently and on the face of the evidence more credible that he, like many others, was using Mr Ross to gather information unlawfully from the police, and that that, rather than a casual friendship, is what explains the frequent and prolonged association between Mr Ross and D's chief crime reporter.

   i. Mr Wright was unable to deny knowing that Mr Ross had provided information from corrupt police officers to other newspapers, but "refused to speculate" (Transcript, Day 22, p.45, lines 6-9; p.52 lines 5-7). Despite claiming to know almost nothing of Mr Ross's unlawful activities, when it suited Mr Wright to make assertions of fact from his own knowledge, he was happy to do so: "*Now, Mr Wright, that's right, isn't it, Ross specialised in selling information obtained by paying corrupt serving police officers? A. I have no knowledge of that. Q. You have no knowledge of him paying corrupt police officers? A. No, I don't. Q. That's where he got his information or tips from, wasn't it? A. <u>Not for me</u>.*" (emphasis added) (Transcript, Day 22, p.44, lines 16-25).]

   ii. It was put to Mr Wright on the basis of the extracts from the Daniel Morgan Inquiry Report of 2011 **{L/784}** that it was well-known that Mr Ross was a private investigator, and an associate of Jonathan Rees, Sid Fillery and corrupt police officers (Transcript, Day 22, p.50, lines 2-7). Mr Wright was initially evasive as to his familiarity with the report, and denied ever having reported on it (Transcript, Day 22,

p.47 line 16 – p.48 line 3). When presented with categorical evidence in the form of an article of his own in which he reported on the Daniel Morgan Report **{L/784.0.2}**, Mr Wright was bizarrely unable to accept that his prior oral evidence that he had not so reported was untrue, and tried to deflect by claiming he had to protect his sources, suggesting a colleague might have been responsible for the reporting, and digressing to boast of his work on Daniel Morgan in general (Transcript, Day 23, pp.4-5). Not least in light of Mr Wright's highly evasive oral evidence, the plain inference is that, having reported on it, Mr Wright read and was familiar with the report's contents, including as it related to Mr Ross. His purported lack of knowledge of Mr Ross's activities as referred to in the report is not credible[50].

iii. In a further instance of Mr Wright's rebarbative approach to giving evidence, despite having stated in his written evidence that Mr Ross left "under a cloud", Mr Wright maintained in cross-examination that he "[didn't] know the circumstances of his departure from the Met" (Transcript, Day 22, p.45, lines 10-11) (itself implausible given Mr Wright was able to say he left under a cloud, and was an experienced crime reporter when he knew Mr Ross), and was unable to accept basic inaccuracies in his written evidence, such as having stated incorrectly that Mr Ross had not faced criminal charges, when he had (Transcript, Day 22, p.46-47).

iv. As Mr Wright said in his first statement **{G/16/20/§13.4}** "*I was asked about John Ross by Jon Steafel[51] in 2011 as his name was brought up by Nick Davies during the Leveson Inquiry*." The plain inference to be drawn from this is that Mr Steafel had identified the individual

[50] He also claimed not to know anything about Mr Ross's unlawful activity as described by Mr Haslam (Transcript, Day 22, p.44, lines 16-25), but was familiar enough with Mr Haslam to call him a fantasist and liken him to Carl Beech.

[51] John Steafel was Deputy Editor of the Daily Mail but has not provided any evidence.

referred to as "Z" by Nick Davies in Chapter 7 of his book "Flat Earth News" (incorporated into his Leveson Inquiry evidence **{E/182/230}**; the relevant section of that chapter is at **{L/495/11-12**}) as John Ross, and further that Mr Wright had been using Mr Ross's professional services in the manner described by Mr Davies in his evidence (and was known to have been so using him), such that it merited a conversation from his managers as a result of Mr Davies' evidence.

v. When this inference was drawn, Mr Wright adopted a tactic used frequently in his oral evidence of aggressively asserting that the conclusion was "speculation", while at the same time being apparently unable to deny it (Transcript, Day 22, p.64, lines 8-15). Indeed Mr Wright appeared outraged even to be asked about the conversation with Mr Steafel, which he had raised in his own witness statement, and tried to deflect questions about it (Transcript, Day 22, pp.56-57; see also pp.65-66; see also Day 23, p.79). In the passage at pp.56-57 Mr Wright responded with evasive sarcasm when the obvious conclusion that he was well-known to have used Mr Ross was put to him, ("*Q. It wasn't well known; is that your evidence? A. Maybe –– what do you mean? I go around in a T–shirt saying, "I 'm a friend of John Ross"?*"). Most troublingly, Mr Wright professed not to know why the statement that Mr Steafel had spoken to him about John Ross was even in his statement ("*I cannot say with any certainty why that sentence is in there*"). Mr Wright was plainly adapting his evidence on this issue on the stand and refusing to accept the most basic logical inferences when put to him.

vi. This came further unstuck the following day, however, when Mr Wright did, finally, accept that the "Z" in Mr Davies' book was Mr Ross, thus joining the dots between Mr Steafel's conversation with Mr Wright immediately after the Inquiry about John Ross and Mr

Davies[52]' account of "Z"'s activities, in the following exchange at Transcript, Day 23, p.80 (albeit Mr Wright remained alarmingly unfamiliar with his own written evidence):

4 Q. Based on your witness statement saying that Mr Steafel
5 came to speak to you when Z came up at the Inquiry?
6 A. I beg your pardon? When did I say that?
7 Q. Back to your witness statement. It's paragraph 10 −−
8 sorry , 13.4 {G/16/20}:
9 "I was asked about John Ross by Jon Steafel ... as
10 his name was brought up by Nick Davies during
11 the Leveson Inquiry."
12 He wasn't named by Nick Davies at
13 the Leveson Inquiry, Z was referred to at
14 the Leveson Inquiry, as we saw, on 24 November for
15 the first time, and then evidence given on the 29th.
16 A. Yeah, I mean, I'm −− I'm happy to accept that. I mean,
17 it 's 2011, 15 years −−

vii. When it was put to Mr Wright, as is plainly correct, that it would have made no sense for Mr Steafel to come to speak to him about Mr Ross if he had only paid Mr Ross for information on one occasion, as his written evidence asserts, Mr Wright could only respond that "*I think that's a question for −− for Mr Steafel.*" (Transcript, Day 23, p.81, line 15). It was not a question for Mr Steafel – who has given no evidence for D – but for Mr Wright, who as so often deflected instead of explaining his evidence.

[52] In relation to Mr Davies, a respected investigative reporter who almost single-handedly exposed the phone hacking cover-up at News Group Newspapers, Mr Wright adopted the same unattractive tactic he adopted in relation to Clive Driscoll – when cornered, he feigned respect but then attacked the source of the allegations put to him. In this instance, he accused Mr Davies of an "act of cowardice" for not naming John Ross in *Flat Earth News* (Transcript, Day 22, p. 64-65, l. 24-25, 1-11)

viii. In light of the unchallenged evidence from Cs' witnesses as to Mr Ross's activities, in particular that he was a conduit to Southern Investigations and Jonathan Rees, and the other examples of payments made by D to Mr Ross as set out above, it is clear that Mr Wright knowingly commissioned Mr Ross on numerous occasions to unlawfully obtain private information.

g. Mr Wright also habitually made cash payments, which fits the modus operandi of Mr Ross, who was also paid in cash **{L/495/12; 15}**.

i. Mr Ross was taken to the report of D's internal lawyer Mr Young and his interviews with a number of D's journalists **{K/1569/16; 18; 20; 21; 32; 35; 50}**. When it was pointed out to Mr Wright that he was the only one who was *not* asked by Mr Young about making cash payments among those journalists – cash payments clearly being a topic of interest to Mr Young in investigating information gathering at the D on the eve of the Leveson Inquiry - Mr Wright was extremely evasive and dismissive (Transcript, Day 22, p.116 line 22 – 117 line 1). Mr Wright accepted that he and Mr Young worked closely together and were friendly – the clear inference is that Mr Young conspicuously chose not to ask Mr Wright about cash payments in his interview (or chose not to record his answer) because he knew Mr Wright was making habitual cash payments.

ii. Cash payments were plainly, according to contemporaneous documents **{K/1583/2}** and D's own witnesses - see for example **{G/19/13}** (Mr Simpson) - outside the norm, which Mr Wright sought to deflect before admitting that his own cash payments would have required sign off from someone "very senior" – likely Mr Steafel (Transcript, Day 22, pp.108-111).

iii. Mr Wright was typically evasive and sought to deflect when asked about his funds of cash used in his Lawrence investigations (Transcript, Day 22, pp.94-95) – eventually only finding himself able to deny that he had “unlimited funds”:

24 Q. Was it –– let me ask you this in relation to 21. Did
25 you have the availability of large amounts of cash which
1 you were entitled to use in relation to your work
2 investigating the Stephen Lawrence or other
3 investigations ?
4 A. I can say with absolute certainty , Mr Sherborne, unlike
5 your comrade Mr Johnson, I didn't have a half a million
6 pound slush fund to bribe witnesses in this case.
7 Q. I 'm not asking you about Mr Johnson, I'm not asking you
8 about the million pounds, I'm asking you did you have
9 the ability to ask for cash, large amounts of cash in
10 relation to your work on the Stephen Lawrence story or
11 other similar stories ?
12 A. In relation to –– I just want to finish off the previous
13 point. I was doing –– I was providing context in
14 relation to Mr Johnson, rather like Prince Harry
15 repeatedly said when he was giving evidence.
16 In relation to unlimited funds, absolutely not.

h. Tellingly, Mr Wright accepted it was “quite possible” Mr Ross had been at his mentor Peter Rose’s leaving party (Transcript, Day 22, p.145).

<u>Christine Hart</u>

262. Despite his denials, it is clear that Mr Wright frequently used Christine Hart **{L/785.4}, {L/785.5}, {L/800.2}** (Day 22, 17 February 2026, pp.129-147, lines 18-11).

Schedule C

263. Mr Wright is bylined on two "Schedule C" articles, a further article pleaded in Prince Harry's claim, and a further two articles pleaded at §9.1.5A(b) in all claims, which further demonstrate his propensity to commission UIG.

264. The first Schedule C article is "*Is Ronnie Barker's family helping hide his runaway son*" **{K/860}**, concerning Adam Barker, the son of comedian Ronnie Barker.

a. This was an article in the Daily Mail dated 25 February 2006 by Paul Bracchi and Stephen Wright. It contains detailed information about Mr (Adam) Barker's bank accounts and various specific transactions relating to it – as described and put to Mr Wright at (Transcript, Day 23, p.89 line 19 – p.87 line 9).

b. Mr Wright was already familiar with this story and the members of the family - when he wrote it, given his previous article (Transcript, Day 23, p.85, lines 3-4), and accordingly there was no plausible reason why he would have needed the innocuous name and address-type information he claimed he got from ELI when it came to writing this later article. Mr Wright said in his second witness statement that he did not recall the article **{G/43/7/§7.2}**, but said he did recall it under cross-examination (Transcript, Day 23, p.85, line 12).

c. Mr Wright asserted that the information in the article was given to him by an "impeccable" source, but was unable to address the proposition that there was no good reason whatsoever for a police source to volunteer the very detailed financial information concerning Mr Barker in the article (Transcript, Day 23, pp.88-89). There is no plausible reason, and it is accordingly implausible that the information came from a legitimate police source (nor is it said in the article to have come from even an unnamed police source).

d. Mr Wright suggested he had been given the bank account information as part of an effort to locate Adam Barker. When it was put to him that there was no need for this kind of detailed information for that purpose, Mr Wright simply replied "I disagree" (Transcript, Day 23, p.89, lines 14-18).

e. Mr Wright was unable to explain the payments to ELI on his instruction in relation to this article **{K/1533/Rows 658-659}**[53]. He floundered between repeating that he was trying to locate Adam Barker, without explaining how ELI's instruction went to that purpose, was unable to explain why the sums of money were so significantly more than legitimate means of locating numbers and addresses[54], and repeatedly sought to distract from the question by suggesting wrongly that he was being asked to reveal information about a member of Mr Barker's family who had supposedly helped him escape (Transcript, Day 23, pp.91-93).

f. Paul Bracchi's evidence when asked about this article was that the information as to Mr Barker's bank accounts was all given to him by Mr Wright, that he had never heard of ELI, and never asked Mr Wright where he got the information (Transcript, Day 40, pp.105-106).

265. The second Schedule C article is "*Ronnie's torment…*" **{K/621}**, again on the subject of Adam Barker.

a. This was an article published in the Daily Mail on 9 April 2005 by Mr Wright and Richard Pendlebury.

b. Once again this article contains detailed information about Mr Barker's financial activity: ""*The Mail understands that on one occasion Barker had*

[53] Mr Wright accepted these payments very probably relate to him (Transcript, Day 23, p.95, line 11) – a remarkable admission given how evasive his oral evidence generally was.
[54] Especially in circumstances where some information in the article <u>does</u> appear to have been obtained by lawful means such as doorstepping, as was put to Mr Wright (Transcript, Day 23, p. 93 line 25 – p.94 line 19).

paid about £20 to access one computer site. On another he had used the credit card to pay £6 to view another … site ." and "*None of his debit or credit cards has been used, nor have any calls been mode on his mobile phone. Calls to it are met with a recorded request to leave a text message*." Richard Pendlebury confirmed in his evidence that he would simply have written up the information provided to him by Mr Wright (Transcript, Day 24, p.13, lines 7-11; p.14 lines 3-7)[55].

c. Again, Mr Wright could only "disagree" when the implausibility of a legitimate police source providing him with this level of detail was put to him (Transcript, Day 23, p.104, lines 10-12).

d. Mr Wright accepted that he was in regular contact with ELI during the period of this article (Transcript, Day 23, p.105, lines 2-5). Once again, his explanation that ELI were providing him with names, phone numbers and addresses, county court judgments and genealogical research is simply not credible in the face of the many, far cheaper and lawful, methods of obtaining public information of this kind, and he could only "disagree" when this was put to him (Transcript, Day 23, p.106, lines 2-6). Also, in light of the fact that Mr Wright had already written about the incident, and Barker family, at length, he must already have had most if not all this innocuous information at his fingertips before writing this article, so he would have no reason to commission ELI to obtain this information.

e. The payments to ELI relating to "BARKER" at **{L/38/5 (bottom two rows) – 6 (top three rows)}** are plainly to be inferred to be connected with this story, being dated 21 March 2025, shortly before publication of this article. Mr Wright claimed again not to remember what these payments related to[56]

[55] Mr Pendlebury otherwise did not remember the article and denied any knowledge of Mr Wright's commissioning of ELI in relation to it, which renders his evidence almost entirely speculative and not very illuminating, given that he claimed to be familiar with Mr Wright's work over a number of articles - his lack of knowledge of the habitual use of ELI by Mr Wright strongly suggests the nature of the information sought by Mr Wright was illicit and unlawful (Transcript, Day 24, pp.14-16).
[56] He also equivocated about whether they related to him at all but did not deny they did.

and became very defensive (Transcript, Day 23, pp.109-110[57]). Absent any cogent legitimate explanation, the plain inference is that they were for UIG in connection with this article, commissioned by Mr Wright, which explains the detailed financial information it contained.

266. The third article is "*Harry to face army carpeting*" (dated 2 April 2007) **{L/463.1}** – which is pleaded **{A/11/51/§23.3(c)(v)}** and relates only to Prince Harry's claim.

  a. The payment slip recording a cash payment of £300 for "*Special contact re Prince Harry royalty protection fears*" **{K/1082}** relates to this article (as Mr Wright accepts in his written evidence **{G/43/6-7/§6.5}**).

  b. Mr Wright asserted that this payment was to Peter Rose for a tip. However, as was put to him, there is no plausible reason why Mr Rose could not be identified as the payee on this slip, or why the slip did not refer to "payment to freelancer" or similar, given he was simply a freelance journalist and was well-known to all to have been close with Mr Wright (having been his "mentor" and a long-time former employee at the Daily Mail) (Transcript, Day 23, pp.147-148). Instead, Mr Wright used the well-known disguise of the term "special". The only reason why Mr Wright suggests he used

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[57] (p.109, line 7 – p.110 line 10): "*You told 8 us in relation to the February story that you were 9 potentially looking at the phone number of a family 10 member who might have been helping Mr Barker. So what 11 did you need to instruct ELI for on five different 12 commissions to a large total sum on 21 March 2005?*
13 A. Is my name against that?
14 Q. It 's relating to the Barker article . Are you saying 15 this is nothing to do with you?
16 A. I am not saying it's nothing with me, I'm just saying 17 is it explicitly for me, that's all.
18 Q. I suggest to you that those five payments relating to 19 a Barker article must relate to the 9 April story or 20 your investigations around it.
21 A. I think that's –– that's an assumption.
22 Q. Well, are you aware of any other Barker story on 23 22 March and following to which those ELI payments might 24 relate?
25 A. Not at this precise moment, no, but I'm just saying 1 I don't know what those payments relate to. It's 2 21 years ago. I don't know what they relate to. I 'm 3 not going to –– I'm not going to speculate.
4 Q. You see, I suggest to you, Mr Wright, that consistent 5 with your use of ELI, which you accepted in evidence was 6 frequent, that you were looking for call data to monitor 7 whether Adam Barker was contacting members of his family 8 on their mobile phones?
9 A. I totally reject that. There's no basis for saying 10 that."

"special contact" was because he supposedly did so for "everyone" (Transcript, Day 23, p.148, lines 12-14).

c. Mr Wright's account of this article and payment slip is not credible. Far more credible is the simple explanation that, as so often, a "special payment" denoted a payment which Mr Wright sought to mask from those reading the slip – a payment to a contact within the police (here the Royal Protection Squad) who could have provided the information in this article about a future dressing down Prince Harry was expected to receive and the fact that "*officers in Scotland Yard's Royalty Protection Squad have also expressed concerns about Harry's penchant for drinking and nightclubs*" and so on **{L/463.1/2}**. As above, given their extensive association over many years, Mr Ross is the obvious candidate for the payee of this cash.

d. Mr Wright's suggestion that at this time "Mr Ross, as I remember, had had a quadruple heart bypass. I wouldn't say he was half dead, but he was a very sick man" (Day 23, pp.149 line 24 - p.150 line 2) is entirely unevidenced and cannot be correct, given there are records of named payments by D in relation to Mr Ross in 2007 and 2008, for example **{K/1653}**. Mr Wright did not refer to Mr Ross's medical condition at this time in his witness statements, despite going into detail about Mr Ross's life and interests, including his love of showjumping. This was another example of Mr Wright inventing evidence in the witness box to try to deflect from incriminating material put before him.

267. The fourth and fifth articles are ""*The missing hours of the loner linked with attack on Abigail*" (dated 14 May 2005) **{K/651}** and ""*I must have done it*" (dated 16 May 2005) **{L/392.1}**, both relating to Richard Cazaly and the attack on Abigail Witchalls.

a. The invoices from ELI relating to work commissioned by Mr Wright are at **{K/636}**, **{K/637}**, **{K/639}**, **{K/642}**, **{K/643}**, **{K/644}**[58]. The "subject" recorded on each of these invoices is a member of the Cazaly family – "R Cazaly", "J Cazaly" or just "Cazaly". It was put to Mr Wright that the initialled subjects are likely to refer to Rosemary Cazaly (Richard Cazaly's mother), Jennifer Cazaly (Richard Cazaly's sister) (Transcript, Day 23, pp.114-115, p.120 and p.122).

b. In relation to the first article of 14 May 2005 **{K/651}**, Mr Wright stated he did not know what these enquiries of ELI were about (Transcript, Day 23, p.116, lines 10-12; p.124, line 10). He then, while simultaneously assuring the Court he was not "passing the buck", tried to do precisely that by suggesting, implausibly, that somehow these invoices addressed to and signed by him could be attributable to unnamed reporters working under him (Transcript, Day 23, p.121, lines 2-8).

c. Once it had been established that the suspicious information in the article concerning the "extensive conversations" Mr Cazaly had had with his partner Ms McKenzie, was not contained in the various other reports Mr Wright had cited in his written evidence as possible sources (Transcript, Day 23, pp.133-136), when the obvious conclusion that such information was the product of the numerous ELI instructions which Mr Wright had made and claimed not to remember, Mr Wright launched into another evasive "background" answer (Transcript, Day 23, p.136 line 22 – p.138 line 16)[59], boasting of his previous work and contacts. None of which went any way

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[58] As was put to Mr Wright (Transcript, Day 23, pp.111-113), these invoices can be matched to the ledger document at **{K/1533}** (e.g. "014051" in the top right of **{K/636}** may be matched to the corresponding entry in the ledger **{K/1533/Row 208}**). Mr Wright betrayed another troubling suggestion that D's lawyers had written the part of his witness statement where he dealt with these payments without his input (Transcript, Day 23, p.114, lines 4-12).

[59] As was pointed out to Mr Wright immediately afterwards, he demonstrated a remarkable ability to remember details of a particular press officer at Surrey police in the early 2000s, but no memory whatsoever about ELI.

towards explaining his repeated and incriminating instructions of ELI in relation to this story.

d. Mr Wright, unbelievably, seemed to suggest Surrey Police was so open in their press policy that he could have obtained such information (published exclusively by the Daily Mail) and while he "wasn't given special treatment" (Transcript, Day 23, p.139, line 2) there was a "very open media policy and we as crime reporters benefited from that" (Transcript, Day 23, p.138, line 15), before clarifying that "My evidence is I do not recall what happened in spring of 2005. That's my evidence" (Transcript, Day 23, p.139, lines 15-17). While Surrey Police may have briefed journalists generally, there is no proper explanation for the specific and exclusive information relating to "extensive conversations" being obtained.

e. It is to be inferred that the instructions of ELI also fed the follow-up article of 16 May 2005 **{L/392.1}** concerning Mr Cazaly, and in particular the information around Mr Cazaly's movements around the time of the attack, were the product of these ELI instructions also, since his phone records may be inferred to have enabled the identification and thus location of those he was speaking to.

268. The Court is respectfully invited to consider the Cs' case in relation to the five Schedule B articles in Baroness Lawrence's claim on which Mr Wright is bylined in the context above, which demonstrates that he is not a witness whose credibility can be relied on and his account of sources should be rejected unless there is concrete contemporaneous documentation to confirm it. Mr Wright was a habitual user both of ELI and of John Ross, plainly for unlawful purposes, and the Schedule C and other non-Schedule B articles set out above show his modus operandi for feeding articles with UIG in action. It is all the more to be inferred he did so in relation to the Schedule B articles as well.

Rebecca English

269. Ms English provided two witness statements at **{G/19}** ("**English 1**") and **{G/52}** ("**English 2**"). Ms English has worked at the Daily Mail since 1999 and became royal correspondent in 2004. She gave evidence on day 31 of the trial.

270. Ms English's memory of relevant events was generally poor and accordingly her evidence was of limited value for D, being frequently confined to speculation. However, there were some particularly notable issues with Ms English's evidence which also give rise to serious concerns as to the credibility of her evidence:

   a. First, Ms English's witness statement stated: *"I never had the telephone number of any of Prince Harry's girlfriends*" **{G/19/4-5/§13}**. This was a categorical and definitive statement, prepared with the assistance of D's solicitors, and was plainly aimed at distancing Ms English from potentially incriminating inferences as to her information-gathering about the Duke of Sussex and his associates. In fact, Ms Davy's telephone number was in one of Ms English's notebooks – one of the very few surviving and disclosed notebooks of any of D's journalists **{K/534/3}**. Ms English accepted this was not "*quite correct, no*" but suggested she "*never needed to call it and I've never needed to use it*" (Transcript, Day 31, p.5, lines 19-20). This response understated the gravity of this inaccuracy and the importance of accuracy in evidence in general.

   b. Second, Ms English was clear in her witness statement at paragraph 15 that **{G/19/6}**:

   > "*I would push for an explanation of a source if appropriate. For example if the information came from someone I didn't know to have reliable contacts or relationship with the story subject, or the information was just inherently not believable. I would then ask the source where the information came from or how they came to know about it. I would also verify (or second source) the information using other contacts or sources independent from the person who provided the original information. Fact checking is an incredibly important part of the reporting process, and a significant part of this involves speaking to the press office at the earliest opportunity. They can often demonstrably prove that a story is true or false at a very early stage. Where I otherwise had doubts about information or a particular source, I wouldn't publish. I would rather lose a story than publish something I had doubts about.*"

c. She elaborated on this (Transcript, Day 31, p.43, lines 1-2): "*When you're a journalist, you just -- as I said in my statement, you double-check everything*".

d. However, when it suited Ms English she was apparently willing to abandon this principle, or at least pass the buck to her colleague Sam Greenhill, for verifying an apparently anonymous call relating to the Duke of Sussex in Botswana for which no details have been provided by any of D's witnesses whatsoever (Transcript, Day 31, p. 23 line 22 – p.24 line 8; pp.27-28).

271. Ms English on occasion gave answers so implausible that they were damaging to her credibility more generally. For instance, as addressed more fully below:

a. Ms English clearly commissioned Mr Behr with Duncan Larcombe of *The Sun*, and was presented with proof at **{L/29}**, yet refused to accept she had done so (Transcript, Day 31, pp.66-67).

b. Ms English suggested she had not read emails because she now considers them "uncharacteristic", referring to **{L/29/4}** (Transcript, Day 31, p. 75, lines 4-9), and **{K/1134}** (Transcript, Day 31, p.123, lines 17-23).

c. Ms English abjectly refused to accept that "reg of her at hotel" was shorthand for "register of her at hotel", referring to **{K/1915}** (Transcript, Day 31, p.143, lines 5-8).

272. Ms English admitted in her written evidence **{G/19/7}** to using Mike Behr and System Searches (which she knew as simply "the Scotts").

273. As to System Searches, Ms English's evidence as to why she used them and what she thought they were doing was unconvincing (Transcript, Day 31, pp.11-13) – she suggested the internal electoral roll resources at D were out of date, without any corroborating evidence and in the face of contemporary documents affirming that on the contrary the resources were regularly updated and valuable **{K/163/4}**. Nor did she offer any explanation of why she (and others at D) would be willing to pay far more money to an outside company when as she recognized there were internal resources to hand. She flatly denied ever having asked herself how

System Searches were obtaining, as she alleged, more up-to-date, information than she could from lawful resources (Transcript, Day 31, p.14, lines 1-6). Coming from an experienced journalist with a self-professed diligence in researching her stories, this is not credible. Ms English, as did all those at D, plainly knew or were wilfully blind to the unlawful methods System Searches were using to gather information for them, which justified (in their minds) the associated cost.

Mike Behr

274. Ms English's interactions with Mr Behr are discussed in greater detail in submissions addressing each of the relevant articles.

275. Ms English clearly had a familiar professional relationship with Mr Behr. While Ms English appeared eager to distance herself from him, the contemporary documentary evidence reveals that they were well-acquainted: the surviving documents alone reveal she received emails from him on 7 December 2007 **{K/1134}** 25 January 2009 **{K/1182}**; 30 March 2009 **{K/1188}**; 17 December 2009 **{K/1231}**; 15 August 2013 **{L/771}**; 16 December 2013 **{K/1911}**. These documents also demonstrate that, far from being merely a local "stringer" in South Africa, Mr Behr was a specialist in blagging information for D and its journalists[60], with a particular expertise in obtaining flight information.

276. When pressed in cross-examination on the plainly unlawful activities Mr Behr can be seen from the documents to have carried out on her behalf, Ms English either had no proper answer or reached for wholly implausible explanations.

   a. Ms English (along with Duncan Larcombe of *The Sun*, copied into the email) received an email from Mr Behr **{K/1134}** in which he provided her with Ms Davy's exact flight details and seat number for a journey to South Africa, and the suggestion to "plant someone next to her". Ms English maintained in her oral evidence that she did not remember receiving the email. While it is of course possible that she may not remember receiving the email (albeit it is surprising her memory would not have been triggered on re-reading it), Ms English's credibility was damaged by her persistent response that the

[60] Records also exist of Mr Behr performing a similar function for Sam Greenhill: **{K/1907}**.

language of the email was somehow alien or uncharacteristic (e.g. Transcript, Day 31, p. 123, lines 17-23), as if that somehow indicated that it was not genuine, or she would not have read it when received.

277. In **{K/1911}**, **{K/1912}** and **{K/1913}**, Mr Behr emailed Ms English to say "*I've done all the checks I can today & I'm certain the plane that's due to fetch hasn't left CT yet & is only scheduled to do so on the 19 th. I'll check daily in case that changes. I also have no indication that she is coming to CT. By tomorrow I will know if he is due to stay on in CT or fly back to UK. Do you want me to keep an eye on it for you this week?*" – and Ms English responded in the affirmative, thanking him. Under cross-examination, Ms English offered a bizarre interpretation of this email, suggesting "*he is just saying, "I'm double−checking those things with the charity*" (Transcript, Day 31, p.41, lines 14-15). This is clearly not what the email says or implies, and Ms English's explanation that Mr Behr was simply double-checking flight information being provided direct from the charity the Duke of Sussex was engaged with on a trip at the time does not bear any serious scrutiny, not least as it does not account for what "checks" Mr Behr refers to, there is no good reason to pay Mr Behr to confirm information effectively from the horse's mouth, and the "she" referred to in the email is Cressida Bonas (as Ms English accepted), about whose travel plans there is no reason for the charity to have known or disclosed (Transcript, Day 31, pp.42-47). Implausibly, Ms English suggests that flight details were provided by the charity (Day 31, p.40, l.18). No evidence has been provided by D to substantiate this claim.

a. When Mr Behr asked who the Duke of Sussex's "*tecs*" were, namely protection officers, Ms English confirmed the identity of one of the officers **{K/1913/1}**. The obvious explanation was that it was so Mr Behr could check the systems unlawfully, as the Duke of Sussex would not be travelling under his own name. Ms English's explanation was again obviously fabricated to mask the truth – she claimed Mr Behr would need to know who the protection officers were so that Mr Behr could somehow be on the lookout for those around the Duke of Sussex as that would give him some advantage

in obtaining photographs of the Duke of Sussex (Transcript, Day 31, pp.49-50). It is impossible to understand how knowledge of a protection officer's identity would give a photographer (which Mr Behr was not, anyway) an advantage in taking a picture of the Duke of Sussex exiting a vehicle, as Ms English suggested. Nor is there any mention of Mr Behr obtaining such pictures in these emails, which are focused on the Duke of Sussex's travel plans.

b. Ms English's explanation of why Mr Behr obtained the Duke of Sussex's precise BA flight details in **{K/1913}** (email 18 December 2013 at 11:45) was that the charity again, albeit "not normally", had given that exact flight, and there was only one flight per day (Transcript, Day 31, p.52, lines 16-22). It was not true that there was only one flight per day **{L/64.69.5}**; **{L/775.0.1}**; **{L/771.2}**.

c. When on 19 December 2013, Mr Behr stated "*He's only leaving tomorrow. Know his hotel, seen bill but so far no sighting of the bearded. No reg of her at hotel*" **{K/1915}**, Ms English suggests she did not know what "*reg*" stands for "*because he doesn't say the word "registration", he says "reg", which I have no idea what he's referring to*" (Transcript, Day 31, pp.54-55)[61]. Once again, Ms English was reaching for an implausible excuse for an email which on its face clearly shows that Mr Behr was blagging information from hotel staff as to whether Cressida Bonas was staying at the hotel.

d. In January 2014, Mr Behr refers to the £350 not covering "*the info provided. It's simply not worth it. I think you know exactly what I mean….*" **{K/1945/2}**. This was plainly a reference to how much Mr Behr had to pay (i.e. the cost of the corrupt payment) to obtain the information (as opposed to the costs of the time spent by him). Ms English stated she had "*I have no idea what he's referring to there, because we only ever paid him as a day rate, just as*

[61] Ms English later suggested she had not addressed this part of the email in her written evidence because "*it's* [the register information] *not of interest to me*" (Transcript, Day 31, p. 145, lines 19-22) – which is no explanation for the lacuna in her evidence in these proceedings at all.

a normal freelance journalist would do" (Transcript, Day 31, p.56, lines 22-24). This is patently false.

e. Indeed, in response, Mr Behr makes clear he didn't "*want to go into why I'm asking for more in an email*" and wanted the money "*not for time spent but for going out on a limb. Ie: please put through another 2 days*" **{K/1945/1}**. Again, Ms English's implausible interpretation again was that meant he was "*working hard*" (Transcript, Day 31, p.63, lines 10-13).

278. In a series of emails from April 2005 **{L/29/4-7}**, Mr Behr provided flight details relating to Ms Davy to Ms English and Duncan Larcombe. Ms English's implausible responses to this evidence also revealed her not to be a credible witness.

a. On 13 April 2006, in an email titled "*chelsy airline search*" **{L/29/5}**, Mr Behr said "*Do you want me to take the cost of the airline searches out of the two days you paid me for? I'll do that if it will make things easier for you. I've billed Rebecca £200 for half the costs so I am partly covered*". The information obtained by Mr Behr is at **{L/29/6}**, clearly unlawfully obtained flight details. Ms English refused to admit that such information must have been unlawfully obtained but only said "*I can't speculate how this was obtained*" (Transcript, Day 31, p.66, lines 21-23). Despite Ms English paying £200 for half of the cost of these airline searches (as explained at **{L/29/5}**), she stated "*I have never asked Mike Behr to do an airline search for me, I have never used that information at all. He is talking about £200 is what we'd actually pay for a shared day rate of work*" (Transcript, Day 31, p.68, lines 21-24) which is contradicted by the contemporaneous document **{L/29/5}**.

b. In particular, the email from Mr Behr specifies: "*Had to do several searches to pick booking up. This time Chelsy did a strange thing. Had my guys look into why they didn't pick up the booking earlier & they say that she was on standby til the last minute and then paid cash for the ticket at the airport. Maybe this is their way of trying to avoid detection?*" **{L/29/5}**. Ms English fell into formulaic responses, re-asserting that she was not copied into the

email and never commissioned Mr Behr to do an airline search (Transcript, Day 31, pp. 68-71). But the lie is given to that response because:

i. she was willing to pay for that information, as the document shows;

ii. although the remaining email forwarding the details of the flight **{L/29/6-7}** is only to the Sun, it is clear from the preceding email at **{L/29/5}** that Ms English would also have received it, save that such an email does not exist; and

iii. Ms English demurred from what would have to be the logical (albeit implausible) conclusion of her position – effectively that Mr Larcombe had asked independently of her for the flight details[62] - saying instead that she could "not speculate" about Mr Larcombe's relationship with Mr Behr[63] (Transcript, Day 31, p.71, lines 13-17; see also p.73 lines 1-4, where Ms English simply reasserted that the email was not sent to her, instead of addressing the question whether Mr Larcombe had truly instructed Mr Behr independently of her).

iv. Incontrovertible evidence appears in the email dated 7 December 2007 that sets out the seat numbers of a flight **{L/29/4}**, which are the exact flight details of Ms Davy. Again, this was disclosure from the Claimants and retained because it was copied into Duncan Larcombe of *The Sun*. Ms English simply said "*I don't know how this could have been obtained, because it was never asked for and it was never acted upon, and I can't speculate about that, because I just genuinely don't know*" (Day 31, p.74, lines 14-17); and that planting someone next to Chelsy Davy, as Mr Behr suggested, was "*strongly that is something I would have never even considered doing, now or then, ever, and would have never even been interested in doing*" (Day 31, p.76, lines 4-7). It is wholly implausible and very damaging to Ms

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[62] Which echoes her written evidence at §30.6 of English 1 **{G/19/23-24}.**

[63] Despite having been willing to do so in her witness statement, as above.

English's credibility that she appears to have suggested that Mr Behr was going out on a limb to provide this kind of information without any kind of instruction from her whatsoever. Nor is there any evidence that this email, evidencing clear UIG, gave her pause in using Mr Behr to obtain information in the future. On the contrary, she was happy to receive similarly unlawfully obtained flight information from Mr Behr in 2013.

279. Ms English accepted that references to a private plane registration number, a sum in South African Rand, and the words "fuel handling" in her notebook **{K/534.1/15}** refer to another plane trip taken by the Duke of Sussex (Transcript, Day 31, p.39, lines 12-25). It is to be inferred that Mr Behr had obtained this information for her also by blagging[64].

280. Ms English can thus be seen to have been a regular commissioner of plainly unlawfully-obtained information from Mr Behr, as well as a user of System Searches who must have known they were undertaking unlawful activities. Ms English's responses when challenged on contemporary documents demonstrating the unlawful products of her unlawful instructions to Mr Behr show her as a witness willing to reach for improbable excuses, rather than tell the truth, when cornered. In the circumstances, the Court should reject her account of events and sourcing unless there is concrete and contemporaneous documentary evidence to confirm it.

[64] Ms English's suggestion (Transcript, Day 31, p.40, lines 11-12) that the sum in her notebook was "roughly what it would cost" clearly does not explain the fact that she had a precise figure noted down in connection with that flight.

USE OF SHARON FEINSTEIN

281. As a result of the witness statements served in these proceedings and the oral evidence given on behalf of D at trial, the true nature and extent to which D's evidence concerning matters complained of by the Cs relates to Sharon Feinstein has become clear. Witness statements and/or oral evidence on behalf of D at trial show that Ms Feinstein was involved in:

   a. The Third Unlawful Article in the claim of Ms Frost Law (bylined to Nicole Lampert).

   b. The Sixth Unlawful Article in the claim of Ms Frost Law (bylined to Nicole Lampert).

   c. The Seventh Unlawful Article in the claim of Ms Frost Law (bylined to Nicole Lampert).

   d. The Eighth Unlawful Article in the claim of Ms Frost Law (bylined to Nicole Lampert).

   e. The Tenth Unlawful Article in the claim of Ms Frost Law (bylined to Katie Nicholl).

   f. The First Unlawful Episode in the claim of Ms Frost Law (involving Katie Nicholl).

   g. The Fifteenth Unlawful Article in the claim of Ms Hurley (bylined to Katie Nicholl).

   h. The Seventh Unlawful Article in the claim of Sir Elton and Mr Furnish (being the same as the Fifteenth Unlawful Article in Ms Hurley's claim) (bylined to Katie Nicholl).

   i. The Hugh Grant 'Plummygate' episode (bylined to Katie Nicholl).

282. In addition, the Cs invite the Court to infer that Ms Feinstein was involved in the Ninth Unlawful Article in the claim of Ms Frost Law (bylined to Richard Kay), on the basis that, as set out below in relation to that article, it is highly likely that Ms Lampert was the source of this story.

283. Notwithstanding her involvement in each and all of the above, Ms Feinstein has provided no evidence in these proceedings. No witness evidence has been served. Ms Feinstein was not called by D to give evidence at trial. The Cs say that this is striking in circumstances where, for instance, and as is set out in further detail below in these submissions:

a. In relation to the First Unlawful Episode in the claim of Ms Frost Law, concerning Ms Frost Law's having experienced an ectopic pregnancy, Ms Nicholl says that she is "*quite sure that this story came from Sharon [Feinstein]*" [First Witness Statement, §36.5.2 **{G/38/31}**]. The related notes in Ms Nicholl's notebook at **{K/402/10}**, which Ms Nicholl says record "*a subsequent conversation I have had with Sharon Feinstein*", plainly have the strong appearance of having been obtained by voicemail interception.

b. In relation to the 'Plummygate' episode, although the information said by Ms Nicholl to have been provided by Ms Feinstein contained obvious errors – such as the suggestion that Jemima Khan had tried to discuss her concerns regarding Hugh Grant with Mr Grant's mother, who had passed away six years earlier – Ms Feinstein unquestionably did provide uncannily accurate information, such as the fact of a "*plummy voice*" woman leaving voicemail messages for Mr Grant.

c. Similarly, in relation to the Sixth Unlawful Article in the claim of Ms Frost Law **{K/520/1}**, while information said by Ms Lampert to have been provided by Ms Feinstein (who is said to have obtained it from a "*confidential source*") again contained information that was inaccurate (namely the incorrect information as to the final settlement sum between Ms Frost Law and Mr Law of £10m), the article also contained financial information of which Mr Law says in his unchallenged First Witness Statement [§19 **{F/8/3 – 4}**]: "*[t]here is no way that could have been learnt by anything other than listening into a voicemail or tapping*".

d. In relation to the 'Plummygate' episode, when Mr Grant sued for libel over the related article published in *The Mail on Sunday* under Ms Nicholl's byline **{K/1032}**, D settled almost immediately and made a statement in open Court.

Similarly, in relation to the Sixth Unlawful Article in the claim of Ms Frost Law, following a letter of complaint from Mr Law's solicitors on 8 October 2004 **{K/510/7}**, D immediately put a warning notice on the story **{K/510/5}** and subsequently published an apology in respect of the article: **{K/510/2}**. The Cs contend that in both cases D, facing legal action, capitulated readily because it could not allow the true source of its information to be disclosed.

e. Remarkably, notwithstanding D's having taken such steps in relation to articles said to have been sourced by Ms Feinstein, D continued to use Ms Feinstein and to pay her for her services: see **{K/1162/1}**. The Cs contend that D did so because it knew that ultimately Ms Feinstein was providing information obtained by voicemail interception and that was thereby accurate, which Ms Nicholl could use in her stories for D.

UNLAWFUL ARTICLES AND INCIDENTS

Knowledge of Unlawful Activity

284. This section addresses the unlawful articles and incidents complained of by the Cs in these proceedings. As set out in each of the Cs' pleaded cases, the Cs' case is that in each instance the responsible individual at D knew or must have known that the information was unlawfully or illegally obtained, on the basis of the facts and matters set out in the Cs' Particulars of Claim (see e.g. §§12 – 15 of the Re-Re-Re-Re-Amended Particulars of Claim in the claim of Baroness Lawrence **{A/7/38 – 43}**).

Baroness Lawrence

Oral evidence of Baroness Lawrence

285. Baroness Lawrence was the fifth of the Claimants to provide witness evidence on the morning of Monday 2 February 2026 (Day 11). She was cross-examined by D for less than one hour.

286. Baroness Lawrence was viciously thrust into the public eye in 1993 as a result of the racist murder of her then 18-year-old son, Stephen Lawrence, in South London. Since that moment, she has been an indefatigable campaigner for justice her son and other victims of racist crimes. Baroness Lawrence was a candid and frank witness. She showed her frustration with D's actions, and their continued denial of liability of the claim. Her upset was compounded by the fact that she continues to feel betrayed by the journalists (in particular Stephen Wright) and D who used the tragic events of her son's murder as a means to sell their papers. She said it "*is just so, so painful*" for her. She put her trust in them and they "*played her*". She was always led to believe that the Defendant was on her family's side – *"But when you look at it , were they really fighting for justice for my son or they were just pretending that they were, to sell their papers, and to show that, you know, that me and my family were somebody that they were supporting?....*

They've used me and my son to give them credibility of supporting a black family, but at the end of the day, I don't believe that they have." (Transcript, Day 11, pp.101-102)**.**

287. Baroness Lawrence said she was aware of the five articles but believed she thought the source of the information was leaks from the police **(**Transcript, Day 11, p.66**).** She was only asked in any detail about the First Unlawful Article by David Williams and Stephen Wright, published by the *Daily Mail* on 24 July 1997. She made clear on a number of occasions that she did not suspect anyone else at the time as she thought it was the police leaking the information: "*I would complain that every time we have gone and had discussion [with the police], within the next day, it will be in the papers. It will be in the papers. Who am I complaining to? I've complained to the police, because I think they are probably the ones leaking information out, because I know it's not me. I would complain to them. But it didn't occur to me, that. And when you're suffering and going through grief, you're not thinking, "Oh, I must make sure that I challenge what's in the newspaper". How I have challenged it is through the police, because I believe that they are the ones who are leaking information."* **(**Transcript, Day 11, pp.78-79**).**

288. Baroness Lawrence was asked about writing the foreword for DCI Clive Driscoll's book and about a specific passage where he reflected whether they could have been victims of phone hacking. She reiterated her belief the information came out due to police leaks (Transcript, Day 11, pp.89-90).

289. Baroness Lawrence made categorically clear that she had no involvement with Hacked Off – *"I wasn't* anything *to do with Hacked Off"* **(**Transcript, Day 11, p.92) and "*...I have no knowledge of Hacked Off, apart from I've heard about them. I've never sat and read anything about them, I have not attended their meetings. I don't know anything about them, only what I've heard"* (Transcript, Day 11, p.95)**.**

290. Baroness Lawrence provided helpful and clear responses to the questions asked by the Defendant and maintained her composure even whilst dealing with an

incredibly sensitive and upsetting matter. Her evidence was forthright, helpful and entirely credible.

First Unlawful Article

291. The First Unlawful Article **{K/91}** ("*Lawrence: A Public Inquiry*" dated 24 July 1997) was addressed in the oral evidence of Mr Wright on Day 22 of the trial. The background and key individuals relevant to the First Unlawful Article are set out in the Cs' skeleton argument at §69. The Court is also invited to refer to the Cs' trial matrix for this article.

292. The First Unlawful Article was bylined to Stephen Wright and David Williams. Mr Williams has not provided any evidence, despite still being employed by D (and having recently accepted an award for his work for D **{L/803}**), and despite the D's witnesses affirming that the article was largely written by Mr Williams **{G/28/50/§110}**; (Transcript, Day 22, p. 125, lines 17-20).

293. Under cross-examination, Mr Wright could offer no proper answer to Baroness Lawrence's case that he had used Christine Hart to blag information from Baroness Lawrence, namely the information contained in the article that "*The family will decide soon whether to bring a second private prosecution for murder against Jamie Acourt and Norris*".

   a. This information was kept private within the Lawrence family (see Mr Khan KC's oral evidence at (Transcript, Day 11, Page 172, lines 7-15) and Baroness Lawrence's oral evidence at (Transcript, Day 11, Page 70, lines 14-23). Yet Mr Wright persisted in an unevidenced non-answer to this point (Transcript, Day 22, pp.147-148, lines 22-9):

      Q. You see, as Mr Khan explained in his evidence, the fact that the family were to "decide soon" is something only they knew?
      A. I believe it was already in the public domain through previous articles in other media.

Q. Mr Wright, the information that the family were about to decide soon goes further than any previous reporting that you have seen.

A. All I can say is that -- and my account has been consistent for the four -- last four years, ever since this complaint came in -- is that my role in this story was getting reaction from the family campaign. That was it.

b. When presented with a payment record from Ms Hart's agency, Warner Detective Agency, **{K/92}** showing a payment of £75 relating to the period immediately following the First Unlawful Article with the description "Wright Enqus", Mr Wright was unable to accept even the most basic and obvious conclusions, that it reflected a payment to Ms Hart for work commissioned by him (Transcript, Day 22, p.126, lines 15-19):

Q. And this reflects the fact that she was paid by you £75; correct?

A. I disagree, Mr Sherborne.

Q. You disagree that she was paid by you?

A. Yes.

c. In light of the evidence of Ms Hart's corroborating conversation with James Hanning **{L/785.4/4}** (and see also Mr Hanning's witness statement at **{F/30}** setting out the circumstances of Ms Hart telling him about the blag call[65]), in which she explicitly told Mr Hanning that she had been paid £75 (the amount recorded in the invoice) to blag the information concerning the family's plans for a private prosecution from Baroness Lawrence for Mr Wright, Mr Wright had nothing substantive to say but that it was "nonsense" (Transcript, Day 22, p.134, line 13).

[65] Mr Hanning was cross-examined on this statement at (Transcript, Day 11, pp.148-163). It appeared to be suggested that Mr Hanning had led Ms Hart to admit to blagging Baroness Lawrence. It emerged clearly, including from his re-examination, that Ms Hart was in fact often willing to describe herself as a blagger, and there was no sound basis for doubting the credibility of what she had told him as reflected in his recordings. Nor was there any substance in D's apparent suggestion that a possible further payment of £350, or £400, to Ms Hart somehow rendered incredible the consistent and recorded account of her being paid (at least) £75 for her blag for Mr Wright.

d. Mr Wright, instead of proffering any cogent reason why Ms Hart was not telling the truth to Mr Hanning, or what the payment related to, simply lashed out at Mr Hanning and Ms Hart (Transcript, Day 22, pp.137-138, lines 21-4):

...But I don't know the context in which this conversation happened. I'm aware that Mr Hanning has got a pathological hatred of the Daily Mail. I'm aware, because I think it's relevant, I'm aware he has been saying some very nasty things about me to -- to people who I know. So I don't know the circumstances of this recording, whether Ms Hart was intoxicated at the time, for example, I don't know.

This response was a clear case, among many, of Mr Wright simply seeking to attack and smear those who, like Mr Hanning, had given evidence to assist the Court, because he had no defence.

e. Ms Hart's account in her conversation with Mr Hanning (that "*I'm 100% sure I'd blagged the mother*" **{L/785.4/6}**) was reinforced by Mr Khan KC's evidence in which he affirmed that Baroness Lawrence was not on good terms with the Daily Mail and Mr Wright at that time in 1997 (Transcript, Day 11, p.172, lines 11-16)[66], and Baroness Lawrence's evidence that she was not in conversation with the Daily Mail around the time of this article either (Transcript, Day 11, pp.75-76, lines 19-8) – which clearly explains the need for Ms Hart to blag information from her for Mr Wright[67]. Once again, Mr Wright could only offer bare disagreement (Transcript, Day 22, p.142, lines 4-16).

[66] At (Transcript, Day 11, p. 174) D's counsel took Mr Khan to his witness statement at **{F/15/2/§10-12}** and told him that having worked with Mr Wright for 25 years "*would take you back, wouldn't it, to 1997?*" – this was incorrect, since Mr Khan KS's statement was originally sworn in October 2025, from which 25 years prior is October 2000. In any event, Mr Khan KC clarified at lines 17-19 that "*It was only much later that it became a much friendlier relationship. I should have made that distinction*".

[67] Ms Hart was clearly talented and provided a valuable service as a blagger – as Paul Bracchi attested, "some people are just good at getting other people to talk" **{G/6/10/§49}**.

f. DCI Clive Driscoll has also given unchallenged evidence **{F/31/2-3}** that he received a call from a woman in November 2025 who "*mentioned that Christine Hart had dealt with Stephen Wright at the Daily Mail and that Christine Hart had pretended to Doreen Lawrence that she was from the Guardian*". As his subsequent account of contact from Christine Hart shows, it is clearly to be inferred that the caller was Ms Hart herself, corroborating and referring to the same incident of blagging as set out above.

g. Ms Hart's admission of having blagged her on this specific occasion is corroborated by her admission to having done some "snooping around" in relation to Baroness Lawrence on other occasions in her interview with Mr Hanning - see **{L/785.4/17}**, and the fact that Baroness Lawrence's number appeared in Ms Hart's filofax, as she confirmed to Mr Hanning **{L/800.2/1}**[68] - why else would Ms Hart have had these contact details (which Mr Wright admitted he had never had himself) unless to target Baroness Lawrence, as she admitted?

294. It was, somewhat obliquely, suggested to Baroness Lawrence in cross-examination that she could not identify the precise information blagged by Ms Hart, and that she was content to have whatever she told her published by the Guardian. The first proposition is irrelevant (especially in the face of Ms Hart's admission and the corroborating documentary evidence), the second cannot seriously be maintained.

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[68] "*James Hanning: Right, and that, and right, and that's your filofax?*

Christine Hart: Yeah, my, oh that's the only um thing I've got from back those days.

James Hanning: Sorry, and who was the other one? Oh, Stephen Lawrence.

Christine Hart: Yeah, Stephen Lawrence and phone number, home phone number and home address. Obviously it's not him, 'cause he was dead, so it would be the mother, but I've put that too, you know.

James Hanning: Blimey."

a. Baroness Lawrence suggested that she probably would not have spoken to the Guardian on the phone as that was not her usual practice in conducting interviews (Transcript, Day 11, pp.83-84, lines 24-7).

b. She was speaking in generalities (at a considerable remove in time), and her answer was given in the context of the suggestion put to her that she was content for the blagged information to be published – as she explained in her previous answer (Transcript, Day 11, p.83, lines 6-18), the point was that her practice for a formal interview she would expect to be published would be to conduct it face-to-face, not over the phone.

c. Baroness Lawrence was very clear in re-examination that she, reasonably, did not remember the call from Ms Hart, was not speaking to the Daily Mail at the time, and that Mr Wright did not have her number, as he agreed (Transcript, Day 11, p.96, lines 21-23; Day 11, p. 97, lines 11-22; Day 22, p.147, lines 3-4).

295. In the circumstances, it cannot be doubted but that Mr Wright commissioned UIG, specifically the blagging of information from Baroness Lawrence by Christine Hart. It is also clear that this UIG fed the First Unlawful Article.

Second Unlawful Article

296. The Second Unlawful Article **{K/156}** ("*£320,000 FOR LAWRENCES*", published in the Daily Mail, bylined to Stephen Wright and dated 14 October 2000) was addressed in the oral evidence of Mr Wright on Day 22 of the trial. The background and key individuals relevant to the First Unlawful Article are set out in the Cs' skeleton argument at §70. The Court is also invited to refer to the Cs' trial matrix for this article.

297. Neither Baroness Lawrence nor Imran Khan KC were asked about this specific article by D during cross-examination, and as a result their evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

298. The information complained of is set out in the Cs' trial matrix – essentially, the clearly confidential details of settlement negotiations being carried on between the Lawrence family and the (then) newly-founded Metropolitan Police Authority ("**MPA**"). Baroness Lawrence's case relies on two matters: the implausibility of D's (and Mr Wright's) explanation for how it/he obtained the information, especially the exclusive information (as to the offer rejected by the Lawrences, the negotiations ending in deadlock, the police's reluctant acquiescence to the sum of £320,000), concerning these negotiations, and a surviving documentary record of a contemporaneous cash payment made by Mr Wright. From these matters Baroness Lawrence invites the inference that Mr Wright paid a source within the police to provide him with information to which he was not lawfully entitled.

299. Mr Wright produced no plausible answer to this case under cross-examination.

a. Despite appearing to be unfamiliar with the articles he had included in his own witness statement, Mr Wright accepted in oral evidence that there were items of exclusive information in the article concerning the negotiations (Transcript, Day 22, pp.154-158).

b. Mr Wright accepted (eventually) that the settlement negotiations between the MPA and the Lawrences (even if they were discussed in any detail there) were a confidential part of the meeting the MPA held (Transcript, Day 22, p162, lines 6-11), as the minutes of the MPA's meeting clearly show, where they state that the press and public were excluded from that part of the meeting considering settlement of a civil action case (which must be referring to the Lawrences' case, as Mr Wright accepted (Transcript, Day 22, p.151, line 2) **{L/112.1/3}**.

c. It is clearly correct that any leak of the negotiations between the Lawrences and MPA – which had not concluded by the time of the article – had the inherent capacity to endanger those negotiations, and accordingly is inherently unlikely to have been a legitimate leak. It also had the inherent capacity to seriously undermine the MPA, particularly so when this was a highly sensitive matter and the MPA was an extremely new body which had very recently been formed and this was only their third meeting at most. It was not in the MPA's interests to provide this information either. Mr Wright had no proper response when this was put to him: (Transcript, Day 22, pp. 164-165, lines 20-12 – beginning unhelpfully with "*Says who?*").

d. In the circumstances, the far more plausible explanation is that Mr Wright paid a police employee for the information concerning the negotiations – and there exists a record of a cash payment Mr Wright made to a "special contact" in relation to the "Damilola / Lawrence case" **{K/157} -** and that the "special contact" was Mr Wright's habitual associate John Ross. Mr Wright's explanation in his written evidence that the word "special" related to the *story*, rather than the unlawful nature of the activity the contact was paid for (well-known to be euphemistic for unlawful activity), is entirely implausible, as well as nonsensical given the wording of the cash payment itself.

<u>Third Unlawful Article</u>

300. The Third Unlawful Article **{K/482}** ("*Yard admits defeat in battle to charge Stephen's killers*", published in the Daily Mail and 5 May 2004) was addressed in the oral evidence of Mr Wright on Days 22, and the start of 23, of the trial. The background and key individuals relevant to the Third Unlawful Article are set out in the Cs' skeleton argument at §71. The Court is also invited to refer to the Cs' trial matrix for this article.

301. The Lawrences – Baroness Lawrence and her former husband Neville Lawrence – were only informed that the police were going to drop the prosecution of the suspects of Stephen Lawrence's murder by letters dated 5 May 2004, delivered by hand **{K/481}** (the version for Neville Lawrence). This was done at a confidential meeting in advance of which no warning or hint had deliberately been given to Baroness Lawrence. This evidence of Baroness Lawrence was unchallenged.

302. Baroness Lawrence's case is that Mr Wright paid a contact, to be inferred to be Mr Ross, for information (including the charging decision, the CPS advice against prosecuting alternative offences such as assault and perverting the course of justice, and that she and Mr Lawrence had been put on standby for an announcement) obtained by paying police officers involved in the police investigation into Stephen Lawrence's murder.

303. Baroness Lawrence was not asked about this specific article by D during cross-examination, and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D. Baroness Lawrence's written evidence **{F/12/7}** is clear that the only plausible explanation for the story to her at the time was a leak from the Police or CPS. This is obviously correct: the letters to her and Mr Lawrence were dated 5 May 2004 and marked for delivery by hand.

   a. Mr Wright appeared unable to accept the most basic logical proposition, that to have reported the conclusion of the detailed and private letters to the Lawrences on 5 May 2004 in an article published the same day entails that the contents of those communications were leaked to him (by the police or CPS) before being sent to the Lawrences (Transcript, Day 22, pp.181-183).

   b. Indeed, Mr Wright appeared deliberately to miss the point when he suggested that the Lawrences "*may have seen which way the wind was blowing, but that's only speculation*" because the possibility of the

investigation failing had been canvassed years previously (Transcript, Day 22, p.183, lines 13-14). The Third Unlawful Article reported the end of the investigation as a fact.

c. Moreover, Mr Wright's written evidence was that he had inferred the charging decision based on a conversation with an unnamed CPE press officer, which he then checked with a senior police source **{G/16/14-15/§10/4}**. It is simply implausible that a CPS press officer would reveal such information, even indirectly. The charging decision was obviously incredibly sensitive and would rightly be inferred to have been closely guarded.

d. In any event, the information Mr Wright says he gleaned from this conversation (and checked with a source) would, on his own evidence, only cover the bare fact of the charging decision: it does not account for the detailed information in the article, including, for example, that "*By the end of the week Crown Prosecution Service lawyers will also advise the Met against mounting a prosecution over alternative offences such as assault or perverting the course of justice*." Mr Wright had no answer to this lacuna and – by his own admission – sought to amend his evidence on the stand to suggest that this extra information had also come from his unnamed police source (Transcript, Day 22, pp.192-193, lines 8-12).

e. Nor could Mr Wright explain how he was able to report as a fact in the Third Unlawful Article that "*Neville and Doreen Lawrence have been put on standby for a statement by the Met, confirming that the marathon hunt for justice is over*" **{K/482/1}**. This, again, was information which was specific and revealed the state of affairs reflected in the letters to the Lawrences **{K/481}**. Mr Wright's written evidence had suggested that Neville Lawrence had shown his colleague David Jones the letter before the article was written **{G/16/15/§10.5}**, and reformulated on the stand to say "*…it's entirely plausible that Mr Lawrence had contacted us to find out what's*

going on" (Transcript, Day 23, p.8, lines 2-4). Given the date of the letter at {K/481} this is impossible. Nor is it plausible that D and Mr Wright would have published something as fact which was merely, as Mr Wright's written evidence suggested **{G/16/15/§10.5}**, an educated guess.

304. There was inherently no proper reason why a police source would, unless paid, leak such incredibly sensitive information concerning a charging decision to Mr Wright before it had been communicated to the Lawrences. Mr Wright could offer no such reason. The only, and clearly, plausible answer is that D and Mr Wright paid, most likely via Mr Ross, for the leaked information, which corrupt payment was another instance of unlawful information gathering.

Fourth and Fifth Unlawful Articles

305. The Fourth and Fifth Unlawful Articles **{K/1119}** ("*LAWRENCE SENSATION: EXCLUSIVE*", published in the *Daily Mail* on 8 November 2007) and **{K/1127}** ("*Lawrence: The vital blunders*", published in the *Daily Mail* on 9 November 2007) were addressed in the oral evidence of Mr Wright on Day 23, of the trial. The background and key individuals relevant to the Fourth and Fifth Unlawful Articles are set out in the Cs' skeleton argument at §72. The Court is also invited to refer to the Cs' trial matrix for this article.

306. Baroness Lawrence was not asked about these specific articles by D during cross-examination, and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

307. Baroness Lawrence's case is that she was targeted for UIG in connection with the information contained in this article. The information in these articles was reported elsewhere on the same day, though elements of it (the fact that Baroness Lawrence and Imran Khan KC had been alerted about the breakthrough) was fully

exclusive. This information is particularly important, however, because it reports another confidential meeting which had taken place the day before publication of the Fourth Unlawful Article (i.e. 7 November 2007) between the police and Baroness Lawrence. It is to be inferred that Mr Wright gained access to what happened at that meeting through UIG.

a. Baroness Lawrence has given clear evidence **{F/12/7}** on which she was not challenged that at the time, she was certain the information in the article "*had to have come from leaks within the police as the information published was known only to a very closed circle and there were protections in place to keep it confidential for the effectiveness of the investigation*". This accords with common sense – there was no imaginable advantage either to the police or the Lawrence family in having a new avenue of investigation (and thus potential prosecution) compromised by being made public before a charging decision had been made, since it clearly had the capacity to tip-off any suspects and damage relations between the Lawrence family and the MPS.

b. **{L/755.1}** is a copy of the Witness Statement of DCI Clive Driscoll for Leveson Inquiry and his oral evidence of 15 March 2012 to that inquiry[69]. Paragraphs 12 -15 of that statement **{L/755,1/5-6/§§12-15}** set out the events about the confidential meeting with Baroness Lawrence and Imran Khan KC about the new forensic evidence, and that this story appeared in the *Daily Mail* shortly afterwards. It also explains that the MPS conducted a leak Inquiry during which Stephen Wright denied that the information came from a police source; DCI Driscoll's oral evidence at the Leveson Inquiry was consistent **{L/756/5/p/20/lines 8-20}**[70]**,** including a tellingly

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[69] Incorporated by his unchallenged evidence in these proceedings **{F/31/2/§7}**.

[70] "*A. That is correct, and once again, I mean I would pay tribute to Mr Wright, because he didn't publish the second story. I know that he didn't publish the second story, I know that. So he was spoken to and certainly on the correspondence that I've read he gave an explanation of how it happened. Q. But he confirmed apparently that no police source had been involved? A. That's what he confirmed, yes, sir. Q. And the reference to "sources" in the article was apparently an assumption by a junior copy writer; is that right? A. That was certainly what Mr Wright said*."

specific recollection (at a far smaller remove in time than these proceedings) that Mr Wright had told him the reference to "police source" in the article had been the (erroneous) assumption of a junior copy writer.

c. In an extract from DCI Driscoll's book, "In Pursuit of the Truth" **{K/1984/4}**, DCI Driscoll expressed amazement that the *Daily Mail* had this information so quickly after his meeting with Baroness Lawrence, and recounts his impression that it may have been the result of phone hacking (as he did not believe it had come from the police).

d. Mr Wright had no proper answer to explain why his written evidence now states that he did get this information from a police source, albeit not one on the investigations team, he says **{G/16/16/§11.2}**, when he had clearly said the opposite to the leak inquiry, and did not correct DCI Driscoll's evidence to that effect at the Leveson Inquiry[71]. Nor could Mr Wright properly explain the clear recollection of DCI Driscoll at the Leveson Inquiry about his explanation relating to a junior copy writer. He instead resorted (not untypically, in his evidence) to an *ad hominem* attack on DCI Driscoll (Transcript, Day 23, p.29). The Court will bear in mind Mr Wright's apparent willingness to mislead the leak inquiry by giving false evidence, and the conflicting account he gave in cross-examination, when assessing the credibility of his evidence overall.

e. The Court can, and should, infer that Mr Wright was seeking to distance himself from contact with a police source at the time of the Leveson Inquiry (presumably perceiving a danger to himself otherwise), but now considers it more convenient to state that he had a legitimate police source when the focus has shifted in these proceedings. Similarly, Mr Wright has now bolstered his account of what the MPS press office told him **{G/16/16}** "*I was told … that the story was correct and that a statement would be made*

[71] Which, after some delay, Mr Wright accepted he would have seen (Transcript, Day 23, p35, lines 10-11).

to the press" versus what he told the Leveson Inquiry at **{K/1579/5}**: "*A. I put a call in to the Scotland Yard Press Bureau on the eve of the publication of the first article, and no objection was -- from memory, no one actually came on the phone to me and said,' Please don't run this'.*" Mr Wright has once again changed his evidence to suit the circumstances of these proceedings – his explanation (Transcript, Day 23, p.47, lines 14-16) was weak and discredits him: "*A. There is a difference, Mr Sherborne, as you well know, between giving evidence in the spotlight at the High Court in the witness box and giving a considered statement*".

f. Nor could Mr Wright proffer any reasonable explanation for the leak of information about the investigation and the meeting between the police and Baroness Lawrence to overcome the evidence of Baroness Lawrence and DCI Driscoll as to the privacy attaching to that information.

g. There is a record of a cash payment which is plainly in connection with these two articles at **{K/1142}**: a cash payment of £1000 requested by Stephen Wright (and signed off by Ben Taylor) to "*special contact re Stephen Lawrence DNA cock-ups page lead*" (emphasis added), and a cash payment of £500 for "special inquiries". The contrast in presentation with **{K/1082}**, which records cash payments made by Mr Wright for two separate stories, suggests that the payments at **{K/1142}** were for the same story.

h. Two significant cash payments were therefore made, plainly in connection with this story, to a "*special contact*", in circumstances where Mr Wright's evidence has shifted over time and the information he reported was being treated with great secrecy. Mr Wright explained the first of these payments as a "kill fee" to Peter Rose. He offered no plausible explanation why that would or could not have been made clear on the face of the document. At (Transcript, Day 23, pp.64-67) Mr Wright suggested variously that Mr Rose's illness explained the cash payment and wording of this document, and/or

suggested that Mr Rose was akin to a confidential journalistic source, which he plainly was not. He was well-known within the News Desk as having been a close friend and colleague of Mr Wright's for many years and was said to be a freelance journalist, which again contradicts the suggestion that there was need for any masking of his identity or status. Moreover, the description of the payment as being for a "*page lead*" indicates the information provided was *actually used* for the purpose of publication, and undermines the assertion that it was a "kill fee", i.e. a payment to *prevent* information being published.

i. Furthermore, the Court is urged to consider the inherent contradiction of Mr Wright's account, namely that he was admitting on the one hand to paying large amounts of cash to a freelance journalist for information which was <u>not</u> used, yet claiming that he did not pay Mr Ross for information other than "for the cost of a lunch" or a press pass to showjumping events **{G/16/20/§13.3}**.

j. Mr Wright offered no explanation at all in his written evidence for the second cash payment of £500. In his oral evidence, he speculated that it related to a different story (which, as above, is not credible).

k. This payment chit was clearly written to mask the true recipient, which was not Mr Rose, for whom there would have been no need to pay such a large sum to "kill" a story which Mr Wright by his own admission already had, but was most likely Mr Ross, who obtained information for Mr Wright from the police by corruptly paying an officer or officers.

<u>Elizabeth Hurley</u>

<u>Oral evidence of Elizabeth Hurley</u>

308. Ms Hurley was the second of the Claimants to provide witness evidence, on 22 January 2026 (Day 4).

309. Ms Hurley is a public figure whose career has required her to be in the public eye despite having a closed and private inner circle. Ms Hurley's evidence was characterised by her candidly accepting that she could not recall matters, and clearly finding the experience of re-living the D's intrusion into her private life intensely distressing. Her evidence was clearly truthful and the Court should rely on it.

310. As to her awareness of the articles at the time, Ms Hurley made clear at the outset of her evidence that there were hundreds if not thousands of articles at the time but ultimately accepted she would have been aware of some of the articles in question at the time – " *Did they particularly stand out? I can't remember that to this day. But can I remember them being just part of such an avalanche of very unwelcome and intrusive press? Yes, I can."* (Transcript, Day 4, p.5).

311. Ms Hurley expanded on the above and highlighted the fact that any complaints she had made previously over articles tended to be due to the fact they were libellous **(**Transcript, Day 4, p.6**).**

312. As to D's suggestion that her circle was "leaky", Ms Hurley was clear that she had not at any stage been able to identify a personal leak – *"Have I ever identified a leak in anybody I personally know? No, I have not."* (Transcript, Day 4, p.7). She was consistent and clear that certain friends might run quotes past her first and speak to the press with her blessing, but would not leak (Transcript, Day 4, p.12; 14; 25).

313. For instance, Ms Hurley was taken to a *Hello* article and quotes from two of her best friends - Henry Dent-Brocklehurst / William Cash - **{K/186}**. Ms Hurley informed the Court that if friends had given quotes, then they would have run it past her first – "…*if they ever gave a quote about me they would have run it by me first"* (Transcript, Day 4, p.8).As to the *Hello* article itself, Ms Hurley accepted a quote was provided but explained that - *" we can probably agree that that's a very benign statement and couldn't possibly cause me any angst or anguish. He's being very supportive and*

actually says pretty much nothing. It's not gossip–worthy, it's actually just quite nice. And, yes, nobody –– I truly believe that these two people, Henry and William, both of whom have been excellent friends to me for more than 30 years, would never, ever say anything indiscreet about me, and in fact, if they were ever going to speak at all , would ask me first" (Transcript, Day 4, p.9).

314. D put it to Ms Hurley that she had given numerous interviews over the years discussing personal matters. Ms Hurley's clear position was that she gave "*very few interviews*" and said "*very little*" (Transcript, Day 4, p.25), and that when she did, or quotes were given on her behalf, they would be about benign matters, not comparable to the unwanted and unlawful intrusions by D (Transcript, Day 4, p.28; 31; 35). Ms Hurley also flatly rejected the assertion that allowing people to give quotes would open up the door to people in her social circle giving information to journalists – *"No, it would not. It would not. I can't think of any of my friends who would want to be quoted in the newspapers, because they're not in show business and they have nothing to gain by it, and they're not interested in seeing their names in print, I don't believe."* (Transcript, Day 4, Page 28).

First Unlawful Article

315. The background and key individuals relevant to the First Unlawful Article are set out in the Cs' skeleton argument at §§225 – 226. The Court is also invited to refer to the Cs' trial matrix for this incident.

316. As noted in the Cs' skeleton in respect of each of the relevant articles, Ms Hurley has given clear evidence that the Unlawful Articles *"from the period with Stephen – particularly around the time I was staying with Elton and David – contained details that could only have come from private conversations"* [Second Witness Statement §30 **{F/14/8}**]. Ms Hurley directly addressed this incident and article in her Second Witness Statement: §§33 – 35 **{F/14/8}**. She also gave oral evidence regarding it on Day 4 of the Trial. During re-examination, her evidence included making clear that the information about her checking into hospital to have her baby under a false name due to safety fears was not information provided to Ms English by her or anyone authorised to do so: Transcript, Day 4, lines 5 – 24.

317. Ms English, in her First Witness Statement [§§28.1 – 28.2 **{G/19/19}**], said that she did not remember this story at all. She speculated that she might have written up the article from other press reports, and that Nadia Cohen (who has not given evidence in these proceedings) might have contributed other information from contacts.

318. Ms English gave oral evidence about this article on Day 31 of the trial [Transcript, pp.150 – 172, lines 20 – 7]. During cross-examination, it is notable that:

   a. When it was put to her that the press reports she had herself referred to her in witness statement did not contain information which had been revealed in her article, her response was to say that she did not remember the contents of those reports. See e.g. p.153, lines 19 – 23.

   b. She accepted that the information about Ms Hurley checking into hospital under a false name due to safety fears, the details about Ms Hurley's mother helping her, and the amount spent by Ms Hurley on nursery furniture and clothing were nowhere to be found in the Press Association report she had referred to: p.155 – 156, lines 18 – 20; p.157, lines 16 – 22. She also accepted that the information about Mr Grant changing his plans did not appear in any of the coverage she had referred to: pp.157 – 158, lines 24 – 9. She also accepted that she had not been provided with a single cutting that contained that specific information: p.160, lines 12 – 18.

   c. For the first time in the witness box, she attempted to suggest that reporters other than Ms Cohen might have worked on the story: p.156, lines 20 – 22.

   d. She ultimately said that the specific information put to her probably came from Ms Cohen: p.171, lines 21 – 23.

   e. When it was put to her that Ms Cohen obtained the information unlawfully Ms English said "*I can't confirm that or comment on it, because it was nothing to do with me*": pp.160 – 161, lines 19 – 23.

319. In light of (a) Ms Hurley's clear evidence, (b) Ms English's propensity to regularly commission unlawfully obtained information and general lack of credibility (as set out above), and (c) the commissioning by Ms Cohen (who is not giving evidence)

of TDI/ELI, Ms Hurley submits that it is clear that Ms Cohen obtained the relevant information unlawfully, and that Ms English would (as was put to her) have known that: pp.160 – 162, lines 24 – 4.

Second Unlawful Article

320. The background and key individuals relevant to the Second Unlawful Article are set out in the Cs' skeleton argument at §§227 – 230. The Court is also invited to refer to the Cs' trial matrix for this incident.

321. Both Ms Hurley and Mr Furnish directly addressed this article and incident in their witness statements: see Second Witness Statement of Elizabeth Hurley, §§36 – 38 {**F/14/9**}; Second Witness Statement of David Furnish, §§22 – 26 {**F/13/6**}. Ms Hurley was not asked about this specific article during oral evidence. Nor were Sir Elton or Mr Furnish. As a result their evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

322. The bylined journalist for D, Mr Dempster, is deceased; Ms Ulla Kloster provided a witness statement in which she addressed the article, **{G/37/4}** but was unable to provide any explanation in that statement as to how this particularly specific information about the specialist trees she ordered for Sir Elton and Mr Furnish as a thank you gift that was contained in the article was obtained, beyond pure speculation. Ms Kloster confirmed during cross-examination that she had no recollection of how the article was produced or where the information came from: Transcript, Day 40, pp.118 – 119, lines 21 – 1; p.123, lines 19 – 20.

323. Mr Burrows has admitted, in the table of articles bearing his signature dated 29 March 2021 **{H/3/1}** and his witness statement dated 16 August 2021 **§60 {H/2/15}**, that the Second Unlawful Article contained information obtained by him on D's instruction through unlawful acts, namely a hardwire tap on the landline telephone of Ms Hurley and through voicemail interception of Sir Elton's and Mr Furnish's gardener. As was put to Mr Burrows on Day 43 of the trial, and to Mr Henderson on Day 25 of the trial, and in light of the matters set out regarding Mr Burrows' and Mr Henderson's relationship above, Ms Hurley submits that that

table of articles and witness statement were authentic, that Mr Burrows obtained this information in the manner he set out, and that he provided that information to Mr Henderson at D. See Transcript, Day 25, pp.32 – 34, lines 16 – 17; Transcript, Day 43, p.99, lines 15 – 17; pp.102 – 103, lines 24 – 4; p.126, lines 10 – 23. Peter Wright's First Witness Statement makes clear that Nigel Dempster's Diary appeared in both *The Mail on Sunday* and *The Daily Mail* [§3.5.3 **{G/41/8}**]; Ms Kloster confirmed this during oral evidence [Transcript, Day 40, pp.118 – 121, lines 17 – 21].

324. In these circumstances, Ms Hurley submits that is it clear that D misused her private information through unlawful means and that liability has been established.

<u>Third Unlawful Article</u>

325. The background and key individuals relevant to the Third Unlawful Article are set out in the Cs' skeleton argument at §§231 – 233. The Court is also invited to refer to the Cs' trial matrix for this incident.

326. Ms Hurley has addressed this incident and article directly in her Second Witness Statement: §§39 – 43 **{F/14/10 – 11}**. She was not asked about this article during cross-examination, and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

327. Victoria Newton, the bylined journalist on this article, who regularly commissioned TDI/ELI[72], including in relation to Ms Hurley while at The Sun[73], has not given evidence in these proceedings. As set out above, where a defendant chooses not to call witnesses who would be in a position to provide evidence as

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[72] See e.g., in the pleaded case of Ms Frost Law, Re-Re-Re-Amended Particulars of Claim, §23.3(d)(vi) **{A/12/50}**, as well as the trial matrix for this article.

[73] See the TDI invoice dated 22 October 2001 relating to an instruction by Victoria Newton and referencing the Claimant's spokeswoman Karin Smith as the target. The amount paid for the enquiry was £299.83. The invoice bears the annotation "re Liz Hurley pregnant" **{K/2120/17}**. See also the TDI invoice dated 3 April 2002 relating to an instruction by Victoria Newton and naming the Claimant as the target. The amount paid for the enquiry was £88.13. The invoice falls on the exact date that the Claimant checked into the Portland Hospital to have her baby by caesarean section the following day **{K/2120/17}.**

to the issues to be resolved in a case, the Court is entitled to draw suitable inferences as to the facts that the defendant has chosen to withhold.

328. Plainly, Ms Newton, as the bylined journalist on this article, has relevant evidence to give regarding how the article came to be written and how it came to be produced. Strikingly, however, D has not served a witness statement on behalf of Ms Newton and she has not been called in these proceedings. There has been no suggestion that she has been unavailable to give evidence in these proceedings. She is a well-known and prominent journalist, being the current editor of *The Sun*, and is readily contactable.

329. Mr Dacre did not address this article in his witness statement **{G/28}**.

330. In these circumstances, in particular her unchallenged evidence on this article, and her evidence that the Unlawful Articles *"from the period with Stephen – particularly around the time I was staying with Elton and David – contained details that could only have come from private conversations"* [Second Witness Statement §30 **{F/14/8}**], Ms Hurley invites the Court to draw, from Ms Newton's absence, the adverse inference that the article was produced using information obtained by UIG and that Ms Newton knows the case against her is unanswerable.

<u>Fourth Unlawful Article</u>

331. The background and key individuals relevant to the Fourth Unlawful Article are set out in the Cs' skeleton argument at §§234 – 236. The Court is also invited to refer to the Cs' trial matrix for this incident.

332. Both Ms Hurley and Mr Furnish directly addressed this article and incident in their witness statements: see Second Witness Statement of Elizabeth Hurley, §§44 – 46 {**F/14/11**}; Second Witness Statement of David Furnish, §§26 – 36 {**F/13/6 – 9**}. Mr Furnish also addressed the article during oral evidence, confirming that Ms Hurley had told him what Mr Bing had said regarding the name of her son, Damian, "*in strictest confidence*": Transcript, Day 14, p.150, lines 8 – 15.

333. Ms Hurley gave oral evidence regarding the matters in this article and the article itself during cross-examination and re-examination on Day 4 of the trial. During re-examination, she was clear that:

a. She did not consider quotes provided by Henry Dent-Brocklehurst and Mr William Cash as being a leak: Transcript, Day 4, pp.102 – 103, lines 5 – 6.

b. She never gave permission to friends of hers to give information or quotes for anonymous use in articles: Transcript, Day 4, p.103, lines 7 – 16.

c. Ms Hurley identified information in the article that she did not authorise anyone to give to Ms Newton, and was clear that neither she (Ms Hurley) nor her any of her friends did so: Transcript, Day 4, p.105, lines 3 – 19.

d. Ms Hurley carefully distinguished between general references to topics concerning her life in publications and exclusive information which could only have been obtained unlawfully: Transcript, Day 4, pp.105 – 196, lines 20 – 15.

334. Again, Victoria Newton, the bylined journalist on this article, and who regularly commissioned TDI/ELI, including in relation to Ms Hurley (see the Third Unlawful Article above), has not given evidence in these proceedings. Plainly, Ms Newton has key evidence to give regarding how the article came to be written and how it came to be produced. As above, D has not served a witness statement on behalf of Ms Newton and she has not been called in these proceedings. Mr Dacre did not address this article in his witness statement **{G/28}**.

335. In these circumstances, and in particular in view of her evidence about the nature of the information and her restricted communication of it, Ms Hurley invites the Court to draw, from Ms Newton's absence, the adverse inference that the article was produced using information obtained by UIG and that Ms Newton knows the case against her is unanswerable.

Fifth Unlawful Article

336. The background and key individuals relevant to the Fifth Unlawful Article are set out in the Cs' skeleton argument at §§237 – 241. The Court is also invited to refer to the Cs' trial matrix for this incident.

337. Ms Hurley has addressed this incident and article directly in her Second Witness Statement: §§47 – 49 **{F/14/12}**. So has Mr Furnish: Second Witness Statement of David Furnish, §§22 – 26 {**F/13/6**}. Ms Hurley was not asked about this article during

cross-examination, and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

338. Gavin Burrows has admitted, in the table of articles bearing his signature dated 29 March 2021 **{H/3/1}** and his witness statement dated 16 August 2021 §§60, 63 **{H/2/15}**, that the article contained information obtained by him on D's instruction, through a hardwire tap placed on a landline telephone used by Ms Hurley and through voicemail interception. As was put to Mr Burrows on Day 43 of the trial, and in light of the matters set out regarding Mr Burrows' and Mr Henderson's relationship above, the Cs submit that that table of articles and witness statement were authentic, that Mr Burrows obtained this information in the manner he set out, and that he provided that information to Mr Henderson at D. See Transcript, Day 43, p.99, lines 15 – 17; pp.102 – 103, lines 24 – 4; p.127, lines 8 – 13. (The allegation of Mr Henderson's targeting Ms Hurley through Mr Burrows, and sharing information provided by Mr Burrows with other journalists at *The Mail on Sunday* and *The Daily Mail*, including Katie Nicholl, was put to him on Day 25 of the trial: see Transcript, day 25, pp.15 – 16, lines 11 – 4; p.18, lines 18 – 25; p.28, lines 20 – 24.)

339. Ms Nicholl addressed this article in her First Witness Statement (§§35.2.1 – 35.2.7 **{G/38/22 – 24}**) and Second Witness Statement (§§5 – 11**{G/55/2 – 4}**). She was also questioned about the article during oral evidence on Day 38 of the trial: Transcript, pp.96 – 117, lines 9 – 10. Common to her First Witness Statement and her answers during cross-examination was her evidence that she could not remember the specific source for information in the article (although she speculated as to who her sources likely were): First Witness Statement, §35.2.2 {G/38/22}; Transcript, Day 38, p.97, lines 21 – 23. The Cs submit that:

    a. As was put to Ms Nicholl, the "*source close to Bing*" identified in the article could not have been Mr Bing's spokesman, Sue Stapley. [pp.99 – 100, lines 7 – 12.]

    b. Ms Nicholl contacted Capitol Inquiry in order to obtain call data relating to Ms Hurley and Mr Bing. [pp.101 – 103, lines 17 – 11.]

c. Ms Nicholl made payments to a(n unidentified) source who looks overwhelmingly like a freelance journalist (who also had provided information about Ms Hurley and actor Dennis Leary being "*understood to have kept in regular contact over the phone*", the incriminating give-away phrase being crossed out of the draft **{L/139.2/3}**. [pp.104 – 107, lines 12 – 9.]

d. Ms Nicholl was taken to invoices showing that she had commissioned Steve Whittamore in relation to Ms Hurley around the time of the article: **{K/278/2}**, **{K/280/2}**. As was put to Ms Nicholl, it is obvious that she was targeting Ms Hurley at around this time: pp.107 – 110, lines 13 – 2.

e. Ms Nicholl was taken to an article at **{L/190.1}** and documentary evidence at **{K/402/11}** showing a working relationship between her and Mr Henderson -something which Ms Nicholl was keen to distance herself from in her witness statement: see paragraph 8 "*We rarely worked on the same stories, indeed I cannot now recollect a single story where we worked closely together*" **{G/38/8}**. One such example was put to her **{L/190.1},** an article which related to the well-known comedian, Michael Barrymore.

f. In Ms Nicholl's notebook at **{K/402/11},** the information which was provided alongside Mr Henderson's name and mobile number (which is the same number as recorded in Whittamore's 2003 contact list **{K/302/4}**), as recorded in the left-hand margin of her notebook, has the obvious appearance of intimate details obtained from call data/voicemails relating to Sienna Miller and her then boyfriend (David or "D" Neville).

g. As was put to Ms Nicholl, the Cs submit that (i) Ms Nicholl worked with Mr Henderson, (ii) that he provided Ms Nicholl, on occasion, with information obtained through voicemail interception or landline phone interception as a result of work done by Gavin Burrows, and (iii) that the Fifth Unlawful Article was the product of such information. [pp.111 – 116, lines 21 – 25.]

340. Mr Dillon addresses this article in his First Witness Statement, saying that he has no recollection of being involved in it and that he has never worked with Gavin

Burrows and had never heard of him before the allegations in the Cs' action were made: §§48 – 49 **{G/30/12}**. However, during cross-examination, he accepted that in his role on the News Desk "*he may well have been*" involved in the discussion and investigation of the story: Transcript, Day 37, p.137, lines 4 – 14. Ms Hurley submits that, as was put to Mr Dillon, he would have known of the unlawful methods involved in preparing the article given his evidence as to his approach to stories coming from his Desk: Transcript, Day 37, p.137, lines 15 – 18.

341. In light of (a) all of the above, (b) Ms Nicholl's obvious propensity to use private investigators who obtained information unlawfully (as set out earlier in these submissions), and her credibility as a witness having been demolished, (c) Mr Dillon's admissions regarding the News Desk's use of private investigators who carried out unlawful activities and the Desk's modus operandi in this regard (as set out above), and (d) the prolific use by the Desk Head at the time, Paul Field, of private investigators[74], the Cs submit that it is clear that, at was put to Ms Nicholl [Transcript, Day 38, p.115, lines 22 – 25], the Fifth Unlawful Article contained information unlawfully obtained by Gavin Burrows through a hardwire tap placed on a landline telephone used by Ms Hurley and through voicemail interception on the instruction of Mr Henderson and passed on to Katie Nicholl for the purposes of the article.

342. In these circumstances, Ms Hurley submits that is it clear that D misused her private information through unlawful means and that liability has been established.

Sixth Unlawful Article

343. The background and key individuals relevant to the Sixth Unlawful Article are set out in the Cs' skeleton argument at §§242 – 244. The Court is also invited to refer to the Cs' trial matrix for this incident.

344. Ms Hurley has addressed this incident and article directly in her Second Witness Statement: §§50 – 53 **{F/14/12 – 13}**. She was not asked about this article during

[74] See §§33 and 38 of the unchallenged Amended First Witness Statement of Steve Whittamore {**F/19/7, 9}**, the updated trial matrix accompanying this article, and §§4(c), 39, 127, 202(f), 224, 337, 466(b) of the Cs' skeleton argument **{CB/8/1}**.

cross-examination, and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

345. Again, Victoria Newton, the bylined journalist on this article, and who regularly commissioned TDI/ELI, including in relation to Ms Hurley (see the Third Unlawful Article above), has not given evidence in these proceedings despite her being readily contactable. Ms Newton has key evidence to give regarding how the article came to be written and how it came to be produced. Mr Dacre did not address this article in his witness statement **{G/28}**.

346. In these circumstances, and in particular in view of her evidence about the nature of the information and her restricted communication of it, the Cs invite the Court to draw, from Ms Newton's absence, the adverse inference that the article was produced using information obtained by UIG and that Ms Newton knows the case against her is unanswerable.

Seventh Unlawful Article

347. The background and key individuals relevant to the Seventh Unlawful Article are set out in the Cs' skeleton argument at §§245 – 247. The Court is also invited to refer to the Cs' trial matrix for this incident.

348. Ms Hurley has addressed this incident and article directly in her Second Witness Statement: §§54 – 55 **{F/14/13}**. She was not asked about this article during oral evidence, and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

349. Ms Lampert addresses this article in her First Witness Statement. She says she does not remember writing and has not located any contemporaneous notes. She speculates as to how it might have been produced, and says she does not remember using ELI for this story or a story like it. See §§17.2.1 – 17.2.4, **{G/22/6 – 7}**.

350. Ms Lampert gave evidence regarding this article on Day 32 of the trial. During cross-examination, it is notable that:

a. She could not remember, in relation to her "*best guess*" theory for how the article was produced, any magazine from which the article might have been sourced, and accepted that D's solicitors had not found any. As was put to her, the likelihood is that no such article existed: Transcript, Day 32, pp.49 – 53, lines 22 – 4.

b. Her suggestion that one of Ms Hurley's friends might have revealed private information about her to a US magazine was, in addition to being entirely speculative, wholly undermined by Ms Hurley's evidence regarding how she protected certain information and limited it to a very close circle: pp.53 – 54, lines 5 – 14; p.63, lines 7 – 21.

c. Having said in her witness statement that she did not remember using ELI for this story, she then said "*I definitely did not use ELI for this story*", before then changing her evidence again and saying "*Well, I can't see why - - how or why I would have done*", and then later asserting again "*We didn't use ELI for this story*": pp.54 – 55, lines 25 – 11; p.60, lines 17 – 22.

d. Regarding the two payments proximate to this article to ELI in Ms Lampert's name **{K/1561}**, all Ms Lampert could do was plead ignorance and say she didn't believe she used ELI for this article: pp.55 – 56, lines 12 – 8.

e. Though Ms Lampert accepted that the article contained information that was personal to Ms Hurley and included deep feelings felt by her, when it was put to Ms Lampert that its being broadcast to the world at large would naturally have been mortifying for Ms Hurley, she said "*I couldn't possibly say*": p.62, lines 9 – 24; p.64, line 22.

351. In light of Ms Hurley's clear evidence, the matters above, and, as set out in detail earlier in these submissions, Ms Lampert's extensive use of TDI/ELI in her work for D (including for activities that were plainly unlawful), the Cs submit that, as was put to Ms Lampert, the Court should draw the inference that TDI/ELI unlawfully obtained information such as call data for her for the purposes of this article and that she or her 'source' accessed the voicemails of Ms Hurley or Sir Elton or Mr

Furnish to obtain information for use in the article: pp,.55 – 61, lines 12 – 16; pp.64 – 65, lines 5 – 3.

Eighth Unlawful Article

352. The background and key individuals relevant to the Eighth Unlawful Article are set out in the Cs' skeleton argument at §§248 – 250. The Court is also invited to refer to the Cs' trial matrix for this incident.

353. Ms Hurley has addressed this incident and article directly in her Second Witness Statement: §§56 – 60 **{F/14/13 – 14}**. She was not asked about this article during oral evidence, and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

354. Ms Lampert addresses this article in her First Witness Statement. She says she does not recall it, but says she thinks that, in addition to reading other reports, a confidential source provided her with information regarding Ms Hurley and that she used a stringer in India in relation to Mr Nayar: §§17.3.1 – 17.3.4 **{G/22/7 – 8}**.

355. Ms Lampert gave evidence regarding this article on Day 32 of the trial. During cross-examination:

   a. It was put to Ms Lampert that the article contained information which did not appear in any of the other reports she referred to or provided. Ms Lampert simply said she was not aware of this. See Transcript, Day 32, pp.68 – 69, lines 24 – 7.

   b. Ms Lampert identified her so-called confidential source as being a socialite who mixed in a similar circle to Ms Hurley and who "*was, I understand, friends with one of her good friends*": p.70, lines 9 – 10. In effect, this means at best that this supposed source was merely a "friend of a friend". Ms Hurley's evidence, that her introducing her son to Mr Nayar was "*a private family meeting*" and that her inner circle, who understood that she was extremely discreet, was "*closed*", [Second Witness Statement, §§19, 58, **{F/14/5, 14}**] clearly undermines any suggestion by Lampert that such a person would be in possession of the relevant information in this article.

c. Ms Lampert said that that source would have been paid, but accepted that there were no payment records for them or related emails. As was put to Ms Lampert, there are no ELI payment records for this period. See pp.71 – 72, lines 5 – 5.

d. Ms Lampert had no real answer to give as to where other information attributed to "*friends*" in the article came from: p.74, lines 4 – 7.

356. Given that, as was put to Ms Lampert, the private information in the article could not have come from any other press reporting, Ms Lampert's so-called "friend of a friend" source, or Mr Nayar's mother (information in the article being attributed to "*friends*"), and in light of Ms Hurley's clear evidence, the matters above, and, as set out in detail earlier in these submissions, Ms Lampert's extensive use of TDI/ELI in her work for D (including for activities that were plainly unlawful), the Cs invite the Court to include that Ms Lampert obtained the date from when Ms Hurley and Mr Nayar had begun their relationship from call data relating to the couple provided by ELI and used this information and voicemail interception to discover that there had been a private family meeting: pp.72 – 78, lines 6 – 4.

Ninth Unlawful Article

357. The background and key individuals relevant to the Ninth Unlawful Article are set out in the Cs' skeleton argument at §§251 – 253. The Court is also invited to refer to the Cs' trial matrix for this incident.

358. Ms Hurley has addressed this incident and article directly in her Second Witness Statement, noting that there "*were certainly private telephone conversations between me and Hugh [Grant] about his relationship with Jemima*": §§61 – 63 **{F/14/14 – 15}**. She was not asked about this article during cross-examination, and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

359. The bylined journalist on this article, Ms Newbon, did not attend trial. Instead, D served a hearsay notice in respect of a witness statement given by her in the name

of Claire Murphy: **{H/24}**. In that statement, at §2, Ms Murphy says having taken legal advice she does not wish to be part of any proceedings: **{H/24/2}**.

360. Ms Nicholl addresses this article in her First and Second Witness Statements, and gave oral evidence regarding it on Day 38 of the trial [Transcript, pp.133 – 137, lines 24 – 8]:

   a. In Ms Nicholl's First Witness Statement, she says that she thinks it is unlikely that she was involved in writing it, although she "*may have helped with some of the second sourcing to stand the story up*". She also says that she thinks Ms Newbon might have been given the story to write up by the News Desk. Notably, she refers to **{K/1958.1}**, a payment record showing a payment of £1,000 to Lee Harpin with exactly the same date as this story with the description "*Jemima & Hugh*", but fails to give any evidence regarding the relationship between that payment and the article: First Witness Statement, §§35.6.1 – 35.6.5 **{G/38/28 – 29}**.

   b. In her Second Witness Statement, Ms Nicholl, as part of further evidence regarding this articles, does address the payment, saying "*This was a page 7 news story lead so I am not surprised that a payment of £1000 was made in respect of this article.*" She then explains what she "*would*" have done "*if I had received this information from Lee Harpin*".

   c. During oral evidence, it was squarely put to Ms Nicholl that she knew that Mr Harpin was infamous for phone hacking (which she denied). Her suggestion (as was put to her) that Mr Harpin had obtained information lawfully from such a large and diverse range of different individuals from extremely different social circles (as opposed to UIG) was plainly implausible. (The Court is invited to refer back to the section above in these closings submissions which deals with Mr Harpin's activities in detail.)

361. Mr Dillon addresses this article in his First Witness Statement, simply saying that he has no recollection of being involved in it: §49, **{G/30/12}**. However, during cross-examination, he accepted that in his role on the News Desk "*he may well have been*" involved in the discussion and investigation of the story: Transcript,

Day 37, p.137, lines 4 – 14. Ms Hurley submits that, as was put to Mr Dillon, he would have known of the unlawful methods involved in preparing the article given his methods of working as he described: Transcript, Day 37, p.137, lines 15 – 18.

362. The evidence of Ms Hurley is plainly to be preferred to the hearsay evidence of Ms Murphy. Strikingly, as the Court will observe, Ms Murphy goes to great lengths in her hearsay witness statement to avoid addressing whether she herself ever used Mr Harpin: she carefully says that she does not have a clear memory of "*having met him*" or "*having spoken to him*", that "*he was not a contact of mine*" and that she did not "*have an established working relationship with him, whereby I would have been regularly contacting him*". The clear and obvious implication from §§14 – 15 of Ms Murphy's statement **{H/24/2}** is that she did use Mr Harpin, and that she is deliberately avoiding giving clear evidence on this point to the Court.

363. In light of (a) the above, (b) Ms Nicholl's obvious propensity to use private investigators who obtained information unlawfully (as set out earlier in these submissions), and her credibility as a witness having been demolished, (c) the matters set out above relating to Mr Harpin, and (d) Mr Dillon's admissions regarding the News Desk's use of private investigators who carried out unlawful activities and the Desk's modus operandi in this regard (as set out above), the Cs submit it is clear that, at was put to Ms Nicholl [Transcript, Day 38, p.137, lines 2 – 8], the Ninth Unlawful Article contained information unlawfully obtained through voicemail interception by Mr Harpin and passed on to Ms Nicholl and Ms Newbon for the purposes of the article.

Tenth Unlawful Article

364. The background and key individuals relevant to the Tenth Unlawful Article are set out in the Cs' skeleton argument at §§254 – 257. The Court is also invited to refer to the Cs' trial matrix for this incident.

365. Ms Hurley has addressed this incident and article directly in her Second Witness Statement: §§64 – 65 **{F/14/15}**. She was not asked about this article during cross-examination, and as a result her evidence regarding the private and restricted

nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

366. Gavin Burrows has admitted, in the table of articles bearing his signature dated 29 March 2021 **{H/3/1}** and his witness statement dated 16 August 2021 §§60, 63 **{H/2/15}**, that the article contained information obtained by him on D's instruction, through a hardwire tap placed on a landline telephone used by Ms Hurley and the interception of a voicemail system. He has also admitted at §63 of the latter statement to targeting Mr Nayar in order to obtain information regarding Ms Hurley. As was put to Mr Burrows on Day 43 of the trial, and in light of the matters set out regarding Mr Burrows' and Mr Henderson's relationship above, Ms Hurley submits that that table of articles and witness statement were authentic, that Mr Burrows obtained this information in the manner he set out, and that he provided that information to Mr Henderson at D. See Transcript, Day 43, p.99, lines 15 – 17; pp.102 – 103, lines 24 – 4; pp.121 – 122, lines 18 – 2; p.123, lines 3 – 12; p.126 – 127, lines 24 – 7. (The allegation of Mr Henderson's targeting Ms Hurley through Mr Burrows, and sharing information provided by Mr Burrows with other journalists at *The Mail on Sunday* and *The Daily Mail*, including Katie Nicholl, was put to him on Day 25 of the trial: see Transcript, day 25, pp.15 – 16, lines 11 – 4; p.18, lines 18 – 25; p.28, lines 20 – 24.)

367. Mr Dillon, Deputy News Editor at the time, addressed the article it in his First Witness Statement, saying he had no specific memory of the article or whether he was involved in sourcing it: §§52 – 53, **{G/30/13}**.

368. Sebastian Hamilton, the Desk Head at the time, has not provided evidence in these proceedings. Ms Nicholl, the bylined journalist, addresses the Tenth Unlawful Article in her First Witness Statement, §§35.3.1 – 35.3.4 **{G/38/25 – 26}** and in her Second Witness Statement, §§5 – 11 **{G/55/2 – 4}**. Ms Nicholl gave oral evidence regarding the article on Day 38 of the trial: Transcript, pp.117 – 123, lines 11 – 5. As to this:

   a. Ms Nicholl's suggestion that EH10-A might have been a source of information for this article is nothing more than pure speculation: pp.119 – 120, lines 1 – 21.

b. The information in the article is plainly personal, and Ms Hurley has given clear evidence as to who exactly she would have shared it with, and she does not believe they would ever have provided it to the press: Second Witness Statement, nor was she challenged on this by D: §§64 – 65 **{F/14/15}**. Ms Nicholl's evidence that her potential sources was a "*life-long friend of Ms Hurley's*" or someone who knew her socially is, set against this, plainly implausible: p.119, lines 8 – 15, p.122, lines 9 – 21.

369. In light of (a) all of the above, (b) Ms Nicholl's obvious propensity to use private investigators who obtained information unlawfully (as set out earlier in these submissions), and her credibility as a witness having been demolished, and (c) Mr Dillon's admissions regarding the News Desk's use of private investigators who carried out unlawful activities and the Desk's modus operandi in this regard (as set out above), the Cs submit it is clear that, as was put to Ms Nicholl [Transcript, Day 38, pp.122 – 123, lines 22 – 5], the Tenth Unlawful Article contained information unlawfully obtained, through a hardwire tap placed on a landline telephone used by Ms Hurley and the interception of a voicemail system, by Gavin Burrows on the instruction of Mr Henderson who passed it on to Katie Nicholl for the purposes of the article.

<u>Eleventh Unlawful Article</u>

370. The background and key individuals relevant to the Eleventh Unlawful Article are set out in the Cs' skeleton argument at §§258 – 260. The Court is also invited to refer to the Cs' trial matrix for this incident.

371. Ms Hurley has addressed this incident and article directly in her Second Witness Statement: §§66 – 72 **{F/14/15 – 17}**. She was not asked about this article during cross-examination, and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

372. Mr Dillon, Deputy News Editor at the time, addressed the article it in his First Witness Statement, saying he had no specific memory of the article or whether he was involved in sourcing it: §§52 – 53, **{G/30/13}**.

373. Ms Nicholl gave evidence regarding this article in her First Witness Statement, at §§35.4.1 – 35.4.4 **{G/38/26 – 27}**. As her oral evidence on Day 38 made clear, her evidence as to the source of the information in the article was entirely speculative. Her speculation as to Source EH11-B being the source for information was undermined by the content and structure of the relevant page in her notebook **{K/590/4}**, and she had no answer beyond "*that's not uncommon*" when it was put to her that her article contained detailed quotes which did not appear in her notebook. Despite D having made 16 payments to System Searches within a short period of time of the article, she held to her evidence in her First Witness Statement [§35.4.4 **{G/38/27}**] that "*I cannot recall if I used a search agency. If I did it would have been to help me get telephone numbers or addresses.*" See Transcript, Day 38, pp.124 – 126, lines 17 – 13.

374. In circumstances where, as set out above, Ms Nicholl's credibility as a witness has been demolished, and in light of Mr Dillon's admissions regarding the News Desk's use of private investigators who carried out unlawful activities and the Desk's modus operandi in this regard (as set out above), the Cs submit that the obvious inference here is, as was put to Ms Nicholl, that she knowingly used System Searches to obtain telephone numbers and addresses unlawfully through credit checks, and obtained the quoted information in the article through voicemail interception. See Transcript, Day 38, pp.126 – 127, lines 14 – 15.

<u>Twelfth Unlawful Article</u>

375. The background and key individuals relevant to the Twelfth Unlawful Article are set out in the Cs' skeleton argument at §§261 – 263. The Court is also invited to refer to the Cs' trial matrix for this incident.

376. Ms Hurley has addressed this incident and article directly in her Second Witness Statement: §§73 – 74 **{F/14/17}**. She was not asked about this article during cross-examination, and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

377. Mr Dillon, Deputy News Editor at the time, addressed the article it in his First Witness Statement, saying he had no specific memory of the article or whether he was involved in sourcing it: §§52 – 53, **{G/30/13}**.

378. Ms Nicholl in her First Witness Statement said that she paid Veronica Blake for information for the article: §35.5.3 **{G/38/27}**. During cross-examination, when confronted with a payment record **{K/1022}** indicating that the relevant payment related to a different, follow-up article, she accepted that Veronic Blake was not in fact a source for the story. In light of Ms Hurley's witness evidence, and given Ms Nicholl's credibility as a witness having been demolished (as set out above), and in light of Mr Dillon's admissions regarding the News Desk's use of private investigators who carried out unlawful activities and the Desk's modus operandi in this regard (as set out above), the obvious inference is, as was put to Ms Nicholl during cross-examination, that she seized upon the payment record to cast Ms Blake as a source, as opposed to the actual source for whom (as Ms Nicholl admitted) she had no payment record and no accompanying notes. The Cs submit that Ms Nicholl sourced the relevant information in the article from voicemail interception. See Transcript, pp.127 – 133, lines 16 – 23.

<u>Thirteenth Unlawful Article</u>

379. The background and key individuals relevant to the Thirteenth Unlawful Article are set out in the Cs' skeleton argument at §§264 – 266. The Court is also invited to refer to the Cs' trial matrix for this incident.

380. Ms Hurley has addressed this incident and article directly in her Second Witness Statement, noting that "*it was the fact of the calls between me, Arun and Hugh that leapt out at me*", and that the matters relating to her weight, figure and diet were easily things she could have shared privately with identified individuals in her close circle: §§75 – 76 **{F/14/17}**. Ms Hurley was not asked about this article during cross-examination, and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

381. Chris Evans, the Desk Head at the time, is not giving evidence in these proceedings. Richard Price, the bylined journalist, addresses this article in his First and Second Witness Statements, and gave oral evidence regarding it on Day 34 of the trial [Transcript, pp.19 – 43, lines 4 – 12].

382. During oral evidence, Mr Price was cross-examined regarding an article relied upon by the Cs in Confidential Schedule C, s.3 (Daniel "Detective Danno" Hanks) of their Particulars of Claim, published on 4 February in *The Daily Mail* under Mr Price's byline about Olivier Martinez and Kylie Minogue **{A/8/68}**: Transcript, Day 34, pp.2 – 19, lines 19 – 3. During cross-examination:

   a. Mr Price accepted that in his witness evidence he had said that in addition to cuttings he had two sources for the information in the article: someone who used to work with Ms Minogue, and a London socialite. See p.3, lines 4 – 11.

   b. Mr Price accepted that he had provided no cuttings which supported the evidence he had given in this regard: p.18, lines 7 – 18.

   c. Mr Price accepted that his article had a large section relating to Ms Minogue's relationship with Mr Martinez and referred to the fact of there being constant telephone contact between them. It was put to Mr Price that Mr Hanks, who provided information to D, had obtained a list of call data for phone calls made by Mr Martinez, and that this information might have been provided to Mr Price as part of his work on the article: pp.7 – 10, lines 4 – 12,

   d. Mr Price accepted that the description of his two sources in the article did not match those in his First Witness Statement: pp.10 – 11, lines 13 – 25.

   e. It was put to Mr Price that it was highly unlikely that his contacts would have known about price calls between Ms Minogue and Mr Martinez taking place in two different countries: pp.12 – 13, lines 19 – 7.

   f. When it was put to Mr Price that there were in fact references to nine different sources in the article, at least six of which appeared to be different people, Mr Price accepted that he could not remember who his sources were for each parts of the article: pp.13 – 16, lines 22 – 13. The Cs submit

that, as was put to Mr Price, information about the telephone contacts between Ms Minogue and Mr Martinez came from a different source, within D, and was information provided by Mr Hanks to D: pp.16 – 19, lines 14 – 3.

383. Regarding the Thirteenth Unlawful Article, in his First Witness Statement, Mr Price says that most of the article was sourced from cuttings and the rest, "*the information that Ms Hurley and Mr Nayar had called Hugh Grant to ask him to come, and about her dieting, coming from a conversation I had with a confidential source who knew them*". Mr Price describes that source as "a friend of mine and I knew they knew Ms Hurley". Despite evidence of D paying for eight requests of System Searches around the date of this article Mr Price says that, though "*I do recall using System Searches… in or around 1999 to 2000… I am certain I did not use System Searches for any information in connection with this article*". See §§11, 12 and 16 **{G/25/4, 5}**.

384. In his Second Witness Statement, Mr Price addresses the fact that on or around 12 March 2007 (the Thirteenth Unlawful Article having been published on 3 March 2007) a cash payment was made with the description "*Special payment to contact for exclusive information and assistance on Hugh Grant / Jemima Khan - £4000*" **{K/1048}**. Mr Price says he does not know who the payment was made to or whether the document has come from, but was somehow able to state categorically that it has nothing to do with this article (without setting out the basis for that belief). No one else from D has sought to explain this payment. See §§6 – 8, **{G/56/2 – 3}**.

385. During cross-examination on Day 34, in relation to the Thirteenth Unlawful Article:

a. Mr Price accepted that he had not provided any of the cuttings on which he said he based the article. [p.20, lines 5 – 11]

b. Mr Price identified at pp.21 – 23, lines 5 – 1 the information in the article he said came from his source.

c. It was put to Mr Price that his evidence in his First Witness Statement about "*bumping into Mr Hurley and Mr Nayar one day*" between Clapham Junction

and Kensington High Street [§13 **{G/25/4}**], and his related oral evidence was implausible and never occurred: pp.23 – 25, lines 2 – 17.

d. It was put to Mr Price that his source could not have had the kind of detailed information regarding Ms Hurley's diet that he said they had, and therefore did not provide it to him. When pressed on this, Mr Price refused to give any further evidence regarding his source. See pp.25 – 27, lines 18 – 10.

e. Despite the specificity of the information in the article regarding calls between Mr Nayar and Ms Hurley to Mr Grant, Mr Price said he had no recollection of his source giving him this information and again would not give further evidence regarding his source: pp.28 – 29, lines 3 – 18.

f. Mr Price was taken to several payments to System Searches around the time of the article, and to the ledger cards at **{K/1597/40}**, **{K/1597/79}** and **{K/1597/80}**. The clear inference is that, as was put to Mr Price, he was using System Searches in relation to this article. See pp.29 – 33, lines 19 – 23.

g. Mr Price accepted that he was likely asked to write this article by someone on the Femail desk, probably Lisa Collins, and that he would have discussed it with them. See pp.34 – 36, lines 20 – 18.

h. It was put to Mr Price that, as is the clear inference, the cash payment of £4,000 of 12 March 2007 was related to unlawfully obtained information relating to the Thirteenth Unlawful Article: pp.36 – 37, lines 25 – 4.

386. For the reasons above, the Cs submit that it is clear that the information in the article regarding calls being made by Mr Nayar and Ms Hurley to Mr Grant, and regarding Ms Hurley's dieting, were provided to Mr Price by either Ms Collins or an unidentified desk head on the Femail section of *The Daily Mail*, with the call data having been obtained by System Searches and that the information was obtained by a journalist or another third party through voicemail interception: see pp.39 – 43, lines 24 – 12.

Fourteenth Unlawful Article

387. The background and key individuals relevant to the Fourteenth Unlawful Article are set out in the Cs' skeleton argument at §§267 – 269. The Court is also invited to refer to the Cs' trial matrix for this incident.

388. Ms Hurley has addressed this incident and article directly in her Second Witness Statement: §§77 – 78 **{F/14/18}**. She was not asked about this article during cross-examination, and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

389. The Desk Head at the time, Keith Poole, has not given evidence in these proceedings. Mr Simpson, the bylined journalist, has addressed the article in his First Witness Statement [§§37 – 49 **{G/39/11 – 14}**] and in his Amended Second Witness Statement [§§5 – 9 **{G/57/2 – 3}**].

390. Mr Simpson gave oral evidence on Day 33 of the trial. He accepted in his First Witness Statement that he used ELI while at *The Daily Mail*: §§21 – 22 **{G/39/6}**. The Cs submit that Mr Simpson's credibility is diminished in light of the fact that his written evidence, that he claimed to have used ELI "*very infrequently*" §22 **{G/39/6}**, was undermined by the matters put to him regarding his use of ELI/BDI on Days 32 and 33 of the trial: see Transcript, Day 32, pp.173 – 200, lines 20 – 6; Day 33, pp.58 – 64, lines 18 – 4.

391. Moreover:

a. Mr Simpson's evidence as to his use of ELI shifted from his witness statement to his oral evidence. In his First Witness Statement he said did not remember using ELI "*for anything other than numbers or addresses*": §§22 **{G/39/7}**. When pressed during cross-examination (given the amount of the payments being far more than was consistent with requesting simple numbers and addresses) he said that though he "*strongly suspected*" that the jobs he commissioned ELI for were obtaining phone numbers and addresses he did not in fact remember what all of those jobs related to: Transcript, Day 33, p.8, lines 20 – 22.

b. Mr Simpson accepted that some of the telephone numbers provided to him by ELI were ex-directory: Transcript, Day 33, p.10, lines 22 – 23.

c. Mr Simpson had no answer when challenged as to the fact that individuals whose numbers were ex-directory were individuals who did not want their number to be publicly available: he simply said, wholly unconvincingly: "*With the benefit of hindsight, of course. But at the time, I gave it no thought whatsoever*." See Transcript, Day 33, p.11, lines 10 – 11.

d. He likewise had no answer when it was put to him that it was clear that the numbers he was asking for were ex-directory, on the basis that if they were not he could easily have obtained them himself from directory inquiries, from D's library, or from the resources available to him via D's intranet: he simply fell back on a refrain of "*It's not something I thought about*" and "*I don't remember that*". See Transcript, Day 33, pp.11 – 12, lines 12 – 13.

e. Mr Simpson also accepted that some of the numbers he obtained from ELI were mobile numbers, which would not have been publicly available: Transcript, Day 33, p.12, lines 14 – 19.

f. Mr Simpson's evidence as to how he believed ELI were obtaining all of this information for him again turned primarily on his refrain that "*I didn't think about it at all at the time*" and unconvincing testimony that he "*didn't find it unusual*" that ELI were able to find this information: Transcript, Day 33, pp.12 – 15, lines 25 – 15.

g. When questioned about an incident relied upon by the Cs in Confidential Schedule C, s.1 (ELI/TDI) relating to an article published on 27 September 2006 in *The Daily Mail* under Mr Simpson's byline [Transcript, Day 33, pp.55 – 67, lines 16 – 10, Mr Simpson said that he had "*no idea*" what any of the payments to ELI of that same date – which identified him as the tasking journalist – were for, and that any of his answers were purely speculative. The Cs submit that, as was put to Mr Simpson, he was seeking to find additional colour for his story about Heather Mills and Sir Paul McCartney

by commissioning ELI to find out information, including in relation to "the Maccagate tape".

392. Mr Simpson's oral evidence regarding the Fourteenth Unlawful Article is at Transcript, Day 33, pp.30 – 51, lines 6 – 1. As to this:

a. Mr Simpson accepted that the article contained information which had not appeared in other stories, with his article having been "*worked on*" by himself and a source: p.33, lines 3 – 19.

b. Mr Simpson's evidence was that he had paid his source for the information in this article. As he eventually accepted, the payment record referred to at §49 of his First Witness Statement **{G/39/14}**, being the record at **{K/22}**, could not have related to that source. Mr Simpson accepted that there was no payment record he could point to which related to what he claimed was his source. See pp.41 – 49, lines 5 – 19.

c. Mr Simpson's evidence was confused and shifting when the cash book entry at **{K/1190}**, which recorded *"£1,100 Richard Simpon payments for showbiz stories"*, was dated 23 April 2009 and was authorised by Mr Poole, was put to him. Mr Simpson was eventually effectively forced to accept that the entry related to multiple payments for multiple stories, rather than a one-off cash payment. The Cs submit that, as was put to Mr Simpson, it is clear that the payments were made to someone who was providing him with multiple pieces of information for a number of stories, that these payments included payments related to the Fourteenth Unlawful Article, that the payee was the true source of previously unpublished information in the article, and that the payments were made in cash rather than through D's contributor system because they related to unlawful information gathering, namely voicemail interception or blagging, carried out to provide Mr Simpson with information for stories: pp.34 – 41, lines 7 – 5; pp.50 – 51, lines 2 – 1.

393. In light of all of the above, including the matters relating to Mr Simpson's credibility and propensity, the Cs submit that it is clear that Mr Simpson commissioned a

third party to unlawfully obtain information about Ms Hurley for the purposes of the Fourteenth Unlawful Article.

Fifteenth Unlawful Article

394. The background and key individuals relevant to the Fifteenth Unlawful Article are set out in the Cs' skeleton argument at §§270 – 272. The Court is also invited to refer to the Cs' trial matrix for this incident.

395. Both Ms Hurley and Mr Furnish directly addressed this article and incident in their witness statements: see Second Witness Statement of Elizabeth Hurley, §§79 – 81 **{F/14/18};** Second Witness Statement of David Furnish, §§62 – 63 {**F/13/14**}.

396. Neither Ms Hurley, nor Sir Elton, nor Mr Furnish were questioned about this article during cross-examination, and as a result their evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

397. Mr Dillon, Deputy News Editor at the time, addressed the article it in his First Witness Statement, saying he had no specific memory of the article or whether he was involved in sourcing it: §§52 – 53, **{G/30/13}**.

398. In Ms Nicholl's First Witness Statement, she says she does not remember the article and hasn't identified any contemporaneous notes relating to it. Her First Witness Statement simply speculates as to how the article might have been produced: §§34.2.2 – 34.2.4, **{G/38/20}**. Notably, her statement says that Sharon Feinstein "*regularly gave me Elizabeth Hurley stories and… could have provided the information in the article*". Likewise, Ms Griffiths says she does not remember the story, and can only speculate on its production: First Witness Statement, §§14.1 – 14.3 **{G/11/5 – 6}**.

399. During cross-examination, Ms Griffiths reiterated that she did not remember who wrote the article or how it was sourced, and that she could not remember reading any cuttings for the story: Transcript, Day 36, p.22, lines 3 – 21; p.23, lines 6 – 14. She could not explain how the article changed completely from originally suggesting that the Beckhams might be snubbed in favour of Ms Hurley's being godparent to Sir Elton's and Mr Furnish's son to a story that was the exact

opposite, and which was ultimately published. Her speculation as to how the information was sourced was also directly contradicted by the witness evidence of Ms Hurley and Mr Furnish, as was put to her. See: Transcript, Day 36, pp.25 – 33, lines 14 – 14. She accepted that she could not offer any real basis for the key passages in the article to which she was taken, other than possibly Ms Nicholl, and that she would simply have taken the information provided by her on trust and just included it: pp. 24 – 25, lines 24 – 13; pp.33 – 34, lines 15 – 6.

400. Ms Griffiths was also cross-examined during oral evidence about an article relied upon by the Cs in Confidential Schedule C, s.2 (Christine Hart) **{A/9/64}** published on 22 July 2018 in *The Mail on Sunday* under Ms Griffiths' byline about Tom Hardy and Charlotte Riley: Transcript, Day 36, pp.92 – 109, lines 12 – 6. Notably, Ms Griffiths said "*yeah*" when it was put to her that she had put a gloss on the evidence in her First Witness Statement because she knew the relevant source was Christine Hart: pp.94 – 96, lines 23 – 18. Ms Griffith also accepted that the police were not prepared to assist with this article (p.97, lines 18 – 19), and that Mr Hardy's PR representative had given a denial (p.97 – 98, lines 20 – 2). Ms Hurley submits that, as was put to Ms Griffiths, Ms Griffiths knew that Ms Hart, who was paid for her information, was a private investigator, and that Ms Hart had blagged the information from Mr Hardy's mother: pp.105 – 109, lines 15 – 5.

401. Regarding the Fifteenth Unlawful Article, Ms Nicholl accepted during oral evidence that, regarding the significant alteration of the story's direction, somehow she "*obtained very specific and accurate information from somewhere that completely changed the course of the article*" that she was going to write. Of this, Ms Nicholl said: *"Well, yes, clearly something's happened, and as I said to you, I don't recall this story."* She said she could not remember who provided the information that completely changed the direction of the story. See Transcript, Day 38, p.84, lines 2 – 15; p.85, lines 22 – 24.

402. It was put to Ms Nicholl that in light of the complete accuracy of the information which changed the story's direction, Ms Hurley's and Mr Furnish's evidence as to the private nature of the information, and Ms Nicholl's own reference to Sharon Feinstein in her First Witness Statement as someone who "*regularly gave me*

Elizabeth Hurley stories" that Ms Feinstein obtained the information through voicemail interception: Transcript, Day 38, p.86, lines 4 – 19. Ms Nicholl denied this, but in light of the matters set out above, as well as those earlier above in relation to Ms Nicholl's propensity and her credibility as a witness having been demolished, Ms Griffiths' use of Christine Hart (see above), and Mr Dillon's admissions regarding the News Desk's use of private investigators who carried out unlawful activities and the Desk's modus operandi in this regard (as set out above), the Cs submit that they have made out their case that the information in question was unlawfully obtained.

SIR ELTON JOHN AND DAVID FURNISH

Oral evidence of Sir Elton John and David Furnish

403. David Furnish gave evidence on 5 February 2026 (Day 14) and Sir Elton John was the last of the Claimants to provide witness evidence, on 6 February 2026 (Day 15).

404. Sir Elton is an internationally acclaimed recording artist and is married to David Furnish, the film producer and director. They both gave remote evidence from their home.

405. Both Sir Elton and Mr Furnish were clearly credible and genuine witnesses. Sir Elton was clearly distressed by the proceedings but gave straightforward, clear and honest answers throughout. Mr Furnish was also entirely credible – he did not seek to argue every point with D but gave thoughtful and helpful answers to assist the Court. The Court should trust the evidence of both these Cs with confidence.

406. In response to D's suggestion that relevant information about them existed in the public domain, Sir Elton and Mr Furnish were emphatic that the articles went significantly beyond what had been available in the public domain. In particular, Mr Furnish explained that the level of detail included in the Unlawful Articles exceeded anything published either by other outlets or in official announcements made by Sir Elton's team.

407. In relation to statements made by Mr Furnish on behalf of others (such as Ms Hurley), Mr Furnish made clear that anything said on behalf of anyone else was done with permission (Transcript, Day 15, p.143, lines 21-25). He was emphatic and clear that he did not routinely speak with journalists because of the fear of being taken out of context, so he would be cordial when approached, but he would tend to give journalists a wide berth. (Transcript, Day 14, pp.143-144, lines 25-11).

408. Mr Furnish also denied knowing who Marc Baker is, one of Charlotte Griffith's purported sources for stories about him and Sir Elton (Transcript, Day 14, pp.148-149).

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First Unlawful Article

409. The background and key individuals relevant to the First Unlawful Article are set out in the Cs' skeleton argument at §§283 – 286. The Court is also invited to refer to the Cs' trial matrix for this incident.

410. Both Ms Hurley and Mr Furnish directly addressed this article and incident in their witness statements: see Second Witness Statement of Elizabeth Hurley, §§36 – 38 {**F/14/9**}; Second Witness Statement of David Furnish, §§22 – 25 **{F/13/6}**. Neither Sir Elton nor Mr Furnish (nor Ms Hurley) were asked about this specific article by D during cross-examination, and as a result their evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

411. The bylined journalist for D, Mr Dempster, is deceased; Ms Ulla Kloster provided a witness statement in which she addressed the article, **{G/37/4}** but was unable to provide any explanation in that statement as to how this very specialist information (about the precise trees which formed the gift) contained in the article was obtained, beyond pure speculation. She confirmed during cross-examination that she had no recollection of how the article was produced or where the information came from: Transcript, Day 40, pp.118 – 119, lines 21 – 1; p.123, lines 19 – 20.

412. Mr Burrows has admitted, in the table of articles bearing his signature dated 29 March 2021 **{H/3/1}** and his witness statement dated 16 August 2021 **§60 {H/2/15}**, that the First Unlawful Article contained information obtained by him on D's instruction through unlawful acts, namely a hardwire tap on the landline telephone of Ms Hurley and through voicemail interception of Sir Elton's and Mr Furnish's gardener. As was put to Mr Burrows on Day 43 of the trial, and to Mr Henderson on Day 25 of the trial, and in light of the matters set out regarding Mr Burrows' and Mr Henderson's relationship above, Sir Elton and Mr Furnish submit that that table of articles and witness statement were authentic, that Mr Burrows obtained this information in the manner he set out, and that he provided that information to Mr Henderson at D. See Transcript, Day 25, pp.32 – 34, lines 16 – 17; Transcript, Day 43, p.99, lines 15 – 17; pp.102 – 103, lines 24 – 4; p.126, lines

10 – 23. Peter Wright's First Witness Statement makes clear that Nigel Dempster's Diary appeared in both *The Mail on Sunday* and *The Daily Mail* [§3.5.3 **{G/41/8}**]; Ms Kloster confirmed this during oral evidence [Transcript, Day 40, pp.118 – 121, lines 17 – 21].

413. In these circumstances, including their unchallenged evidence regarding the private and restricted nature of the information in question, Sir Elton and Mr Furnish submit that is it clear that D misused their private information through unlawful means and that liability has been established.

Second Unlawful Article

414. The background and key individuals relevant to the Second Unlawful Article are set out in the Cs' skeleton argument at §§287 – 289. The Court is also invited to refer to the Cs' trial matrix for this incident.

415. Both Ms Hurley and Mr Furnish directly addressed this article and incident in their witness statements: see Second Witness Statement of Elizabeth Hurley, §§44 – 46 {**F/14/11**}; Second Witness Statement of David Furnish, §§26 – 36 {**F/13/6 – 9**}. Mr Furnish also addressed the article during oral evidence, confirming that Ms Hurley had told him what Mr Bing had said regarding the name of her son, Damian, "*in strictest confidence*": Transcript, Day 14, p.150, lines 8 – 15.

416. Victoria Newton, the bylined journalist on this article, and who regularly commissioned TDI/ELI[75], has not given evidence in these proceedings. Again, as set out above, where a defendant chooses not to call witnesses who would be in a position to provide evidence as to the issues to be resolved in a case, the Court is entitled to draw suitable inferences as to the facts that the defendant has chosen to withhold.

417. Plainly, Ms Newton, as the bylined journalist on this article, has key evidence to give regarding how the article came to be written and how it came to be produced. Strikingly, however, D has not served a witness statement on behalf of Ms Newton and she has not been called in these proceedings even though she is a prominent

[75] See e.g., in the pleaded case of Ms Frost Law, Re-Re-Re-Amended Particulars of Claim, §23.3(d)(vi) **{A/12/50}**, as well as the trial matrix for this article.

journalist still. There has been no suggestion that she has been unavailable to give evidence in these proceedings. Ms Newton is the current the Editor of *The Sun,* so is eminently contactable. Mr Dacre did not address this article in his witness statement **{G/28}**. In these circumstances, Sir Elton and Mr Furnish invite the Court to draw, from Ms Newton's absence, the adverse inference that the article was produced using information obtained by UIG and that Ms Newton knows the case against her is unanswerable.

418. For all of the above reasons, the C invites the Court to find that D unlawfully obtained her private information and published the Second Unlawful Article using it.

Third Unlawful Article

419. The background and key individuals relevant to the Third Unlawful Article are set out in the Cs' skeleton argument at §§290 – 292. The Court is also invited to refer to the Cs' trial matrix for this incident, as well as the section above on Ms Lampert's propensity and credibility.

420. Mr Furnish has directly addressed this article and incident in his witness statement: see Second Witness Statement of David Furnish, §§37 – 46 **{F/13/9 – 11}**. Ms Lampert did so in her First Witness Statement at §§18.1 – 18.5 **{G/22/8 – 10}**.

421. Neither Sir Elton nor Mr Furnish were questioned about this article during cross-examination, and as a result their evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D. Ms Lampert gave oral evidence on Day 32 of the trial. As noted above, Ms Lampert admitted during cross-examination that she used TDI / ELI in her work for D, and that *The Daily Mail* used TDI / ELI to blag information and obtain itemised call data i.e. to unlawfully obtain information. It is clear that, despite her contention during oral evidence that she used TDI/ELI "*semi-regularly*", she used them extensively. [Transcript, Day 32, p.97, lines 6 – 14.]

422. In the witness box, Ms Lampert said that her evidence regarding this article was "*all speculation because I can't really remember writing [it]*": Transcript, Day 32, p.91, lines 8 – 9. She denied the Cs' case as put to her, namely that TDI/ELI had on her behalf blagged information regarding the cost of policing the wedding of Sir Elton and Mr Furnish, and the number of police officers required to do so, from a body that would have held that information i.e. the police or the local council: Transcript, Day 32, p.97, lines 19 – 25; p.99, lines 4 – 9. However:

a. She accepted that none of the third-party reporting referred to in her witness statement contained that information. [Transcript, Day 32, pp.85 – 86, lines 21 – 5.

b. As was put to Ms Lampert, the evidence in her First Witness Statement, that the figure may have been *"a 'guestimate' of likely cost given the number of police officers involved"* [§18.3, **{G/22/9}**], would have been predicated on Ms Lampert knowing the number of police officers involved in Sir Elton's and Mr Furnish's wedding. Ms Lampert accepted that the police had said they would not release that number due to operational concerns and that that information would therefore not have come from them [Transcript, Day 32, pp.88 – 89, lines 21 – 15.

c. Ms Lampert's evidence as to where the £10,000 figure came from changed from her witness evidence to her oral evidence. Having said in her First Witness Statement that the figure may have been a 'guestimate' under cross-examination she said, for the very first time, that "*it may well have been from Gary Farrow, who was Elton's spokesman*" [Transcript, Day 32, p.87, lines 4 – 19.] This suggestion was immediately and conclusively challenged by the Cs' lead counsel on the basis of Mr Furnish's clear evidence that such information, relating to his wedding day, was "*kept completely private*", such that Mr Farrow would not have disclosed such a figure. Sir Elton and Mr Furnish submit that it is clear that Ms Lampert has invented the account she gave during cross-examination having read Mr Furnish's witness statement, which confirms that her 'guestimate' was in

fact "*exactly as reported*" in her article: §45, **{F/13/11}**; Transcript, Day 32, pp.92 – 93, lines 22 – 4.

d. The precision of the amount quoted in Ms Lampert's article indicates, the Cs submit, that it was, given the steps taken to keep such information private, unlawfully obtained. Ms Lampert accepted that there were a large number of payments to ELI within a short period of the article, which was published on 16 December 2021: **{L/404/1}**; [Transcript, Day 32, p.94, lines 4 – 9; p.97, lines 6 - 14]. The obvious inference is that, given Ms Lampert's propensity to use TDI/ELI, and her express admission that TDI/ELI were used for blagging, TDI/ELI blagged information in this article for her. Ms Lampert sought to put some distance between her article and these payments by speculating as to the significance of the dates on the invoices from ELI around the time of the article, but then accepted that she did not know how the invoices actually worked: Transcript, Day 32, pp.100 – 101, lines 13 – 13.

e. Ms Lampert's oral evidence as to how she obtained the information regarding the number of police officers involved in Sir Elton's and Mr Furnish's wedding was also new, vague and speculative: she simply said "*I probably would have had an idea. I would have spoken to someone to get an idea of how many might be… that would all be part of the guesstimate*". [Transcript, Day 32, p.104 – 105, lines 15 – 8.]

f. As was put to Ms Lampert during cross-examination, her evidence in her First Witness Statement, §18.5 **{G/22/4}** that she started using ELI rather than System Searches to obtain addresses because System Searches were often "*tied up with News Desk searches*" is belied (i) by documentary evidence showing that System Searches were in fact more than capable of handling multiple searches for *The Daily Mail* and *The Mail on Sunday* (in response to which Ms Lampert unconvincingly sought to recast what she meant by a '*search*') and (ii) by the fact that the amounts charged by ELI were five or sometimes even 10 times more expensive than those charged by System Searches. The clear inference is that Ms Lampert used ELI to obtain

information other than addresses through UIG. Transcript, Day 32, pp.94 – 96, lines 11 – 24.

423. On these bases, and in light of the matters set out above in relation to Ms Lampert's propensity and her overall credibility as a witness, the Cs submit that it is clear that the Third Unlawful Article contained information which was obtained by UIG, amounting to a misuse of private information by D.

Fourth Unlawful Article

424. The background and key individuals relevant to the Fourth Unlawful Article are set out in the Cs' skeleton argument at §§293 – 296. The Court is also invited to refer to the Cs' trial matrix for this incident.

425. Both Mr Furnish and the Duke of Sussex directly addressed this article and incident in their witness statements: see Second Witness Statement of David Furnish, §§47 – 50 {**F/13/11**}; Second Witness Statement of the Duke of Sussex, §§58 – 59 **{F/16/14}**. Their evidence, including their evidence that communications concerning Sir Elton's attending the party in question would have been private, directly between the Duke of Sussex and Sir Elton, and likely involved voicemails being exchanged between them, was not challenged by D under cross-examination. Nor was Sir Elton asked about this article during oral evidence. As a result their evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

426. Mr Dillon, Deputy News Editor at the time, addressed the article in his First Witness Statement, saying he had no specific memory of the article or whether he was involved in sourcing it: §§52 – 53, **{G/30/13}**.

427. Ms Nicholl speculates about a number of sources for this story in her First Witness Statement: §33.66 – 33.6.3 **{G/38/17 – 18}**. During cross-examination, she was clear that she could not actually recall if Lady Elizabeth Anson had been such a source: Transcript, Day 38, p.62, lines 4 – 7. She also accepted that although the memorial concert for the Duke's mother, Princess Diana, had been covered by the press, the party which her article revealed details of had in fact been kept secret

(this being the whole point of her article), that she had not disclosed or referred to a single article relating to these events, and that she had no contemporaneous notes concerning it: Transcript, Day 38, pp.62 – 64, lines 22 – 11.

428. In these circumstances, and in light of the matters set out above in relation to Ms Nicholl's propensity and Nicholl's credibility as a witness having been demolished, as well as Mr Dillon's admissions regarding the News Desk's use of private investigators who carried out unlawful activities and its modus operandi in this regard (as set out above), Sir Elton and Mr Furnish submit that they have made out their case that the information in question was, as was put to Ms Nicholl, obtained by voicemail interception: Transcript, Day 38, p.64, lines 18 – 23.

Fifth Unlawful Article

429. The background and key individuals relevant to the Fifth Unlawful Article are set out in the Cs' skeleton argument at §§297 – 298. The Court is also invited to refer to the Cs' trial matrix for this incident.

430. Mr Furnish directly addressed this article and incident in his Second Witness Statement: see §§51 – 53 **{F/13/11 – 12}**. When the provenance of the article was put to him during cross-examination that the information, he was clear as to the "*specific detail*" not previously publicised that "*was surprising to us and caused concern*": Transcript, Day 14, pp.132, lines 3 – 10. Mr Furnish also confirmed the private nature of that information during re-examination: Transcript, Day 14, pp.151 – 152, lines 14 – 8. Sir Elton did likewise during oral evidence, and confirmed during re-examination that the information that he has "undergone a series of blood tests, X-rays and scans to find out why his illness has proved so debilitating" was not information he had authorised to be disclosed to *The Daily Mail*: Transcript, Day 15, p.11, lines 5 – 8; pp.24 – 25, lines 1 – 7.

431. Two journalists were bylined on the article: Mr Simpson, who addressed it in his First Witness Statement and during oral evidence, and Ben Todd. Mr Todd, who was responsible for four articles admitted by Mirror Group Newspapers as being the product of UIG at that newspaper in ***Gulati v MGN*** [2015] EWHC 1482 ChD, has given no evidence in these proceedings. Plainly, he has evidence to give

regarding how the article came to be written and how it came to be produced. However, D has not served a witness statement on behalf of Mr Todd and he has not been called in these proceedings even though she is a prominent journalist still. There no suggestion that he has been unavailable to give evidence in these proceedings. In these circumstances, Sir Elton and Mr Furnish invite the Court to draw, from Mr Todd's absence, the adverse inference that the article was produced by D using unlawfully obtained information and that their case in this regard is unanswerable.

432. On behalf of the Cs, Mr Timur Moon has given unchallenged evidence regarding, on the basis of his interactions with Mr Simpon at *The Daily Mail*, his suspicion that that "*phone hacking and the interception of voicemails were being used to investigate stories and target people of interest to the Mail at the showbiz desk as a matter of routine*": First Witness Statement of Timur Moon, §7, **{F/24/2}**. When this was put to Mr Simpson during cross-examination, his response was to say *I have no recollection of him having any view on any of that"* and "*I don't have much recollection of him at all*": Transcript, Day 33, p.55, lines 5 – 15.

433. Mr Simpson accepted in his First Witness Statement that he used ELI while at *The Daily Mail*: §§21 – 22 **{G/39/6}**. The Cs submit that Mr Simpson's credibility is diminished in light of the fact that his written evidence, that he used ELI "*very infrequently*" §22 **{G/39/6}**, was undermined by the matters put to him regarding his use of ELI/BDI on Days 32 and 33 of the trial: see Transcript, Day 32, pp.173 – 200, lines 20 – 6; Day 33, pp.58 – 64, lines 18 – 4.

434. Moreover:

a. Mr Simpson's evidence as to his use of ELI shifted from his witness statement to his oral evidence. In his First Witness Statement he said did not remember using ELI "*for anything other than numbers or addresses*": §§22 **{G/39/7}**. When pressed during cross-examination he said that though he "*strongly suspected*" that the jobs he commissioned ELI for were obtaining phone numbers and addresses he did not in fact remember what all of those jobs related to: Transcript, Day 33, p.8, lines 20 – 22.

b. Mr Simpson accepted that some of the telephone numbers provided to him by ELI were ex-directory: Transcript, Day 33, p.10, lines 22 – 23.

c. Mr Simpson had no answer when challenged as to the fact that individuals whose numbers were ex-directory were individuals who did not want their number to be publicly available: he simply said, wholly unconvincingly: "*With the benefit of hindsight, of course. But at the time, I gave it no thought whatsoever*." See Transcript, Day 33, p.11, lines 10 – 11.

d. He likewise had no answer when it was put to him that it was clear that the numbers he was asking for were ex-directory, on the basis that if they were not he could easily have obtained them himself from directory inquiries, from D's library, or from the resources available to him via D's intranet: he simply fell back on a refrain of "*It's not something I thought about*" and "*I don't remember that*". See Transcript, Day 33, pp.11 – 12, lines 12 – 13.

e. Mr Simpson also accepted that some of the numbers he obtained from ELI were mobile numbers, which would not have been publicly available: Transcript, Day 33, p.12, lines 14 – 19.

f. Mr Simpson's evidence as to how he believed ELI were obtaining all of this information for him again turned primarily on his refrain that "*I didn't think about it at all at the time*" and unconvincing testimony that he "*didn't find it unusual*" that ELI were able to find this information: Transcript, Day 33, pp.12 – 15, lines 25 – 15.

g. When questioned about an incident relied upon by the Cs in Confidential Schedule C, s.1 (ELI/TDI) relating to an article published on 27 September 2006 in *The Daily Mail* under Mr Simpson's byline [Transcript, Day 33, pp.55 – 67, lines 16 – 10, Mr Simpson said that he had "*no idea*" what any of the payments to ELI of that same date – which identified him as the tasking journalist – were for, and that any of his answers were purely speculative. Sir Elton and Mr Furnish submit that, as was put to Mr Simpson, he was seeking to find additional colour for his story about Heather Mills and Sir Paul

McCartney by commissioning ELI to find out information, including in relation to "the Maccagate tape".

435. During cross-examination, Mr Simpson maintained his evidence that the Fifth Unlawful Article originated from previous reporting in other outlets. However, he accepted that the article contained information about Sir Elton not seen in other reporting: Transcript, Day 33, pp.20 – 22, lines 17 – 2. His evidence was that he believed that that additional information came from Mr Todd: Transcript, Day 21, p.21, lines 11 – 18. Mr Simpson's suggestion that Mr Todd would have obtained that information from Sir Elton's spokesman, Gary Farrow, was, in addition to being purely speculative, undermined by the fact that the information in question would have been potentially harmful to Sir Elton, something which Mr Simpson eventually accepted during cross-examination: Transcript, Day 33, pp.22 – 23, lines 8 – 13. Mr Simpson continued to plead ignorance and simply speculate as to the various payments relied upon by Sir Elton and Mr Furnish in support of their inferential case that the Fifth Unlawful Article contained unlawfully obtained information: Transcript, Day 33, pp.23 – 29, lines 14 – 14.

436. In light of all of the above, and the matters set out in the Cs' skeleton argument and accompanying updated trial matrix, Sir Elton and Mr Furnish submit that the Court should conclude that the Fifth Unlawful Article contained information unlawfully obtained by a private investigator commissioned by Mr Todd or Mr Simpson.

Sixth Unlawful Article

437. The background and key individuals relevant to the Sixth Unlawful Article are set out in the Cs' skeleton argument at §§299 – 301. The Court is also invited to refer to the Cs' trial matrix for this incident.

438. As noted in the Cs' skeleton argument, Sir Elton and Mr Furnish have given clear evidence of the "*incredibly private*" nature of the process of having a surrogate carry their child, the steps taken by them to protect the integrity of that process, and their shock at how the Daily Mail had been able to obtain a copy of their son's birth certificate before they did, and the homophobic way the information in the

article was presented: Second Witness Statement of David Furnish, §§54 – 61 **{F/13/12 – 13}**.

439. The bylined journalists on this article were Ben Todd and David Gardner. The desk head was Ben Taylor. Neither Mr Todd nor Mr Taylor have given evidence in these proceedings. D has served a hearsay notice in respect of a witness statement given by David Gardner, who did not attend trial.

440. The Court is invited to conclude that, for the reasons set out at §301 of the Cs' skeleton argument, and on the basis of the accompanying updated trial matrix, Mr Gardner unlawfully obtained the information in this article identified by the Cs and provided it to Mr Todd, for publication by him and D in the Sixth Unlawful Article. The evidence of Sir Elton and Mr Furnish, both of whom gave oral evidence concerning this article [Transcript, Day 14, pp. 139 – 142, lines 7 – 2; Day 15, pp.20 – 22, lines 8 – 13); Day , is plainly to be preferred to the hearsay evidence of Mr Gardner, who did not (and whose suggestion that a registrar would provide private information about a child over the phone to a journalist before a birth certificate had even been issued is obviously implausible).

<u>Seventh Unlawful Article</u>

441. The background and key individuals relevant to the Seventh Unlawful Article are set out in the Cs' skeleton argument at §§302 – 305. The Court is also invited to refer to the Cs' trial matrix for this incident.

442. Both Mr Furnish and Ms Hurley directly addressed this article and incident in their witness statements: see Second Witness Statement of David Furnish, §§62 – 63 {**F/13/14**}; Second Witness Statement of Elizabeth Hurley, §§79 – 81 **{F/14/18}**.

443. Neither Sir Elton, nor Mr Furnish, nor Ms Hurley were questioned about this article during cross-examination. As a result their evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

444. Mr Dillon, Deputy News Editor at the time, addressed the article it in his First Witness Statement, saying he had no specific memory of the article or whether he was involved in sourcing it: §§52 – 53, **{G/30/13}**.

445. In Ms Nicholl's First Witness Statement, she says she does not remember the article and hasn't identified any contemporaneous notes relating to it. Her First Witness Statement simply speculates as to how the article might have been produced: §§34.2.2 – 34.2.4, **{G/38/20}**. Notably, her statement says that Sharon Feinstein "*regularly gave me Elizabeth Hurley stories and… could have provided the information in the article*". Likewise, Ms Griffiths says she does not remember the story, and can only speculate on its production: First Witness Statement, §§14.1 – 14.3 **{G/11/5 – 6}**.

446. During cross-examination, Ms Griffiths reiterated that she did not remember who wrote the article or how it was sourced, and that she could not remember reading any cuttings for the story: Transcript, Day 36, p.22, lines 3 – 21; p.23, lines 6 – 14. She could not explain how the article changed completely from originally suggesting that the Beckhams might be snubbed in favour of Ms Hurley's being godparent to Sir Elton's and Mr Furnish's son to a story that was the exact opposite, and which was ultimately published. Her speculation as to how the information was sourced was also directly contradicted by the witness evidence of Ms Hurley and Mr Furnish, as was put to her. See: Transcript, Day 36, pp.25 – 33, lines 14 – 14. She accepted that she could not offer any real basis for the key passages in the article to which she was taken, other than possibly Ms Nicholl, and that she would simply have taken the information provided by her on trust and just included it: pp. 24 – 25, lines 24 – 13; pp.33 – 34, lines 15 – 6.

447. Ms Griffiths was also cross-examined during oral evidence about an article relied upon by the Cs in Confidential Schedule C, s.2 (Christine Hart) **{A/9/64}** published on 22 July 2018 in *The Mail on Sunday* under Ms Griffiths' byline about Tom Hardy and Charlotte Riley: Transcript, Day 36, pp.92 – 109, lines 12 – 6. Notably, Ms Griffiths said "*yeah*" when it was put to her that she had put a gloss on the evidence in her First Witness Statement because she knew the relevant source was Christine Hart: pp.94 – 96, lines 23 – 18. Ms Griffith also accepted that the police were not prepared to assist with this article (p.97, lines 18 – 19), and that Mr Hardy's PR representative had given a denial (p.97 – 98, lines 20 – 2). The C submits that, as was put to Ms Griffiths, Ms Griffiths knew that Ms Hart, who was

paid for her information, was a private investigator, and that Ms Hart had blagged the information from Mr Hardy's mother: pp.105 – 109, lines 15 – 5.

448. As to the Seventh Unlawful Article, and the reversal of the story from the original draft, Ms Nicholl accepted during her oral evidence that somehow she "*obtained very specific and accurate information from somewhere that completely changed the course of the article*" that she was going to write. Of this, Ms Nicholl said: *"Well, yes, clearly something's happened, and as I said to you, I don't recall this story."* She said she could not remember who provided the information that completely changed the direction of the story. See Transcript, Day 38, p.84, lines 2 – 15; p.85, lines 22 – 24.

449. It was put to Ms Nicholl that in light of the complete accuracy of the information which changed the story's direction, Ms Hurley's and Mr Furnish's evidence as to the private nature of the information, and Ms Nicholl's own reference to Sharon Feinstein in her First Witness Statement as someone who "*regularly gave me Elizabeth Hurley stories*" that Ms Feinstein obtained the information through voicemail interception: Transcript, Day 38, p.86, lines 4 – 19. Ms Nicholl denied this, but in light of (a) the matters set out above, as well as (b) those earlier above in relation to Ms Nicholl's propensity, (c) Ms Nicholl's credibility as a witness having been demolished, (d) Ms Griffiths' use of Christine Hart (see above), as well as (e) Mr Dillon's admissions regarding the News Desk's use of private investigators who carried out unlawful activities and its modus operandi in this regard (as set out above), the Cs submit that they have made out their case that the information in question was unlawfully obtained through voicemail interception and Ms Nicholl knew it.

<u>Eighth Unlawful Article</u>

450. The background and key individuals relevant to the Eighth Unlawful Article are set out in the Cs' skeleton argument at §§306 – 308. The Court is also invited to refer to the Cs' trial matrix for this incident.

451. Mr Furnish dealt directly with this article in his Second Witness Statement: §§64 – 68, **{F/13/14 – 15}**. Both he and Sir Elton also gave oral evidence relating to it and

the Sixth Unlawful Article: Transcript, Day 14, pp.139 – 142, lines 5 – 3; Day 15, pp.20 – 22, lines 8 – 13. To the extent that leading counsel for D sought to suggest to both Claimants during oral evidence that their having released select information regarding their son's birth (so as to retain control over it) undermined their evidence, this was clearly and comprehensively rebutted in their oral evidence: Transcript, Day 14, pp.139 – 142, lines 7 – 3; Day 15, pp.20 – 22, lines 8 – 13.

452. The bylined journalists, Caroline Graham and Ms Churcher, and the desk head, Mr Dillon, all gave evidence regarding it in their witness statements and during cross-examination.

453. Ms Churcher gave oral evidence on Day 33 of the trial (correcting various parts of her First Witness Statement in the process: pp.133 – 137, lines 25 – 23). Her evidence was often vague and confused. She introduced new evidence for the first time, made tangential statements, blamed her legal advisers on various occasions, and contradicted herself. It is notable that:

   a. Having provided that witness statement and the details in it for these proceedings, Ms Churcher said at the outset of her cross-examination that she could not in fact remember which of her sources provided her with what information for this article: p.143, lines 1 – 14.

   b. Ms Churcher said, for the first time in the witness box, that the sources (Source A) whom she introduced Ms Graham to were in fact already known to Ms Graham: p.143, lines 4 – 8.

   c. When it was noted that Ms Churcher had not addressed in her witness evidence a letter from Ms Graham to Source A referring to conversations Ms Churcher had had with Source A and promising Source A money in return for information relating to the identity of the surrogate mother to Sir Elton's and Mr Furnish's baby son, said she didn't "*remember this particular letter*" or the role of Source A, attributed that failure to her not being shown the letter when preparing her witness statement, and for the very first time gave

evidence that Source A "were kind of part-time journalists": pp.151 – 155 , lines 4 – 12.

d. Ms Churcher had no real answer when it was put to her that that letter and other documentation clearly suggested that Source A was a single source, rather than two individuals disguised as a single source as she had said: pp.157 – 158, lines 19 – 6; pp.165 – 167, lines 15 – 4.

e. When it was put to her that Source A was providing information not just about Sir Elton and Mr Furnish's apartment (which Ms Churcher had given evidence about) but about the identity of their son's surrogate mother (which she had not), Ms Churcher (eventually) said that "*It is true that my witness statement is quite vague*" and provided new evidence, for the first time, suggesting that Source A had performed a different, new role in this regard "*after [Ms Churcher] had dealt with the sources*": pp.158 - , lines 7 – 23.

f. When pressed during cross-examination, Ms Churcher gave evidence for the very first time that, in addition to Source A and Source B, "*it looks to me like I might have had another source*", along with a vague account of why that might be: p.171, lines 3 – 16; pp.180 – 181, lines 18 – 8.

g. When challenged on whether Source B, a supposed long-time friend of Sir Elton and Mr Furnish would have sought to help in identifying the surrogate mother to their child, Ms Churcher admitted notwithstanding her 'memo', "*I have to say now, thinking - - looking logically, it seems unlikely that they'd be able to get it*", and again suggested she might have had another source not described in her witness statement: pp.177 – 175, lines 21 – 19.

454. Ms Churcher was also cross-examined on Day 33 on matters relating to:

a. her use of Dan Hanks [pp.77 – 83, lines 7 – 16];

b. incidents relied upon in Confidential Schedule C, s.3 (Dan Hanks) of the Cs' Particulars of Claim relating to (i) an article published on 7 January 2021 in *The Mail on Sunday* under Ms Churcher's byline about Yoko Ono, Tony Cox and Kyoko Cox **{A/9/65}** [pp.83 – 96, lines 17 – 7; and (ii) information

obtained by Mr Hanks relating to Jeffrey Epstein **{A/9/65}** [pp.100 – 130, lines 7 – 7]; and

c. an incident relied upon in Confidential Schedule C, s.5 (Summit Credit & Legal Services) relating to a story published on 4 December 2005 in *The Mail on Sunday* under the shared byline of Ms Churcher and Dennis Rice about Peter Mandelson, his partner and visa rules **{A/9/70}** [pp.96 – 100, lines 8 – 6].

455. Regarding these matters, it is notable that:

a. Ms Churcher accepted that reports provided to her by Mr Hanks, including in relation to the Schedule C Kyoko Cox matter, impermissibly contained Social Security Numbers, which were "*a very sensitive matter*", and that had she "*focused on that I would have realised he wasn't doing this correctly*". As was put to her, Ms Churcher's evidence, that "*at the time I didn't notice*", is plainly implausible given how prominent these "*SSN*" details were in the reports she obtained. See e.g. **{L/245/3}**, which was put to Ms Churcher [p.8, line 8]. The relevant sections of the transcript are at pp.79 – 83, lines 11 – 16 and pp.91 – 92, lines 17 – 14.

b. Regarding the Schedule C Kyoko Cox matter, in her oral evidence, Ms Churcher gave an account for the very first time of where she said the material provided to her by Mr Hanks originated, being ostensibly "*his files that he had done for the Daily Mirror or maybe it was the Sunday Mirror*". There is no mention of any such material in Ms Churcher's Amended First Witness Statement **{G/2/7 – 9}** or indeed in the Further Amended Second Witness Statement of Mr Hanks **{F/5/8 – 9}**, which provides a different account.

c. It is clear from Ms Churcher's evidence that she used the agency Capitol Inquiry, the use of which was banned by D in 2007: pp.93 – 96, lines 14 – 7.

d. Regarding the Schedule C Peter Mandelson matter, Ms Churcher said that she had nothing to do with commissioning Summit Credit & Legal Services in relation to the accompanying article. She said that either Dennis Rice,

from whom there is no evidence in these proceedings, "*or a reporter in London*", was responsible for the portion of the article dealing with Mr da Silva's attendance at a college in London: [pp.96 – 100, lines 8 – 6].

e. Regarding the Schedule C Jeffrey Epstein matter and Ms Churcher's answers under cross-examination [pp.100 – 130, lines 7 – 7], the Cs submit it is obvious that, as was put to Ms Churcher [p.129, lines 5 – 8], Ms Churcher paid Mr Fisten through an (admitted) concealed route for Jeffrey Epstein's address book because the address book was not publicly available at the time. Ms Churcher provided a brand new and incredibly vague account of the status of the address book during oral evidence, which centred on her claiming that "*it went in and out of the public domain. It went into court, it came out of court*" [p.122, lines 11 – 18]. When asked why none of this appeared in her witness statement, Ms Churcher said "*I didn't know that at the time. I - - did more research…*" This is wholly implausible, not least because Ms Churcher served an amended version of her First Witness Statement of 3 October 2025 on the Cs four months later, on 9 February 2026 i.e. last month: that updated statement made no mention whatsoever of the matters that Ms Churcher introduced under cross-examination.

456. Ms Graham gave evidence the following day, on Day 34 of the trial. It is notable that:

a. Ms Graham said, for the first time, after being taken to the relevant documentation, that the information provided by Source A included her trying to assist Ms Graham and Ms Churcher with identifying the surrogate mother to the Cs' son: pp.104 – 108, lines 21 – 21.

b. Despite saying that she did not know what Sir Elton's and Mr Furnish's wishes and intentions were at the time, Ms Graham then expressly admitted that she read an interview with Sir Elton and Mr Furnish in which they stated they intended to protest and respect the privacy of the surrogate mother. Ms Graham said at first said she did not remember reading that statement, before then saying "*Yes, I would assume that they would want the surrogate name kept private*": p.107, lines 20 – 25; pp.113 – 118, lines 8 – 12.

c. When shown her email to Source A of 29 December 2010 **{K/1292/3}** promising Source A a payment of USD800, a potential payment of USD1700, and a possible further USD7500 "*if we are able to exclusively published [the surrogate mother's] name on Sunday and name her exclusively as the surrogate mother based on your tip and information supplied by you to us*", Ms Graham gave new but implausible evidence in the witness box that she would in any event never have named the surrogate mother "*without her express permission*": p.113, lines 17 – 18.

d. Despite saying at the outset of the relevant section of her First Witness Statement that she "*remember[s] this article fairly well as I was working on the ground in Los Angeles*", during cross-examination Ms Graham provided, for the very first time, details of the additional sources she said provided information for this article, namely "*a freelancer at the building for several days… with a photographer, who was speaking to people going in and out, and other people at the building*", as well as "*a source that lives in that building*": pp.122 – 123, lines 24 – 12.

e. When it was put to her that she had instructed Mr Hanks to carry out a licence plate check to try to identify the surrogate mother to Sir Elton's and Mr Furnish's child, Ms Graham was vague, and sought to shift responsibility onto the freelancer whose existence she had revealed for the very first time during oral evidence: pp.125 – 126, lines 1 – 20.

457. Ms Graham also accepted during oral evidence that she commissioned Mr Hanks on multiple occasions between 2001 and 2010 / 2011: p.48, lines 1 – 6. When she was taken through examples of Mr Hanks having provided her with reports containing social security numbers, and it was put to her that she would have seen them as they were all over the documents and recognised their significance although she never asked Mr Hanks to stop sharing them, she unconvincingly said "*I - - I honestly wasn't looking for them… I wasn't looking for social security numbers. So perhaps they were on there. It wasn't something that struck me at the time.*" and "*I didn't know he was sending them. I honestly don't have any recollection*". See Transcript, Day 14, pp.52 – 60, lines 10 – 15. When presented

with a report containing social security numbers relating to Nicole Scherzinger Ms Graham notably changed her evidence almost instantaneously, initially saying "*I didn't even see it at the time*" to "*I mean, okay, maybe I did see it at the time", but I didn't ask for it*". See pp.62 -63, lines 14 – 8. Ms Graham's evidence was plainly unconvincing and implausible.

458. Ms Graham likewise provided an uncompelling explanation when asked, in relation to a document containing telephone numbers provided to her by Mr Hanks **{K/533}**, why and how she had annotated it with the identities connected to those numbers. Her account, that she simply called the numbers and hung up, is simply not plausible: the obvious inference is that, as was put to Ms Graham, she telephoned the numbers and presented as someone other than a journalist to obtain information as to whether there was any connection with Prince Andrew (i.e. she blagged the information): pp.128 – 131, lines 7 – 9.

459. Mr Dillon gave evidence on Day 37 of the trial. He accepted the obvious significance of the potential story regarding the identity of Sir Elton's and Mr Furnish's surrogate, and that the related payments would have been discussed with him. It is to be inferred in light of his general admissions and the News Desk's propensity (as set out above) that, as was put to him, in his role as Desk Head he would have been aware of the unlawful methods being used to obtain information for this article: Transcript, Day 37, pp.131 – 136, lines 25 – 20.

460. In light of all of the above, as well as Mr Dillon's admissions regarding the News Desk's use of private investigators who carried out unlawful activities and its modus operandi in this regard (as set out above), Sir Elton and Mr Furnish submit that it is clear that, as was put to Ms Graham, a freelancer or a source within their building obtained information regarding them and the identity of their surrogate mother by blagging and false pretences, and that the Cs have made out their case on UIG in relation to this article.

Ninth Unlawful Article

461. The background and key individuals relevant to the Ninth Unlawful Article are set out in the Cs' skeleton argument at §§309 – 310. The Court is also invited to refer to the Cs' trial matrix for this incident.

462. Mr Furnish has addressed this article and incident directly in his Second Witness Statement, noting that "*Grey Goose were excellent partners to us over many years and they never would have put out information without collaborating with us first.*": §§69 – 71 **{F/13/15 – 16}**. Neither he nor Sir Elton were questioned about this article during cross-examination, and as a result their evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D. In her First Witness Statement, Ms Nicholl says she does not remember the article or its source, and so simply speculates as to how the information might have been obtained, suggesting that it might have come from a member of the Grey Goose PR team: §§34.3 – 34.3.2, **{G/38/21 – 22}**. Likewise, Ms Griffiths says she does not remember the story specifically, and can only speculate on its production, again suggesting that it might have come from Grey Goose: First Witness Statement, §§15.1 – 15.4 **{G/11/6 – 7}**.

463. Ms Nicholl gave oral evidence regarding this article on Day 38 of the trial: Transcript, Day 38, pp.86 – 96, lines 19 – 8. The inherent implausibility of Grey Goose deliberately providing information to D to generate a small article three months ahead of an event that was of no real commercial help to them was put to Ms Nicholl, as was the fact that the inaccuracy of the related information in the article regarding Jude Law strongly suggested that the source was not Grey Goose (who would not have made such errors): Ms Nicholl had no real answer to these points, save to speculate further [Transcript, Day 38, pp.88 – 92, lines 2 – 16]. Nor did she have any real explanation to offer as to why, as was clear from Ms Griffiths' list of potential stories for the Friday conference **{K/1382/4}**, the article shifted from saying that Ms Jolie was going to host Sir Elton's next ball to an article reporting that she had declined to do so: [pp.94 – 96, lines 2 – 8].

464. Ms Griffiths similarly had no real answers to give when these points were put to her, save to continue to speculate and to introduce, for the first time, evidence regarding her and Ms Nicholl's relationship with Grey Goose and their attendance at particular parties: [Transcript, Day 36, pp.35 – 37, lines 25 – 2; more generally, see pp.34 – 52, lines 12 – 24].

465. Mr Dillon, Deputy News Editor at the time, addressed the article it in his First Witness Statement, saying he had no specific memory of the article or whether he was involved in sourcing it: §§52 – 53, **{G/30/13}**.

466. In light of the matters set out above, as well as those earlier above in relation to Ms Nicholl's propensity and to her credibility as a witness being demolished, Ms Griffiths' use of Christine Hart (see above), and Mr Dillon's admissions regarding the News Desk's use of private investigators who carried out unlawful activities and its modus operandi in this regard (as set out above), the Court is invited to conclude that, as was put to them in oral evidence, the article contained information unlawfully obtained by Ms Nicholl or Ms Griffiths by voicemail interception or blagging [Transcript, Day 38, pp.95 – 96, lines 24 – 8; Day 36, p.43, lines 5 – 11]; p.51, lines 17 – 25.

<u>Tenth Unlawful Article</u>

467. The background and key individuals relevant to the Tenth Unlawful Article are set out in the Cs' skeleton argument at §§311 – 312. The Court is also invited to refer to the Cs' trial matrix for this incident.

468. Mr Furnish has addressed this article and incident directly in his Second Witness Statement, noting that *"[n]one of this was publicised – it was completely private"*: §§72 – 73 **{F/13/16}**.

469. Sanchez Manning, who assisted on this article for D, addressed it in her First Witness Statement at §§8 – 14 **{G/24/2 – 4}**. In oral evidence she corrected her statement, saying that it might have been her who told Ms Griffiths that Sir Elton was at the Princess Grace Hospital, rather than the other way around. She accepted that her recollection of events was limited and dependent on the

contemporaneous emails that she had seen. See Transcript, Day 39, p.73, lines 15 – 24; p.75, lines 18 – 22.

470. Ms Griffiths, the bylined journalist, speculated in her First Witness Statement that the article might have come from a tip either from Marc Baker or then-editor Geordie Greig, but said she did not remember either of them being involved. Nor did she remember seeing the press reports she was shown when preparing her statement. See First Witness Statement, §§16.1 – 16,4, 16.6, 16.12 **{G/11/7 – 8, 10}**. Under cross-examination, she said for the first time that she believed the information in fact came from the News Desk. Sir Elton and Mr Furnish invite the Court to conclude that Ms Griffiths changed her evidence following Mr Furnish's oral evidence on Day 14, where he said he did not know who Marc Baker and had no recollection of his name. See Transcript, Day 36, pp.53 – 58, lines 9 – 8. (Geordie Greg is not giving evidence in these proceedings.)

471. Ultimately, despite her witness statement referring to cuttings, Ms Griffiths accepted that none of the reporting she referred to contained the information in her article about Sir Elton's leg swelling like a balloon, his finding an abscess on his thigh, his playing tennis on his private court, the unbearable pain and swelling he endured, and the cocktails of injections, including adrenaline, that he was forced to receive: Transcript, Day 36, pp.63 – 64, lines 19 – 5. (When cross-examining Mr Furnish, leading counsel for D could only put to him that previous reporting contained "*the kernel of the same story*", and accepted during a similar line of questioning put to Sir Elton that the information in those articles was not in the same terms as the Tenth Unlawful Article: Transcript, Day 14, p.135, lines 17 – 22; Day 14, pp.15 – 16, lines 18 – 1.)

472. Ms Griffiths accepted that the information she was provided for the purposes of the story came from someone on the News Desk, whose identity she said she could not recall but "*who probably had a tip and asked me to look into it*" by calling Mr Farrow to stand up the story. Her suggestion that Mr Farrow might have provided her with the detailed private information in the article was plainly belied by the terse nature of Mr Farrow's email responses to her queries (see e.g. **{K/2000}**), the extremely short duration (32 seconds) of the call recorded as

having taken place between them, and the absence of any reference to him in her notes. (Leading counsel for D's related questions to Mr Furnish during oral evidence, which only ultimately amounted to the vague suggestion that Mr Farrow was providing "*some sort of information, whether by way of confirmation*", were credibly responded to and addressed by Mr Furnish. The similar line of questioning to Sir Elton equally failed to produce anything like a basis for Mr Farrow being the source of the private information in the article. See Transcript, Day 14, pp.135 – 138, lines 23 – 19; Day 36, pp.63 – 64, lines 19 – 5. pp.70 – 84, lines 14 – 1; p.88 – 89, lines 1 – 19; Transcript, pp.16 – 20, lines 7 – 3.

473. In light of (a) the above, (b) Ms Griffiths' use of Christine Hart (see above), (c) the notable admissions by Mr Dillon regarding the News Desk's use of private investigators who carried out unlawful activities, and the News Desk modus operandi in this regard (as set out above), the Cs submit that it is clear that, as was put to Ms Griffiths, the private information in the Tenth Unlawful Article was obtained by a private investigator commissioned by the News Desk who obtained the information by blagging the hospital at which Sir Elton was being treated or through voicemail interception: see Transcript, Day 36, pp.75 – 76, lines 25 – 4; p.87, lines 17 – 25; p.89, lines 18 – 20.

The Duke of Sussex

The Duke of Sussex's oral evidence

474. The Duke of Sussex was the first of the Claimants to provide witness evidence, on 21 January 2026 (Day 3). The Duke of Sussex was a careful and candid witness. While he showed understandable frustration with D's actions, and its choice to defend the claim without making any admissions.

475. The central theme of D's cross-examination of the Duke of Sussex was that there was no contemporaneous complaint made by him in relation to the Unlawful Articles he complains of. The Duke of Sussex explained:

   a. he did not see all of the articles (Transcript, Day 3, Page 22) **{C/29/7}**;

   b. his status as a Royal uniquely limited his capacity to make complaints and indeed meant that he often did not even see suspicious material because of the strict "*never complain, never explain policy*" (Transcript, Day 3, pp.5-6 6) **{C/29/3}**;

   c. he knew that if one does complain "*they tend to double down*" (Transcript, Day 3, Page 22) **{C/29/7}**; and

   d. the attribution of sources in articles misled him at the time (Transcript, Day 3, Page 6) **{C/29/3}**.

476. D strained to suggest the Duke's social circle was "leaky":

   a. In response to an unpleaded article, **{K/211}** ("*Rugby girl who won Harry's heart*"), the Duke denied that it would have originated from "*friends*" providing information (Transcript, Day 3, p.21) **{C/29/7}.**

   b. D put an incident in Jamaica (including texts with 'Charlotte' [Griffiths]) to the Duke, who was clear about the unique circumstances of that instance, as when he first met Ms Griffiths he did not know she was a journalist who worked for D from 2008: "*I wasn't aware of that at the time, but when I found out. I cut contact with her. ... I did not see Ms Griffiths socially*" (Transcript, Day 3, p.32) **{C/29/9}**

c. The core premise put to him that his social circle was "*leaky*" was roundly rejected: "*My Lord, my social circles were not "leaky", I want to make that absolutely clear, and any time that I was suspicious or ... This was always incredibly hard because, without evidence, if I was suspicious, then I would have to cut communication with those people*" (Transcript, Day 3, p.34) **{C/29/10)**

d. D's suggestion that the Duke had "*regular contact*" with Ms English was rejected, and he explained "*I did not have a good relationship with Ms English. Quite the opposite*" (Transcript, Day 3, p.40) **{C/29/11}**. The contact with her, where he thanked her, facilitated by a royal press officer, did not equate to any other sort of more informal relationship.

e. D also referred to a 2017 email exchange in which the Duke of Sussex complained about Barbara Jones **{M/2}** - far from being evidence of her good journalism, the Duke confirmed in re-examination that her journalistic activities on the ground were likely "*Bribes and blagging, pretending to be someone else, getting access to places that she probably shouldn't have access to*" (Transcript, Day 3, p.81) **{C/29/22}**.

477. The evidence provided by the Duke of Sussex gave a coherent and consistent account that he did not share private information with journalists, that he was constrained by "the Institution" (the Palace) which often shielded him from coverage and imposed a "no comment" culture, and that friend/source attribution misled him. It is respectfully suggested that D's legitimate source narrative be rejected. The Duke of Sussex's evidence left no doubt that he was not in a position in reality or constructively to bring a claim prior to the Applicable Date of October 2016.

First Unlawful Article: "The Godfather" {K/175}

478. Katie Nicholl is bylined on this article dated 2 September 2001 in the *Mail on Sunday*. The information contained in this article that Ms Legge-Bourke intended to ask The Duke of Sussex to be godfather to her son, planned to ask Prince Charles next week, and that she and The Duke of Sussex remained very close, was exclusive to the article. The background and key individuals relevant to the First Unlawful Article are set out in the Cs' skeleton argument at §200. The Court is also invited to refer to the Cs' trial matrix for this article.

479. The Duke of Sussex gave written evidence **{F/16/8/§§26-27}** that "*26. No one outside a very close circle would have known this information. Tiggy was not new to media intrusion, she had experienced it since becoming a friend when we were teenagers. This is not something Tiggy would go round shouting about, in fact she would have protected this sensitive information with her life knowing how valuable it is to the tabloids. This story was also pre-empting what was going to happen; it had not happened yet. I therefore believe that the circle of knowledge would have just been me, Tiggy and her husband. The whole point was to ask me if I wanted to, then ask my father if he was happy, and for it then to be announced. 27. My father had not even been notified yet so his office would not have known…It certainly won't have come from any 'official' sources as they weren't aware at this point*."

480. The Duke of Sussex was not asked about this specific article by D during cross-examination, and as a result his evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

481. Ms Nicholl referred to previous reporting in the *Sunday Express* **{K/171}** in her witness statement **{G/38/11/§33.2.2}**, where she drew from that article that "*this was not an exclusive story*". However, it was accepted by Ms Nicholl there was no information about Tiggy Legge-Bourke asking The Duke of Sussex to be godfather

to her son or that she was going to ask Prince Charles the following week in the *Sunday Express* article, which details appeared in her article.

482. Ms Nicholl referred to three deceased individuals when explaining how she sourced this story:

   a. She recalled in her witness statement **{G/38/11/§33.2.2}** that Paul Field passed the story to her, though there are no documents to support this supposed recollection.

   b. She speculated (she was not able to recall) that the information might have come from Lady Elizabeth Anson, a cousin once-removed of the late Queen, aged 60 at the time of this article, in respect of whom there was no evidence of any connection to the young Ms Legge-Bourke. However, this suggestion cannot withstand the unchallenged evidence of The Duke of Sussex to the contrary (as above).

   c. Ms Nicholl also speculated (again having no memory) that she may have run the story past Tara Palmer-Tomkinson also, in her witness statement, but did not seriously maintain that under cross-examination (Transcript, Day 38, p.39, lines 9-13).

483. Having raised him as a possible source for the story, Ms Nicholl sought to minimise her knowledge of Mr Field's use of private investigators as well as his position as her *"mentor",* but was clearly untruthful in her initial response that she was not aware he instructed PIs (Transcript, Day 38, pp.35-36, lines 13-3):

> *Q. And he was, as I canvassed with you, a prolific user of a number of private investigators, wasn't he?*
>
> *A. As you know, Mr Sherborne, Paul Field isn't with us any more, so I'm not -- not able to speak on his behalf, but I was not aware that that was the case.*

Q. I thought we agreed last time, Ms Nicholl, that he introduced you to Mr Whittamore?

A. Yes, he did. Mr Whittamore, who was widely used across the payment you also suggested he introduced me to getting criminal record checks and everything else, which is completely untrue.

Q. But you were aware, weren't you, that Mr Field used a number of private investigators, weren't you, at the time?

A. Well, I was aware that he used Mr Whittamore, because he passed his details over to me.

484. In circumstances where, as set out above, Ms Nicholl's credibility as a witness has been demolished, and in light of The Duke of Sussex's unchallenged evidence, the proven propensity of Ms Nicholl, Mr Field, and the *Mail on Sunday* News Desk led by Mr Dillon[76], to engage private investigators for UIG, and the lack of credible explanation for the exclusive information in the article, the clear inference is that this information was obtained by Ms Nicholl and/or Mr Field (and passed to Ms Nicholl) by UIG commissioned by her and/or him – in the circumstances the most likely form of UIG is voicemail interception.

Second Unlawful Article: "Harry's older woman" {K/297}

485. Ms Nicholl is bylined on the Second Unlawful Article, dated 8 December 2002 in the *Mail on Sunday*. It relates to The Duke of Sussex's relationship with Natalie Pinkham. The background and key individuals relevant to the Second Unlawful Article are set out in the Cs' skeleton argument at §201. The Court is also invited to refer to the Cs' trial matrix for this article.

486. The Duke of Sussex's written evidence in relation to this article **{F/16/9/§29}** is that "*[t]he reality is a very small group of people knew we were close; we did not discuss it outside of a small group for fear of it ending up in the papers and it being*

[76] Mr Dillon accepted he had "possibly" been involved in the discussion and investigation of this story (Transcript, Day 37, p.119, lines 10-17).

blown up into something it wasn't and spun for entertainment. The reference to Natalie being the only one for me I believe is unlikely. Whilst I don't believe that I 'bombarded' her with text messages, I will have been in regular contact. However, no one would have known this detail aside from someone with my call data."

487. The Duke of Sussex was not asked about this specific article[77] by D during cross-examination, and as a result his evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

488. The Duke of Sussex's case is that information contained in the article was obtained by UIG, specifically voicemail interception by or at the instruction of Ms Nicholl and/or the obtaining of itemised phone billing information to ascertain the frequency of contact. The evidence before the Court clearly supports this conclusion:

   a. Ms Nicholl recorded a telephone call with Ms Pinkham which is available at **{K/18}**. Ms Nicholl accepted that Ms Nicholl was "*rather guarded*" (Transcript, Day 38, p.44, lines 4-6). Ms Nicholl initially suggested she was friends with Ms Pinkham, even that she knew her well **{G/38/12/§33.3.2}** but quickly downgraded it to "*acquaintances*" (Transcript, Day 38, p.42, line 7), a characteristic feature of Ms Nicholl's exaggeration of what she claimed to be her relationship with relevant individuals.

   b. Ms Nicholl's notebook containing notes apparently relating to this story is at **{K/291/3}** (transcribed at **{M/17/3}**). However, not all the information in the article is recorded in the notebook (such as the fact that The Duke of Sussex had told his friends that he thought he has a chance of wooing Ms Pinkham or the frequency of contact by text messages) – as Ms Nicholl said, that is "*[a]bsolutely the type of specific information he would have confided to friends and not necessarily recorded in my notebook*" (Transcript, Day 38,

[77] He was asked questions at (Transcript, Day 3, pp. 19-24) about a prior article relating to Ms Pinkham, uncomplained of in these proceedings.

p.48, lines 7-9). The lack of recording in her notes of this information suggests it was not information that Ms Nicholl needed to second-source or verify, because she knew it was correct as it was unlawfully obtained.

c. Ms Nicholl was unable to recall how she had obtained Ms Pinkham's mobile phone number, which was recorded in her notebook **{K/291/3}.** She speculated that it could have come from people who knew Ms Pinkham, or even from Ms Pinkham herself (Transcript, Day 38, p. 48, lines 14-19). Ms Nicholl did not explain how she might have been able to obtain Ms Pinkham's number directly from her, if she did not have any means of contacting her. It should be noted that in the "ectopic pregnancy" episode in relation to Sadie Frost, Ms Nicholl recorded a number of mobile phone numbers belonging to Ms Frost's associates **{K/401/8}.** Next to those numbers Ms Nicholl wrote "Lloyd", which is inferred to be Lloyd Hart of ELI, who had unlawfully obtained those numbers. In the absence of a credible explanation of how she obtained Ms Pinkham's mobile, and from whom, the clear inference is that the number was obtained unlawfully, and it was via that number that Ms Nicholl was able to establish the contact between The Duke of Sussex and Ms Pinkham.

d. In a draft of this article dated 6 December 2002 **{K/296/1}**, Ms Nicholl also felt able to write that the DOS "*send hers* (sic) [Ms Pinkham] *text messages all the time*".

e. Ms Pinkham has categorically and credibly denied Ms Nicholl's account in relation to this article, and denied ever being indiscreet **{H/20}** – evidence on which D has not sought to cross-examine her.

f. Ms Nicholl's oral evidence as to her source for the article was extremely vague (Transcript, Day 38, pp.41; 46}, just as her written evidence was **{G/38/12-13/§33.3}** (in which she implausibly suggested that The Duke of Sussex was showing an unnamed friend his text messages "on at least one

occasion", which friend conveniently then showed Ms Nicholl) – she claims not to recall her sources.

489. In circumstances where, as set out above, Ms Nicholl's credibility as a witness has been demolished, and in light of The Duke of Sussex's unchallenged evidence, the proven propensity of Ms Nicholl to engage private investigators for UIG (and also the propensity of Mr Dillon and the *Mail on Sunday* News Desk for the same[78]), and the lack of any credible explanation for the exclusive information in the article, the clear inference is that this information was obtained by Ms Nicholl by UIG commissioned by her – in the circumstances the most likely form of UIG is voicemail interception.

Third Unlawful Article: "Harry falls for a girl from the Glossy Posse" {K/391}

490. Ms Nicholl and Andrew Buckwell are bylined on the Third Unlawful Article, dated 11 May 2003 in the *Mail on Sunday*. It relates to The Duke of Sussex's relationship with Laura Gerard-Leigh. The background and key individuals relevant to the Third Unlawful Article are set out in the Cs' skeleton argument at §202. The Court is also invited to refer to the Cs' trial matrix for this article.

491. The Duke of Sussex gave clear evidence that he considers it "extraordinary" that the information came into the hands of the press given the privacy he had attached to it and the "tiny" circle of friends who knew **{F/16/10}**. The Duke of Sussex was not asked about this specific article by D during cross-examination, and as a result his evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

492. Mr Buckwell's oral evidence was that his source for this story identified the name "glossy posse" for Ms Gerard-Leigh's group of friends, that she went to an all-girls school, and the school was in the town of Calne, but he did not recall the source

[78] Mr Dillon accepted he had "possibly" been involved in the discussion and investigation of this story (Transcript, Day 37, p.119, lines 10-17).

mentioning her secret visits to Eton and confirmed that not all the information in the article originated from his source (Transcript, Day 37, p.162, lines 8-17).

493. Mr Buckwell also confirmed that as the wording of the article demonstrates, there were multiple cited sources for the information in it (Transcript, Day 37, p.163).

494. Mr Buckwell had clear form in using private investigators to carry out UIG – when at the *Mirror* he instructed Christine Hart to obtain medical information relating to Timothy Taylor and Des Lynham ("*Full M.*") **{K/61.32}**[79], the information relating to Mr Taylor was clearly then used in an article he wrote **{K/119.1}**. He admitted generally that Ms Hart "may have" obtained medical information through subterfuge (Transcript, Day 37, p.166, lines 7-16).

495. Mr Buckwell was also a frequent user of Jonathan Stafford, plainly to carry out unlawful activity, as he knew. Mr Buckwell was taken to records of his instructions to Jonathan Stafford at **{K/38/6; 7; 10; 17}** when he was at the Sunday Mirror, clearly showing him commissioning Mr Stafford to carry out unlawful searches (to be inferred, by blagging the information) such as landline phone conversions, "Meter + telephone itemisation", "airline checks" and itemized phone billing data ("Tele item"). Mr Buckwell simply said he could not remember these searches (Transcript, Day 37, p.189). Mr Buckwell's response when it was put to him that Mr Stafford was a blagger, as he clearly was, was unconvincing (Transcript, Day 37, p.184, lines 2-5): "*A. I -- I wouldn't have described him like that, no, but I mean, he provided information that, you know, I wanted -- you know, helped -- helped with things that I couldn't find, yeah*."

496. Ms Nicholl's written evidence (confirmed orally) is essentially that she has no memory of the article at all but that Paul Field may have passed information on to her for it **{G/38/14/§33.4.3}**. Mr Buckwell similarly **{G/7/3}** could not recall his

[79] Mr Buckwell's evidence in relation to this invoice was illuminatingly evasive (Transcript, Day 37, p.168, lines 4-13): "*A. It records my name against two individuals, yes. It does not necessarily mean that I instructed her. I don't recall instructing her. And it's possible, I think, as you know from my statement, for example, with Timothy Taylor, there's a story on which I'm bylined which we think this invoice relates to, but I don't recall asking her to do it. It may be that someone else did, or that she did some -- some kind of work for it which is then tagged because it's my -- my name was on that story*."

source giving him any other information than essentially identifying Ms Gerard-Leigh (see §9).

497. Paul Field, the desk head, who in Ms Nicholl's account received the information from Mr Buckwell, was also a prolific user of TPIs. For example, Steve Whittamore while at Associated, and whom he personally commissioned to carry out plainly unlawful work such as "Veh Reg" checks – for example **{L/142}{L/707 Rows 673, 953}{L/708 Rows 1763, 1773, 1775, 2237, 2410, 2509, 2728} -** and "blags", for example **{L/708 Rows 1919, 2531, 2688}.** He is also named on numerous Whittamore schedules which include commissioning for mobile phone conversions, Friends and Family requests, blags and ex-directory numbers **{K/1510/18}.**

498. There were a considerable number of payments to Mr Stafford proximate to the date of this article **{L/683}**. There was also a payment to Mr Whittamore by the Mail on Sunday dated the same day as the article, signed by Paul Field, for £530 **{L/263}.**

499. In circumstances where, as set out above, Ms Nicholl's credibility as a witness has been demolished, and in light of The Duke of Sussex's (unchallenged) evidence, the clear propensity of all three of D's journalists (as well as that of the *Mail on Sunday* News Desk and Mr Dillon[80]) involved in this story to use TPIs for UIG, and the absence of any explanation whatsoever for the source of much of the information in this article, the natural and correct inference is that Mr Stafford was commissioned to blag information for the purposes of the article by Mr Buckwell and/or Mr Field and/or Ms Nicholl, and that voicemail interception was also commissioned (most likely aided by the fruit of Mr Whittamore's UIG), which revealed to them the exclusive details of the secret relationship between The Duke of Sussex and Ms Gerard-Leigh.

[80] Mr Dillon accepted he had "possibly" been involved in the discussion and investigation of this story (Transcript, Day 37, p.119, lines 10-17).

Fourth Unlawful Article: "Harry besotted with Chelsy, his 'first true love'" {K/564}

500. Caroline Graham and Barbara Jones are bylined on the Fourth Unlawful Article, published in the *Mail on Sunday* on 28 November 2004. Heather Briley is a freelance journalist who was also working for the Mail on Sunday on this story. It relates to The Duke of Sussex's new relationship with Chelsy Davy and his trip to Argentina. The background and key individuals relevant to the Fourth Unlawful Article are set out in the Cs' skeleton argument at §203. The Court is also invited to refer to the Cs' trial matrix for this incident.

501. The Duke of Sussex was not asked about this specific article by D during cross-examination, and as a result his evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

502. Ms Graham accepted she commissioned Mr Hanks multiple times between 2001 and 2010/2011, including **{L/250}** (authorized by Sian James) **{L/346}**, **{L/542}**, **{L/649}**. The sort of material provided to Ms Graham included social security numbers and other details **{L/369}**. Ms Graham claimed at first that she did not notice SSNs at the time (Transcript, Day 34, p. 55, lines 1-5), however it is vanishingly unlikely that Ms Graham did not notice these which appeared on many documents, especially in the face of Mr Hanks' evidence that he was asked to keep providing this material when it was noted that it had not been (Transcript, Day 12, p.80, lines 8-14), and given Ms Graham herself penned an article exploring the gravity of sharing SSNs **{L/802.2}**. Ms Graham also patently blagged the various individuals listed in Mr Hanks's report of call data of Denise Martell which he provided to Ms Graham **{K/533}** by calling them and pretending to them not to be a journalist. Ms Graham incredibly suggested she had obtained the details in manuscript written next to the various phone numbers on **{K/533}** by ringing and hanging up without introducing herself (Transcript, Day 34, p.130, lines 7-8).

a. Ms Graham and Ms Briley have different accounts of how they located The Duke of Sussex at the El Remanso Lodge in Argentina (Transcript, Day 34, p.71, lines 5-10).

b. Ms Graham knew that The Duke of Sussex had arrived in Argentina on a BA flight accompanied by Mark Dyer **{K/543}** but had no explanation for how she knew these flight details beyond assuming she had seen a photograph (Transcript, Day 34, pp.71-72, lines 22 – 8) – that is despite her earlier evidence being that the information came from an unnamed confidential source (Transcript, Day 34, pp.70-71, lines 19-4), and despite Ms Briley's evidence being that this information came from Alejandro Sangenis **{G/17/4}**.

c. Ms Graham denied responsibility (Transcript, Day 34, pp.73-74) for the photographs sent to her by Ms Briley at **{K/549}** – she had claimed in written evidence **{G/20/9/§12.13}** a belief that "*it was a local photographer who took the photographs when they returned from their trip*", but they were photographs clearly taken by a non-professional, most likely a member of staff on a private plane taking The Duke of Sussex and others to a hunting trip in Argentina, one of which was from inside the cockpit.

d. Ms Graham initially suggested that she had known Ms Davy's name was "Chelsea Davies" by 25 November 2004 (Thursday) (Transcript, Day 34, p.75, lines 14 – 15), but then conceded that she could not have known her surname as the email at **{K/550}** to Mr Wright of that day indicates otherwise (Transcript, Day 34, p.76, line 5). Ms Graham appeared to be over-eager to excuse and explain her knowledge of Ms Davy. In the email at **{K/550}** of 25 November 2004, Ms Graham reported that she had agreed to pay $1,000 for Ms Davy's surname "*and more details*".

e. **{K/551}** is an email from Ms Graham to Mr Dillon and Liz Cocks on 25 November 2004 timed at 7.02pm. It states *inter alia*: "*Chelsea flew out with*

Harry, stayed in the same house as him and is on the plane with him tonight. They got on the plane separately so we need to have someone there who has seen the pix I have sent over tonight. He is in First Class with his protection officers. I believe she is in Business. I only have the name Chelsea" and "*She is on that BA flight tonight so need [your] help at [that] end*."

i. Ms Graham had clearly obtained the flight plans of Ms Davy and The Duke of Sussex as this email reflects. Her explanation that she obtained these details – including where each would be sitting on the plane – from unspecified local freelancers (Ms Graham was unclear in cross-examination whether she maintained that the information originated from sources at the ranch or not (Transcript, Day 34, pp.95-96, lines 16-2) is not credible and should be discarded. Aside from anything else, $1,000 would be a considerable sum to pay a ranch employee or freelancer[81] for information they had picked up legitimately – but makes much more sense in amount in the context of paying an airline employee to carry out an unlawful search of a flight log to access information about a customer.

ii. Mr Dillon obfuscated when presented with the email at **{K/551}** (Transcript, Day 137, p.127, lines 9-18): "*She wanted the British Airways employee to confirm the surname of Chelsy Davy who would have been the only "Chelsea on [that] flight"; that's correct, isn't it? A. She's clearly trying to identify Prince Harry's girlfriend, yes, and she clearly has a contact at British Airways who might be able to inform her of that. Q. By paying for someone to check the system? A. Well, it doesn't say that. Q. You knew that's what she meant, didn't you, Mr Dillon? A. No, I didn't*."

[81] Ms Graham was not sure which, in cross-examination (Transcript, Day 34, p.93, lines 13-14).

iii. The email speaks for itself – Ms Graham discovered this (correct) information as to the couple's flight plans from a paid source at BA – and plainly unlawfully. The Duke of Sussex's third witness statement is clear in his recollection[82] that he and Ms Davy took the same flight out of Buenos Aires on 25 November 2004 (she having a layover in Sao Paolo on her way to Cape Town, in different classes, which explains Ms Graham's accurate information that they "*got on the plane separately*").

f. **{K/559}** – Ms Briley clearly told Ms Graham that she had offered (and was going) to pay a BA employee ("$$") to search (most likely by checking a flight system) for Ms Davy's name – it is to be inferred to confirm her identity[83] (especially her surname which Ms Graham's preceding emails to Mr Wright and Mr Dillon demonstrate she did not know but was eager to obtain).

i. Ms Graham sought to explain this email away by suggesting there might be a prior email from Ms Briley to her which indicated she merely intended to ask a friend for some information (Transcript, Day 34, pp.80-81, lines 21-8). This email was not in evidence and the Court should disbelieve both its existence and Ms Graham's credibility in raising it for the first time on the stand.

ii. Ms Briley amended her witness statement on the eve of giving oral evidence to state **{G/17/5-6/§18}** that her contact, "Adrian", an airport manager in Buenos Aires, did not provide any information to her. But in oral evidence, Ms Briley said (Transcript, Day 39, p.10-1, lines 4-3) that "*He worked for British Airways at the check-in desk*",

[82] Supported by a memorable circumstance of the flight: "*I recall that this was the flight when Chelsy wasn't sitting with me at first (as the mechanics meant she booked separately), until one of my protection officers swapped seats with her so that we could sit together. That's the only time I remember this happening as far as I can recall which is why it stands out.*" **{E/428/2/§4}**.

[83] Vital information to running the story was confirming her exact identity, as Ms Graham volunteered (Transcript, Day 34, p.90, lines 14-18).

and later that "*he'd given us any information, but he told me that he couldn't check the computers because it was confidential information, and I told him, "Well, if you can get any information from anywhere else, let me know"*"[84]. None of this was even in Ms Briley's amended statement, yet was clearly germane to the issue, as Ms Briley knew[85] – regrettably, it appears Ms Briley was adapting her evidence on the stand to bolster her weak case that she did not pay a BA employee unlawfully to obtain information for her. Her willingness to adapt her evidence in this manner indicates that there are very serious issues as to its integrity.

iii. Ms Jones suggested that she was given Ms Davy's correctly-spelt name in her oral evidence. Ms Briley amended her witness statement on the eve of giving evidence to demur from her previous assertion that Ms Jones had been the one to confirm Ms Davy's (correctly-spelled) name, in a patent effort to reconcile her evidence with D's case **{G/17/6/§18}** – her original evidence betrayed her true attempt to divert attention from her own UIG in paying a BA employee for the information.

iv. Ms Jones amended her written evidence to correct an obvious inaccuracy that she was tasked with locating Ms Davy in Cape Town on Saturday 27 November 2004, because Ms Graham's draft article of 26 November 2004 **{K/560}** clearly contains Ms Jones's input. However, Ms Jones cannot have had the correct spelling on Friday 26 November, because the draft article, including her input, has Ms Davy's name spelled incorrectly. Ms Jones accordingly cannot have

[84] Ms Briley was also clearly searching for excuses when she suggested her BA source might have obtained the correctly-spelled name from "airline chatter around the airport" or a "friend in the VIP lounge" – which would not explain the correct spelling pf this unusually-spelled name (Transcript, Day 39, p.22, lines 11-16).

[85] (Transcript, Day 39, p.13, lines 7-8) "*A. Yes, it is true, and I don't know why it's not in my witness statement. I overlooked it.*"

been telling the truth in her evidence that she obtained the name and located Ms Davy by looking at the phone book (Ms Jones accepted that there would have a very large number of different "Davies" in the phone book, and in any event it is preposterous that she found Ms Davy's house by selecting one of the affluent areas of Cape Town and then guessing it was, out of other Davys, BEM Davy – not even Ms Davy's initials but her mother's) – the plausible inference is that she used the services of Mr Behr to locate Ms Davy, as was put to her (Transcript, Day 39, p.37, lines 7-9)[86]. Her strenuous attempts to distance herself from him (including wrongly suggesting in the witness box that she knew nothing of his involvement, despite referring to it in her witness statement) in her oral evidence must be seen in this context.

g. In Ms Graham's first witness statement at §12.14 **{G/20/9-10}** she said: "*As I remember, it was the local freelancers who had contacts at the ranch who were able to clarify the spelling of Chelsy's name and confirm her South African nationality*." – but on the stand Ms Graham admitted (Transcript, Day 34, p.83, lines 23-24) that her Argentine sources did <u>not</u> have the correct spelling of the name.

    i. Ms Briley once again appeared to have amended her written evidence to match Ms Graham's case – miraculously unearthing, the day before her oral evidence, an apparently crystal-clear memory of a phone call she says she made to Ms Graham in which she celebrated getting Ms Davy's name **{G/17/5-6/§18}**. This was not only implausible but internally incoherent, because her amended

[86] Ms Jones suggested she "had nothing to do with Mike Behr" (Transcript, Day 39, p.37, lines 10-11). However, Ms Jones' witness statement stated "*she and Mike Behr (a South African freelancer) had both talked to Joe Osman*" **{G/12/8/§18.13}**. When this was put to her she said "*Tania Coetzee was a photographer that I used. She came with me to Chelsy Davy's house and she told me afterwards that she sometimes worked with Mike Behr. I did not*" (Transcript, Day 39, p. 38). This was plainly defensive and supports the inference that she did, in fact, use him.

evidence claimed that she celebrated the correct spelling, but that her ranch sources had told her an <u>incorrect</u> spelling **{G/17/5-6/§18}**. In oral evidence Ms Briley floundered in an attempt to suggest she had received the correctly spelled name from her ranch sources (Transcript, Day 39, pp.21-22). She was plainly not telling the truth.

h. Ms Graham hardened her speculation in her witness statement that the name had come from the internal hunting flight manifest **{G/20/9-10}** to saying in oral evidence (Transcript, Day 34, p.88, lines 14-16) "*somebody at the ranch -- I know who it was -- looked at the manifest, and that's when we finally got the spelling of Chelsy Davy*". She said she or someone else then contacted Barbara Jones with the correct spelling (Transcript, Day 34, p.88, lines 22-23). As well as being highly improbable that a flight manifest from a hunting trip around a week previously (on 20/21 November) would have been the source of Ms Davy's name, when Ms Graham had by her own admission been working her sources at the ranch very hard but without success up to Friday 26 November 2004, this cannot be correct because Ms Jones's input into the article can already be seen in the draft article Ms Graham circulated at **{K/560}**. Ms Briley's written and oral evidence did not corroborate that the spelling came from any flight manifest, despite the ranch sources being "hers".

i. Ms Graham had no explanation for the information that The Duke of Sussex had spent weekends with Chelsy in Cape Town during the summer (Transcript, Day 34, p.96).

j. Mr Dillon could not explain the **{K/559}** email (Transcript, Day 37, pp.129-130, lines 25-5): "*It's clear, isn't it, that Ms Briley was paying an employee at British Airways to find of surname for you? A. When you say for me, I don't agree with that, I -- Q. For the Mail on Sunday. A. -- I'm not cc'd into that email, I didn't receive that email*."

503. The evidence and chronology relating to the Fourth Unlawful Article is relatively involved – not least because D's witnesses gave inconsistent, and repeatedly shifting, evidence on key issues related to it – but the documents and key dates reveal a simple explanation for how Ms Graham and Ms Briley obtained[87] Ms Davy's full and correctly-spelt name: Ms Briley paid a BA employee to search flight records and pass her the information, which was plainly unlawful for her to commission and for the BA employee to provide. This is what **{K/559}** (in combination with the draft article at **{K/560}**) shows – as above, D's witnesses have tied themselves in knots to try to avoid the simple (but highly incriminating) explanation which appears on the document and have no credible alternative explanation.

504. No credible explanation has been offered either for how The Duke of Sussex and Ms Davy's (correct) flight details were obtained by Ms Graham as recorded in **{K/551}** – it is clearly to be inferred that, as foreshadowed on the face of **{K/550}**, she paid for them to be obtained unlawfully. No explanation at all has been proffered for how information that "*Harry spent discreet weekends with Chelsy in Cape Town during the summer while he was working with AIDS victims in Lesotho*" – indeed D's journalists have explicitly denied responsibility for that information. It is to be inferred that those journalists or Mr Dillon's News Desk obtained that information by UIG also.

505. Following the intervention of the judge on Day 39 to inquire as to whether confirmation could be obtained as to whether Ms Davy was on the British Airways flight from Buenos Aires on 25 November 2004 with The Duke of Sussex (Transcript, Day 39, p. 76, lines 13-25, p. 77, lines 1-11), The Duke of Sussex served a supplementary witness statement in which he said he believed that Ms Davy was on the flight with him out of Buenos Aires **{E/428/2/§4}.** He recalled her swapping seats with one of his protection officers so she could sit with him, and

[87] And as Mr Dillon must have known, as was put to him (Transcript, Day 37, p.126, lines 20-24; p.130, lines 18-21). Mr Dillon was as he accepted clearly very involved in this story (Transcript, Day 37, p.127, lines 19-23).

that there was a stop or layover before flying onto Heathrow. The Duke of Sussex's supplementary evidence about Ms Davy moving into first class to sit with him, and swapping seats with a protection officer, aligns with the information provided by Ms Graham in her memo to Mr Dillon of 25 November at 7:02 PM. *"He is in First Class with his protection officers. I believe she is in Business."* **{K/551}.** The Duke of Sussex also stated his belief that Ms Davy did not travel onwards to London with him.

506. In response, D served Richmond 44 protesting about the delay in providing this information, ignoring the fact Sussex 3 was served solely in response to the Judge's observation and to assist the Court. Ms Richmond stated that Sussex 3's suggestion that Ms Davy disembarked at an "unspecified stop over point" before travelling on to Cape Town was not corroborated by information D had been able to identify in the time available.

507. However, in response, Cs provided a short note to the judge and Galbraith 33 **{E/428.4; E/428.3}**, and disclosed a copy of British Airways timetable for November 2004-March 2005, which had been located via a simple Internet search. That document showed that British Airways Flight 246 which would have left Buenos Aires on 25 November 2004, would have had a stopover in Sao Paulo, Brazil **{E/428.3}**[88]. From there, Ms Davy would have picked up a connecting flight to South Africa. The Cs believe that in conjunction Sussex 3 and the disclosed timetable provide compelling and conclusive evidence that Ms Davy was on the British Airways flight which departed Buenos Aires, and therefore that her name was obtained unlawfully via Ms Briley's contact at BA.

[88] In support of Richmond 44, D disclosed an article from Merco Press dated 2 October 2003 reporting that British Airways had increased the number of weekly flights from Buenos Aires to London from three to four, and that the flight number of the outgoing flight was BA0246 **{M/55}** – the same flight number as that on the flight schedule disclosed by C **{E/428.3}**

Fifth Unlawful Article: "HOW HARRY FELL IN LOVE" {K/580}

508. Ms English is bylined on the Fifth Unlawful Article, dated 2 December 2004 in the *Daily Mail*. It relates to the early development of The Duke of Sussex's relationship with Chelsy Davy. The background and key individuals relevant to the Fifth Unlawful Article are set out in the Cs' skeleton argument at §204. The Court is also invited to refer to the Cs' trial matrix for this article.

509. The Duke of Sussex's written evidence in relation to this article **{F/16/11-12/§§43-44}** includes the fact that "*Information about my relationships was guarded by me the most zealously which therefore meant it was the most valuable asset. This was the early days in my relationship with Chelsy. She did not go round telling people, nor would I share private information with strangers around a campfire*."

510. The Duke of Sussex was challenged as to this evidence, it being suggested to him that the account of a campfire discussion of his relationship with Ms Davy in his memoir **{K/2338/6}** was the same incident as that reported by Ms English in this article (Transcript, Day 3, p.46, lines 19-22). However, his response put paid to that notion entirely – the individuals around the fire on the occasion recounted in his memoir were three of his closest friends whom he had known for many years. The article recounts by contrast that The Duke of Sussex "*began pouring his heart out to the three <u>strangers</u> sitting beside him*" (emphasis added). It is not credible, and seemed not seriously to be suggested to The Duke of Sussex, that one of these three close friends he identified in his memoir was the source of this article (Transcript, Day 3, pp.46-47). The Duke of Sussex's evidence that he would not disclose information to <u>strangers</u>, therefore, stands effectively unchallenged.

511. D's case as to the sourcing of this article does not stack up.

a. Ms English asserted in her witness statement **{G/19/9/§23.1.2}** – as was put to The Duke of Sussex – that the campfire element of the article had been retold by him in his memoir. But as above, and given the article reported on

details not included in the memoir, it is incorrect that the two accounts reflect the same event.

b. Ms English also relied in her witness statement **{G/19/9-10/§23.1.3}** on a number of prior reports to speculate that she might have gathered some of the information about Chelsy Davy joining The Duke of Sussex in his gap year in Argentina in the article from them – but as was demonstrated to her in cross-examination, none of these reports contained the details in the Fifth Unlawful Article.

c. Ms English said that this was "widely reported" **{G/19/9/§23.1.3}**. However, the articles relied upon by Ms English do not have the same level of detail as in the Fifth Unlawful Article so cannot account for its sourcing[89]. Ms English did not dispute this but suggested these were just "*a number of examples I would have used at the time... not exhaustive or conclusive*." (Transcript, Day 31, p.31, lines 23-24).

d. In particular, Ms English stated as a *fact* (as opposed to it being "believed") in the Fifth Unlawful Article that The Duke of Sussex "*secretly paid of Chelsy to fly from South Africa to join him*" **{K/580/1}**. Ms English stated, despite there being no evidence of the same that there were other stories, that the information was "*reported in other papers*", when in fact it had merely been speculated about in one article, and without the tell-tale word "secretly" **{K/568}**. It is to be inferred that Ms English could only confirm this as fact (something which she said was an important part of her journalistic method) by unlawful means, namely engaging Mr Behr to blag flight information (see section above in relation to Ms English's propensity to use Mr Behr for that illicit purpose).

[89] **{K/563}**, News of the World; {K/567}, Mirror; **{K/569}**, Telegraph; **{K/576}**, Express; **{K/577}**, Sun; **{K/578}**, Sun; and **{K/568}**, Sun.

e. Similarly, the information that Ms Davy had "*whisked* [The Duke of Sussex] *off to Robben Island*" and the fact that The Duke of Sussex travelled back to Cape Town to see Ms Davy "*at least twice*" was similarly exclusive and likely to have been obtained unlawfully, as was also put to Ms English (Transcript, Day 31, pp.80-81, lines 22-1).

f. Having also referred to the Palace press office as a potential source of information, Ms English confirmed in oral evidence that "*No, it was very basic details they confirmed…not the level of detail that's in the article. That was obtained from other articles and also from freelancers working on the ground*." (Transcript, Day 31, p.37, lines 3-13). Ms English could not confirm who the supposed local stringers she consulted were (Transcript, Day 31, p.38).

g. Ms English's transcribed notebook **{K/534.1/2; 15}** indicates she consulted Mike Behr in connection with this story, and that she obtained private flight information as to the make and model of the plane and the cost of the flight, (recorded on **{K/534.1/15}** from him), which it was Mr Behr's speciality to blag.

h. Ms English made much of her fastidious fact-checking **{G/19/6/ §15}**, yet apparently included details in the Fifth Unlawful Article: i) as to what The Duke of Sussex had said about Ms Davy around a campfire from a completely unverified (as Ms English admitted – Transcript, Day 31, p.24) unnamed tipster to the News Desk from a supposed "stranger round the campfire"; and ii) that "*the couple kept in touch by mobile phone and e-mail*", which Ms English asserted was simply an assumption (Transcript, Day 31, p.82, lines 6-7). In light of the (obvious) need to get stories right, neither of her explanations are credible – far more likely is that she obtained this information through illegitimate means, including through unlawfully accessing phone billing data.

i. The information as to the contact by phone and email is more likely to have been derived through phone billing data and other forms of unlawful information gathering, than included merely as an "assumption". The information as to the campfire story, as was put to Mr Greenhill, is far more likely to have been obtained through unlawful means, in particular voicemail interception (Transcript, Day 40, pp.70-79), not least given Mr Greenhill's propensity for commissioning UIG[90]. Mr Greenhill did not, in fact, even recall the content of the supposed anonymous tip passed to him, only the fact of it (Transcript, Day 40, p.72, lines 16-17). However, the campfire account represents only a part of the information which is exclusively in this article.

512. In the premises of The Duke of Sussex's effectively unchallenged evidence as to the privacy attaching to the information in this article, the propensity of Ms English and Mr Greenhill to commission UIG to feed their stories, and the lack of credible explanations for how the story was sourced, the proper inference is that the unexplained items of information were sourced unlawfully, as set out above.

<u>Sixth Unlawful Article: "It's the army or me, Harry" {K/614}</u>

513. Ms Jones is bylined on the *Mail on Sunday* article "*It's the army or me, Harry*" dated 6 February 2005. The background and key individuals relevant to the Sixth Unlawful Article are set out in the Cs' skeleton argument at §205. The Court is also invited to refer to the Cs' trial matrix for this article.

514. The information in this article, as The Duke of Sussex's evidence **{F/16/12/§§45-49}** attests, went into an extraordinary level of detail, was not the sort of thing he and Ms Davy, who were careful and suspicious, were sharing, and could only have been obtained unlawfully, most likely from phone records of communications

[90] Cs refer to Cs' skeleton argument at §§330-333 relating to Mr Greenhill's clear commissioning of ELI to carry out UIG in relation to articles he wrote about Sally Anderson and David Blunkett **{K/688}** and **{K/692}**. This episode was put to Mr Greenhill at (Transcript, Day 40, pp.11-62) – he had no convincing answer to Cs' case that he clearly engaged ELI to blag bank and other data to feed those articles and admitted that he "probably" made a "blag call" to the estate agents where Ms Anderson worked (Transcript, Day 40, pp 45-46).

between the two of them. The Duke of Sussex was not asked about this specific article by D during cross-examination, and as a result his evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

515. D has effectively proffered no substantial evidence in response to this claim.

a. Ms Jones, despite being bylined on the article, denies writing it, stating that her only involvement was to obtain quotes from one Joe Osman (Transcript, Day 39, pp.39-40, lines 24-1), said to be a friend of the Davy family.

b. Ms Jones also claims Sebastian Hamilton "pieced together", or wrote (it is unclear between her written and oral evidence – **{G/12/7/§18.11}** and (Transcript, Day 39, p.39)).

c. Mr Dillon has no memory of the article at all (Transcript, Day 37, p.131) but accepted that he "may have been" involved in the discussion and investigation of the story (Transcript, Day 37, p.131, lines 13-17).

d. Even Ms Jones's account of gathering just the information from Mr Osman is utterly implausible. Ms Jones emerged for the first time under cross-examination (Transcript, Day 39, pp.41-42) with new evidence as to how Mr Osman is said to have known Shaun Davy – being his alleged occasional cannabis supplier, she said – which must be treated with proper scepticism, not having been included in her witness statement. It cannot have happened – and Ms Jones cannot truly have believed that it happened – that Mr Osman elicited the detailed quotes in this article by appearing at Ms Davy's house unannounced in 20 minutes. Ms Jones had no explanation for this, and resorted to wild speculation that Mr Osman might somehow have had "leverage" to obtain the information because of his relationship with Shaun Davy (Transcript, Day 39, p.48, lines 23-25). Despite this, Ms Jones

insisted that Mr Osman "clearly was an authentic source" (Transcript, Day 39, p.56, line 14).

e. The truth is that Mr Osman could not and did not provide Ms Jones with the information she says he did, as was put to her (Transcript, Day 39, p.55, lines 24-25)[91]. Even if he did (having fabricated it himself) and she was merely credulous in believing him, it is impossible that such information (which did not even cover all of the quotes in the article) would not have needed to be double-checked given the circumstances in which it was said to have been obtained. As was put to Mr Dillon (Transcript, Day 37, p.131, lines 21-24), it is to be inferred that he and/or others at the *Mail on Sunday* News Desk commissioned UIG, including via the instruction of System Searches **{L/37/1-2}**, to feed this article.

516. In light of the major lacuna in D's evidence as to how this article was sourced, The Duke of Sussex's unchallenged evidence as to the privacy attaching to the information in the article, the likely involvement[92] and propensity of Mr Dillon and the *Mail on Sunday* News Desk to use UIG as set out above, it is to be inferred that the information in this article was gathered unlawfully and/or was sought to be corroborated by unlawful means.

<u>Seventh Unlawful Article: "I'm mad about Harry" {K/712}</u>

517. Ms English is bylined on the *Daily Mail* article "*I'm mad about Harry*" dated 2 January 2006. The background and key individuals relevant to the Seventh Unlawful Article are set out in the Cs' skeleton argument at §206. The Court is also invited to refer to the Cs' trial matrix for this article.

[91] Supported by The Duke of Sussex's evidence in his third witness statement [**E/428/2 §5}** that "*I have also been told that Chelsy was not in the house when it was said that Joe Osman visited her brother Shaun Davy in February 2005. This was confirmed by Mr Davy as he as the only person present and let Joe Osman in as he was supposedly dropping off a gift (photo frame) and said he knew Shaun from Mozambique. Mr Davy had never met, spoken to or seen Joe Osman before*."

[92] As was put to Mr Dillon (Transcript, Day 37, p.131, lines 21-24).

518. The Duke of Sussex's written evidence in relation to this article includes the fact that "*The information in this article, particularly about my feelings, the fact we were on holiday together, and the present I gave Chelsy, were very private and would only be known to a very tight circle, if not just Chelsy and me*." **{F/16/13/§51}.** The Duke of Sussex was not asked about this specific article by D during cross-examination, and as a result his evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

519. Ms English suggests the source may be that referred to in her notebook at **{K/534/19}** – in direct and implausible contradiction to The Duke of Sussex's unchallenged evidence above. In her witness statement Ms English said "*I think that a freelance journalist … was out in Mozambique at the time and came to the Daily Mail with the story …*" **{G/19/12/§24.2}**. Yet when confronted with the fact that the number of the freelancer she had identified in her notebook {K/534/19} as the likely source was not a Mozambique number, Ms English demurred (Transcript, Day 31, p.86, lines 10-14): "*A. No, I said in my statement that I think it could have come from this person, but I can't be 100% sure. I think there were a number of sources for this particular story, and I think this might have been the person, but I can't -- I can't be 100% sure*".

520. Ms English suggested the information about the "*bracelet that she* [Ms Davy] *was showing off*" came from an unnamed "*contact I had through somebody who worked on the island, and…a freelance journalist who provided some information*" (Transcript, Day 31, p. 87, lines 5-8), but there are no payment records for this supposed contact, or other corroborating details. It is simply a bare assertion. Similarly, Ms English's assertion that a hotelier in Mozambique whom she had met 18 months previously had happened to gather (Ms English did not suggest that The Duke of Sussex and Ms Davy had been staying with that hotelier) all the detailed information in the article him/herself, and then pass it on to her, is implausible, as was put to her (Transcript, Day 31, p.87, lines 13-19).

521. Ms English's account under cross-examination was vague and scattered - when confronted with the implausibility of one of her many mooted sources for the article, she shifted emphasis to another (e.g. (Transcript, Day 31, p.87, lines 13-24), which indicates a conscious attempt to obfuscate the true source[93]. As was put to Ms English, it is suspicious that no proper record whatsoever from her many various suggested sources exists, that she was unwilling even to name the freelance journalists she says may have been involved, and that – in stark contrast with similar stories – no payment was apparently necessary to gather this detailed information from purported local sources (Transcript, Day 31, pp.91-92).

522. Similarly, the "*worries that once he joins a regular Army regiment he could be posted anywhere in the world*", Ms English confirmed in oral evidence that she does not have a document to support that assertion. As was put to her, the more likely explanation is that the confessional and emotional information Ms Davy is said to have imparted to a friend was obtained through voicemail interception (Transcript, Day 31, pp.88-89, lines 11-7).

523. There were payments around this time to ELI **{K/1533}** (see rows 573 to 585), in early January 2006 which strengthen the inference that that company was engaged to carry out UIG, including voicemail interception, and obtain the information in the article, for which Ms English had no properly credible alternative explanation.

Eighth Unlawful Article: "Let her rest in peace" {K/935}

524. Ms English is bylined on this article in the *Daily Mail* dated 15 July 2006. It concerns The Duke of Sussex's confidential communications with his brother concerning the fallout from intrusive pictures of their dying mother published in

[93] See also (Transcript, Day 31, p.90, lines 18-25): "*... you have no plausible explanation, Ms English, as to how that very private information, which was shared with very few people, has found its way into your article. A. Shared with very few people who clearly, through sources, relayed it to me. I cannot remember, given that this was 25 years ago, who they were, but I'm telling you now that is how that would have come about.*"

an Italian magazine. The background and key individuals relevant to the Eighth Unlawful Article are set out in the Cs' skeleton argument at §207. The Court is also invited to refer to the Cs' trial matrix for this article.

525. The Duke of Sussex gave evidence **{F/16/13/§55}** that "*[m]y brother and I... were having private conversations about photographs of our dead mother which had been put into the public domain... [t]he amount of information and detail in this article would not have come from Clarence House*". The Duke of Sussex was not asked about this specific article by D during cross-examination, and as a result his evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

526. Ms English's account of her sourcing of this article in written evidence {G/19/14-15} was implausible: somehow, she inferred from the simple, straightforward statement issued by the Princes **{L/416.1}** that Prince William might have been acting alone, and an unnamed Royal press officer then provided her with the information as to the Princes' intimate feelings and conversations about a highly emotional and private issue <u>after</u> the Princes had already issued a press release (containing the information they wished to be made public), and provided this only to Ms English and not to any other newspapers, who nearly all covered this story and would have been provided with the information, if it was being given freely by a press spokesperson.

527. Her written evidence suggested that the information from the Press Office was that "*Prince William had taken charge and telephoned Prince Harry and they were of the same mind on this issue. The press officer confirmed that it was a highly emotional call for both of them and that they had the full support of their father*" **{G/19/15/§25.3}** – but the article also included the fact that The Duke of Sussex and Prince William had not seen the actual photographs in question, which was a significant fact **{K/935}**.

528. In oral evidence the credibility of Ms English's account did not improve. When presented with the unlikelihood of a press officer putting out sensitive details of the kind included in the article, Ms English simply proffered the generality that "*I have a good relationship with the press office, they know I will handle information fairly and sensitively*" (Transcript, Day 31, p.103, lines 2-4) – which, unless all the other press who were no doubt seeking comment off the back of the same Clarence House press release are thought to have had poor relations with the palace press office, does not explain why she alone was supposedly so favoured, especially given how junior she was at the time of this article (only 18 months previously, she had apparently needed all the help she could get sourcing stories from colleagues like Sam Greenhill in the Fifth Unlawful Article).

529. Nor was the information accurately described by Ms English as "background guidance" (which would more likely have been provided to the press more generally) – it was specific and sensitive information about an emotional private phone call between the brothers and its contents. Attributing it as she did to a "source close to them" also needlessly obfuscates if the source was truly from the palace press office itself (i.e., a high-quality source) (Transcript, Day 31, pp.104-107).

530. More likely, given The Duke of Sussex's unchallenged evidence and the propensity of Ms English and other at the *Daily Mail* News Desk at the time to commission UIG, is that the contemporaneous payments to JJ Services **{K/1533/JJ Services Tab/Rows 93-95}**; **{L/334/140;144-147}** [94] .

Ninth Unlawful Article: "Harry and Chelsy's love at the crossroads" {K/970}

531. Ms Nicholl is bylined on the *Mail on Sunday* article "*Harry and Chelsy's love at the crossroads*" dated 17 September 2006. The background and key individuals

[94] As part of the modus operandi of the News Desk whereby information was accessed by individuals and shared around those to whom it would be useful, as occurred in relation to the Fifth Unlawful Article on D's own case (Transcript, Day 31, pp. 109-111).

relevant to the Ninth Unlawful Article are set out in the Cs' skeleton argument at §208. The Court is also invited to refer to the Cs' trial matrix for this article.

532. Once again, The Duke of Sussex's evidence is that this information must have come from UIG in relation to his and/or Ms Davy's phone records or voicemails **{F/16/14}**. The Duke of Sussex was not asked about this specific article by D during cross-examination, and as a result his evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

533. Ms Nicholl has some information in relation to this story in her notebook **{M/19/3}**, which Ms Nicholl attributes to a freelance journalist ("RJ"). But as Ms Nicholl accepted (Transcript, Day 38, p.55, lines 9-20), these notes, purportedly recording what the journalist had told her, do not include references to key information in the article such as that "*[t]he love-struck couple spent hours on the phone last week after Chelsy decided she did not want to move to the UK*".

534. Nor was this precise detail (spending hours on the phone last week) among Ms Nicholl's notes at **{M/20/3}**. Ms Nicholl suggested the information at **{M/20/3}**, and in particular that "*they've been discussing their future over the phone*", originated from Garth Gibbs **{G/38/16/§33.5.4}**, (another deceased individual) who was at the time an elderly and seriously unwell man living alone with his cat on the Isle of Wight and who had left South Africa before Ms Davy was born. Despite having said so in her witness statement, Ms Nicholl accepted (Transcript, Day 38, p.58, lines 16-22) that it was a "*fair assumption*" that it was "*highly implausible that this 70-year old semi-recluse living in the Isle of Wight, and being very ill, would have been sufficiently close to Ms Davy to have known the intimate details of her private communications with Prince Harry*" – but equally implausibly suggested that he had introduced Ms Nicholl to a young relative of his who conveniently was close friends with Ms Davy. The suggestion this source was a relative of Mr Gibbs was raised for the first time in Ms Nicholl's cross-examination – she stated in her written evidence that the source was Mr Gibbs "and/or" a friend

of Ms Davy. Ms Nicholl giving this evidence for the first time in oral evidence should be treated with serious scepticism, especially given her absence of credibility (see section above).

535. Ms Nicholl unrealistically suggested that the information about phone calls and their length was from the unidentified "*young lady in South Africa*" who knew Ms Davy who was so close to her that she could "*know that Chelsy had been speaking to Harry for hours on the phone, without a doubt*" (Transcript, Day 38, p.59, lines 15-18).

536. Ms Nicholl could not be sure whether she used System Searches for this story or not (there are a number of proximate payments to the date of this article in evidence: **{K/1534 – see "System" tab, Rows 621-633}**.

537. In circumstances where, as set out above, Ms Nicholl's credibility as a witness has been demolished, and in light of The Duke of Sussex's unchallenged evidence, Ms Nicholl's propensity for commissioning UIG, and the lack of any plausible explanation for the sourcing of this story, it is to be inferred that the Duke of Sussex and/or his associates were targeted through unlawful searches of phone data, including by System Searches, and voicemail interception.

Tenth Unlawful Article: "Princes and Palace clash on 'all-night' Diana party" {K/1089}

538. Ms Nicholl is bylined on this article in the *Mail on Sunday*, dated 20 May 2007. The background and key individuals relevant to the Tenth Unlawful Article are set out in the Cs' skeleton argument at §§293 – 296. The Court is also invited to refer to the Cs' trial matrix for this article.

539. Both Mr Furnish and The Duke of Sussex directly addressed this article and incident in their witness statements: see Second Witness Statement of David Furnish, §§47 – 50 {**F/13/11**}; Second Witness Statement of The Duke of Sussex, §§58 – 59 **{F/16/14}**. Their evidence included that communications concerning Sir

Elton's attending the party in question would have been private, directly between the Duke of Sussex and Sir Elton, and likely involved voicemails being exchanged between them. None of Sir Elton, Mr Furnish or The Duke of Sussex was asked about this specific article by D during cross-examination, and as a result their evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

540. Mr Dillon, Deputy News Editor at the time, addressed the article it in his First Witness Statement, saying he had no specific memory of the article or whether he was involved in sourcing it: §§52 – 53, **{G/30/13}**.

541. Ms Nicholl speculates about a number of possible sources for this story in her First Witness Statement: §33.66 – 33.6.3 **{G/38/17 – 18}**. During cross-examination, she was clear that she could not actually recall if Lady Elizabeth Anson had been such a source: Transcript, Day 38, p.62, lines 4 – 7. She also accepted that although the memorial concert for the Duke's mother, Princess Diana, had been covered by the press, the party which her article revealed details of had in fact been kept secret (this being the whole point of her article), that she had not disclosed or referred to a single article relating to these events, and that she had no contemporaneous notes concerning it: Transcript, Day 38, pp.62 – 64, lines 22 – 11.

542. In circumstances where, as set out above, Ms Nicholl's credibility as a witness has been demolished, and in light of the matters set out above in relation to Ms Nicholl's propensity, Sir Elton and Mr Furnish submit that they have made out their case that the information in question was, as was put to Ms Nicholl, obtained by voicemail interception: Transcript, Day 38, p.64, lines 18 – 23.

Eleventh Unlawful Article: "Harry takes Chelsy on a make-or-break holiday" {K/1136}

543. Ms English is bylined on this article in the *Daily Mail* dated 8 December 2007. It concerns The Duke of Sussex's holiday and travel plans with Ms Davy. The background and key individuals relevant to the Eleventh Unlawful Article are set out in the Cs' skeleton argument at §210. The Court is also invited to refer to the Cs' trial matrix for this article.

544. The Duke of Sussex's evidence is that neither he nor Ms Davy were sharing private information, such as the information contained in this article with others, and further that the only conceivable way to find out his flight details was to do so through his partner (Ms Davy) because he flew under a pseudonym **{F/16/15}**. The Duke of Sussex was not asked about this specific article by D during cross-examination, and as a result his evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

545. Ms English's recollection of her sources for this story in her written evidence was simply not credible **{G/19/15-18}**. She suggests "students at Leeds" provided her with the information, but it is implausible that a student at Leeds University could have done so to the level of detail contained in this article. Ms English states that she only remembers Mr Behr giving her innocent-sounding information about flights **{G/19/18}**, but the contemporaneous evidence directly contradicts this notion.

546. In cross-examination, Ms English did not identify the supposed student sources, and accepted that "*they wouldn't know exact details, and clearly this article isn't detailed, but they would know roughly what was going on*", when in fact the article does contain detailed information about the couple's plans and international movements, as well as their innermost feelings about each other (Transcript, Day 31, p.113, lines 11-13). Ms English thinks it "*possible*" (no more) that one cash payment of £200 (11 days after the article) was to such a student **{K/1140}**, but

her memory was extremely hazy (Transcript, Day 31, p.116, lines 13-25). The proper inference is rather that this cash payment with the payee disguised was for unlawful information gathering in relation to this story, as was put to Ms English (Transcript, Day 31, p.117, lines 8-15).

547. It is not credible that unidentified sources at Leeds University would know this level of detail and be able to provide it to Ms English[95], with no records of their having done so (Transcript, Day 31, p.115, lines 19-22) – certainly not without Ms English corroborating what she was told by some other means she does not mention in evidence (as was put to her (Transcript, Day 31, p.115-116)) – not least given The Duke of Sussex's unchallenged evidence as to the privacy he and Ms Davy maintained over such matters.

548. Ms English's reliance on another report **{K/1135}** as supporting an assumption that the information in her article might have been given to more than one newspaper cannot withstand scrutiny – her article contains more details than the other (Transcript, Day 31, pp.120-122).

549. As to the travel plans specifically, the article states that "*the couple will fly out this weekend*", so 9 or 10 December 2007. An email from Mike Behr at **{K/1134}**, which includes material that clearly relates to a flight blag, shows the flights departing on 9 December 2007 and arriving 10 December 2007, which is exactly what is said in the article. The information in the *Daily Star* article (which Ms English suggested may be a tip) merely identifies a break over (unidentified dates later in) the New Year **{K/1135}**.

550. Ms English's challenge in cross-examination shows how her position is unbelievable (Day 31, p.123, liens 15-23):

[95] Nor is Ms English's office acting as a sort of drop-in clinic for Leeds Students down in London a credible picture, as she attests (Transcript, Day 31, p.115, lines 3-7).

Q. Ms English, you read this email [{K/1134}], which you deny now, didn't you, at the time?

A. I've made very clear in my evidence I do not remember receiving this email. I do not remember reading it, because it's so uncharacteristic of anything that I -- any discussion I ever had with Mike Behr and I would also strongly suggest the information in my article bears no resemblance to what is in that email, which reinforces my belief that that's the case.

551. Simply describing an email as "uncharacteristic" does not diminish the inevitable conclusions that: i) Ms English did read the email, and ii) Ms English had commissioned Mr Behr to provide the (inevitably unlawfully-gathered) information in it to her. Clearly, people do not only read emails which are "characteristic", and (with respect to him) mercenary individuals such as Mr Behr plainly would not provide information to a journalist unless on the understanding it was wanted, and would be compensated-for. This can also be inferred from the wording of the email which indicates a prior arrangement that Mr Behr would provide the information: "*its confirmed with sear numbers. Maybe you and Duncan can plant someone next to her?*".

552. In light of The Duke of Sussex's unchallenged evidence as to the privacy attaching to this information, the lack of plausible explanation for the sourcing of the information in the article relating to Ms Davy's feelings about the relationship (including a lack of plausible explanation for the £200 cash payment, which most likely related to unlawfully obtained information), and the transparent documentary evidence that Mr Behr had unlawfully obtained and provided to Ms English the flight plans of Ms Davy (and thus also The Duke of Sussex, who flew under a pseudonym and whose flight details would thus be more difficult to blag), it is plain that The Duke of Sussex and Ms Davy were targeted for UIG in connection with this article.

Twelfth Unlawful Article: "Harry moves in with Chelsy" {K/1236}

553. Ms Nicholl is bylined on the *Mail on Sunday* article "*Harry moves in with Chelsy*" dated 24 January 2010. The background and key individuals relevant to the Twelfth Unlawful Article are set out in the Cs' skeleton argument at §211. The Court is also invited to refer to the trial matrix for this article.

554. The Duke of Sussex's evidence in relation to this article was that it raised "*Not just concerns for our privacy, but serious security concerns too given the details of sleeping location, likelihood of seeing me more at her apartment than Clarence House. Nicholl discloses a disgusting amount of personal information that could have quite clearly only been obtained through unlawful means, such as having Chelsy or us both under surveillance.*" **{F/16/15/§67}**. The Duke of Sussex was not asked about this specific article by D during cross-examination, and as a result his evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

555. Ms Nicholl's memory as to the sourcing of this story was, as usual, poor. She was prompted, she said, by looking at her notes **{M/21/4}**, which notes she attributes to a conversation with a confidential source or sources. These notes, as Ms Nicholl accepted (Transcript, Day 38, p.67-68, lines 17-10), do not contain key information included in the article, such as that The Duke of Sussex was staying every weekend at Ms Davy's flat, that she had given him keys, and that the private protection officers were staying in London (despite her witness statement suggesting that some of this information was contained in her notes **{G/38/18/§33.7.2}**).

556. Having suggested in her written evidence that "*I was shown screenshots of some of Prince Harry's posts and messages*" **{G/38/19/§33.7.3}** (for which there are no surviving records) – Ms Nicholl changed this evidence on the stand and was speculative and much less definite: "*the source of this information, and would*

sometimes send me screenshots from Chelsy -- Chelsy's Facebook page and Harry's" (Transcript, Day 38, .68, lines 19-21).

557. Ms Nicholl's suggestion that she had other notes relating to this story was similarly not credible, when her notes appear to be linear and grouped by subject in her notebooks – as was put to her (Transcript, Day 38, pp.70-71).

558. In circumstances where, as set out above, Ms Nicholl's credibility as a witness has been demolished, and in light of The Duke of Sussex's unchallenged evidence, Ms Nicholl's proven propensity for commissioning UIG, and the lack of documentary record or proper explanation for key information in the article (as was put to Ms Nicholl), the clear inference to be drawn is that Ms Nicholl commissioned UIG, including voicemail interception, to obtain that information.

<u>Thirteenth Unlawful Article: "Harry cooks up a reunion over dinner at Chelsy's" {K/1630}</u>

559. Ms Nicholl is bylined on the *Mail on Sunday* article "*Harry cooks up a reunion over dinner at Chelsy's*" dated 9 October 2011. The background and key individuals relevant to the Thirteenth Unlawful Article are set out in the Cs' skeleton argument at §212. The Court is also invited to refer to the Cs' trial matrix for this article.

560. The Duke of Sussex's written evidence in relation to this article is that "*[t]he information referred to in this article was private and would have only been known by Chelsy and me, or a close friend of each of ours. I was not sharing private dinner conversations with anyone. It would have likely been picked up from communications between us, or our communications to a close friend*" **{F/16/16/§69}**. The Duke of Sussex was not asked about this specific article by D during cross-examination, and as a result his evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

561. Ms Nicholl again referred to her notes **{M/22/3}** as demonstrating the legitimate sources of this story – but those notes once again do not contain key information in the article such as the fact that The Duke of Sussex and Chelsy Davy were having dinner, a quiet night in at her flat, the fact that she'd invited him over for a Friday night dinner, that he stayed until the early hours. Ms Nicholl suggested her source was a freelancer with their own source for such information, but, as was put to Ms Nicholl, this does not properly explain why the freelancer would themselves need to be confidential, and thus un-testable by Cs, in these proceedings (Transcript, Day 38, pp.74-75).

562. Indeed, the notes at **{M/22/3}** apparently relating to this story are akin to a report, of what was being said after the event about the conversations that were had between The Duke of Sussex and Ms Davy, but do not contain any reference to the fact that they were having a private dinner in her flat, the fact that she'd invited him over, she was cooking for him, and so on. More plausible than Ms Nicholl's poorly recollected account is that her notes record the contents of the voicemails that were passed between The Duke of Sussex and Ms Davy after the dinner in the flat – which explains why Ms Nicholl's written notes do not record these additional details.

563. Ms Nicholl – clearly prompted by seeing a payment of £500 to one Holly Millbank **{K/19/Row 23}** – has also suggested that information may have come from her for the article – but there is no record of Ms Nicholl receiving any such information.

564. In circumstances where, as set out above, Ms Nicholl's credibility as a witness has been demolished, and in light of The Duke of Sussex's unchallenged evidence, Ms Nicholl's proven propensity for commissioning UIG, and the lack of documentary record or proper explanation for key information in the article (as was put to Ms Nicholl), the clear inference to be drawn is that Ms Nicholl commissioned UIG, including voicemail interception, to obtain that information.

Fourteenth Unlawful Article: "Prince Harry faces lonely New Year's Eve after girlfriend Cressida flies to Richard Branson's private island without him" {K/1927}

565. Ms English is bylined on the *Daily Mail* article "*Prince Harry faces lonely New Year's Eve...*" dated 27 December 2013. The background and key individuals relevant to the Fourteenth Unlawful Article are set out in the Cs' skeleton argument at §213. The Court is also invited to refer to the Cs' trial matrix for this article.

566. The Duke of Sussex's written evidence **{F/16/16/§71}** is that the information as to Ms Bonas's movements was likely derived from tracking her or blagging information about her flight. It was suggested to The Duke of Sussex in cross-examination (Transcript, Day 3, pp.51-57) that emails from a palace press secretary to Ms English appearing to relate to this story **{K/1937}** demonstrated the free-flow of information and guidance from the palace to journalists like Ms English. What these emails in fact show is that it was only in the most egregious of circumstances (where *The Sun* had published a story about Ms Bonas attending Sandringham, which was flatly wrong and required to be corrected) that the Palace would provide information. Mr Loughran makes quite clear that the norm was that information would not be provided: "*I'm afraid there isn't any guidance I can give on the Necker story this time. So over to the quality of your sources on this one. Sorry about that - I think you know why, but mainly it's because we get umpteen stories put to us about [The Duke of Sussex] and [Cressida Bonas] each week, we have to try and retain a degree of privacy for them. It's just yesterday's story ... was so prominent and so wide of the mark!*". This email demonstrates, contrary to D's case, the efforts the Palace took to protect the Princes' privacy[96] and normal habit of refusing requests for information, unless a pre-existing publication was "so wide of the mark" that it required public correction.

567. The key documentary thread relating to this article is set out as follows:

[96] Notable also in the context of the Eighth Unlawful Article, where Ms English implausibly suggested guidance as to a private phone call between the Princes had been given to her by the palace press office.

a. There was a call at 10.23am on 16 December 2013 at **{K/2440/Row 324}** from Ms English to Mr Behr.

b. **{K/1911}** in an email of 16 December 2013 at 4.38pm, Mr Behr emails Ms English "*I've done all the checks I can today & I'm certain the plane that's due to fetch hasn't left CT yet & is only scheduled to do so on the 19th. I'll check daily in case that changes. I also have no indication that she is coming to CT. By tomorrow I will know if he is due to stay on in CT or fly back to UK. Do you want me to keep an eye on it for you this week?*". At 4.40pm, Ms English states to Mr Behr "*let's see what turns up tomorrow. And thanks*". Mr Behr's searches involved the movements of The Duke of Sussex and Ms Bonas, but he confirms to Ms English that he had no information yet about Ms Bonas.

c. **{K/1912}** Ms English replied again to Mr Behr's initial email of 16 December 2013 and informs him that "the charity" have said his team will be in Cape Town "by Friday" – that is, Ms English giving Mr Behr a steer as to vague timings. Mr Behr is plainly instructed to seek out more specific information than "the charity" was offering as to The Duke of Sussex and Ms Bonas's travel plans. When put to her that these emails show she wanted to know whether Ms Bonas was coming out to be with The Duke of Sussex, Ms English reluctantly accepted "*I can't remember what I asked at the time about it, but he's -- I think that must be a reference to it, but once*" (Day 31, pp.130-131, lines 22-25).

d. **{K/1913/2}** on 18 December 2013 at 8.11am, Mr Behr confirmed to Ms English that The Duke of Sussex "*arrives CT tonight & departs London tomorrow night*".

e. **{K/1913/2}** later on 18 December 2013, Mr Behr confirms the flight as "*BA 58 departing CT 20h45 arriving 6.30am*". Ms English initially stated there was

only one flight a day and so this information was outbound per day from Cape Town, and so it must have been the only one. However, there were two BA flights alone from Cape Town to Heathrow: **{L/64.69.5}**, **{L/775.0.1}** and **{L/771.2}**.

f. **{K/1915}** on 19 December 2013 at 10.08am, Mr Behr confirms there is "*No reg of her at hotel*". Ms English confirmed, again reluctantly, that this was likely a reference to Ms Bonas, though she was bizarrely unable to accept that "reg of her at hotel" meant "register": (Transcript, Day 31, p. 142-143, lines 22-19). No mention of the "no reg of her at hotel" is made in Ms English's witness statement. Ms English suggested that was because it was "not of interest to me" Day 31, p. 145, lines 19-22.

g. There are also calls and texts on 19 December 2013 between Ms English and Mr Behr at **{K/2440/Row 325*ff*.}**.

h. **{K/1918/2}** on 20 December 2013 Mr Behr confirmed again the flight for The Duke of Sussex would be BA 58. In these emails arranging payment Ms English and Mr Behr demonstrate a telling reluctance to specify what the "assistance" Mr Behr had provided was in an email (as was put to Ms English at (Transcript, Day 31, pp.147-148).

i. In January 2013, just into the new year after his instruction, Mr Behr had an email exchange with Ms English about payment for his work for her **{K/1945}**. He complains about the payment received not "cover[ing] the info provided" - which can only refer to the blagged flight and hotel information he had given Ms English – and his obvious reticence about committing an explanation of his activities to writing is extremely suspicious ("*I think you know exactly what I mean….*"; "*I really don't want to go into why I'm asking for more in an email*"; "*not for time spent but for going out on a limb*"). These emails speak for themselves, but Ms English had no serious answer to this, beyond implausibly suggesting that she had no idea what he was talking

about, bare denials, and vague complaints that Mr Behr was unpleasant to speak to on the phone (Transcript, Day 31, pp.56-64). It is not credible at all that Ms English would simply have acquiesced to a request for more money which she now seeks to portray as being unreasonable and not even understood by her.

568. The inferences from this thread are obvious (and bolstered as ever by The Duke of Sussex's evidence as to the privacy of the information in the article and Ms English's propensity to commission UIG on other occasions) – Mr Behr was unlawfully obtaining the travel information (including flight details and hotel registrations) of The Duke of Sussex and Ms Bonas in her efforts to pin down their movements for Ms English, which information was used to write the Fourteenth Unlawful Article about their pre-Christmas plans, which reported on those movements.

Sadie Frost Law

Sadie Frost Law's oral evidence

569. Ms Frost Law was the third of the Cs to provide witness evidence, on 26 January 2026 (Day 6).

570. Ms Frost Law was honest, candid and, as she put it aptly in re-examination, spoke "from the heart". While she showed understandable distress as to the D's actions and the demands of the process, she was determined to ensure accountability for what she characterisation as to its dishonesty and refusal to take accountability.

571. The questions Ms Frost Law was asked focused on the D's limitation defence and little challenge was made as to her substantive unlawful information gathering claim. The central theme of the D's cross-examination as to the substantive claim was that Ms Frost Law had "leaky friends" who had been encouraged to impart information to the media through prior reporting. Ms Frost Law explained:

a. That on the occasions where her family spoke to the press they were speaking after newspapers had exposed private information to the world, rather than volunteering it. Specifically:

   i. As to quotes featuring in an article written by Sharon Feinstein, dated 23 September 2001, attributed to Ms Frost Law's sister **{K/176}** (Transcript, Day 6, pp. 9 - 10), Ms Frost Law explained that her sister was not "revealing anything personal" and that the context was her sister was an actress who could not avoid answering questions in interviews she was giving as to her own career. She made clear that the articles in her claim were of a very different nature and her sister was not privy to much of the information that featured in the pleaded articles.
   ii. D put an article to Ms Frost Law in which her mother was quoted commenting on her post-natal depression **{K/319}** (Transcript, Day 6, pp.10-14). Ms Frost Law explained that her mother was commented on this after this medical matter had already been reported upon by the media. In summary, she was not doing anything unlawful or disclosing anything "revelatory". A further article was put to her in a similar vein **{K/419}** to which she provided the same explanation.
   iii. Finally, the Defendant put two articles to Ms Frost Law concerning her father speaking to the media **{K/330}** and **{K/635}**. She made clear to the Court that she was estranged from her father such that he was not privy to information as to her private and family life and that he was very unwell which the media exploited until his death.
   iv. Ms Frost Law highlighted that she did not accept that the above encouraged members of her circle to provide information to the media (Transcript, Day 6, pp.19 -20).

b. That if publicists did speak it was to quell media interest, rather than to generate it (Transcript, Day 6, pp.18;27 -28).

c. That she strove to avoid giving private information in the context of promoting her work and projects. D referred to a The Sunday Times interview dated 7 March 2004 **{K/446.1/4}** which it asserted personal information as her relationship with Jackson Scott. Ms Frost Law firmly rebutted that: the interview was likely to be a promotional piece and she was not revealing intimate details (Transcript, Day 6, pp. 29 -32). A further instance **{K/615}** was put, an interview in The Observer dated 6 February 2005. Again, Ms Frost Law highlighted that her comments were made after such matters had been very widely publicised (Transcript, Day 6, pp. 33 - 38).

572. The evidence provided by Ms Frost Law gave a consistent account that the articles (and incidents) featuring in her claim were extremely private and known to very few people. D did not seriously challenge that key proposition. Given the overwhelming majority of Ms Frost Law's evidence was therefore left unchallenged, it stands to be preferred to the D's reliance on flimsy and implausible sources (including a large amount of information provided by freelance journalists whom D has chosen not to call in support of its Defence) and/ or very limited recollections (except when convenient) and/ or speculation.

First Unlawful Article: "Jude Law plans to sue club over his daughter's Ecstasy tablet..." {K/286}

573. The First Unlawful article was bylined to Nick Pryer in the *Mail on Sunday*, dated 13 October 2002. Mr Pryer was cross-examined in relation to this article on Day 34 of the trial (Transcript, Day 34, pp.133-148). The article concerns a distressing incident involving Ms Frost's young child at Soho House and included details of the medical aftermath, legal steps and the strain in the relationship between Ms Frost and Mr Law. The background and key individuals relevant to the First Unlawful Article are set out in the Cs' skeleton argument at §§108-111. The Court is also invited to refer to the Cs' trial matrix for this article.

574. Ms Frost Law's evidence as to this article specifically was unchallenged in cross-examination[97]. Mr Law's and Mr Jackson's evidence as to this article was unchallenged also. Ms Frost explains the article provides "accurate and very specific" details including private medical steps which, tellingly, were not ultimately undertaken **{F/18/13/§53}**. Mr Law was abroad filming with poor signal and so Ms Frost and Mr Law relied heavily on voicemails to discuss the incident: **{F/18/13/§54}, {F/7/2/§5}, {F/8/2/§§6-8}**. As Mr Law notes, some of the private information cannot have conceivably come from anywhere other than a voicemail message or conversation **{F/8/2/§§8}**, particularly given his remote whereabouts at the time. Mr Jackson gives similar evidence as to the extensive use of Mr Law's voicemail facility at the time **{F/7/2}**. None of these witnesses having been asked about this specific article by D during cross-examination, as a result their evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

575. Mr Pryer's evidence was, with respect to him, of very limited value because he denied any knowledge of how the information in it was sourced, and had very little memory of his role in the article at all – save that, as he guessed, he was simply provided some quotations, by one of his editors at the time (Ms James, Mr Pyke, or Mr Bevan) which he thought came from a freelancer but did not independently verify, and wrote up those quotations into the copy for print (Transcript, Day 34, pp.137-141). There is no evidence available to the Court in respect of their contribution/s.

576. Much of the sensitive information in this article was exclusive, as Mr Pryer accepted, despite his witness statement **{G/3/4-5/§§11-12}** having intimated that

[97] Ms Frost Law was asked questions in general terms about similar reporting of the ecstasy tablet incident (Transcript, Day 6, pp. 21-26), where it was suggested implausibly that prior reporting on the story would have encouraged her friends to share intimate and private information with the press.On the contrary: "*I was isolated, holed up at home, distressed, and trying to be a good mum. So I don't understand how I would be talking to friends, because I was not going out*" (Transcript, Day 6, p. 23).

the article's contents were already in the public domain (Transcript, Day 34, p.136):

> *Q. -- so, for example, the fact that Mr Law was now actively planning to sue Soho House?*
>
> *A. Yes.*
>
> *Q. That he had said he would boycott Soho House and would urge his associates to do so?*
>
> *A. Mm.*
>
> *Q. The fact that there was considerable tension between them and he was unhappy. That was information that is not to be found in the cuttings that you refer to in your witness statement?*
>
> *A. That's correct.*

577. There is accordingly effectively no evidence from D as to how this article was sourced. Mr Dillon claimed to have no recollection of the article, though he remembered the story (Transcript, Day 37, pp.137-138, lines 19-8)

578. Mr Pryer mentioned for the first time on the stand that "*Well, also provided to me in the bundle was an invoice from a freelance writer*..." (Transcript, Day 34, p.140, lines 3-10). This invoice has not been identified by D and accordingly Cs cannot confirm if it has been disclosed to them. Had such an invoice existed then Mr Pryer would likely have been taken to it in re-examination, this did not happen The Court should treat as suspicious a failure to disclose a material document such as this invoice would be, if it exists.

579. The *Mail on Sunday* features desk were users of PIs such as Jonathan Stafford to blag information. Sian James noted in 18 October 2011 that Mr Stafford was "*known in the features department as a blagger*" **{K/1573/2}** and that he was regularly used by them. Mr Pryer said this about Mr Stafford in cross-examination – very notably, he did not answer directly when asked whether Mr Stafford was a

blagger or not, it is to be inferred, because he clearly knew that he was and preferred not to say so (Transcript, Day 34, pp.146-147, lines 11-3):

Q. And were you aware of his use by the features department?

A. Yes.

Q. He was a blagger, wasn't he?

A. I'll tell you what I and we as a department used him for was to find names and addresses and phone numbers of people that we wanted to interview.

Q. And lists of call data as well?

A. I can't remember ever doing that, no.

Q. And you gave him a name -- a mobile number, and he gave you the name of the person whose number it was?

A. I can't remember it with mobile numbers particularly, but reverse telephone directories, yes.

Q. And ex-directories as well?

A. Yes.

Q. But you don't know the methods that he used to obtain them, do you?

A. I don't know the methods he used to obtain them…

580. In light of the clear and (effectively) unchallenged evidence of Ms Frost Law, Mr Law and Mr Jackson, the lack of any proper evidence whatsoever as to the sourcing of the article – in particular, the exclusive information as identified above – from D, and the propensity of the *Mail on Sunday* features desk to commission UIG, the Court can and should infer that the *Mail on Sunday* features desk commissioned UIG (most likely by means of blagging and voicemail interception) targeted at Ms Frost Law and/or her associates to obtain such information for the purposes of this article.

<u>Second Unlawful Article: “Kate has touch of Frost for new baby” / “Model Kate will have her baby christened with a …” {K/289}</u>

581. The Second Unlawful Article was bylined to Victoria Newton, and published in the *Daily Mail* dated 19 October 2002. The article concerned private communications between Ms Frost Law, Kate Moss and Mr Law, in particular a private request for Ms Frost Law and Mr Law to be godparents to Kate Moss' newborn child and that the christening would take place after Mr Law got back from filming in Romania. The background and key individuals relevant to the First Unlawful Article are set out in the Cs' skeleton argument at §§112-115. The Court is also invited to refer to the Cs' trial matrix for this article.

582. Ms Frost Law's unchallenged[98] evidence is that the information in the article was "*true, private and very specific information*" **{F/18/4/§56}**. Again, this was at a time when Ms Frost and Ms Moss, and Ms Frost and Mr Law were exchanging voicemail messages. Ms Frost kept the matter very private **{F/18/4/§57}**. Ms Frost Law was not asked about this specific article by D during cross-examination, and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

583. Ms Newton herself had propensity for commissioning UIG[99] There are three ELI payments that Ms Frost Law contends support an instruction of ELI by the *Daily Mail* Showbiz department in respect of this incident **{K/1561 – see rows 36,38 and 39 of the "Express" tab}**

18-Oct-02	CIN1	2404205	0498 SHOWBIZ ENQUIRIES	-217.38
24-Oct-02	CIN1	2406874	0566 SHOWBIZ RESEARCH	-264.38
25-Oct-02	CIN1	2432985	0573 RESEARCH SHOWBIZ	-82.25

[98] Ms Frost Law was asked whether she provided information to Victoria Newton – she affirmed she did not (Transcript, Day 6, p.165, line 24 – p.166, line 1).
[99] See Cs' trial matrix for the Second Unlawful Article which sets out documentary evidence as to Ms Newton's propensity under item 11.

584.D has proffered no evidence to rebut Ms Frost Law's claim in relation to this article. The Cs generally invite the inference that Ms Newton in particular has not given evidence for D because her evidence would not support D's case. Ms Newton is the current editor of *The Sun* and therefore eminently contactable, but D has not provided a reason for why she is unavailable to give evidence. The information in this article was private, specific, and not, as D contends (without supporting evidence), a "matter of obvious inference", not least as, as Mr Law notes **{F/8/2}** the key event of he and Ms Frost Law being asked to be godparents did not, in the event, happen. Given Ms Newton's and the *Daily Mail* features desk's propensity for commissioning UIG, the obvious inference is that she and or the features desk did so to target Ms Frost Law on this occasion, specifically by instructing ELI, most likely to blag information and facilitate voicemail interception of her and her associates, to feed the Second Unlawful Article.

<u>Third Unlawful Article: "The smiley show – Their marriage in turmoil" {K/347}</u>

585.The Third Unlawful Article was bylined to Nicole Lampert, and published on 5 February 2003 in the *Daily Mail*. The article concerns detail of Ms Frost Law's marital breakdown, in particular her prescription of anti-depressants and sleeping pills, an argument on 3 February 2003, and wanting to give an outward impression of happiness. The background and key individuals relevant to the First Unlawful Article are set out in the Cs' skeleton argument at §§116-119. The Court is also invited to refer to the Cs' trial matrix for this article.

586.Ms Frost Law's evidence as to this article includes that **{F/18/14-15/§§60-63}**:

> "*...The Mail's article published details of that which barely anyone knew as I was so paranoid. tried to call them and pretended to be someone else to get information.*

The article says "friends" told the Mail my prescription details but only Kate, Zoe, Jude and my mum knew, and I believe we exchanged voicemail messages about this, but I do not believe any of them would have said anything to anyone. What's really odd is that I did not even take the sleeping pills.

I used pseudonyms in some doctors' surgeries in order to protect my privacy and security

...

I do not believe that Jude was living with us at this time so we were in regular contact on various things on our landlines and leaving voicemails for each other. I believe that this must be how they learnt that we had an argument the day before and the other details given that this was not something discussed by us openly with others."

587. Ms Frost Law was not asked about this specific article by D during cross-examination[100], and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

588. Mr Law also gave unchallenged evidence **{F/8/2-3/§§12-14}** including that "*[a]ll these little details – "the only thing they've agreed on at the moment is to do whatever's best for the children" – from my point of view, this is extremely private and very true. I wouldn't have even discussed this with Ben. I might've exchanged such feelings in voice messages or calls with maybe with my mum and dad, but definitely with Sadie. The information referring to Sadie being prescribed antidepressants and sleeping pills and the "row the night before" is again very private and very specific*".

[100] Ms Frost Law was asked in re-examination whether she provided information to Ms Lampert and she confirmed she did not (Transcript, Day 6, p.166, lines 4 – 5).

589. Ms Lampert's memory of the article is weak and her evidence amounted to nothing more than speculation. She said in oral evidence that "*my best guess is that I would have spoken to Sharon [Feinstein] mostly, but maybe also the photographer to get an impression of what he saw, and then from Sharon to understand what was going on, and the story from the day earlier was one that Sharon I think had given me as well*." (Transcript, Day 32, pp.111-112, lines 22-2).

590. Ms Lampert accepted that the fact that a row had occurred the night before was not information that could have been gleaned from the photographs (Transcript, Day 32, p.113, lines 15-23).

591. Ms Lampert suggested in her witness statement the prescription of sleeping pills was either "old news" or from Ms Feinstein **{G/22/11/§19.2.5}** – in her oral evidence she did not know which (Transcript, Day 32, p.114, lines 12-14). Clearly reporting of some information in this article was not "old news" because it reported on an argument "the night before", but in any event no cuttings have been identified by D which contain this information. Ms Lampert suggested she thought it would have been "*higher up in the story if it was a new element*" (Transcript, Day 32, p.115, line 1) but this was pure speculation.

592. Ms Lampert then remarkably modified her position under cross-examination to say that "*I believe I would have obtained it* [the information as to sleeping pills particularly] *from Ms Feinstein*" (Transcript, Day 32, p.115, line 15) though there are no notes in relation to or payments to Ms Feinstein, but that Ms Feinstein "*told me who the person was and as -- as Sadie has in her witness statement, it is, as she suspected, someone very close to her, someone who was giving money -- selling stories for money and also I think probably had a interesting relationship with Sadie and her feelings towards Sadie*" (Transcript, Day 32, p.116, lines 8-13). There is also no evidence from Ms Feinstein notwithstanding D's reliance upon her.

593. Ms Lampert did not identify who that source was, but Ms Frost Law is clear that it was not just a case that "close friends" knew, only "*Kate, Zoe, Jude and my mum knew*" **{F/18/14/§61}** – and she was not challenged on that evidence at all. Accordingly, and entirely implausibly, Ms Feinstein's supposed source would have had to be one of these individuals, who are inherently unlikely to have been seeking payment for regular leaks of information about Ms Frost Law. Ms Lampert's description of Ms Feinstein's purported source does not match these individuals (see Transcript, Day 32, p.116, lines 10-13: "*...someone very close to her, someone who was giving money -- selling stories for money, and also I think probably had an interesting relationship with Sadie and her feelings towards Sadie*"). No evidence was provided by Ms Feinstein, who was the alleged source for this and several other pleaded articles and episodes relating to C. D has provided no explanation about why Ms Feinstein was unable to provide evidence. It is however clear that D appears to have often accepted information from Ms Feinstein without scrutinising the source of the same, which is entirely consistent with the fact that she was providing information obtained through voicemail interception (as Ms Lampert knew). The use by Ms Lampert and Ms Nicholl of Ms Feinstein is addressed in detail above.

594. In light of Ms Lampert's propensity to commission UIG, and the unchallenged evidence of Ms Frost Law and Mr Law as to their communications and the privacy attaching to the information, it is inherently likely that the information in this article, including sensitive medical information, was not obtained legitimately through Sharon Feinstein or a photographer (given Ms Frost Law's and Mr Law's evidence as to the very limited number of individuals who knew of the information) but by unlawful means and in particular most likely by voicemail interception of messages between Ms Frost Law and Mr Law, as was put to Ms Lampert (Transcript, Day 32, p.116-117), whose denial must be treated with extreme scepticism given her lack of any real recollection. If, as Ms Lampert insists, Ms Feinstein was a source of information, then it is likely that she gathered that information by such unlawful means, which Ms Lampert knowingly received, as above.

Fourth Unlawful Article: "Welcome to the Sadie & Jude show" {K/406}

595. Alison Boshoff is bylined on the Fourth Unlawful Article, dated 19 July 2003 and published in the *Daily Mail*. The article concerns detail of Ms Frost Law's marital breakdown and divorce. The background and key individuals relevant to the Sixth Unlawful Article are set out in the Cs' skeleton argument at §§120-122. The Court is also invited to refer to the Cs' trial matrix for this article.

596. Ms Frost Law was confiding privately to close friends (often by voicemail) at the time **{F/18/15-16/§§64-70}** – see for example at §66 "*The article also reports on what I was saying privately. I kept it quiet as I was proud and did not want to admit to people what was going on. I tried to put a brave face on but I would confide in my friends Kate, Zoe and Holly. I often left them emotional voicemails as I was not in a good way…*". Ms Frost Law was not asked about this specific article by D during cross-examination[101], and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

597. The extent to which Mr Law kept matters private relating to his divorce is dealt with in his own witness statement **{F/8}** and also in the unchallenged witness statement of Mr Jackson **{F/7/2/§7-8}**.

598. Ms Boshoff candidly accepted that her written evidence **{G/18/4/§14}** that "*It is absolutely possible that 'Welcome to the Sadie & Jude Show' was based entirely on cuttings*" was simply wrong (Transcript, Day 36, p.127, lines 18-21). She also accepted that a source, whom she cannot remember consulting for this article[102] but claims was a friend of a friend of Ms Frost Law and Mr Law, did not mirror how

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[101] Ms Frost Law was asked in re-examination whether she provided information to Ms Lampert and she confirmed she did not (Transcript, Day 6, p.166, lines 4 – 5).

[102] See also Transcript, Day 36, p.130, lines 7-9.

the article itself described its source, namely a "friend" and "someone in Ms Frost's camp" (Transcript, Day 36, p. 129, lines 4-6), and later also that her witness statement was "imprecise" in its description of her speculative source (Transcript, Day 36, p.132, line 13).

599. There is thus no substantial evidence from D before the Court whatsoever as to how the article was sourced and where the information came from. The simple and correct conclusion is that the speculative source – the friend of a friend – was not the source cited in the article.

600. Ms Boshoff initially suggested she did not need to engage a private investigator for this article because she would not have needed to knock on any doors – but that was incorrect, as she admitted, because the evidence shows clearly that she also used private investigators for other purposes (Transcript, Day 36, p.113, lines 6-14; p.157, lines 16-19). Ms Boshoff also suggested that she was not in a position to have instructed a private investigator in relation to this article because she was a freelancer at the time of writing it[103] – but this was also wrong, as she instructed Jonathan Stafford on 30 September 2002, after she started working for D as a freelancer on a retainer **{L/191}**[104].

601. Ms Boshoff was a habitual user of private investigators, plainly for the purpose of commissioning UIG from them:

   a. Ms Boshoff continued to be in contact with Mr Stafford long after the "PI ban" in 2006/2007: there is a surviving record of her contacting him by phone in 2013 **{K/2440/Row 295}**. Tellingly, despite suggesting only a remote connection to Mr Stafford, Ms Boshoff referred to him as "Jonathan" in her oral evidence (Transcript, Day 36, p.161, line 2). Ms Boshoff admitted to getting ex-directory numbers from Mr Stafford – it is highly likely that she

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[103] (Transcript, Day 36, p.157, lines 20-24).

[104] She also accepted that she could easily have asked a colleague to instruct an enquiry agent on her behalf when freelancing (Transcript, Day 36, p.158, lines 11-16). Caroline Graham also confirmed that freelancers could instruct PIs (Transcript, Day 34, p. 51, l. 11-20)

also instructed him for the other unlawful services he provided to D, such as itemised phone bills (e.g. as at **{K/361}**, as indeed Ms Boshoff accepted he may have done (Transcript, Day 36, pp.154-155, lines 25-2) - she tellingly sought to row back from that admission immediately afterwards).

b. Ms Boshoff also admitted to using Christine Hart[105], including for blagging information and to stand up stories, and described her as an enquiry agent and journalist, but admitted that Ms Hart's corporate entity "Warner Detective Agency" should have been a clue as to her activities, which was plainly an attempt mask her true knowledge (Transcript, Day 36, pp.149-154). **{K/129}** shows Ms Hart in use by the Daily Mail Showbiz department from 1998.

c. JJ Services/Steve Whittamore. Mr Whittamore of course used the email "blag2049@hotmail.com" **{L/334/159}** (see also the memo on Whittamore {K/2033.2}). Ms Boshoff appears in Mr Whittamore's "Yellow Book" **{K/1.1/Row 8}** as having commissioned Mr Whittamore on at least five occasions, including for plainly unlawful activity – occupancy searches, friends and family searches, and obtaining ex-directory numbers. Ms Boshoff implausibly refused to accept that she had ever commissioned Mr Whittamore even when presented with absolute proof that she had (Transcript, Day 36, pp.144-145). It is clearly the case that the article by Ms Boshoff at **{L/107.1}** relating to Julia Jones correlates to Ms Boshoff's instruction of Mr Whittamore for an occupancy search in relation to "Julia Jones" at **{K/1.1/Row 10}** and a related, unlawful Friends and Family search at Row 11 .

602. In light of the unchallenged evidence of Ms Frost Law, Mr Law and Mr Jackson, the (often by her own admission) unsatisfactory explanation from Ms Boshoff for how

[105] Corroborated by Ms Hart's interview with Mr Hanning at **{L/783/15}** in which she refers to working for Ms Boshoff specifically.

the article was, and was not, sourced, and Ms Boshoff's proven and admitted propensity for commissioning UIG, this article is to be inferred to have been fed either by a blag call and/or voicemail interception by a private investigator, targeted at Ms Frost Law or her associates and commissioned by Ms Boshoff.

Fifth Unlawful Article: "Keep that girl away from our kids!" {K/422}

603. Ms Nicholl is bylined on the Fifth Unlawful Article, dated 2 November 2003 and published in the *Mail on Sunday*. The article concerns detail of Ms Frost Law's relationship with Mr Law and their communications, in particular detailing a "heated telephone conversation" in which Ms Frost Law told Mr Law she did not want Ms Miller to be seen as a second mother to their children, and for Mr Law to keep Ms Miller away from their children, all of which was exclusive. The background and key individuals relevant to the Fifth Unlawful Article are set out in the Cs' skeleton argument at §§124-133. The Court is also invited to refer to the Cs' trial matrix for this article.

604. Ms Frost Law's written evidence as to this article is clear that the information in it was highly private and was only being confided by her to close friends on the phone; she was shocked at its appearance in an article **{F/18/16/§§71-73}**. Mr Law's unchallenged evidence is also telling and poignant **{F/8/3/§§15-17}**:

> "*I remember the dialogue of Sadie telling me to keep Sienna away from the kids. That is very specific, and not something I would say to a journalist, or anyone else. It was a private conversation or communication between us in a voice message.*
>
> *I didn't, and I don't today, have a group of friends I confided these things in. There's a certain amount of embarrassment when it comes to divorce. You're slightly embarrassed and you want to move on, until someone goes "you know, a lot of people get divorced". You feel like a freak. By 2003, we*

had to a degree been forced to play it out in public, and so I was even more private. I was consciously aware of "who's heard this", "goodness there's a leak", and "be careful". I wasn't sharing stuff like this willy-nilly."

605. Ms Frost Law was not asked about this specific article by D during cross-examination[106], and as a result her evidence (along with that of Mr Law) regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

606. Ms Nicholl suggested her source (SFL5-A) was a friend of Sienna Miller, and apparently not a freelancer.

607. The notes in Ms Nicholl's notebook are at **{K/400}**, where SFL5-A is redacted. Ms Nicholl kept a log of payments to this source at **{K/429}** (see the redaction at the top of the page on **{K/429/1}** – Ms Nicholl accepted these payments were to SFL5-A (Transcript, Day 35, p.103, lines 15-19; p.104, lines 13-15). One of these payments at {K/429/2} clearly relates to this article – "*£1000 – Sadie – get that girl out of my house (outstanding)*". Some can be paired up with stories, such as "[redacted] *to move in with boyfriend* [redacted]" with "*Sophie* [Dahl] *moves in with her new man Dan*" **{L/262.1}**. Other pieces of information from SFL5-A plainly also do not relate to Sienna Miller or MS Frost Law's "set" – such as information about "Prince William's birthday party"[107]. It is therefore highly unlikely the individual Ms Nicholl asserts was the source was in fact a friend of Ms Miller and able to provide this kind of highly detailed and sensitive information in relation to her[108] – SFL5-A is quite clearly a freelancer or general gossip tipster, who was making regular and significant money (if not a living) selling stories to Ms Nicholl, and no doubt others, to judge by **{K/429/1-2}**.

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[106] Ms Frost Law was asked in re-examination whether she provided information to Ms Nicholl and she confirmed she did not (Transcript, Day 6, p.166, lines 2 – 3).

[107] And others appearing to relate to all kinds of individuals and stories – "necklace", "acting school, "jug of water".

[108] Interestingly, Charlotte Griffiths' written evidence is that her "circle" adjacent to the royal family (so she says) were quite separate from celebrities like Elton John and so on **{G/11/7/§14.3}**.

608. The article refers to a “heated telephone conversation”. **{M/18/5}**, Ms Nicholl’s notes transcribed, includes some details ("*She was kissing Rafferty which sent her mad; Sadie has been on the phone to Jude non-stop; She's got daggers out for her; She doesn't want*.") but does not refer to the “heated telephone conversation” in which the quote referred to in the article was spoken, nor does it name the source. Ms Nicholl also, for the first time, suggested that “*If I'm speaking to a confidential source, I'm not likely to put that name in my notebook. If I'm speaking to an agent or a publicist or someone else, I will probably put that name down*.” (Transcript, Day 35, p. 112, lines 17-23). This is despite the fact that she wrote her sources down regularly e.g. **{M/18/6}**. Ms Nicholl also suggested that not noting the source on this occasion was to “protect her”, but did not explain when asked who she was protecting the source from (Transcript, Day 35, p.112-114), and indeed she named SFL5-A on the following page at **{M/18/6}**. Her excuse that she was trying to protect SFL5-A was patently nonsensical and was invented to evade scrutiny of the true source of her information for this article.

609. As was put to Ms Nicholl, it is also apparent on the face of the article that some of the information in it originates from Ms Frost Law’s “side” (as opposed to Sienna Miller’s), e.g. the paragraph “*Sadie ... has told the Hollywood start that she does not want Sienna to be seen as a second mother to their children*” **{K/422}** – for which Ms Nicholl had no explanation as to how that squares with SFL5-A being her source beyond extremely vague assertions that she would try to second-source where she could, and may have spoken to an unidentified other party but has no notes of it (Transcript, Day 35, pp.114-115, lines 19-4).

610. Ms Nicholl’s supposed sourcing for the article is incoherent and illogical, and plainly evasive. In circumstances where, as set out above, Ms Nicholl’s credibility as a witness has been demolished, and in light of Cs’ unchallenged evidence, the plainly highly intimate and private nature of the information relating to phone calls in the article, and Ms Nicholl’s proven propensity for commissioning UIG (and that of Mr Dillon and the Mail on Sunday News Desk, who may be inferred to have been

involved in discussing and sourcing this story also[109]), far more likely was that Ms Nicholl was obtaining the information in this article unlawfully, and specifically most likely by targeting Ms Frost Law through voicemail interception – or alternatively that she did so in order to stand up or embellish any core information from a legitimate source.

Unlawful Article 5A: "Sadie v Jude" {K/441}

611. Ms Nicholl is bylined on the Fifth-A Unlawful Article, published in the *Mail on Sunday* on 29 February 2004. The article concerns detail of Ms Frost's custody battle with Jude Law, including the fact that Mr Law said Ms Frost Law was an "unfit mother", a private phone call between Ms Frost Law and Mr Law and its aftermath, and a private remark to a 'friend' by the Claimant. This was all exclusive (although there was some prior reporting of the mere fact there was a disagreement of custody/financial arrangements, as opposed to these sensitive details). The background and key individuals relevant to the Sixth Unlawful Article are set out in the Cs' skeleton argument at §§134-138. The Court is also invited to refer to the Cs' trial matrix for this article.

612. Ms Nicholl accepted the information in this article was "sensitive and private" (Transcript, Day 35, pp. 119-120), which accords with Ms Frost Law's unchallenged evidence in relation to it **{F/29/2-3/§§7-8}**[110]. It was suggested to Ms Frost Law that a letter from Harbottle & Lewis on her behalf complaining of this article as potentially defamatory (Transcript, Day 6, pp.44-49) was inconsistent with her current position that it is true. Ms Frost Law credibly and understandably explained that while she did not remember this letter at all, her aim in 2004, in a period of high stress and even "panic", was preventative, and that there were

[109] As was put to Mr Dillon (Transcript, Day 37, p.138, lines 20-23).
[110] As noted above, Ms Frost Law was asked in re-examination whether she provided information to Ms Nicholl and she confirmed she did not (Transcript, Day 6, p.166, lines 2 – 3).

minor inaccuracies in the article onto which she may have alighted at the time in writing that letter.

613. There was a payment of £750 to Lee Harpin which relates to this article (as Ms Nicholl accepted (Transcript, Day 35, p.123, line 4) – recorded at **{K/1958.1}** (see the entry relating to "Jude & Sadie custody battle" for 29 February 2004 - all bar one of the entries on this list are stories for Ms Nicholl).

614. The article also appears in the clip of suspicious Lee Harpin articles, apparently compiled by the assistant to John Wellington on 3 April 2014 (during the phone hacking criminal trials) **{L/774}**. In that compilation, the Fifth-A Unlawful Article appears at **{L/774/18}** the words "he called her" are specifically noted and double underlined by an unknown individual at Associated (but Cs infer was John Wellington, the Managing Editor) who had clearly identified the suspicious nature of the article. The 'legal warnings' section records that there are legal warnings in place following complaints of inaccuracy by Ms Frost Law and Mr Law.

615. The email at **{K/434}** is an email to Ms Nicholl from Mr Harpin, dated 15 January 2004, offering her some stories. Ms Nicholl sought, in her second witness statement, to rely on it as a basis for suggesting that Ms Frost Law's PR, Meena Khera, had been a source for this article, because Mr Harpin indicated in this email that she might have spoken to him about an entirely separate story. This was obviously not sound reasoning on its face – the tip Mr Harpin offered in the email at **{K/434}** was completely different in nature (professional as opposed to personal) and clearly positive for Ms Frost Law (it related to her new commercial ventures), while there is plainly no reason why Ms Frost Law's representative would share the intimate details in this article (about Mr Law compiling a dossier of shame and similar) – to the extent that Ms Nicholl even suggesting it was must be treated with suspicion. Ms Nicholl did not have a serious response to the illogicality of Ms Khera sharing this kind of information with her (or Mr Harpin) in cross-examination (Transcript, Day 35, pp. 124-126). The truth is clearly that none of the information in this article came from Ms Frost Law's PR, as Ms Nicholl

refused to accept (Transcript, Day 35, p.126, lines 20-24). Neither Ms Khera or, even more significantly, Mr Harpin were called by D to provide evidence about this article.

616. Ms Nicholl contends another source was behind the story as well, in support of which she relies on notes at **{L/64.5/6-8}**. Again, there is no source recorded, which in light of Ms Nicholl noting sources elsewhere in her notebook is suspicious and indicative that the source was an illegitimate one – most likely from Mr Harpin having used unlawful means to gather the information. There is certainly no other record of what Mr Harpin provided for his £750 fee (as Ms Nicholl confirmed, the going rate for a lead story (Transcript, Day 35, p.129, lines 11-13; confirmed also at **{K/1960}**, an email where D was contacted by the MPS as part of Operation Weeting in 2014) beyond these notes.

617. Ms Nicholl again relied on SLF5-A – but did so inconsistently, sometimes suggesting that this source (who, as above, it is highly improbable was in a position to provide detailed private information about Ms Frost Law in any event) was the source of the information at **{L/64.5/6-8}** rather than Mr Harpin (Transcript, Day 35, p.130-131, lines 25-1), but later suggesting that SFL5-A was simply second-sourcing what Mr Harpin had told her (Transcript, Day 35, p.131, lines 24-25). Ms Nicholl was unable to identify what information she said came from Mr Harpin and what from her purported other source (Transcript, Day 35, p.139, lines 4-13). Again, D provided no evidence from Mr Harpin and no explanation has been provided as to why Mr Harpin was unable to give evidence.

618. Similar information to that in this article appears in the "*Frost Report*" article, published the same day as this article on 29 February 2004 in the *Sunday Mirror* at **{L/334.1}** (for which Mr Harpin was paid **{L/334.1.1}**) and which was an admitted article in *Gulati v MGN*.

619. In circumstances where, as set out above, Ms Nicholl's credibility as a witness has been demolished, and in the premises above, and given the unchallenged

evidence of Ms Frost Law and Ms Nicholl's proven propensity for commissioning UIG, and the lack of credible explanation for the sourcing of the article otherwise by Ms Nicholl, the clear inference is that Mr Harpin obtained the information in this article by voicemail interception, just as he provided similar information to the *Sunday Mirror* by the same (admitted, by the *Sunday Mirror*) means for an article the same day in that newspaper, and provided it to Ms Nicholl, as she knew.

Sixth Unlawful Article: "Jude gives Sadie £10m divorce deal" {K/520}

620. Ms Lampert is bylined on the Sixth Unlawful Article, dated 2 October 2004 and published in the *Daily Mail*. The article concerns confidential divorce negotiations, including the facts (which were exclusive to the article) that Ms Frost and Mr Law were close to an agreement on a financial deal, that Ms Frost was demanding half of Mr Law's earnings, and other accurate details such as Ms Frost's personal motivations for settling. The background and key individuals relevant to the Sixth Unlawful Article are set out in the Cs' skeleton argument at §§139-143. The Court is also invited to refer to the Cs' trial matrix for this article.

621. Ms Frost Law noted in her written evidence how Mr Law thought this information was being leaked by her, and it was "*a horrible feeling, having the person you love accusing you of something you did not do and having to receive phone calls accusing you or your friends of leaking information*" **{F/18/17/§75}**. Such information was given to only a limited number of people **{F/18/17/§77}**. Mr Law's unchallenged evidence in relation to the information in this article includes **{F/8/3-4/§§19-20}** that:

> "*The financial information – Sadie getting the £5m house, me paying for schooling, £25,000 per month payments, the £3m lump sum, half of the proceeds of the flat in Primrose Hill – is all very specific. There is no way that could have been learnt by anything other than listening into a voicemail or tapping.*

I left the settlement negotiations to my lawyers. I may have talked to Sienna about this, and maybe to Ben. I don't remember talking to my mum and dad, and I never spoke to my sister about it. I understand from Callum Galbraith that the private investigator, Gavin Burrows, has admitted live tapping calls and hearing me discussing the divorce negotiations with my father, brother or uncle. I don't have a brother, and I do not believe that I spoke with my father and certainly not my uncle about this, but I will have discussed it with my personal assistant and possibly my good friend, Bradley Adams. It seems entirely likely that the information was obtained from live phone calls as it is so detailed and accurate."

622. Ms Frost Law was not asked about this specific article by D during cross-examination[111], and as a result her evidence (and that of Mr Law) regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

623. Notably, this was a story about which Mr Law had pre-emptively complained the day before it was published – **{K/510/2-7}**. It is not credible, as Ms Lampert suggested, that the *Daily Mail* was content to publish this story in the face of an outright denial by Mr Law simply because the purported source of Ms Feinstein's was so good – a source with whom Ms Lampert was not ever in contact herself **{G/22/11/19.2.5}**; the far more likely account is that the paper published because it was confident in its unlawful sourcing as to the details of the negotiations, but then apologised because it was unwilling to identify that true, unlawful, source of that information (Transcript, Day 32, p.121), which is entirely consistent with the fact that Ms Feinstein was providing information obtained through voicemail interception (as Ms Lampert knew). The use by Ms Lampert and Ms Nicholl of Ms Feinstein is addressed in detail above.

[111] Ms Frost Law was asked in re-examination whether she provided information to Ms Lampert and she confirmed she did not (Transcript, Day 6, p.166, lines 4 – 5).

624. Gavin Burrows admits that he also obtained information for this article **{H/3/2}**, stating in a table verified with a statement of truth dated 29 March 2021 that the Sixth Unlawful Article was obtained from "*HW* [hard wire interception of a] *phone call between him* [Mr Law] *and his Dad – It may have been his brother or uncle*". Mr Burrows has also admitted this article in his witness statement dated 16 August 2021 §66 **{H/2/17}**, that the Sixth Unlawful Article contained information obtained by him on D's instruction through unlawful acts, namely the information coming from a hard wire tap of a phone call between Mr Law and his father (or possibly his brother or uncle).[112]

<u>Seventh Unlawful Article: "CRAZY SADIE V MOODY JUDEY" {K/593}</u>

625. Ms Lampert and Paul Bracchi are bylined on this article in the *Daily Mail*, dated 8 January 2005. The article concerns matters relating to the engagement between Mr Law and Sienna Miller (and the knowledge of Ms Frost Law). The article includes a number of exclusive facts, including details of a telephone conversation between Mr Law and Ms Frost Law. The background and key individuals relevant to the Eighth Unlawful Article are set out in the Cs' skeleton argument at §§144-148. The Court is also invited to refer to the Cs' trial matrix for this article.

626. Ms Frost Law's written evidence as to this article is at **{F/18/17-18/§§78-81}**. Ms Frost Law was not asked about this specific article by D during cross-examination, and as a result her evidence regarding the private and restricted nature of the

[112] As was put to Mr Burrows on Day 43 of the trial, and to Mr Henderson on Day 25 of the trial, and in light of the matters set out regarding Mr Burrows' and Mr Henderson's relationship above, it is clear that the table of articles and Mr Burrows's witness statement were authentic, that Mr Burrows obtained this information in the manner he set out, and that he provided that information to Mr Henderson at D. See (Transcript, Day 25, pp.32 – 34, lines 16 – 17; Transcript, Day 32, p.127, lines 7-12; Transcript, Day 43, p.99, lines 15 – 17; pp.102 – 103, lines 24 – 4; p.125, lines 10-25; p.127, lines 14 – 23). Mr Burrows had form in targeting Ms Frost Law and Mr Law – see an invoice from his company IIG addressed to *The People* dated 27 August 2003 **{L/26/4}**.

information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D[113].

627. Ms Lampert and Mr Bracchi say they cannot recall details (both of whom used these TPIs), but again suggest Sharon Feinstein is the likely source along with 'cuttings' **{G/22/13-14/§§19.4.2-19.4.5}**; **{G/6/3-6}**. It is highly improbable that a (human) source of Ms Feinstein's, even a very good one, would have been privy to the precise phone calls recounted in this story – Ms Lampert speculated that the source could have been "in the room when the actual conversation happened", which would seem inherently unlikely (and indeed would almost inevitably have identified the leak to Ms Frost Law), or, equally unlikely, was told about the precise details of a particular phone call (Transcript, Day 32, p.145, lines 2-7). D has provided no evidence from Ms Feinstein but this is entirely consistent with the fact that she was providing information obtained through voicemail interception (as Ms Lampert knew). The use by Ms Lampert and Ms Nicholl of Ms Feinstein is addressed in detail above.

628. Ms Lampert reluctantly accepted that it was possible that she would want to stand up a report from a source concerning a particular phone call: "*you needed to be absolutely sure that this information was correct, didn't you? A. I needed to make sure that the -- that most of it was correct, and particularly that we weren't going to get into kind of libellous territory*" (Transcript, Day 32, p.147, lines 20-24) (see also Transcript, Day 32, p.148, lines 10-13) and that Ms Frost Law and Mr Law could have been communicating via voicemail messages (Transcript, Day 32, p.149, lines 12-18).

629. Mr Bracchi also accepted that the cuttings he had cited in his written evidence did not explain (as prior sources) significant parts of the Eighth Unlawful Article (Transcript, Day 40, pp.87-89 line 13). Mr Bracchi asserted that the non-cuttings

[113] As noted above, Ms Frost Law was asked in re-examination whether she provided information to Ms Lampert and she confirmed she did not (Transcript, Day 6, p.166, lines 4 – 5).

information in the article came from Ms Lampert (Transcript, Day 40, p.106, line 16).

630. Mr Bracchi accepted he was a regular user of Mr Whittamore (Transcript, Day 40, p.94, lines 13-15). When confronted with plainly unlawful activity which he had commissioned Mr Whittamore to undertake – a "mobile conversion" – **{K/1.1/Row 12}**, Mr Bracchi simply responded that he could not recall using Mr Whittamore for such things, instead of straightforwardly accepting what the document showed had occurred (Transcript, Day 40, p.97, lines 3-12)[114]. Mr Bracchi also used Christine Hart – it is to be inferred that he commissioned her so she could blag information for him (he accepted using her and that she "might have" blagged to get information – Transcript, Day 40, p.101, line 4; lines 22-23).

631. Given Ms Frost Law's and Mr Law's unchallenged evidence, the propensity of Ms Lampert and Mr Bracchi both to commission UIG (including the use of Ms Feinstein), and the inherent implausibility of detailed information of the kind in this article having come from a legitimate source, or at least not needing to be stood up by illegitimate means, the only proper inference is that unlawful methods were used by Ms Lampert and/or Mr Bracchi to feed and/or stand up the story, and in particular voicemail interception.

Eighth Unlawful Article: "THE JUDE V SADIE SHOW" {K/674}

632. Ms Lampert is bylined on this article in the *Daily Mail*, dated 30 June 2005. The article concerns divorce negotiations and post-settlement intentions, in particular exclusive matters such as Ms Frost Law stating to Mr Law that she would get "every penny I deserve", Mr Law wanting confirmation of where the money was going including receipts, Ms Frost Law keeping a diary of rows and

[114] He also said he had "no reason to...challenge" Mr Whittamore's evidence that he only did what he was asked to do, and that he wrote down who the journalist was commissioning him so that when he invoiced there would be no complaints (Transcript, Day 40, p.98, lines 1-7).

tape recordings, and Ms Frost starting to look for weekend country cottages. In particular the article refers to a number of private conversations including the fact that "*Sadie Frost was screaming down the phone*" **{K/674/1}**, including the date of the call ("last Wednesday night"). The background and key individuals relevant to the Eighth Unlawful Article are set out in the Cs' skeleton argument at §§149-154. The Court is also invited to refer to the Cs' trial matrix for this article.

633. Ms Frost Law's written evidence as to this article is at **{F/18/18-19}**. Ms Frost Law was not asked about this specific article by D during cross-examination, and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D. Ms Lampert accepted that there was private and exclusive information in the article (Transcript, Day 32, p.130, lines 12-18).

634. Ms Lampert suggested the exclusive information in this article was from her contact (the so-called source of Sharon Feinstein who is said to have been a friend of Sadie Frost) (Transcript, Day 32, p.135, line 9). Ms Lampert also suggested, without having mentioned this in her witness statement, that Ms Frost's PR would have assisted with sourcing the story ((Transcript, Day 32, pp.135-136, lines 21-3); Ms Lampert went on to state, as a fact, that she had spoken both to Ms Frost Law's, and to Mr Law's, PRs, as a fact (Transcript, Day 32, p.139, lines 15-17)[115]) – the Court should treat this assertion with proper scepticism given it emerged for the first time under cross-examination. She accepted generally, however, that "*I probably would have tried to second source as much material as I could*" (Transcript, Day 32, p.136, lines 2-3), and the need for extra caution and double-sourcing was obvious given that, on Ms Lampert's case, Ms Feinstein's source had provided seriously inaccurate information for the Sixth Unlawful Article, which had resulted in a complaint. C notes again that D

[115] Ms Lampert floundered and did not appear to suggest that the PRs had, in fact, corroborated her supposed source, though her evidence was tellingly evasive (Transcript, Day 32, pp.140-141).

provided no evidence from Ms Feinstein in relation to this article, despite Ms Lampert's heavy reliance on her.

635. Clearly, and given also that Ms Lampert had as she accepted obtained information from both "sides" (i.e. Ms Frost Law's and Mr Law's) for this article, the notion that the Eighth Unlawful Article was single-sourced via only Ms Feinstein speaking to a friend of Ms Frost Law's is inherently improbable (Transcript, Day 32, pp.136-137). The detailed information in the article must rather have come from voicemail interception which Ms Feinstein carried out (as Ms Lampert knew) and passed on to Ms Lampert - the use by Ms Lampert and Ms Nicholl of Ms Feinstein is addressed in detail in above.

636. There were a number of ELI payments around the time of this article (at **{K/1533}** - see the rows referred to at **{CB/22/70-71}**). As was put to Ms Lampert (Transcript, Day 32, pp.137-139) the contemporaneous payments to ELI – an agency habitually carrying out UIG for D and used habitually by Ms Lampert as she admits **{G/22/9/§18.5}** – indicate that they would have been instructed to target Ms Frost Law and/or her associates (including Mr Law) in order, at least, to corroborate this story by providing her with call data, and/or to help facilitate the voicemail interception described above[116]. This inference is supported by Ms Lampert's propensity for commissioning UIG, including especially by ELI, and the unchallenged evidence of Ms Frost Law and Mr Law.

<u>Ninth Unlawful Article: "Sadie's £6million divorce" {K/676}</u>

637. Richard Kay is bylined on the Ninth Unlawful Article, published in the *Daily Mail* dated 1 July 2005. The article concerns details of the divorce settlement structure, telephone conferences and confidentiality agreements. The background and key

[116] Ms Lampert did not recall using ELI or not – but said she "would not have needed to use ELI", which is no answer to Ms Frost Law's case that ELI could have provided, and did provide, useful corroborating material to Ms Lampert.

individuals relevant to the Ninth Unlawful Article are set out in the Cs' skeleton argument at §§155-158. The Court is also invited to refer to the Cs' trial matrix for this article.

638. Ms Frost Law's evidence is that the information in this article would have been limited to lawyers and a very small circle **{F/18/18-19/§§88-89}**. Ms Frost Law was not challenged on this evidence during cross-examination, and as a result her evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

639. Ms Frost Law was challenged, extremely weakly, in cross-examination that she would have made a complaint to Richard Kay, possibly when they were both involved in a TV project ('Project Catwalk') the following year[117], had her complaint about this article been substantial (Transcript, Day 6, pp.40-44). Her evidence as to the privacy attaching to the information in the article and the tight circle it was shared with was undisturbed, and Ms Frost Law was able to point out that Mr Kay's evidence that he had obtained information about her from Daniel Bee could not be correct, since she only met Mr Bee after the occasion Mr Kay said he got it[118], and (clearly rightly) to scotch any notion that Mr Tooth would have revealed these confidential negotiations to a journalist (nor did Mr Kay really suggest this with any level of conviction) .

640. Mr Law's unchallenged evidence **{F/8/4/§24}** is that "*There is no way on earth the information revealed in this article – the actual settlement, the fact of reaching a settlement, keeping the home, the lump sum – would've been shared. I don't think I ever discussed my settlement with anybody other than in communications to and from my lawyers, who may have left messages about this on my phone. It is so detailed and private, even referring to barrister's conferences and the*

[117] Ms Frost Law did not even recall Mr Kay being involved in that programme with her.
[118] Mr Kay admitted he may have been mistaken on this point (Transcript, Day 40, p.116, lines 23-25).

confidentiality obligations, so they must have had access to my communications."

641. Mr Kay had effectively no relevant evidence to give on behalf of D in relation to this article – his witness statement records that "*the story must have been given to me in a written form by either the Newsdesk or the Showbusiness desk*" **{G/21/5/§17}**. He accepted that the articles he had cited as potential prior reporting sources for this article did not account for all the information in it (Transcript, Day 40, pp. 114-116).

642. Given the proximity of her reporting on similar topics **{K/674}**, it is highly likely that Ms Lampert was the source of the story provided to Mr Kay – as Mr Kay accepted was possible (Transcript, Day 40, p.113-114, lines 22-4).

643. There is a record of payments made to ELI **{L/38/9}** proximate to this article, which support the inference of unlawfully obtained information when coupled with the precision of the information contained in the article. D has not produced any journalist who takes responsibility for this article to whom these payments could fairly have been put.

644. Given Ms Frost Law's and Mr Law's unchallenged evidence, the complete dearth of any explanation from D as to how the article was sourced, and the likelihood that Ms Lampert was the source of it and her proven propensity for commissioning UIG, it is to be inferred that the information in this article was gathered by Ms Feinstein unlawfully intercepting voicemails and passing that information to Ms Lampert (as Ms Lampert must have known - the use by Ms Lampert and Ms Nicholl of Ms Feinstein is addressed in detail in above, with Ms Lampert then passing the information to Mr Kay. It also most likely involved the instruction of ELI to blag call data by D to support and/or corroborate that unlawful sourcing.

<u>Tenth Unlawful Article: "Jude and Sadie's school reunion" {K/1106}</u>

645. Ms Nicholl is bylined on the Tenth Unlawful Article, published in the *Mail on Sunday* on 19 August 2007. The article concerns details relating to the schooling and welfare of Ms Frost and Mr Law's son, Rafferty. These details were exclusive. The background and key individuals relevant to the Tenth Unlawful Article are set out in the Cs' skeleton argument at §§160-163. The Court is also invited to refer to the Cs' trial matrix for this article.

646. Ms Frost Law explained in her written evidence how she discussed these private matters via voicemail and on the landline **{F/18/19/§90}** as does Mr Law **{F/18/5}**. Mr Jackson addresses the issue at **{F/7/2/§19}**, explaining he does not believe Mr Law would have discussed this "super private" matter with anyone other than Ms Frost and their son. None of this evidence has been challenged by D[119], and as a result their evidence regarding the private and restricted nature of the information in question (and the unlikelihood of its being legitimately obtained) remains wholly unchallenged by D.

647. Ms Nicholl cannot recall the article but believes that Sharon Feinstein "*helped to stand up the story*" and had obtained the information from her sources on Ms Frost Law and Mr Law **{G/38/31/§36.4.2}**. There is a record of Ms Feinstein being paid £400 at **{K/1162}** (description: "*Jude Law and Sadie F*") which Ms Nicholl claims relates to this story. Again, it is to be noted that Ms Feinstein was not called to give evidence in relation to this payment or this article. Again, the information in the story is consistent with the fact that Ms Feinstein was providing information obtained through voicemail interception (as Ms Nicholl knew). The use by Ms Lampert and Ms Nicholl of Ms Feinstein is addressed in detail above.

648. In circumstances where, as set out above, Ms Nicholl's credibility as a witness has been demolished, and in light of Ms Frost Law's and Mr Law's unchallenged

[119] As noted above, Ms Frost Law was asked in re-examination whether she provided information to Ms Nicholl and she confirmed she did not (Transcript, Day 6, p.166, lines 2 – 3).

evidence as to the privacy attaching to the information in this article, Ms Nicholl's proven propensity to commission UIG, and the lack of any substantial evidence from D whatsoever as to the sourcing of this article, it is to be inferred that Ms Nicholl obtained the information either direct from Ms Feinstein, or used Ms Feinstein to stand it up as Ms Nicholl claims in her witness statement, and that Ms Feinstein, as Ms Nicholl would have known, obtained it through voicemail interception.

First Unlawful Episode: Ectopic Pregnancy UIG

649. Ms Nicholl is the journalist at D chiefly involved in this episode. She prepared an article in relation to it which remained unpublished **{K/411}**. All of the information in the draft article is exclusive. It concerns an extremely distressing and private episode in Ms Frost Law's life, namely her treatment for an ectopic pregnancy. The background and key individuals relevant to the First Unlawful Episode are set out in the Cs' skeleton argument at §§84-97. The Court is also invited to refer to the Cs' trial matrix for this episode.

650. Ms Frost Law's clear evidence is that the only people who knew about this distressing medical episode were Mr Scott (her then-partner) and Zoe Grace, one of her closest friends – not even her mother or sisters otherwise. She does "*not believe that my doctors or Jackson would have leaked anything and I was very careful not to talk about this at the time*" **{F/29/2/§§3-6}**.

651. Ms Frost Law was not challenged on her evidence as to this episode, but it was suggested to her (bizarrely) that she ought to have brought a claim in respect of it at the time (Transcript, Day 6, pp.49-51). As she confirmed, she did not discover the draft article at {K/411} which was plainly the key to understanding the nature of this intrusion into her privacy until after she had brought these proceedings (Transcript, Day 6, pp.179-180).

652. Ms Nicholl's notes are at **{K/401}** (manuscript) and **{K/402}** (transcribed). These clearly show:

a. At **{K/402/6}** that the margin refers to Susie (Mallis, of ELI), next to "*Sadie Frost: Had some note re: Ultrascan. Yes, she is having that kind of treatment. She went for an ultra-sound. She is pregnant*." Those notes are in keeping with Ms Nicholl being told, directly or indirectly, information from Ms Frost Law's medical files.

b. **{K/401/6}** identifies one of her doctors, Dr Geoffrey Lloyd ("Dr Geoffrey Lloyd – had a letter about") and notes "*She was recently treated in March Aug. 6 saw psychologist Dr. Jennifer Gumbourne.*" as well as other detailed medical information from her patient records. This again is highly suggestive of the blagging of medical information.

c. Subsequent pages state "*Found out about Ectopic pregnancy beginning of last week*" and "*She's very angry with herself*" and "*They* [Ms Frost and Mr Scott] *were using condoms*". These quotations which have no named source in the left-hand margin (but Ms Nicholl suggested could have come from Ms Feinstein) look like clear quotations from voicemails, which is consistent with the methods used by Ms Feinstein on other articles.

d. It also details the mobile telephone numbers of a number of individuals, including Charlotte Scott, Jackson Scott and Ben Jackson.

653. Ms Nicholl's explanation of the material in her notebooks is wholly unconvincing (Day 35, pp.61-63), including in relation to Portland Hospital (Day 35, p.65, l.4 – p.67, l.3):

> "*Q. Well, let's look at what else there is: "Checked Portland brought up the Princess Grace Hospital. (March 2003)." That's a record, isn't it, of the person who reports this information to you telling you that they've checked the records of the Portland Hospital?*

A. It's -- it's simply not clear, and these are -- these notes are not clear. They obviously appear to be taken in live time. It's not clear exactly what that refers to.

Q. Well, it's clear what it refers to, Ms Nicholl, because the Portland Hospital was plainly a famous antenatal clinic, wasn't it, for celebrities?

A. And it still is, I believe, yes.

Q. And you've asked Ms Mallis to check the Portland Hospital in order to find out whether Ms Frost is registered in for her pregnancy?

A. I don't -- I don't believe I would ever do anything like that. That would be blagging medical information and I didn't do that.

Q. Well, if this is Ms Feinstein providing it, surely you would have said the same to her, "Why on earth are you obtaining information of such detail about Ms Frost's medical notes"?

A. I'm -- I'm sure I would have asked her that, because I would have wanted to grill her forensically on her source. My experience was that Sharon Feinstein had a very close source to Sadie Frost and would have had that level of information about her.

Q. What, Ms Feinstein would have checked the Portland Hospital records? What did that mean then, Ms Nicholl?

A. I -- as I've said to you, the notes are confusing. I can't, all these years on, exactly explain what those notes mean, but I'm telling you to the best of my recollection that is a conversation that I had with the source of the story, Sharon Feinstein.

Q. You see, the check of the Portland Hospital records brings up the fact that Ms Frost had attended the Princess Grace Hospital and then the date, March 2003. That's a record, isn't it, of what must appear in the Portland Hospital notes?

A. I don't know. I don't know.

Q. Well, you're writing this down, Ms Nicholl. This is pretty extraordinary stuff, isn't it?

A. I'm writing it down over 20 years ago. I can be very clear that I did not blag medical information, which is what you're suggesting. This has come from Sharon Feinstein. I recalled that it came from Sharon Feinstein."

654. Quite clearly, Ms Nicholl's source is reporting to Ms Nicholl Ms Frost's medical notes[120]. The reference to "Susie" having "checked Portland" is something that Ms Nicholl said she "*can't make sense of*" (Transcript, Day 35, p.69, line 7). The notes in Ms Nicholl's notebook record Ms Nicholl jotting down a reported conversation the blagger had with the Portland Hospital:

a. Many of the details in the notebook are also in inverted commas, which obviously indicate that Ms Nicholl was being told by her source (Ms Mallis) what was told to the source – if as Ms Nicholl suggests it was simply Sharon telling her information, the inverted commas, as she accepted, make no sense: "*No, I think that's -- I think that is Sharon saying that to me. I can't explain why it's in inverted commas. Those are, I believe, from Sharon.*" (Transcript, Day 35, p.64, lines 12-14).

b. Similarly the words "*So I'll send the letter out to you*" in the notebook only make sense as being a report of <u>what the source was being told</u> about Ms Frost Law's letter (the doctor's letter referred to elsewhere in the notes) – Ms Nicholl's dodge, that Ms Feinstein was (in inverted commas) offering to send her Ms Frost Law's medical letter, which offer for some reason Ms Nicholl then wrote down verbatim instead of "Sharon to send me letter" or similar, is absurd (Transcript, Day 35, lines 5-12)[121].

c. The notion that Ms Feinstein would have "checked Portland", if as Ms Nicholl suggested she had had sight of Ms Frost Law's medical letter, is also nonsensical. Ms Nicholl "*can't make sense of the – of that part. It's – it is quite confusing*" (Transcript, Day 35, p.69, lines 7-8).

[120] As Ms Nicholl reluctantly admitted, whoever her source was had "*…the actual medical notes themselves, you say? A. I believe that seems to be the implication from the notes I've taken down, yes.*" (Transcript, Day 35, p.85, lines 12-14).

[121] Similarly the words "*'Yes. I got a letter about that the other day'.*" are only properly explicable as reported speech by the blagger rather than Ms Feinstein telling MS Nicholl information.

d. The misspelling of “Gumbourne” in the notes, when the real doctor’s name was Gomborone (see **{L/64/69.7}**) is also clearly redolent of information being obtained by blagging, which would account for a mis-hearing of a less familiar name. It is not redolent of Ms Feinstein, who Ms Nicholl claims had, or had seen, Ms Frost Law’s letter, reporting details from that letter to Ms Nicholl, which would render the misspelling inexplicable.

655. As set out in Cs’ skeleton argument at §93 (which is not repeated here), it is plainly right that the word written next to the detailed information at **{K/401/6}** is “Susie” – to be inferred to be Susie Mallis, who ran ELI – and not “Sadie” as Ms Nicholl more latterly contended. It is also clear therefore that Ms Mallis, i.e. ELI, was the source of the medical notes information, which is to be inferred were blagged. There is no reference to another source, including Ms Nicholl’s suggested source, Ms Feinstein. Ms Nicholl was more hesitant in oral evidence as to the “Susie” / “Sadie” manuscript (Transcript, Day 35, p.60, lines 16-20):

> “*I said I'm not sure what it says. It does look like "Susie", but I don't recall speaking to a Susie, I don't know Susie Mallis, and I certainly don't recall speaking to a Susie for this story*.”

656. Tellingly, Ms Nicholl later stated “*you're inferring that I've used Susie to blag medical information*” (Transcript, Day 35, pp.60-61, lines 25-1); “*I -- I don't believe I spoke to Susie for this story*” (Transcript, Day 35, p.62, line 6)– referring to her simply as “Susie” suggesting a degree of familiarity in contrast with her original assertion that she did not know Susie Mallis (see also Day 35, p.71, lines 2-4)[122].

657. Ms Nicholl was charged over £400 by ELI with two payments made for “K NICHOLLS SEARCHES” and “KATIE NICHOLLS URGENT ENQ” made on 7 October

[122] And see Transcript, Day 35, p.75, line 16 in relation to Lloyd Hart.

2003: **{L/685/1}**. The Atex article is dated by Associated in its disclosure list as 5 October 2003 4.38pm **{K/415}**; **{D/93}**.

658. An invoice dated 5 October 2003 **{K/412}** itemises the work undertaken by JJ Services for the week ending 5 October 2003 which states **{K/412/2}**:

Occupant search; 6 Cleverton Court,SN2 5HE...Trevena.	(K Nicol)	17:50
Line.		75:00
Occupant search; 7a Tyndale Terrace,N1 2AT...Outen.		17:50
Line.		75:00
Director search; Grossman.		40:00
Occupant search; 63 Moore Park Road,SW6 2HH.		17:50
Occupant search; 35 Grosvenor Gardens,SW1W 0BS.		17:50
Area search; Grossman,London x 2.		60:00
PO blag.		100:00
Occupant search; 208/4 Farm Lane,SW6 1DG.		17:50
Line.		75:00
Occupant search; 33 Steeles Road,NW3 4RG...Frost/Law.		17:50
Line x 2.		150:00

a. Ms Frost's address at the relevant time was 33 Steeles Road. Ms Nicholl is identified in the first line as the commissioner of the searches. The invoice is also approved by David Dillon and Paul Field, whose signatures can be seen at **{K/412/1}**. The invoice is addressed to Paul Field. The work list sets out a number of ex-directory numbers obtained, referred to as "*line*", as explained in Mr Whittamore's evidence at **{F/19/10/§40}**.

b. Mr Whittamore's unchallenged evidence **{F/19/10/§38-39}** in relation to the targeting of Ms Frost Law (and this invoice) is that:

"*I have been shown an invoice and work-list addressed to Paul Field of the Mail on Sunday, dated 9 February 2003.). The work-list lists a number of ex-directory numbers and related occupancy searches for members of what I am told are Sadie Frost's family (as the name Frost does not feature), which I obtained for Katie Nicholl. I have also been shown related entries in a copy of the "Green Book" spreadsheet. This shows that one of my sub-contractors obtained all three numbers. Therefore, it is more than likely that pretext methods would have been used to obtain these numbers.*

> *I have been shown a further invoice and work-list dated 5 October 2003, listing a series of searches and refers to a "blag"* [the invoice above at **{K/412}**]. *The final entries on the list are for occupancy search on an address in North West London where I am told Ms Frost and her partner Jude Law lived. The work-list shows I provided "Line x 2" for that address*."

659. Ms Frost Law thus relies on the JJ Services invoice in relation to her in advance of this incident as UIG:

    a. The week of this article (week ending 5 October 2003) Mr Whittamore provided ex-directory numbers and an occupancy search in relation to Ms Frost and Mr Law **{K/412}**. Ms Nicholl accepted that it was "possible" she was asking for an ex-directory number (Transcript, Day 35, p.8, lines 8-18). In light of Mr Whittamore's unchallenged evidence as to the knowledge of D's journalists who instructed him, it is to be inferred that Ms Nicholl knew these searches targeted at Ms Frost Law and Mr Law were unlawfully carried out.

    b. The Whittamore searches for the week ending 9 February 2003 at **{K/349}** related to Vaughan (Ms Frost's father) and Davidson (Ms Frost's mother's maiden name and her sister, Holly Davidson), as Ms Nicholl accepted (Transcript, Day 35, pp.13-14). Ms Frost did not share the information with Ms Davidson.

660. Further details of mobile phone numbers of Ms Frost Law's associates are on **{K/402/8}**, and Ms Nicholl accepted that she would likely have obtained those details from enquiry agents (Transcript, Day 35, p.72). There is a reference to a Lloyd [Hart] of ELI at **{K/402/8}**, but Ms Nicholl implausibly stated "*I don't recall a Lloyd Hart*" (Transcript, Day 35, p. 74, line 8) and could offer no explanation as to who this "Lloyd" was written down in her notes.

661. The notes at **{K/402/8}** clearly show that Ms Nicholl, having unlawfully obtained the mobile phone numbers of the associates of Ms Frost Law and Mr Law listed there, phoned one of them – most likely Holly Davidson – and put the fact that there was a medical letter confirming the ectopic pregnancy to them, which they denied, either because the letter had not even been sent yet (hence the words in the prior notes "*So I'll send the letter out to you*"), or Ms Davidson had not been told about it. Clearly this call – and the call to Mr Scott's mother the notes record, and the subsequent call to Ms Frost Law herself (some of the medical information such as the Ultrascan **{K/402/6}** was put to Ms Frost **{K/402/9}**) – were an attempt to get legitimate cover for a story which had already been obtained by unlawful means through ELI's medical blag.

662. As above, there were two commissions of ELI, an earlier one for £264.38, which was likely for the medical blag information at **{K/402/6}** from Susie Mallis and a smaller sum for the call data and/or telephone numbers at **{K/402/8}** from Lloyd Hart.

663. Further detailed medical and private information is at **{K/402/10}**, and Ms Nicholl had at this stage the telephone numbers of Ms Frost Law and various of her associates. The obvious inference is that this information, comprising highly sensitive details about exactly how the medical procedure had taken place, her sexual practices with Mr Scott, and her feelings of distress, was obtained by voicemail interception – either by Ms Nicholl herself or by Ms Feinstein at Ms Nicholl's behest.

664. Ms Nicholl accepted that the source attribution in the article to a "*friend of Jackson's told the Mail on Sunday*" **{K/411/1}** was not correct (Day 35, p.90, l.8-11), but suggested that it was to protect the actual source. It is utterly implausible that any source, however "close" to Ms Frost Law Ms Feinstein's source was said to be, could have had access to this level of detailed medical information, not least in light of Ms Frost Law's unchallenged evidence.

665. It speaks volumes that the draft article **{K/411/2}** even contained Ms Frost Law's denial – indicating clearly that even with an outright denial, Ms Nicholl was confident enough in her information to present the story to her editors for publication. This is simply inexplicable, where the information was as sensitive as Ms Nicholl admits, unless Ms Nicholl's source was literally indubitable – obtained by blagging or voicemail interception (as is entirely consistent with the fact that Ms Feinstein was providing information obtained through voicemail interception (as Ms Nicholl knew). The use by Ms Lampert and Ms Nicholl of Ms Feinstein is addressed in detail above.

666. The real reason the article was not published is that Ms Frost Law threatened to get her lawyer, Mr Tyrrell, involved, as her notes record **{K/402/11}**. Since Ms Nicholl's efforts to get air cover for the clearly unlawfully-obtained information had failed, publishing would have been far too risky.

667. Ultimately, Ms Nicholl's position as to this episode is well-captured by her phrase "*I didn't blag any medical information. That's not a matter of memory, that's a matter of principle*." (Transcript, Day 35, p.69, lines 13-15). Ms Nicholl seeks to rely on her own "principles" alone as supporting her hopeless case in the face of the documentary evidence that she blagged this information – but the huge weight of the evidence as to her propensity for commissioning UIG, in the many instances apart from this especially egregious one, mean that her touted "principle" has no substance whatsoever. In the further circumstance that, as set out above, Ms Nicholl's credibility as a witness has been demolished, the inescapable conclusion is that ELI and JJ Services were commissioned to undertake UIG to target Ms Frost Law in relation to this story – JJ Services to obtain ex-directory numbers most likely, and ELI to do the same, as well as the meat of the article – the blag to obtain Ms Frost Law's medical records. It is very likely that Mr Dillon, an executive on the News Desk and Ms Nicholl's line manager, would have known of these unlawful methods and factored them into D's decision not to publish the

story (as was put to him: Transcript, Day 37, p.138 – aside from anything else, it is Ms Nicholl's evidence that instruction of Mr Whittamore would have had to go through the News Desk, including therefore Mr Dillon (Transcript, Day 35, p.18, lines 2-11)).

Second Unlawful Episode: Chris Anderson

668. Glenn Mulcaire sourced material from Ms Frost's voicemail, passed it to Greg Miskiw, who in turn passed the material on to Chris Anderson at the *Mail on Sunday* – which occurred in April and May of 2006. The background and key individuals relevant to the Second Unlawful Episode are set out in the Cs' skeleton argument at §§98-107. The Court is also invited to refer to the Cs' trial matrix for this episode.

669. Ms Frost Law's evidence in relation to this episode is at **{F/18/2/§4}**, which was unchallenged by D. She says it was "*obvious that they* [the emails from Mr Miskiw] *contained transcripts of my voicemails*" and explains her distress at discovering this.

670. In the emails before the Court, Mr Anderson can be seen to confirm D's interest in the product of unlawful activity but also to encourage further acts of UIG:

a. on 20 April 2006 at 12.20pm Mr Miskiw asks "… *are you interested in Sadie Frost? I might have a story about her*" **{K/886/4}**;

b. on 20 April 2006 at 12.50pm Mr Anderson responds and confirms "*Of course we are interested in Sadie*" **{K/886/6}**;

c. on 20 April 2006 at 4.55pm Mr Miskiw then sent an email, plainly quoting at length from Ms Frost Law's voicemails **{K/886/7}**. The email even identifies that Ms Frost has been in contact with Amanda Owen and sets out her

telephone number. Mr Mulcaire had been contemporaneously intercepting Ms Schmidt's voicemails **{K/709}**;

d. on 21 April 2006 at 4.12pm Mr Miskiw then provides addresses and a telephone number for Ms Frost Law's nanny **{K/886/10}**. It is clear that a call took place where Mr Anderson confirmed that he wished to have these details at some point after the email on 20 April 2006 **{K/886/7}** (see Transcript, Day 27, pp.173-182[123]); and

e. on 21 April 2006 at 5.53pm Mr Anderson responds "*thanks greg – we're going to give her a knock*" **{K/886/11}**;

f. the later sequence of emails, ending with the words from Mr Anderson to Mr Miskiw on 26 April 2006 "*By the way, Jade has said through friends that she doesn't want to talk …*" **{K/886/17-19}** clearly show that Mr Anderson had run with the story and contacted Ms Schmidt;

g. on 2 May 2006, Mr Miskiw asked to be paid an agreed £500 for the stories relating to Ms Schmidt and Sir Simon Hughes **{K/886/21}**.

671. Mr Miskiw was paid £500 for the information (and that relating to Sir Simon Hughes) **{K/896}**; **{K/917}**. Mr Anderson was somewhat at a loss to explain this payment, and implausibly suggested that this was simply to make Mr Miskiw go away, and/or because he was down on his luck, and/or might provide a story again in future – clearly the more simple and likely answer is that he had provided detailed, and risky-to-obtain, information, as the emails show (Transcript, Day 27, pp.157-159).

[123] Mr Anderson's refusal to accept this obvious inference was more than innocent misunderstanding, but was clearly an effort to downplay his level of interest and involvement in receiving this kind of information from Mr Miskiw.

672. The messages to Mr Anderson clearly contain transcripts of Ms Frost Law's voicemails for use by the *Mail on Sunday*. Mr Anderson's written evidence provided no explanation at all as to this issue, simply suggesting it "*did not occur*" to him that the information in the emails was from a voicemail or obtained unlawfully **{G/26/7/§30}**. Although in 2018, Mr Anderson indicated to Liz Hartley that he accepted "with hindsight" that he supposed "*it is consistent with material obtained from voicemail interception*" (as well as other things) **{K/2191}**. Mr Anderson states it is likely he would have simply passed the emails (including the intercepted voicemail extracts) on to the News Desk of the *Mail on Sunday* **{G/26/7/§28}**, which is implausible given the extent to which he engaged with the matter.

673. In cross-examination, Mr Anderson in fact accepted that the emails contained transcripts of voicemails (Transcript, Day 27, p.187, lines 7-10): "*I mean, I -- I -- of course it's consistent with -- with, you know, what has turned out to be the case, that it was, you know, left on an answer phone*", albeit continuing to dither and obfuscate (pp.188-189) as to his understanding at the time, including as to whether he did or did not actually read the email, whether the email made sense or contained non-sequiturs (of which he did not identify any). The simple and correct answer is that he would almost certainly have understood the email then as he understands it now, being as he was then an experienced journalist, i.e. as containing transcriptions of voicemails.

674. The transcriptions of Ms Schmidt's voicemails themselves by Mr Mulcaire are at **{K/40/9}**.

675. Mr Anderson entirely unrealistically suggested that he would have had no journalistic interest whatsoever in how Mr Miskiw had obtained the clearly verbatim quotes in his email, and suggested that the News Desk whom he may have passed the story onto would have been similarly naive (Transcript, Day 27, pp.204-205; 210).

676. It was also entirely inconsistent with the fact that he continued to be engaged with Mr Miskiw as to the attempts to stand up the story by fronting up Ms Schmidt herself, as the emails demonstrate.

677. With the acquiescence and knowledge of the News Desk, including Mr Dillon[124], Mr Anderson received, encouraged, and used the product of UIG targeted at Ms Frost Law via her former nanny Ms Schmidt, being the interception and transcription of Ms Schmidt's voicemail messages from Ms Frost Law. Given Mr Anderson's considerable experience of many years as a senior journalist, his association with Mr Miskiw[125] (and thus it is to be inferred his familiarity with his way of working), it is wholly implausible that, as Mr Anderson suggests, he simply did not notice the verbatim messages which were being passed to him, or even consider whether they were derived from voicemail interception. The emails show the opposite: he noticed the information, encouraged its provision, took action himself as a result of it, and paid Mr Miskiw for it.

Sir Simon Hughes

Oral evidence of Sir Simon Hughes

678. Sir Simon Hughes gave oral evidence on 27 January 2026 (Day 7). The transcript of his evidence is at **{C/33}**.

679. Sir Simon was a member of the Bar, a Shadow Justice Minister and then Justice Minister. He is an extremely experienced and well-regarded public servant and lawyer. In his evidence it was clear that he was particularly offended by the allegation that he was "*lying on oath*". He was absolutely clear, on the contrary, that he always sought in his professional roles and life to abide by the law (Transcript, Day 7, p 121 **{C/33/32}**). Sir Simon was a cogent, helpful and plainly honest witness. The Court should have no hesitation in believing his evidence.

680. Sir Simon's written evidence had explained the important events that occurred in January 2006 namely the approach by the Sun political Editor Trevor Kavanagh

[124] As was put to Mr Dillon (Transcript, Day 37, p.147).
[125] **{H/14/3}**.

leading to the publication of the front page article in *The Sun* entitled *'A Second Limp-Dem Confession: I'm gay too'*, an exclusive by Trevor Kavanagh dated 26 January 2006 {K/715} and an article on pages 6 and 7 **{E41/22-23},** which led to him losing in his attempt to become Party leader of the Liberal Democrats. Sir Simon eventually launched successful proceedings against NGN.

681. The central theme put to Sir Simon in D's cross-examination was that of limitation. This is addressed in the Limitation section of these Closing submissions below. D sought to advance the proposition that Sir Simon knew (or ought to have known) by 2016 that D's titles were implicated in unlawful information gathering. Sir Simon's evidence was absolutely clear on this point: he considered that a worthwhile claim "*crystallised in 2022*", (Transcript, Day 7, p.121 **{C/33/32}**).

682. It was put to Sir Simon in particular that he was involved in a dishonest conspiracy to conceal his true limitation knowledge and were subsequently lying on oath. Sir Simon rejected this in the strongest possible terms, emphasising that it was "completely untrue" and further that he resented the facts that such a serious allegation had been put to him (Transcript, Day 7, p.121 **{C/33/32}**). The basis upon which such an allegation was put to Sir Simon was always extremely weak, as his cross-examination showed.

<u>Unlawful Incident</u>

683. The background and key individuals relevant to the unlawful incident over which Sir Simon's claim for UIG is brought are set out in the Cs' skeleton argument at §§167 – 180. The chronology of events is set out at §§181 – 188 of the skeleton. The Court is also invited to refer to the Cs' trial matrix for this incident.

684. Chris Anderson gave evidence regarding this incident on Days 27 and 28 of the trial. (John Wellington, despite providing a witness statement in this trial, **{G/40}**, does not address this incident in that evidence or the related payment approved by him at **{K/896}**).

685. Sir Simon's case is that Mr Miskiw provided Mr Anderson with unlawfully obtained information in relation to Sir Simon and HJK, and that Mr Anderson knew that that information (which *The Mail on Sunday* then used) came from Glenn Mulcaire. Mr

Anderson's oral evidence was characterised by a marked desire to distance himself as far as possible from Mr Miskiw and this entire episode. He frequently pleaded ignorance as to the details of the story presented to him by Mr Miskiw in April 2006 regarding Sir Simon's private life and HJK, to the steps being taken to develop that story, and to where the information provided to him by Mr Miskiw had come from – despite it being clear that he was in regular contact with Mr Miskiw regarding the story and indeed was Mr Miskiw's point of contact at *The Mail on Sunday* for it.

686. Most notably:

a. Mr Anderson continued under cross-examination, as he did in his First Witness Statement [§12, **{G/26/3}**], to seek to distance himself from Greg Miskiw, appearing to suggest (for the very first time) that although Mr Miskiw had been news editor at the *News of the World* at the same time as Mr Anderson, he (Mr Anderson) had typically dealt with a totally different executive, Robert Warren: Transcript, Day 27, pp.105 – 106, lines 9 – 11.

b. Mr Anderson's generalised and unconvincing attempts throughout his oral evidence to distance himself from the potential story concerning Sir Simon and HJK's private lives can be seen at Transcript, Day 27, p.118, lines 1 – 4, in terms that would reappear throughout his evidence:

   No, I don't think -- I don't think I would. I honestly don't think -- I'm -- I'm -- I can't remember what the story was about. I don't think I really, really knew what the story was, honestly.

c. Mr Anderson later stated *"… I -- actually, I honestly don't think I really knew the detail of the story at the time"*, but was subsequently forced to accept the obvious facts that (i) *The Mail on Sunday* wanted to publish a story about Sir Simon and his boyfriend, (ii) *The Mail on Sunday* wanted to obtain a photograph of both of them or of HJK himself, and (iii) Mr Anderson plainly knew the detail of the story sufficiently well to be able to update Mr Miskiw on its progress throughout: [Transcript, Day 27, p.123, lines 5 – 18; p.132, lines 5 – 25.]

d. Mr Anderson accepted that the email he received from Mr Miskiw on 19 April 2006 **{K/886/1}** was not the first communication that they had had regarding this story, and that he and Mr Miskiw had had further, separate telephone calls regarding it over and above the emails exchanged between them: Transcript, Day 27, pp.126 – 130, lines 16 – 4; p.151m lines 10 – 14. However, Mr Anderson's efforts to distance himself from Mr Miskiw and from the story then extended to the wholly implausible evidence that Mr Miskiw had not provided him with HJK's address.

e. Despite the clear contemporaneous evidence to the contrary (the emails between Mr Miskiw and Mr Anderson regarding the story, with Mr Miskiw checking in and Mr Anderson updating him on progress **{K/886}**), Mr Anderson suggested that Mr Miskiw "*must have been*" in contact with other, unidentified "*reporters or whatever*", to whom Mr Miskiw would have provided that information: Transcript, Day 27, p.134, lines 10 – 11. Mr Anderson could provide no documentary evidence or indeed any details at all to the Court of any such contact, and his evidence was vague, confused and unconvincing:

Q. You see, I suggest to you the obvious answer, Mr Anderson, is the Mail on Sunday had HJK's address because Mr Miskiw provided it to you, along with his identity, during your initial communications with him prior to the first email that we saw.

A. I'm sure I would have remembered if he'd given me any details. I -- I don't -- I didn't -- I just didn't, I'm sure, take that sort of detail. I -- I think I took the story tip, and -- and I'm sorry, I have been saying I gave it to the news desk, that was my assumption. Maybe it was just to the picture desk. And -- and then, you know, I fielded his queries about whether the story is working or not. I -- I'm -- I'm really pretty sure that he didn't give me any addresses or anything.

Q. Well, how can you be sure of that, Mr Anderson, when you're very unsure of almost everything about the story?

A. Yes, I know. But I'm not -- because there are certain things that just wouldn't have happened, and -- and –

[Transcript, Day 27, pp.136 – 137, lines 23 – 15.]

f. Mr Anderson's subsequent evidence and efforts to distance himself from this story are equally as equally uncompelling and unattractive. The Court is invited to consider Transcript, Day 27, pp.137 – 141, lines 19 – 7.

g. Incredibly, Mr Anderson told the Court that notwithstanding his extensive journalistic experience and previous role as political editor of the *News of the World*, and notwithstanding the story's having been national news in the UK in hundreds of news stories[126], he was not aware at the time of Sir Simon's sexuality being publicised in a front-page story in *The Sun* in January 2006 in the lead up to the Liberal Democrat leadership contest **{K/715/2}**: Transcript, Day 27, pp.118 – 119, lines 16 – 20. This defies credibility, and Sir Simon submits that the plausibility of Mr Anderson's evidence throughout must be assessed with his willingness to make such a statement in mind.

h. Equally implausibly, Mr Anderson refused to accept that the address which *The Mail on Sunday* had sent a photographer to was HJK's, falling back on his general approach of pleading ignorance: Transcript, Day 27, pp.122 – 133, lines 11 – 6.

i. Mr Anderson did not challenge the evidence that Mr Mulcaire was the source of the information Mr Miskiw was providing him. Indeed, it was never seriously open to him to do so, on the basis of the contemporaneous documents to which he was taken: **{K/49}**, **{K/3/3}**. Mr Anderson's evidence that he himself had no knowledge of Mr Mulcaire is implausible. Sir Simon submits that it is obvious that Mr Miskiw would have told Mr Anderson where the information he was providing to *The Mail on Sunday* was coming from i.e. from Mr Mulcaire, not least so that the paper could satisfy itself that the information was sufficiently credible for it to invest in in sending a

126 **{E/41/28-354}**. *The Daily Mail* report about this matter is at **{E/41/36}**.

photographer to HJK's address over several days to seek to obtain a photograph.

j. Mr Anderson's response, when presented with HJK's clear evidence to the Leveson Inquiry regarding being doorstepped at his home by a journalist in late April 2006, was similarly unconvincing: Transcript, Day 28, pp.6 – 13, lines 5 – 12. He fell back on pleaded ignorance, asking questions of the Cs' lead counsel, meandering speculation, and averments of having no recollection when it was put to him that, as will evidently have been the case, he would have been aware of *The Mail on Sunday* sending a journalist to HJK's home to front him up.

k. Sir Simon submits that it is similarly obvious – from the contemporaneous documentation, from the fact that Mr Anderson and Mr Miskiw were also in contact by telephone, and from sheer common sense – that Mr Anderson knew that Mr Miskiw was attempting to ascertain for *The Mail on Sunday* whether HJK was inside his home to assist the paper in obtaining a photograph, and that he was doing so by Mr Miskiw or Mr Mulcaire telephoning HJK's number and speaking with him under a false pretext. (When this was put to Mr Anderson he replied "*maybe*", but then claimed, unconvincingly, that he "*wouldn't have known anything about that*": Transcript, Day 27, p.152, lines 16 – 21.) Mr Anderson was again notably vague when it was put to him that he had made clear to Mr Miskiw the necessity of finding out whether HJK was at the address, stating "*I'm not sure*" and then speculating as to what likely happened. [Transcript, Day 27, p.151, lines 10 – 22; Day 28, p.4, lines 17 – 23].

l. Mr Anderson also advanced, for the first time, a new explanation under cross-examination as to why *The Mail on Sunday* had paid £500 to Mr Miskiw, claiming that it was partly down to the possibility that Mr Miskiw might provide useful stories in the future: Transcript, Day 27, pp.156 – 160, lines 21 – 14. Again, Sir Simon submits that Mr Anderson's offering new evidence under cross-examination is indicative of his not being a credible

and reliable witness, and that the Court should assess his evidence against that backdrop.

687. This incident was put to David Dillon in cross-examination on Day 37 of the trial: pp.145 – 148, lines 13 – 5. Again, equally implausibly, Mr Dillon claimed not to remember Sir Simon's sexuality being publicised in a front-page story in *The Sun* in January 2006 in the lead up to the Liberal Democrat leadership contest **{K/715/2}**[127]: p.146, lines 11 – 24. Sir Simon submits that, as was put to Mr Dillon, and as Mr Anderson himself said, Mr Anderson would have discussed his potential story regarding Sir Simon during the regular news conference that Mr Anderson attended: p.146, lines 4 – 6; pp.146 – 147, lines 25 – 25. It is to be inferred that, as was also put to Mr Dillon, Mr Anderson would also have discussed how Mr Miskiw was planning to stand the story up: p.148, lines 1 – 5.

688. On the basis of the above, as well as Mr Dillon's admissions regarding the News Desk's use of private investigators who carried out unlawful activities and its modus operandi in this regard (as set out above), Sir Simon submits that he has plainly made out his case on liability against D, and that D misused his private information.

[127] **{E/41/28-354}**. *The Daily Mail* report about this matter is at **{E/41/36}**.

LIMITATION

689. Each of the Cs, on the Cs' case, were victims of wrongdoing by journalists and PIs working for D's newspapers. None of the Cs knew, at the time, that such wrongdoing was taking place. The issue for the Court to determine on limitation is whether, in each case, the Cs could, with reasonable diligence, have discovered the concealed facts relevant to their rights of action until a date less than 6 years prior to the issue of their claim forms.

690. D contends that, if they had been reasonably diligent, all of these Claimants could, before 6 October 2016 (six years before the issue of the claims on 6 October 2022 **{A/1-6}**) ("**the Applicable Date**"), have discovered that they had worthwhile claims against it.

691. D argues, simultaneously, that on the one hand no acts of UIG were in fact carried out by its journalists or those acting on their behalf (not that the acts were somehow lawful) and on the other that (notwithstanding this) these individual Cs could reasonably have discovered that they *had* taken place at the time or certainly before 2016. This is argued, in circumstances where D itself has stated that it carried out its own investigations into wrongdoing and discovered nothing at all (hence its strenuous public denials), and claims that to do so now would be "*extraordinarily complex, difficult and disproportionately expensive*"[128]. How then, the Cs ask, can they have been expected to have discovered this, especially where, as a result of the D's deliberate concealment and the intentionally covert nature of the underlying acts themselves, the vast majority of the evidence is necessarily in the D's own possession (as is the case in such UIG claims).

692. It is unrealistic to suggest that any of them could, at the Applicable Date, have discovered facts that <u>they themselves</u> were victims of wrongdoing.

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[128] In RPC's letter dated 22 April 2022 substantively responding to the Cs' letter of claim, D stated that it considered the Cs' request for D to conduct investigations as to the events which took place at the time to be "*extraordinarily complex, difficult and disproportionately expensive*" and that although it "*takes any allegations of illegal activity extremely seriously, there can be no objective justification for such an exercise unless your client can identify a credible claim*" **{I/7/2}**.

693. In 2016, there were no admissions of wrongdoing by ANL as – in contrast - there were by NGN and MGN.[129] Nor could a prospective claimant, without some kind of additional information, have *reasonably* believed that they were also a victim.

694. Without a positive MPS notification in relation to D or some other clear and cogent evidence, such claims were speculative.

695. The issue of limitation breaks down into three questions in relation to each Claimant:

(1) Was the Claimant "triggered", that is, were they put on notice of the need to investigate possible wrongdoing by D?
(2) If they were "triggered", what information would a reasonable investigation have revealed about D's wrongdoing?
(3) Would that information be sufficient to constitute a "*worthwhile claim*"?

696. The applicable law is set out in detail in the Schedule of Law to the skeleton argument and is not repeated here. The starting point is s.32(1) of the Limitation Act 1980, the relevant provisions of which are as follows:

> *" … where in the case of any action for which a period of limitation is prescribed by this Act, …*
>
> *(b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; …*
>
> *the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it*".

697. This provision has been the subject of analysis in many decided cases, most recently in ***Sculfor & Ors v MGN*** [2026] EWHC 597 (Ch) which was handed down during the trial of this action. In short:

(1) The words "*any fact relevant to the plaintiff's right of action*" means the essential facts that a claimant has to prove to establish a prima facie case, as distinct from evidence required to prove that case (***Duke of Sussex*** [1384]).

(2) The burden of proof in establishing their case under s.32 is on the Cs (***FII***

[129] The forensic and narrow concession (made late) in relation to a prima facie case of s.55 breaches, albeit without any admission as to the position of ANL's journalists, is simply not comparable.

Group Test Claimants v HMRC [2022] AC 1 ("***FII***") [203])

(3) Time runs from the point when a claimant knows, or would with reasonable diligence have known, that they had a "worthwhile claim" (or, what amounts to the same thing, "*has sufficient confidence to embark on the preliminaries to issuing a claim*") (***Gemalto Holdings BV v Infineon Technologies AG*** [2023] Ch 169 ("***Gemalto***") [45] and [53].

(4) The question as to what could, with reasonable diligence, have been discovered can be considered in two stages:

(a) Was there something to put the claimant on notice of the need to investigate ("a trigger");

(b) If the claimant was "triggered", what would a reasonably diligent investigation have revealed? (***OT Computers v Infineon Technologies*** [2021] QB 1183 ("***OTC***") at [47].

698. The Cs' case is that deliberate concealment is made out primarily from:

(a) the covert and concealed nature of the UIG itself and misleading or obfuscatory source identification; or

(b) in the alternative, knowingly false denials (at the Leveson Inquiry and through other public denials) designed to keep wrongdoing secret.

699. The Cs' primary case is at (a) above, and it would not be necessary to determine (b) if the primary route at (a) succeeds (notwithstanding the fact that the issue would be relevant to aggravated damages).

700. In ***Sussex & Ors v MGN Ltd***, the defendant conceded that there had been deliberate concealment of the unlawful information gathering ("**UIG**") complained of for the purposes of s.32 of the Limitation Act 1980: [1404] ("**the Covert Act Concession**"). It is worth noting that in MTVIL, at the start of the January 2025 trial, NGN similarly conceded that if it were established that NGN committed UIG as alleged, such UIG would by its nature have been deliberately concealed for the purpose of section 32 of the Limitation Act 1980, and NGN contended that on that basis the issue of any further deliberate concealment fell away.

701. In ***Sussex & Ors v MGN***, the defendant also conceded that each claimant had not been on notice to investigate whether there had been UIG, despite the publication of articles, the fact that the information in them was private or confidential and its publication had distressed the claimants, the fact that the claimants had not seen firm evidence as to how the information had been obtained, and there having been suspicious activity around the same time: [1407]-[1408] ("**the Trigger Concession**").

702. Fancourt J identified two bases as being the likely reason for the Trigger Concession (MGN having only articulated the first below):

 (a) at the dates of publication, there was almost no publicity about phone-hacking or blagging (and associated or cognate unlawful practices) that would have been likely to lead a claimant to consider that that was a possible explanation: [1410]; and

 (b) there existed a different and credible explanation for the possession by MGN of private information, namely that a friend, family member or professional contact of a claimant was leaking private information to MGN (a claimant being 'put off the scent' by MGN's attempts to create this impression by alluding to e.g. "friends", "pals" etc. as the source in many of the articles): [1411].

703. In the current claims, in contrast, D argues that there was no deliberate concealment of UIG and makes <u>neither</u> the Covert Act Concession nor the Trigger Concession. In fact, it argues that each article was a trigger, save in Sir Simon Hughes's case, where the trigger is alleged to be his knowledge that HJK had been subjected to UIG (see D's Written Opening Submissions: **{CB/10.1/268/§918}**).

704. Further, D expressly argues that there *should* be a finding by the Court as to whether evidence to the Inquiry (and the public) was deliberately false or not, on the basis that "*evidence that was not deliberately false couldn't support a finding of deliberate concealment*" (Day 2, page 107, lines 6-8 **{C/28/28}**).

705. D's case also elides publication with knowledge. This is wrong as a matter of both principle and of fact. The mere fact that an article was published did not reveal the

concealed nature of the information obtained. Indeed Cs' primary case is that the original act of (successful) concealment was deliberate both in terms of the covert act of the UIG itself and then the misidentification of such information in an article as coming from a 'friend' or a 'source' or similar, or otherwise deliberately misleading the reader and the Cs as to the true origin. The fruits of UIG were presented as ordinary reporting rather than the product of blagging, voicemail interception, or similar.

706. The concept of a "worthwhile claim" is also central. It is clearly expressed by the Court of Appeal in *Gemalto*, at [45]:

> "*A "worthwhile claim" arises when a reasonable person could have a reasonable belief that they have been the victim of a particular wrong*".

The Court goes on to say that there is unlikely, in most cases, to be a practical difference between this test and that "statement of claim" test: that is, the claimant had, or could with reasonable diligence have, obtained such knowledge as would allow him/her properly to plead a claim that would not be liable to be struck out as unarguable or lacking a sufficient evidential basis. As Green LJ explained such a claim would not be worthwhile if the Court would "*summarily dismiss such a pleading upon the basis that it is premature or exiguous*". Indeed, D noted this itself in the letters of response, making clear that "*allegations are not to be made unless there is credible material to support the contentions made*" **{I/7/2}**.

707. Indeed, as was noted by Nicklin J in his limitation summary judgment decision [2023] EWHC 2789 (KB) at [210] and [211] **{C/1/69}**:

> 210. In all probability, Associated could have been expected to rely upon the fact that Associated executives had given evidence, on oath, in the Inquiry, that there was no evidence that Associated was guilty of the sort of wrongdoing that had been practised at other newspapers. In light of Associated's historical response to similar allegations, it is not fanciful to suppose that Associated might well have described the Claimants' claims as "mendacious smears" and robustly criticised and attacked the speculative basis on which they had been brought. Set against the sworn testimony of Associated's senior executives, each Claimant, it would have been argued, was under a heavy burden to show that this evidence was false.

> 211. It is not fanciful to suggest that, without clear allegations that specific people working for Associated had been guilty of Unlawful Acts, the Claimants would have been very vulnerable to the charge that they were 'fishing' for a case on a wholly speculative basis. As the Master of the Rolls noted in Gemalto [46], "a claim in respect of a concealed event would not be a worthwhile one if it were pure speculation". Associated argues that the "bare bones" that the Claimants had, in terms of facts that they could plead, mean that such a claim would not have been "pure speculation".

708. In the ***FII*** case it is said that time runs from the point when a claimant recognises that there is a worthwhile claim or once they have "*sufficient confidence to embark on the preliminaries to issuing a writ such as submitting a claim to the proposed defendant, taking advice and collecting evidence*", and that there is no substantive difference between these formulations, each of which casts light on the other [193].

709. In ***BAT Industries PLC* v *Commissioners of Inland Revenue*** ([2025] EWCA Civ 1271) ("*BAT-CA")* the Court of Appeal made it clear that a "worthwhile claim" was not to be equated with a *"claim worth investigating*" but meant, rather, a claim which was worth raising or pursuing [53]. In other words, where there were "*good grounds for supposing*" there was a valid claim [54].

710. In contrast to a claimant who knows all the essential facts when a wrong is committed (for example, when published private information clearly comes from an illegal source) when the wrongdoing is concealed, the defendant has deliberately placed the victim at a disadvantage. The claimant needs to be alerted to the need to investigate and then, to carry out investigations which reveal a viable claim.

711. The facts of ***Sculfor & Ors v MGN*** distinguish it from the present proceedings. There is no similar general publicity, adverse findings, admissions, or well publicised MPS operations and consequential convictions[130]. The closest analogy from that judgment is Mr Sculfor's successful limitation case where it was found that he was misled by the way the wrongdoing was presented, blamed friends or family, and no particular trigger put him on notice.

[130] In 2013 Dan Evans pleaded guilty to voicemail interception at the *News of the World* and the *Sunday Mirror,* and in 2014 Andy Coulson, Ian Edmondson, James Weatherup, Neville Thurlbeck and Greg Miskiw were convicted of Voicemail interception

712. In ***Gemalto*** the example given as the 'pivotal moment' was when the regulator issued a decision because "*from this stage onwards all possible victims of the defendant know that the regulator has reached the point where it considers that there is a real case to answe*r" [84]. However, there was no such 'pivotal moment' for the Cs in the present case from which time started running (no MPS operation, no admission or Court finding; indeed, quite the opposite).

713. It should be noted that the fact that a person takes legal advice is not, of itself, sufficient to start time running. It obviously depends on the content of the advice. The phrase "*sufficient confidence to embark on the preliminaries to issuing a writ such as submitting a claim to the proposed defendant, taking legal and other advice and collecting evidence*" cannot sensibly be construed as meaning that, in all cases, advice comes *after* "sufficient confidence". The phrase first appears in the judgment of Lord Donaldson MR in ***Halford v Brookes*** ([1991] 1 WLR 428), the context being a civil action for murder where the relevant facts were known and did not require further investigation. The words after "*such as*" are merely examples of possible preliminaries, not a description of what "preliminaries" are in every case.

714. It is unarguable that when a claimant is not aware that they have suffered a wrong or have suffered a wrong which they (reasonably but wrongly) believe to have been the result of the actions of a third party, they are not "triggered". There can be no requirement to be diligent in investigating whether the potential defendant was, in fact, responsible for the wrong. It is only when the claimant is put on notice of the wrong, or that the third party might not be responsible (the "trigger"), that the claimant is required to investigate the other possible explanations (see ***Duke of Sussex*** [1421e-f]). What a reasonably attentive person in the individual claimant's circumstances would have become aware of is deemed to be known by the claimant and may be sufficient to put him/her on notice that s/he should investigate (see ***Duke of Sussex*** [1421c]).

715. In ***Granville Technology Group v Infineon Technologies AG*** ([2020] EWHC 415 (Comm)) Foxton J noted that:

> "*There will be many claims when it will be objectively apparent that something "has gone wrong" – where the claimant has lost property, failed*

> *to receive something it expected to receive, or suffered an injury of some kind – which event ought itself to prompt the claimant to ask "why?" and investigate accordingly. However, where a claimant purchases goods on a market which has been rigged by a cartel, there may be nothing which ought reasonably to prompt the claimant to further enquiry*" [48].

716. When private information appears in newspapers it is rarely 'objectively apparent' that something has gone wrong. Private information can appear in newspapers for all kinds of reasons which do not involve UIG – leaks from "friends and family", "tips" from members of the public, copying of stories from other newspapers, observations made or conversations overhead in public or semi-public places and so on. Indeed, D's primary case is that that is exactly what happened and, insofar as it did cross-examine them, the cross-examination of the Claimants focused on this primarily.

717. In relation to the question as to whether a person is "triggered", account must be taken of the circumstances of the actual claimant (as opposed to their "personal characteristics" such as being slothful, naïve, shy, nervous etc. (***OT Computers*** [38])). Adapting the words of Millett J in the ***Paragon Finance*** case, the test of reasonable diligence is how a person in the circumstances of the claimant with adequate resources, motivated by a reasonable but not excessive sense of urgency would act.[131]

718. Whilst there was considerable media discussion of phone hacking, particularly in relation to the NGN (particularly the News of the World) and, to a lesser extent, also in relation to MGN, the opposite is true of D. Public awareness of phone hacking and the wider scandal did not tell any of the Cs that D had blagged medical information, procured ex-direct numbers, or commissioned PIs and the like. As Nicklin J observed in the limitation summary judgment at [207] **{C/1/68}**:

> To have a worthwhile claim, the relevant Claimant must additionally believe that s/he has a worthwhile claim that s/he was a victim of such Unlawful Information Gathering. And even then, there is a material difference between a person suspecting that they may have been the victim of some wrongdoing, and a person having a reasonable belief that s/he has been the victim of a particular wrong: Gemalto [45]. For the purposes of s.32, a viable or worthwhile claim is the latter, not the former. On the facts of the typical claim brought by these Claimants, it is the

131 See ***Paragon Finance v Thakerar*** [1999] 1 All ER 400 at 418c-d.

difference between suspecting that information that has appeared in a published article must have been obtained unlawfully and knowledge of facts (even if incomplete) that enable a claim of particular wrongdoing to be articulated.

719. At Leveson, as set out further below, the evidence shows that D's public position was not a strong and clear admission of wrongdoing but the opposite. The oral evidence did the opposite of putting the Cs on notice.

720. The standard of what constitutes "reasonable diligence" is an objective one but it is "*informed by the position of the actual claimant*" (***Loreley Financing v Credit Suisse*** [2023] EWHC 2759 (Comm) [149] (iv). As discussed above in relation to "triggering" the profession and location of a claimant can properly be taken into account in determining the expected standard of reasonable diligence. The circumstances of each of the Cs should be considered as part of this exercise (and the Court will have had an opportunity to assess this from the written and oral evidence).

721. The Cs entirely reject that any claimant who was 'triggered' before October 2016 could reasonably have discovered that there were credible allegations of voicemail interception, blagging, and other forms of UIG at D and that, as a result, it was possible that they might have been victims of this wrongdoing. In the circumstances, the Cs could not have discovered sufficient facts to realise that they had worthwhile claims against D.

722. As set out above, Cs' case is that deliberate concealment is made out primarily from:

(a) the covert nature of the UIG itself and misleading or obfuscatory source identification; or

(b) knowingly false denials (at the Leveson Inquiry and through other public denials) designed to keep wrongdoing secret.

723. The evidence of Paul Dacre, Liz Hartley and Peter Wright goes primarily to four general issues:

(1) the issue of knowingly false denials for the purposes of the Claimants' deliberate concealment case at (b) above, through both (i) evidence at the Leveson Inquiry which amounted to knowingly false statements and/or

materially misleading omissions (issue 14 of the Claimants' trial matrices), and (ii) aggressive denials at the Leveson Inquiry and subsequently. This is relied on for the Claimants who were aware of and say they believed D's denials (not Ms Hurley and Baroness Lawrence, who were unaware of D's denials at the Leveson Inquiry);

(2) the issue of constructive knowledge of the Claimants, insofar as Mr Dacre and Ms Hartley identify the position D took – and would have taken – in relation to any prospective claims or investigations at an earlier time as a matter of counterfactual enquiry. This also relates to public statements made by D that the Claimants will invite the Court to find would have put the claimants '*off the scent*'. See also the analysis in [206] to [213] **{C/1/68-69}** of the judgment on D's application for summary judgment in these proceedings with the neutral citation [2023] EWHC 2789 (KB), which the Claimants respectfully adopt, and in particular **{C/1/69/§§209-211}**:

> "In advancing that argument at any trial, it would be open to each Claimant to submit that a claim advanced on this purely inferential basis would have been vigorously defended and characterised by Associated, on an application to dismiss the claim, as "purely speculative". It is perhaps noteworthy that Associated's solicitors' letter of response, dated 22 April 2022, dismissed Baroness Lawrence's claim as "no more than speculative". Although each Claimant was not advancing a cause of action that included fraud or dishonesty – in terms – for all practical purposes they would have faced a very similar obstacle [...] Associated could have been expected to rely upon the fact that Associated executives had given evidence, on oath, in the Inquiry, that there was no evidence that Associated was guilty of the sort of wrongdoing that had been practised at other newspapers. In light of Associated's historical response to similar allegations, it is not fanciful to suppose that Associated might well have described the Claimants' claims as "mendacious smears" and robustly criticised and attacked the speculative basis on which they had been brought. Set against the sworn testimony of Associated's senior executives, each Claimant, it would have been argued, was under a heavy burden to show that this evidence was false."

(3) the issue of aggravated damages.

724. The fact of the public denials and the belief of them by the Cs is, as noted by His Lordship, already established separately from the evidence of Mr Dacre, Ms Hartley and Mr Peter Wright. D has not challenged the evidence of the belief of such denials at trial, save for a limited extent in relation to Prince Harry where it was suggested that he could not have believed D's denials at Leveson and not followed it (the simple answer being, as set out further below, that while Prince Harry did not follow the Leveson Inquiry closely, he was still aware of what was said **{C/29/21}**).

725. It may not be necessary for the Court to determine whether D's denials at the Leveson Inquiry and to the public were *knowingly* false if the Court determines that there was deliberate concealment by the making of the statements, or from the act of UIG itself, and/or by the obfuscatory source identification (essentially the Covert Act Concession that Mirror Group sensibly made). However, a determination of knowingly making false denials would also go to the issue of aggravated damages (though see below).

726. Indeed, the Judge noted this in his ruling on 11 November 2025 **{C/20.1/7-8/§20}**:

> "What key Associated witnesses told the Leveson inquiry is potentially relevant, for the reasons explained in the limitation judgment, to the issue of concealment. What was said by those witnesses to the Leveson Inquiry is not capable of any dispute. Mr Sherborne argues that Associated's denial of wrongdoing to the Leveson Inquiry was false, I am presently unconvinced that this is a relevant issue to be resolved in this litigation. The issue is what the relevant Claimants *understood* Associated's public position to be. It is no part of any Claimants' case that, at the time of Leveson, s/he knew what Associated told the inquiry was false. Indeed, it would undermine the Claimants' case on limitation and concealment if they did."

727. To the extent that deliberate concealment is established in these proceedings simply by way of concealment *ab initio* by the UIG itself and the deployment in the article alone, it may be that the issue relating to deliberate concealment from public statements does not require determination. However, as was canvassed during the trial, D has failed to make any Covert Act Concession or similar concession, including in their Oral Opening Submissions. Absent such a formal concession, the Claimants' case is pursued and must be pursued given D's stance.

728. Mr Dacre's evidence that journalists were "*not actively behaving illegally*" at the Leveson Inquiry was false and deliberately misleading: see Transcript, Day 18, p.86, ll. 15-19; p.89, ll. 14-22; Day 17, p.150, ll. 20-24. Mr Dacre accepted that he did not know what D's journalists had asked Steve Whittamore for, but nonetheless maintained this position: Transcript, Day 18, p.86, ll.18-25. Indeed, Mr Dacre accepted that "*I didn't want to look back, because, you know, we were moving on*": see Transcript, Day 18, p. 14, ll. 17-21. This supports the Cs' case (apart from that of Ms Hurley and Baroness Lawrence, who were unaware of the denials) in relation to the denials at the Leveson Inquiry amounting to deliberate concealment, as identified above, by way of misleading statements.

(1) Despite, as Mr Dacre now claims, not properly understanding the position or having a proper basis to make denials in relation to the *Mail on Sunday*, Mr Dacre did so aggressively at the Inquiry. Mr Dacre also in his evidence conspicuously sought to distance himself from the *Mail on Sunday* throughout his evidence in this trial. Mr Dacre now says, in these proceedings, that he "*regret*[s]" not disclosing his lack of knowledge to the Inquiry at the time, and certainly in relation to a story by columnist Katie Nicholl: Transcript, Day 18, p. 132-133. Such a position amounted not just to ongoing deliberate concealment of essential elements of the Cs' claims, but also putting them off the scent – giving them the impression that there had been no unlawful activity and distancing them even further from discovering it.

(2) Mr Dacre also made clear that he wanted his denials at Leveson to be believed (Transcript, Day 18, page 157). This was a facet of his deliberate concealment of essential elements of the Claimants' claims.

(3) Mr Dacre knew that blagging meant, and was understood to mean, obtaining information by deception, and stated that he did not countenance such

activities by his journalists (Transcript, Day 18, page 65-66).[132] Mr Dacre therefore denied blagging at D's newspapers on 18 July 2011 **{K/1417/23}**. This kept hidden an essential factual component of the Cs' claim and in fact put them off the scent, and is therefore relevant in terms of both ongoing concealment and for the purposes of constructive knowledge as explained at §8(2) above.

(4) D's denials became even more aggressive after the Inquiry, as Mr Dacre accepted (Transcript, Day 18, pp. 155-156), particularly in the public response that the Cs' claims were entirely "*preposterous smears … based on no credible evidence*", which D then published itself **{K/2321}**. This is relevant to the question of constructive knowledge and D's likely response if the Cs had made allegations against it earlier.

729. Ms Hartley's statement at the Leveson Inquiry that D had "*seen no evidence to suggest that any information* [was] *illegally obtained by Mr Whittamore*" was deliberately misleading. It was an unsupportable statement in circumstances where Ms Hartley was aware of multiple blags attributed to D's publications in relation to Mr Whittamore and the obtaining of information which at the very least was prima facie evidence of illegal activity by Mr Whittamore (such as vehicle registration checks, criminal record checks, mobile phone conversions and friends and family numbers). Ms Hartley now accepts that the "*wording was a mistake*" (Day 19, page 132, line 25). The Cs contend that it was more than a mistake: it was knowingly false and amounted to deliberate concealment of elements of the Cs' claims.

(1) Ms Hartley saw the Aide Memoire relating to Paul Field dated 18 October 2011 (**{K/1573}**) before drafting the Internal Review that was finalised on 24 October 2011 and disseminated to the Risk Committee on or around that time

[132] There is no infringement of Article 9 of the Bill of Rights 1689 where the matter is what was said or done in parliamentary proceedings as a matter of historical fact in circumstances, as here, where it is not contentious: ***Prebble v Television New Zealand Ltd*** [1995] 1 A.C. 321, 337. The principles stated in ***Prebble*** were approved by the House of Lords in ***Hamilton v Al-Fayed*** [2001] 1 A.C. 395, per Lord Browne-Wilkinson at 402F – 403B. See also the summary of Stanley Burnton J of the principles in ***Office of Government Commerce v Information Commissioner*** [2008] EWHC 774 (Admin); [2010] Q.B. 98.

{K/1579}. Ms Hartley accepted that she drafted the Internal Review, but did not accept under cross-examination in these proceedings she had seen any aide memoire shown to her. The Cs invite the Court to find that Ms Hartley did in fact read and use the document in drafting her Internal Review. The Internal Review directly and exactly copied and pasted sections from the Aide Memoire, for example:

Aide Memoire {K/1573} (18/10/2011)	**Internal Review {K/1579} authored by Liz Hartley** (24/10/2011)
§1. Paul Field was news editor of The Mail on Sunday 2000-2003. At this time there was no Google, no Facebook, no BlackBerries and certainly no iPhones. **Reporters had laptops, but these could only be used to communicate with the office.** However traditional sources of information used by reporters **such as telephone directories, electoral rolls, births, marriage and deaths, and Companies House records were becoming available on CD-rom**.	§8(b) and (c) Before 2003, Facebook, Blackberries and iPhones and powerful search engines such as Google did not exist. **Reporters had laptops, but these could only be used to communicate with the office.** Traditional sources of public information used by reporters to find the subjects of news stories, **such as telephone directories, electoral rolls, births, marriage and deaths, and Companies House records were becoming available on CD-rom**.
§2... **The manual versions of** these **were held in town halls** so, if you wanted **to find someone who lived in Norwich**, you would have **to go to Norwich to search the relevant electoral roll.** Whittamore was able to search the whole **national database, either for a name or for an address.**	8(d) **The manual versions of** electoral rolls **were held in town halls**. In order **to find someone who lived in Norwich**, it would be necessary **to go to Norwich to search the relevant electoral roll.** Enquiry agents, such as Whittamore, were able to, and had the necessary skills to search the **national database, either for a name or for an address.**

It is crystal clear that Ms Hartley had access to the Aide Memoire at the time of the Internal Review, and her refusal to accept this obvious truth lessens the credibility of her evidence on these matters. It is fanciful to suggest that the words in the Internal Review could have been included had Ms Hartley not first seen the Aide Memoire (not least the striking nature of Mr Field's Norwich example, and the non-standard use of lower caps in the second half of CD-ROM). Under cross-examination, Ms Hartley sought to distance herself from this note, given the nature of Mr Field's admission, but appeared to concede

that she could not recall if she saw it at the time; nor did she recall, in her evidence, seeing the other shorter contemporaneous note **{K/1572}** (which did not include the verbatim wording used in the internal review) (Day 20, page 4, ll.4-24). Neither Ms Hartley, nor Mr White in re-examination, identified the shorter document that Ms Hartley said she did recall seeing. It has not been identified since.

There is clear evidence on the face of the Aide Memoire at **{K/1573/2/§6}** which shows that Paul Field conceded that "*it was thought that Whittamore did mobile conversions by 'ringing someone up'*", that Mr Whittamore was tasked by D's journalists with supplying "*x-directory numbers, friends and family lists* [...] *mobile conversions*", and that reporters knew that "*criminal records checks and car number plate checks* [...] *would involve a breach of the law*" **{K/1573/1/§3}**, which it was clear from the material shown to the team on the ICO visit in August, as well as on the third disc sent to D in September, a number of D's journalists had asked for, including Mr Field himself. The Cs will invite a finding that this was deliberately omitted from the Internal Review and from the evidence provided by D to the Leveson Inquiry, which amounted to deliberate concealment of elements of the Cs' claims.

Separately, it can be inferred that the statement that Mr Stafford was "*known in the features department as a blagger*" was similarly known by Ms Hartley at the time of the Internal Review but not included **{K/1573/2}**, as it appears in the same document and would therefore have been read in the circumstances.

Again, this issue primarily goes to the deliberate nature of the concealment in question, in relation to those Cs who were aware of D's denials at the Leveson Inquiry: the statement made to the Inquiry was deliberately misleading, as were the subsequent public statements.

(2) There was also significant deliberate non-disclosure to the Leveson Inquiry of relevant payments by D to John Ross, Jonathan Stafford (as distinct from Newsreel), Christine Hart/Warner Detective Agency, and (in relation to the *Mail on Sunday*) ELI/TDI/BDI. These private investigators had ledgers generated for all payments on 10 and 13 June 2011.[133] Those documents were created and were available in June 2011 but not provided to the Inquiry in October 2011 .[134] The hard copy versions of these ledgers remain, and (at least) the copy of the JJ Services June 2011 ledgers (these ledgers were only disclosed to the Cs late last year located in Pandora's Box) from this exercise was scanned and sent to Ms Hartley on 19 October 2011 without any commentary or explanation (indicating that she had requested it and already knew what it was being sent to her for) **{K/1576}** (the attachment is at **{K/1577}**). Ms Hartley says she does not recall being sent it (Day 19, page 157, ll.3-13), does not accept she requested it, and denies having seen it at the time (Day 20, page 52, ll.14-16), despite clearly having been emailed it without any accompanying explanation **{K/1576}**.

730. The evidence given by Peter Wright to the Leveson Inquiry that invoices received from Mr Whittamore were "*very vague*" and one could only deduce "*really only the sums of*

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[133] The totality of those generated were:
{K/1377} John Ross (MOS) 10 June 2011 15:20
{L/682} Jonathan Stafford (Daily Mail) 10 June 2011 15:58
{E/166/13} Jonathan Stafford (MOS) 10 June 2011 15:59
{K/1577} JJ Services (MOS) 10 June 2011 16:02
{L/684} JJ Service (Daily Mail) 10 June 2011 16:04
{L/683} Rachel Barry (MOS) 10 June 2011 16:17
{L/689} System Searches (MoS) 13 June 2011 11:51
{L/690} System Searches (Daily Mail) 13 June 2011 12:28
{L/688} Summit Credit (MoS) 13 June 2011 12:32
{L/685} ELI (MoS) 13 June 2011 15:13
[134] The ledgers sent to the Inquiry were:
{L/24} Capitol Inquiry (Daily Mail)
{L/28} Newsreel (Daily Mail)
{L/30} Searchline
{L/33} JJ Services (Daily Mail)
{L/35} Summit Credit (MoS)
{L/36} System Searches (Daily Mail)
{L/37} System Searches (MoS)
{L/38} ELI (Daily Mail)

money paid to him" and that "*his name was on them*" **{K/1682/19}** was false and deliberately misleading.

(1) Mr Wright sought to recast these statements as suggesting that Mr Wellington had told him this and he had not reviewed material. This should be rejected. The meaning conveyed to the Leveson Inquiry was that Mr Wright looked at the invoices himself. It is unarguable that the second sheets provided with the front cover of the invoice showed precisely the work carried out by Mr Whittamore. Mr Wright's own evidence (as an editor who 'walked the floor') was that he would know from his journalists the means they used to obtain a story and journalists were required to reveal sources if they were so asked (Day 26, pp.102-103). Mr Wright was not too distant from sourcing of stories in the *Mail on Sunday* to understand how information was obtained. Nor is he likely to have been misled by Mr Wellington. Mr Wellington would have been well aware of the activities of PIs.

(2) Mr Wright was also put on specific notice of some of the material of Mr Whittamore and aware of those second sheets, not least the 2010 letters of complaint from Clive Betts (**{L/619}** cf. **{L/251}**, and **{L/621.2}**)) and Peter Hain (**{L/620}** and **{L/621.2}**) which were copied to him and identified clear UIG, including on second sheets e.g. **{L/619/5}**. It was not disputed by Mr Wright in cross-examination that *prima facie* illegal work had been carried out.

(3) Mr Wright's aide memoire of his conversation with Paul Field **{K/1573}** also showed that Mr Field had told him that Mr Whittamore engaged in unlawful activities such as ex-directory numbers, friends and family lists, criminal record checks and so on. As above, this aide memoire was used in the preparation of Ms Hartley's internal review, albeit the incriminating part of what Mr Field said did not make it into the final document produced by Ms Hartley. Mr Wright's note also referred to Mr Stafford as a blagger **{K/1573/2}**.

731. It is accepted that the analysis of deliberate concealment arising from public statements must be applied as appropriate to categories. However, the denials in particular as to there being "*no evidence*" relating to Mr Whittamore blagging and using other UIG (or being asked to carry out the same) goes directly to facts without which the present claims were incomplete (given that it is necessary to establish Mr

Whittamore's modus operandi, that it was unlawful, and that he carried out such work for D as important parts of a necessarily inferential case). That concealment is therefore not too abstract to apply the Cs' claims. The denials relate to the very claims the Cs now bring. Those denials are also relevant, as set out further below, in relation to constructive knowledge and/or (if the individual claimant was aware) actual knowledge, albeit the deliberate nature of such denials is irrelevant for the purposes of establish the extent to which it interferes with constructive knowledge.

732. Such matters also go to the issue of aggravated damages. However, the Claimants recognise that if it becomes unnecessary to determine such matters (in circumstances where deliberate concealment is established on the primary bases identified above) it might not be proportionate for considerable further evidence to be given and determined solely for the purposes of a further damages award.

733. D also seeks to impute work undertaken by what later (in 2022, though they were working independently on related matters before this) became the Research Team of Dr Evan Harris, Dan Waddell and Graham Johnson into knowledge. That should be rejected. The clear evidence of Mr Johnson is that he kept material as confidential until it was 'stood up' for publication or broadcast and he "*would keep such material confidential unless and until I was ready to publish the story in order to protect its exclusivity*" (Transcript, Day 13, pp. 159-160; cf. **{F/9/2/§5}**). The same is true of Dr Harris's oral evidence "*Our main focus was our concern that the truth had not come out at the first stage of Leveson*" (Transcript, Day 8, p. 12, ll.5-7). At this stage there were at least three different and separate agendas in place:

(1) Mr Johnson, who was interested in advancing his journalistic activities at the time;

(2) Dr Harris, whose primary interest related to ensuring that Leveson 2 occurred; and

(3) potential claimant lawyers.

There is a clear tension (if not conflict) between each of these groups, and such tension was not conducive to a potential claimant being put on notice at the earliest possible date.

734. In respect of knowledge, D relies upon, *inter alia*, (a) an emal from March 2016 that states "*Heather Mills, Simon Hughes and Sadie Frost*" were "*in the frame*"

{L/780.015}; (b) one from April 2016 the suggestion that Ms Frost had "*agreed to launch an action against the MOS*" **{L/780.019}**; one from August 2017 that "*Mark Thomson and his colleague, James Heath,* [...] *are co-ordinating the legal side on the Mail*" **{K/2108}**; and (d) one in March 2019 that "*James Heath is aiming to co-ordinate early wave claimants*" **{K/2208}**. The latter two are after the applicable date.

735. The email **{L/780.015}** sent by Dr Harris to Hugh Grant on 20 March 2016 stating that "*Heather Mills, Simon Hughes and Sadie Frost*" were "*in the frame*" in relation to legal action against the Mail, was addressed by Dr Harris (Transcript, Day 8, p. 24, ll.7-22):

> Q. -- Gary Lineker in the Mail on Sunday, just to get our context. You say: "My only role in this is providing guidance to Graham, trying to keep the co-operation on track and contacting victims to persuade them to instruct lawyers to sue the arse off the Mail. We have so far got Heather Mills, Simon Hughes and Sadie Frost in the frame." Dr Harris, I suggest that this email is a fair description of what you and Mr Johnson were actually doing in early 2016?
>
> A. Well, if you mean what I meant by "in the frame", I meant these are the people we had in mind to approach, and -- and if it stood -- and if it was stood up, then they could sue -- they could sue the Mail, if I can put it more politely.

736. Extensive searches by the Cs' solicitors team have been carried out on the emails and other documents of the individuals who later became part of the Research Team, looking for any communications with "*Heather Mills, Simon Hughes and Sadie Frost*" in 2015-6 and any and all such documents were reviewed by the solicitor team and where relevant disclosed. No communications indicating an approach have been found other than those discussed in the sections on Sir Simon and Ms Frost law below.

737. Sir Simon similarly confirmed that nothing at his April 2016 meeting indicated that he was "*in the frame*" for a claim against D (Transcript, Day 7, p.29, ll.7-15).

738. The embryonic idea of Dr Harris of potentially co-ordinating claims was "*certainly not something I* [Mr Heath] *discussed with Mr Thomson*" (Transcript, Day 21, p. 55, ll.14-15). Indeed, until that stage, as Mr Heath confirmed in evidence, "*everything I had seen was too speculative*" (Transcript, Day 21, p. 57, ll.8-10) and in the "*context of advising Byline, there would have been an information barrier between us*" (Transcript,

Day 21, p.61, ll.4-6). As he further explained (Transcript, Day 22, p. 4, ll. 14-21) "*If there's a potential for conflicts of interest between two matters, so one matter I am working on or am instructed in and one matter Mr Thomson is working on and is instructed in, we would put in place what's known now as an information barrier where we would keep all the details of the matters we were working on entirely separate between us, we wouldn't exchange any information about the matters*". Mr Johnson's clear evidence was that all he wanted was "*quote so I can publish the story*" (Transcript, Day 14, p. 61, ll.12-15).

739. Mr Thomson was also clear that the suggestion he was "*co-ordinating the legal side of the Mail*" per **{K/2107.2}** and **{K/2108}** was "*completely untrue*" (Transcript, Day 16, p. 23, l.2) and "*All I can say is I -- I had no conversation about this* [co-ordinating multiple claims]*, I would never have done it. I'd done my time coordinating hacking claims after four years doing it against News Group and then assisting James in Mirror Group. This is just not accurate.*" (Transcript, Day 16, p.25, ll.15-20).

740. Although Mr Heath indicated in principle that he would have been happy to co-ordinate a group claim *if* one came along subsequently **{F/33/4/§12}**, it would have depended on the circumstances as he explained to the Judge (Day 21, p. 49 l.25 to p.51 l.21):

> MR JUSTICE NICKLIN: Why was it necessary for them to be "a co-ordinated group"?
>
> A. It was my view, my Lord, that there would have to be disclosure applications that would go beyond the bounds of what would be reasonable and proportionate to -- in a single claim, but might be proportionate if there was a group of claims.
>
> MR JUSTICE NICKLIN: Does that not depend on what the strength of the evidence was in the individual claim?
>
> A. Yes, certainly.
>
> MR JUSTICE NICKLIN: So if you had a strong individual claim, you wouldn't need a group of claimants to bring it?
>
> A. If -- if you had a strong individual claim, my view at the time, whether it was right or wrong, was the cost budget you were likely to get for a certain claim would constrain you from seeking disclosure from Associated Newspapers, certain disclosure orders from Associated Newspapers, of the type that, in my view, was likely to have been needed, given the length

> of time that had passed between the events that would have been alleged in question and any claims being brought.
>
> MR JUSTICE NICKLIN: Does it depend on the parameters of the litigation you're planning on bringing?
>
> A. My Lord, sorry, I don't quite understand.
>
> MR JUSTICE NICKLIN: Well, you can bring an individual claim, and if you've got clear evidence of unlawful information gathering, a straightforward, self-contained little claim. If, however, you want to be more ambitious and bring a claim which alleges a systematic unlawful information gathering, then you may need more claimants, you may need more disclosure, and you may run into the sort of budgeting issues on disclosure that you've just been talking about.
>
> A. It wasn't my -- it wasn't really in my contemplation of having the larger sort of claim, my Lord, it was more in terms of, because of the time that had passed, it was highly likely that documents would have been destroyed or lost in the ordinary course of business, which would require seeking orders for digging through the archives of the newspaper publisher in question, and that was likely to be a time-consuming and expensive exercise, which my view was that the court was unlikely to grant in the context of an individual standalone claim, but might grant in the context of a basket of claims being brought together.

741. Mr Heath explained that earlier material relating to UIG at D was "*very speculative*" (Transcript, Day 21, p. 10, l.22) and that when he acted for Ben Noakes (cf. the 2016 memo **{K/2067.8/47}** (dated 2016 on the first page and which includes references which refer to research undertaken on 28 September 2016, but with the metadata of the memo being 6 February 2017)) that "*When I acted for Ben Noakes at Taylor Hampton, my Lord, it was a long time ago, and I really cannot remember much about the time. I am relatively confident that I didn't identify such articles at the time because, as far as I remember, the matter was purely speculative and never went anywhere*" (Transcript Day 21, p.31, ll.12-17). As a specialist solicitor with substantial experience in claims for UIG, such evidence is powerful: as matters stood then there was not sufficient evidence for a properly arguable claim.

742. As set out in more detail in the sections below specific to Ms Frost and Sir Simon, the meetings that took place with Dr Harris and with Dr Harris and Mr Johnson respectively in April 2016 were not occasions where any evidence of phone-hacking or any other wrong-doing by Associated was passed to these Claimants.

743. Ultimately, the question for the Court is not whether someone somewhere happened to be investigating (for their own reasons), but whether there was sufficient reliable, claimant-specific material which the claimant in question could obtain and which would justify embarking on the preliminaries of a claim.

744. In short, the unlawful acts complained of were concealed *ab initio*, published as if the information had been obtained lawfully, and then in subsequent years D publicly denied wrongdoing. The Cs who followed Leveson heard denials rather than admissions. Research in the background by third parties – the Research Team as they would become – was kept confidential and even by 2016 the focus was primarily elsewhere and on different individuals. After claimant-specific evidence emerged and was presented to them, the Cs took advice and moved to bring the claims that the Court now has to determine.

745. The Cs' submissions on limitation and the law of limitation are set out in detail in the Cs' trial skeleton argument and should be read in conjunction with these submissions. For each of the Cs, a limitation chronology has been set out to assist the Court. These chronologies are annexed to these written submissions.

So-called limitation camouflage scheme

746. D amended its pleading **{A/29/19/§28A}** and **{A/31/20/§29A}**, at a very late stage to allege, further to their case that Sir Simon and Ms Frost Law (respectively) had actual knowledge at a much earlier stage, and that a fraudulent conspiracy was hatched by, *inter alia*, solicitors, Sir Simon, Dr Harris and Mr Johnson to hide the date that actual knowledge was obtained.

747. D's 'limitation camouflage' allegation is founded, primarily, on two emails. First, in July 2019 an email from Dr Harris to Sir Simon which stated, inter alia, that "[t]o *deter the Mail from arguing 'limitation' (ie you knew about this* 6 *years ago) Atkins Thomson think it best for stories to be written in Byline which can be referred to as the basis for claims being raised"* **{K/2211}**. Second, the "*proper email*", which was sent by Mr Johnson to Mr Thomson in October 2018 in relation to Ms Frost's claim **{K/2175.1}**

748. The oral evidence demonstrated that the true picture is not at all sinister and there were no such 'limitation camouflage' schemes in relation to Sir Simon and Ms Frost, and they are dealt with in detail below, but a number of evidential points stand out.

749. The evidence of James Heath is particularly clear, and disposes of the Sir Simon Hughes "limitation camouflage" allegation given it is his supposed advice that D suggests underpins the alleged scheme. He was not developing claims against the *Mail* and had "*no instructions or retainer to do so*" **{F/33/5/§14}**. He was clear "*any Limitation Camouflage Scheme of the type alleged would be thoroughly improper and contrary to my professional duties, I would certainly not give the advice alleged and I have never given advice to the effect of what is alleged to anyone. I do not believe it is advice that anyone else at my firm would give either for the same reasons*" **{F/33/6/§15}**. The true position in relation to the conversation between Dr Harris and Mr Heath that led to the July 2019 email was as follows **{F/33/6/§16}**:

> I believe, as far as I can recall of it, since it was a passing conversation, this appears to have been a mangling of a conversation I had with Dr Harris off the back of an article Byline was considering publishing concerning UIG for or by the Defendant. As far as I can remember, I had a conversation with Dr Harris and mentioned to him that Byline, since it would be required to contact anyone mentioned as an alleged victim of UIG for or by the Defendant in any of its articles, should tell those people that they should obtain legal advice inter alia on any potential claims they might have arising from the matters mentioned in the articles, since the Defendant was likely to raise a limitation defence to any such claims if brought and rely on the articles for that purpose. I believe, as far as I can remember, telling Dr Harris that any person bringing such a claim would need to be able to explain when they received knowledge of the essential facts of their claims and were likely to co-operate with Byline if it meant that they would learn those essential facts. What I said to Dr Harris was certainly not advice to anyone and I did not contemplate any of the alleged victims in the articles I was involved in instructing me because I could not have advised them in relation to the articles in question, given the obvious potential for conflicts of interest between them and Byline.

750. This was supplemented in Mr Heath's oral evidence (Transcript, Day 21, p. 85, l. 18 to p. 86, l. 4):

> What I said to him was, as far as I could remember, the conversation was that we -- well, that I said this is how knowledge works, actual knowledge, in section 32, and if Byline were to publish an article, then -- and draw it to

> the attention of the person concerned, then that would give them actual knowledge. If Byline were to provide documents or show documents to the person whilst writing the article, then that would give them actual knowledge. And so it was -- it's very important that these people should get legal advice, because then the clock would be ticking for the purposes of limitation.

751. Mr Johnson also confirmed that he did not consider the story relating to Miskiw / Anderson was "*stood up*" in 2016 (Transcript, Day 14, p.42, ll.10-11) and he was not in a position to write a story.

752. That is also consistent with the Cs' evidence. Ms Frost Law explained that the April 2016 meeting was one in which she was shown no evidence and told there was "*no action to be taken at that point*" (Transcript, Day 6, pp.97-98). Sir Simon similarly confirmed that nothing at the 2016 meeting indicated that he was "*in the frame*" for a claim against D (Transcript, Day 7, p.29, ll.7-15).

753. The 11 July 2019 email from Dr Harris to Sir Simon stated, *inter alia*, that "[t]o *deter the Mail from arguing 'limitation' (ie you knew about this 6 years ago) Atkins Thomson think it best for stories to be written in Byline which can be referred to as the basis for claims being raised"* **{K/2211}**.

754. Dr Harris said in relation to this email (Transcript, Day 10, p. 139, ll. 4-14):

> I didn't remember this conversation -- and that's what I then clumsily put here, "To deter the Mail from arguing 'limitation'". What I meant to say, what I was trying to get across, was that if that point that you definitely knew about a claim was set out in a publication, as with an article -- I think that was the point that was being put across -- then that's the point at which the clock starts to run on you knowing about it, or it being known about. Clearly there would be the advance notice that you were given on a front up or right to reply.

755. Essentially, Dr Harris explains that he 'mangled' a point made to him by James Heath in an attempt to encourage Sir Simon to assist Byline write an article.

756. Nor does Mr Johnson's evidence assist D's case, who said in relation to the July 2019 email (Transcript, Day 14, p. 68, ll. 6-25):

> Yeah. I mean, I can't remember this email, but it's -- this would have been absolutely no concern to me. The -- it's -- it's a load of nonsense written by Evan, and I would have -- I can't remember it, but I would have looked

> through it and thought what use is this to me? Is there a quote from Simon Hughes, or ... The honest position is this, is I didn't even know what limitation was until my colleague Dan Evans later explained it to me a couple -- probably a couple of years after this email, and it was -- it was the first -- I knew vaguely what the concept of limitation was, but I didn't know the details of it and -- and the ins and outs of it until my -- my colleague explained it to me in connection with another case.

757. To the extent expectations were raised in advance of the meetings, Sir Simon and Ms Frost Law were rebuffed with it being suggested there simply was no evidence.

758. In relation to the Sadie Frost Limitation Camouflage Scheme, this is also a paper-thin allegation. Not least because it would involve the active participation of Ms Frost, but her involvement is not pleaded by D.

759. The suggestion put to Mr Thomson and Mr Johnson that there was 'pretend formality' in relation to the October 2018 "*proper email*" **{K/2175.1}** is nonsense. It was a routine request for a formal request for comment that could, if appropriate be passed on to the client. The Court should reject D's assertion and its tendentious label.

760. D founds its entire allegation on what it describes as a fake formality to this email. The suggestion put to Mr Thomson and Mr Johnson that there was 'pretend formality' in relation to the October 2018 "*proper email*" **{K/2175.1}** defies an ordinary reading. It was a routine request for a formal request for comment that could, if appropriate be passed on to the client.

761. Multiple documents, witness statements and oral evidence demonstrate that the true picture is not at all sinister and there were no such 'limitation camouflage' schemes in relation to Sir Simon and Ms Frost. They are dealt with in detail below, but a number of "logic" and evidential points stand out

762. D's case offends even basic common sense. In order to work, there would have had to be such strong evidence of unlawful information gathering for so long (i.e. for more than 6 years before the email), that a 'scheme' had to be put in place to push knowledge back. In the case of Sir Simon, that means that he would have had to have knowledge since 2013 which D does not suggest was the case. Otherwise, any "scheme" is in no way justified.

763. Further such a scheme would require a grand conspiracy involving the suppression of communications about the fraud, and involve multiple actors including solicitors. Each of the fraudulent 'limitation camouflage' schemes are addressed in the claims of Sir Simon and Ms Frost Law below.

Limitation – Prince Harry and Baroness Lawrence

764. It is convenient to address the issue of limitation in relation to Prince Harry and Baroness Lawrence together, again due to the factual overlap between the watershed moments.

765. When asked directly about his watershed moment he explained "*the moment that I found out about the Mail was in 2020. Mr Sherborne was the one who told me about it*" (Transcript, Day 3, p.73, ll.6-8), which was when he found out about the admissions of UIG from Dan Hanks and Gavin Burrows **{F/16/6-7/§§16-19}**, and that "*I think if I was concerned about the Mail in a hacking sense* [in 2018], *I would have used the one moment that my wife and I used when she was in litigation with them and I put in my hacking claims against Mirror Group and News Group. I think, you know, three at the same time would have been the ultimate opportunity to bring in a hacking claim as well with Associated, had I known about it*" (Transcript, Day 3, p.73, ll.13-20).

766. The articles complained of did not give Prince Harry the requisite knowledge. His evidence explained that the contents were disguised as legitimate (Transcript, Day 3, p. 6, ll.16-25):

> Q. In particular, in relation to the articles that were published, you thought that the information had in many cases been leaked by individuals in your social circle, didn't you, your friends or bodyguards, as you put it?
>
> A. That was the way that the articles had been written, my Lord; a source said this, a friend said this, an insider said this.
>
> Q. And you thought that that was entirely possible, didn't you?
>
> A. It was pretty convincing at the time.

767. This led Prince Harry to suspect those around him in circumstances where he had no reason to suspect that the true source was concealed or disguised **{F/16/7-8/§21}** (cf. **{F/16/9/§30}** and **{F/16/14/§60}**). The false attribution put Prince Harry off the scent and onto the wrong suspects.

768. D's general reliance on hacking and UIG elsewhere is misplaced. While it is accepted that Prince Harry was aware of phone hacking of Royal Household staff in 2005 that is knowledge of a different newspaper group in materially different circumstances. Any general background must also be considered in the context of Prince Harry's service in the British Army where he was extremely busy and not attentive to mainstream news **{F/16/16/§72}**. Public documents buried away online (such as the Media Standards Trust report in 2015 (see Transcript, Day 3, pp.67-68) which Prince Harry had not seen) is far removed from knowledge of facts necessary for his claims.

769. While Prince Harry did not follow the Leveson Inquiry closely, he was still aware of D's clear denials, and in particular Mr Dacre's (Transcript, Day 3, pp.76-77). D, "[b]y going on the offensive, rather than the defensive, they had me so convinced that I didn't even think twice about it" **{F/16/18/§82}**.

770. The messages between Prince Harry and a friend **{M/6/2}** indicating he suspected the Sun or the Mail paid for a burglary does little to assist D. Suspicion about a burglary is a long way from knowledge about Prince Harry's claim as now pleaded, not least in circumstances where burglary to order does not form part of the claim that has proceeded to trial. Prince Harry made clear it was "*speculation*" (Transcript, Day 3, p. 74, ll.3-25).

771. The watershed moment, as explained above, arose from notification by Mr Sherborne and provision of Daniel Hanks' confession and Gavin Burrows' confession, and the first time he was aware of D's involvement in UIG **{F/16/6-7/§§15-19}**. After becoming aware in 2020, Prince Harry instructed Hamlins in 2021. Such diligent prosecution of a claim against D again shows any suggestion he was or could have been aware earlier if he was reasonably diligent is wrong, and D's case is built on artificial reverse engineering.

772. After Prince Harry became aware of his claim, he notified Baroness Lawrence on 12 January 2022 that she had been targeted by D, who had instructed Gavin Burrows and Jonathan Rees.

773. The email dated 12 January 2022 where Prince Harry contacted Baroness Lawrence is at **{K/2303/1-2}**. This was her trigger.

774. Baroness Lawrence's position on actual or constructive knowledge is clear (Transcript, Day 11, p. 99, l.9-20):

> Q. Before you were told in 2022 about what private investigators had revealed about their activities, do you remember that in 2022, did you have any reason to believe that the Mail had been using unlawful activities against you?
>
> A. No.
>
> Q. Was there anything you were told prior to then that made you suspect that the Daily Mail had been doing that?
>
> A. No.
>
> Q. Baroness Lawrence, did you have any dealings with Hacked Off?
>
> A. No.

775. The high point of D's case on knowledge in relation to Baroness Lawrence appears to be a reference in the 2015 autobiography of Clive Driscoll, to which Baroness Lawrence wrote a foreword **{K/1984/3}**. In one of the chapters, it suggests that a meeting that was held ended up being "*splashed all over the* Daily Mail *the following day*" and "*It took about 15 minutes from that newspaper arriving on the front door steps all over the country before we got a call from one of the lawyers acting for the family. 'Same old Met, leaking everything to make yourselves look good. I was horrified that Mrs Lawrence thought I'd have done something like that. I'd already rattled her with the saliva request. Now this had happened, she had to think I was as full of hot air as the rest. How was I going to prove otherwise? I was also shocked because the* Mail *had printed secret information. On reflection, we could have been victims of the*

phone hacking scandal but I had no idea how such information could have leaked at the time” **{K/1984/4}**.

776. However, it is neither party's case that the meeting to which Mr Driscoll refers was related to phone hacking. Further, this was in the context at that time (2015) where Baroness Lawrence “*trusted the Mail*” and Stephen Wright - prior to 2022 (Transcript, Day 11, p.100, ll.4-10) - and did no more than record Mr Driscoll's retrospective speculation (and in circumstances where it recorded Baroness Lawrence's lawyer considered it was a leak). Baroness Lawrence explained that many of these things were leaked by the police and “*that's where my complaint would have been and continued to be*” (Transcript, Day 11, p.89, ll.24-25). Mr Khan confirmed that “*Doreen isn't -- Baroness Lawrence isn't backward in coming forward to take action, but a standing -- the default position at meetings with the police was that the police were leaking every time, and, often much to my embarrassment, Doreen would have a go at the police almost every time we met. So whatever Clive Driscoll believed to be the case, I think one of the things that he would have been uncomfortable with was that it was a police officer who was leaking, and notwithstanding what he says here, if the -- if he had written this and she had seen it -- and I don't know whether she has or she hasn't -- her belief would always have been that it was the police that were involved in the leaking and not necessarily any newspaper, a newspaper that we had had a relationship with*” (Transcript, Day 11, p.176, l.16 to p.177, l.6).

777. There is a material distinction between Baroness Lawrence's clear belief or suspicion that police officers leaked information and suspecting that journalists from a national newspaper were involved in the supply of that information by procuring and paying for it. Suspicion of police leaks does not amount to knowledge of the causes of action now brought.

778. D's secondary point that Mr Khan KC was involved in Hacked Off is very weak. Baroness Lawrence was clear that she was unaware that Mr Khan KC was at any meeting with Hacked Off (Transcript, Day 11, p.94, ll.14-16) and Mr Khan KC confirmed he had no relationship with them and very limited knowledge of Hacked Off (Transcript, Day 11, pp.177-179).

779. After the concealed facts crystallised, Baroness Lawrence acted promptly, acting immediately after the notification in January 2022 and sending a letter before action on 22 March 2022 **{I/2}**. That reflects reasonable diligence once she was aware of a worthwhile claim.

Limitation – Elizabeth Hurley, Sir Elton John and David Furnish

780. It is convenient to consider the claims of Elizabeth Hurley, Sir Elton John and David Furnish together because of the factual overlap in their watershed moments.

781. The trigger in relation to the claims of Elizabeth Hurley, Sir Elton and Mr Furnish is clear. Ms Sangani explains that evidence first came to her in December 2020 when she was put on notice, when she was alerted to the confession of Gavin Burrows about targeting Ms Hurley, and immediately informed Ms Hurley **{E/394/4/§18}**. It was then a process "[t]*he process was one from December through to August where it was putting together all of Mr Burrows' evidence to date into the witness statement. It was an iterative process, but it was a process*" (Transcript, Day 17, p.13, ll.6-9) (and Ms Sangani then took evidence from Mr Burrows on 1, 8, 15, 22 and 29 March 2021: **{E/394/5/§21}**). Ms Hurley confirms this, that it was "*the ghastly Mr Burrows*" who triggered her (Transcript, Day 4, p. 55, l. 15), and she was contacted in the call on 16 December 2020 **{E/394/4/§18}**.

782. It was after this point, "*in around early 2021 and during the month of February*" that Ms Hurley called Sir Elton and David Furnish.

783. Mr Furnish's evidence is the key account, which was also expressly adopted by Sir Elton. Mr Furnish confirmed that Ms Hurley alerted him and Sir Elton (Transcript, Day 14, p.123, ll.17-19). Sir Elton confirmed "*I didn't hear anything about any activities with the Mail until Elizabeth reached out in February of 2021. Prior to that, there was no discussion of anything relating to the Mail newspapers*" (Transcript, Day 14, p.124, ll.16-20).

784. Mr Furnish then sought legal advice in February 2021 **{F/13/2/§9}** (cf. the metadata of the privileged communications at **{K/2278}** and **{K/2290}** in late February 2021).

785. Sir Elton explained that it was the point that they saw the signed confession of Mr Burrows that they decided to bring the claim (Transcript, Day 15, p.8, ll.6-17):

> ... we hadn't seen the Gavin Burrows confession, or the signed confession, or whatever it was, and when we saw that, it ... There were things in it, for example, when he talked to our gardener, and I mean, I just found that unbelievable that he would talk to our gardener, he had our gardener's phone, and the information about the trees was totally right, how could it not be correct when he wrote exactly what had happened, and that would never have happened as hearsay or leak or anything. So, I mean, we thought about this very carefully. We don't take action unless we are pretty sure that we have had an injustice done against us.

786. Prior to this, Mr Furnish confirmed he had no suspicions about the *Mail* newspapers (Transcript, Day 14, p. 126, ll.15-23):

> No, no, not at all. Never suspicious of the Mail, because I had followed -- I dipped in and out of the Leveson Inquiry, and I specifically recall Paul Dacre's testimony during Leveson saying that only red top newspapers hacked phones, hacked lines, etc, and that the Mail -- he said he did a thorough investigation of activities at the Mail and that there were no illegal activities. That -- that's my recollection of what he said during Leveson.

787. Far from public discussion of wrongdoing putting Sir Elton and Mr Furnish on enquiry as to D, the public denials put them off the scent.

788. The same is true in relation to the MGN and NGN claims in 2016 and 2017. MGN apologised and admitted voicemail interception and use of PIs: **{K/2095}**; **{K/2109}**. Further, as Mr Furnish explained, having accepted that he was aware of the articles when published (Transcript, Day 14, p. 127, l.13 to p.128, l.3):

> I wouldn't have suspected illegal activity at that time. They were just articles that were upsetting for different reasons. But my dealings with Ms Sangani were very much specifically related to our Mirror case and our Sun case. I didn't have a kind of relationship with my lawyers where I was, you know, going back and forth discussing what's happening in the press and in our life. I don't have that kind of relationship. Calling up lawyers regularly is expensive. And so, you know, we might talk about it at home amongst ourselves and say, "Wow, I wonder where that -- that came from", but we didn't have any suspicion of illegal activity, and you just assume it's a leak, and you -- often in those cases you have no way of knowing where that could have come from.

789. Mr Furnish also made clear he would not have expected Ms Sangani to inform him unless there was evidence that he or Sir Elton might have been targeted by D (Transcript, Day 14, p. 151, ll.8-13):

> Q. ... Can I ask you, would you have expected Ms Sangani to contact you about a group claim if she didn't have any evidence of illegal activities at the Mail in relation to you or Sir Elton personally?
>
> A. No, I wouldn't expect her to do that. That would just be speculation.

790. Similarly, Ms Hurley explained that after the police told her she had never been hacked it was "*off my radar*" until Hugh Grant spoke to her about the Mirror in 2015 (Transcript, Day 4, p.69, ll.17-23). Ms Hurley did not follow Leveson or Motorman (Transcript, Day 4, p.75, ll.10-11). She was filming in America at the time of Leveson (Transcript, Day 4, page 69 ll4-14 and page 71 ll. 10-14).

791. In relation to Ms Hurley, D sought to suggest that something could be made of the document described as the Operation Bluebird memo at **{K/2058.3}** which is dated 1 December 2016 as it names Ms Hurley as being part of one of "*two potential victim groups*" **{K/2058.3/2}**. The other four individuals named there are not claimants in these proceedings. As Ms Hurley explained, having been shown the memo in cross-examination (Transcript, Day 4, p. 97, l. 16 to p.98, l.21):

> Q. You were expecting, weren't you, Ms Hurley, in 2016, to be part of a group claim against Associated?
>
> A. I was not expecting in 2016 to be part of a group claim against Associated.
>
> Q. And you and your lawyer, Ms Sangani, had been notified –
>
> A. I –
>
> Q. -- of the investigation and its outcome?
>
> A. To my knowledge, absolutely not notified, and I don't think there's been any evidence found at all of us being notified, because I wasn't notified. I mean, you can see there's quite a lot wrong in this, because of those five people they say are going to be sitting here, guess what, there's only one, me, so ... The other four aren't there. So I really don't understand.
>
> Q. Well, I suggest you do, Ms Hurley, and you were aware of the investigation and the development of claims that had been going on in 2015 to 16, and you'd been kept in touch with this by any or all of Mr Grant, Ms Sangani, Dr Harris or Mr Johnson, or your assistant Katie?
>
> A. Well, number one, I don't know if my assistant Katie was even working for me. I think she'd left London and moved to the country by then. I can't be absolutely sure of the dates, but I'm pretty sure she had. And I've said quite a few times, I'll say it again: no, nobody was keeping me informed of anything, ever. I've never sat down with Hugh and had a serious chat in my

> life pretty much about anything, and the idea of him regularly updating me on stuff is -- is -- is preposterous. He didn't.

And further (Transcript, Day 4, p.99, l.25 to p.100 l.22):

> ... I couldn't find any information whatsoever on my emails about any of this information when I was asked to look for it in disclosure. I didn't have anything. So I -- I had no idea that people were including me in their reports about publicity. Honestly, I -- this is news to me. I don't know what this is. And I would -- people can -- in many different ways people have written about me, whether it's in the newspapers or whatever, but the idea of me being put on somebody else's timetable of litigation and publicity is ridiculous. It couldn't happen. And I can assure you my sister Katie most certainly -- I don't know if she'd even know who Hacked Off was, to be quite honest, she left London a long time ago, and I can't imagine for a second Katie has ever had a meeting with anybody about Hacked Off. I've never asked her, because it's never come up, and I can't imagine she wouldn't have told me if she had, but I really do not think that can possibly be the case. I do not know who this man is, talking about timetables and publicity. I don't know what this is. I have no idea. I kind of mind being used in that respect, but I don't know what it is.

792. Ms Hurley is absolutely clear: she was never notified and nobody was keeping her informed. There is no actual evidence to contradict that at all. The Operation Bluebird memo, written by Mr Johnson/Dr Harris (who were wholly unconnected to Ms Hurley) after the applicable date, for a separate third party, without any knowledge of Ms Hurley (nor is there any evidence that she did know about it) is no substitute at all for such missing evidence.

793. The fact that third parties, such as Dr Harris and Mr Johnson, are writing about Ms Hurley does not impute the knowledge they held on to her. It was being produced for an entirely unconnected third party, and is clearly a document that would be used to emphasise progress and potential steps, similar to a pitch document, in circumstances where Mr Johnson was seeking funding. Further submissions relating to the Operation Bluebird Memo are set out in the note at **{CB/26}**, which was provided to the Court on 24 February 2026 and the contents of which are not repeated in these closing submissions.

794. Similarly, Mr Johnson accepted the "*Deploy ElizH*" **{K/2067.7/5}** simply never happened. Ms Hurley also explained the position (Transcript, Day 4, p.90 l.7 to p.91, l.19):

> Q. You see, one reason I suggest you did tell you about it is that your name features in the action list compiled by Mr Johnson. Could we get back up on the screen, please, {K/1974.1/12}. Just to give you context, I told you this was an Associated investigation timeline prepared by Mr Johnson in early 2015. Part of it includes an action list. Do you see the top action on the page we're looking at is: "Deploy ElizH to help HG speak to Dominic L." Do you see that?
>
> A. Like I'm some kind of super-spy to be deployed. I don't even know what that means. Who's "Dominic L"?
>
> Q. "HG" is Mr Grant.
>
> A. Yes, no, I got that. And I'm "ElizH", I get that.
>
> Q. "Dominic L" is Dominic Lawson, the then editor of The Telegraph, who the documents suggest Mr Grant was trying to interest in a particular allegation of phone tapping against Associated.
>
> A. Okay. Well, I can assure you I have never been deployed by anyone to speak to Dominic. I actually knew Dominic back in the 90s, but I have never been deployed to speak to anyone, ever.
>
> Q. Did Mr Grant explain to you what his and Hacked Off's investigation involved and your possible deployment, even if you weren't actually deployed?
>
> A. No. No. No one's ever suggested to me I'd be deployed, no.
>
> Q. You're obviously an independent woman, Ms Hurley. It's unlikely, is it not, that there would have been any consideration of deploying you unless you'd been consulted?
>
> A. I really can't answer for anybody else. You'd have to ask them. I don't know. I mean, as I've said, I don't know how responsible and grown-up I seem to many people, and the idea of deploying me on a secret mission is preposterous.

795. Nor was Ms Hurley made aware or involved in the reference to her in a later memo in May 2017 **{K/2094.10}** (see Transcript, Day 4, p.101, ll.21-25).

796. Ms Sangani's evidence is that the first evidence relating to D came to her only in December 2020 and so there can be no suggestion of any earlier trigger, in any event, from solicitors: **{E/394/12/§42}**.

797. Mr Furnish also made clear that he would not have expected Ms Sangani to contact him unless there was evidence of illegal activities at the Mail in relation to him and Sir Elton personally, as anything short of that would "*just be speculation*" (Transcript, Day 14, p. 151, ll.12-13).

798. D's limitation case on Ms Hurley, Sir Elton and Mr Furnish is very weak. Awareness of intrusive articles and phone hacking generally is not sufficient for the purposes of constructive knowledge. There was neither actual nor constructive knowledge for Ms Hurley before 16 December 2020. Similarly, there was neither actual nor constructive knowledge for Sir Elton or Mr Furnish until they were informed in February 2021.

Limitation – Sir Simon Hughes

799. Sir Simon's claim is unique among the Cs as it is a pure UIG intrusion claim that is not tied to any published article (though similar to the Ectopic Pregnancy Episode pleaded by amendment in Ms Frost's claim). Sir Simon's written evidence had explained the important events that occurred in January 2006 - namely the approach by 'The Sun' political Editor Trevor Kavanagh leading to the publication of the front page article in *The Sun* entitled *'A Second Limp-Dem Confession: I'm gay too'*, an exclusive by Trevor Kavanagh, dated 26 January 2006 **{K/715}** and an article on pages 6 and 7 **{E/41/22-23},** which had the effect of him losing in his attempt to become Party leader of the Liberal Democrats.

800. As can be seen from the contemporaneous document, and unsurprisingly, *The Sun* was a key focus for Sir Simon.

801. Everything pointed towards NGN in 2006, 2011 and 2012.

802. In 2006, the MPS had told Sir Simon that Glenn Mulcaire was involved in the interception of his voicemails for the *News of the World* **{F/11/10/§57}**. He asked if anyone else was involved and was told 'no' **{E/386/2/§5}**. Sir Simon was told in 2011 that he had been provided with "*any documents showing or evidencing the identity of the person or persons who had instructed or engaged Mr Mulcaire to access the Applicant's voicemails*" under 1.7 of the Winegarten order **{K/1493}** "*no documentation ... falls to be disclosed*" **{K/1511/2}**. The Mulcaire notes provided in

September 2011 had redactions to the left-hand corner names **{E/388/5/§24}**. It was NGN that admitted in sworn admissions that between 16 February 2006 and 16 June 2006 that Mr Mulcaire intercepted the voicemail messages of Sir Simon and provided the fruits of that UIG to the *News of the World* **{K/1663/10/§41}**. Sir Simon thought that "*all the indications*" were that the Mulcaire notes related to the *News of the World* (Transcript, Day 7, pp. 19-20; 60-61; 118-119).

803. Sir Simon followed the Leveson Inquiry and believed the trenchant denials of D that Associated never carried out voicemail interception**. {F/11/16/§88}**. Sir Simon's evidence on this was not challenged by D at trial. The thrust of D's case is that Sir Simon would have been shown the Miskiw/Anderson emails upon which he later founded his claim in early 2016. It is clear that Dr Harris and Mr Johnson had the Miskiw/Anderson emails at that time as the "*Frost/Schmidt emails*" are discussed in the context of "*the Simon Hughes story*" in an email from Dr Harris to Mr Johnson on 20 February 2016: **{K/2038.1}**. However, as Sir Simon explains (Transcript, Day 7, p. 16, ll.4-15):

> A. This email speaks for itself, but it was nothing that I knew at the time, nor did I know what his view was about the issue. I'd been asked for a meeting and in due course there was a meeting, but his assessment of a Simon Hughes story was not something in my knowledge, my Lord.
>
> Q. I suggest that in the light of this email, it's likely that Dr Harris would have told you on the phone that the whistleblower was Mr Miskiw?
>
> A. I never -- I never heard the name Miskiw for a considerable time after -- until a considerable time after that.

804. Sir Simon was entirely unaware that the Miskiw/Anderson emails had been obtained and had no recollection of being told of the emails. Dr Harris stated he would not have shared such material with Sir Simon (Transcript, Day 9, p.24, ll.4-25), and his evidence was that he did not share the emails because they were the journalistic property of Graham Johnson. This is consistent with the text on 4 April 2016 **{K/2047}** which refers to an NGN claim and a possible Mirror claim.

805. On 4 April 2016, HJK and Sir Simon exchanged emails and HJK said he knew that Dr Harris had a source implicating the Mail but he "*doubted*" the source **{K/2045}**.

806. Dr Harris and HJK had been in communication and HJK had acceded to Dr Harris's request to send him the text {**L/780.010.1/1**} that lay below the redactions in his Leveson WS [{**K/1618/2-3,6**}]. This revealed to Dr Harris for the first time that the journalist, or journalists, who had door-stepped both HJK and Sir Simon were from Associated. It is clear that the "*Mail business*" referred to in the email of 3 March 2016 **{K/2041}** related to this doorstepping episode (as opposed to the claim which Sir Simon now brings), and as Sir Simon explains (Transcript, Day 7, p. 23, l.21 to p.24, l.13):

> Then and before, and after for a considerable time, my Lord, the only Mail business that was in my mind was that the Mail appeared to have been the newspaper which organised somebody to doorstep me and to doorstep a friend of mine and, as I've said in my witness statement, as far as I was concerned, bluntly, being doorstepped had become par for the course since 1983 on many, many, many occasions, and therefore if Dr Harris wanted a conversation about that episode, I was very happy. My -- my honest belief before, during and until later was that doorstepping was then, as it had been many times before, conventional journalism. If journalists know where you live, they come for all sorts of reasons. That's not illegal. You don't have to answer them. And so I never saw that as something that was uncomplicated or that I couldn't answer any questions about, which I -- which I happily did.

807. Neither Sir Simon nor Dr Harris believed that "door-stepping" even approached unlawful activity (cf. **{F/25/7-8}**).

808. Dr Harris asked Sir Simon to meet with him and Mr Johnson at a coffee shop on Jamaica Road **{K/2046}**. The meeting took place on 5 April 2016.

809. The meeting, initially proposed to discuss the "*Mail business*" (referred to above), in fact ended up being about *The Sun* article (save as in relation to 'door knocking') that had outed Sir Simon in 2006. What *The Sun* story had done to Sir Simon's political career, as well as personally, and how this information had been obtained was plainly of the greatest priority to him, especially given the ongoing MTVIL applications at the time.

810. Critically, Sir Simon was not shown the Miskiw/Mulcaire emails or told about them:

> Q. So your evidence, Sir Simon, is that although the email which prompted the arranging of this meeting referred to a discussion of the "Mail business", the meeting ended up being about The Sun?
>
> A. That's how it turned out, and The Sun was the immediate and topical issue, because there were proceedings I think during court the following week, and Mr Johnson, as I understood from Dr Harris at the meeting, was a person who was working on that. So, yes, the only conversation about the Mail turned out to be the conversation about whether I recognised who the doorstepping person was. And I also believe -- and, again, I want to be clear about this -- I don't believe there was any conversation about The Mirror at that meeting either, I think it was predominantly about The Sun. It wasn't a long meeting, it was a breakfast meeting, it was in a coffee shop, or outside a coffee shop, and I was there for a while and then went off, but that's the summary of what happened at that meeting.
>
> Q. I regret to suggest to you, Sir Simon, that that account of the meeting is not a truthful account.
>
> A. It is a truthful account, with the additional point I've made that there was a short conversation about the doorstepping person and who that might have been, but it is a truthful account.
>
> Q. I suggest that at the meeting you and Dr Harris and Mr Johnson did discuss the "Mail business", and that the "Mail business" in question was a suggestion that there was evidence on which you could base a potential claim against the Mail on Sunday?
>
> A. Absolutely not, sir.
>
> Q. And I suggest that Mr Johnson and Dr Harris showed you the evidence, which was the 2006 emails that the whistleblower and Mr Miskiw had sent them, or at least discussed these emails with you?
>
> A. I was shown nothing, I'm clear about that, and they were not discussed with me.
>
> Q. You may also have been shown or discussed the evidence Mr Mulcaire was providing to Dr Harris and Mr Johnson interpreting his notes which related to you?
>
> A. No, I was not.

811. Similarly, Mr Johnson confirmed that that meeting was about *The Sun:* "*I was not asked to show Simon Hughes those emails, and during the meeting I didn't show him the emails*" (Transcript, Day 14, p. 27, ll.1-2). The sole question relating to the *Mail* was who had doorstepped Sir Simon. Similarly, Dr Harris confirmed (Day 8, p.37, ll.9-13):

> No. I remember that meeting, it was about The Sun. I was very focused, for reasons I can explain, on The Sun at that meeting. I had a question for Simon about the Daily Mail, but it was about The Sun, primarily.

812. None of the contemporaneous documents contradict Sir Simon's evidence (or that of Dr Harris and Mr Johnson) that he was not shown or told about the Miskiw/Mulcaire emails.

813. Reliance by D on an erroneous reference to "*News International*" in an email from Dr Harris to solicitors at Hamlins does not assist **{K/2050.1/1-2}**. The reference is clearly an error and the email relates to newspapers beyond the *News of the World* rather than the corporate entity News International. The subject line is about *The Sun*, i.e. the new frontier for the MTVIL litigation and the remainder of the email clearly relates to *The Sun* **{K/2050.1/3-4}**. Sir Simon of course later brought a claim against *The Sun* in 2019.

814. Internal memos from 2017 **{K/2094.10}**, 2018 **{K/2175.0.1}** and 2019 **{K/2196.1}** **{K/2208.1}** that identify Sir Simon as a potential victim also do not assist, not least as they are well after the Applicable Date. Internal documents not shown to Sir Simon do not assist in imparting knowledge to him.

815. The 3 March 2019 email from Dr Harris to Sir Simon again post-dates the Applicable Date by nearly two and a half years **{K/2208}** but does enclose a victim memo **{K/2208.1}**. Sir Simon candidly accepts that he was put on notice of potential UIG from this date **{A/22/16/§22}**. Crucially, the terms of the memo make no mention of having communicated any of the information about the activities of Associated to Sir Simon at any point prior to the meeting on 1 March 2019, let alone at the meeting in 2016. Again, there is no evidence which contradicts Sir Simon's evidence (or that of Dr Harris and Mr Johnson) that he was not shown or told about the Miskiw/Mulcaire emails in 2016.

816. The decisive change occurred in early 2022 when Sir Simon was presented with the Miskiw/Anderson emails and Glenn Mulcaire's explanation of the notes along with the payment record: **{F/11/16-17/§§89-93}**.

So-called 'limitation camouflage'

817. D's pleaded case is at §28A of the Amended Rejoinder **{A/29/19-20/§28A}**. It alleges a scheme between Dr Harris on the advice of Mr Thomson (or "*another solicitor at*

Atkins Thomson") (D suggests this can be inferred from the emails at **{K/2211}** and **{K/2212}**) and that this scheme was adopted by Sir Simon.

(a) The evidential basis is impossibly narrow. There are no emails from Mr Thomson; none from Mr Heath; none from Sir Simon. There is only one sentence in one email - from Dr Harris to Sir Simon and Graham Johnson **{K/2211}** and a response from Mr Johnson **{K/2212}** both on 11 July 2019.

(b) This complete lack of any other evidence is especially telling because extensive searches have been carried out – for example – of all Dr Harris' documents, emails, text messages and WhatsApp messages against all relevant search terms relating to Sir Simon and to limitation, and every email, text and WhatsApp message that passed between them has been reviewed by the Claimants' solicitor team. There is nothing which supports the so-called scheme.

818. The email that D does not refer to is the next one in the chain dated 12 July 2019, **{K/2216}**, which tells Sir Simon to "*Ignore these for now*" (i.e. **{K/2212}** and **{K/2211}**). Sir Simon explained that he did not look at these emails until the following Monday: 15 July 2019. He would therefore have likely glanced at the chain together and confirmed there was "*no need to ask further questions*" and he was busy with plenty of other things on the agenda and so happy to have something taken off the agenda (i.e. considering the emails in any detail) (Transcript, Day 7, p.91, ll.2-14).

819. D is therefore trying to found what is effectively a fraud case from a document not authored by the solicitor who is said to have given the advice, not copied to such solicitor nor even shown to have been approved by such solicitor. It is weak evidence, and entirely undone by the evidence of Mr Thomson, Mr Heath, Sir Simon, Mr Johnson and Dr Harris. As set out above, Mr Johnson's evidence was that he did not know what limitation meant and it was not something that was important to him with no decision relating to publication being made on that basis **{E/389/4/§§14-17}**. Under cross-examination he went even further, describing the email from Dr Harris as "*a load of nonsense written by Evan*" (Transcript, Day 14, p.68, l.8).

820. The sentence written by Dr Harris is "*To deter the Mail from arguing "limitation" (ie you knew about this 6 years ago) Atkins Thomson think it best for stories to be written in*

Byline which can be referred as the basis for claims being raised” (**{K/2211}**). Realistically, this so-called scheme rests on just this one sentence.

821. Mr Thomson said this of the email (Transcript, Day 16, p. 130, l.7 to p. 131, l.24):

> A. I didn't discuss any such scheme or arrangement with anyone, with Evan, with Graham, and I was really surprised to see this email. And I'm also really concerned that Evan didn't send it to me, because I would have immediately reacted if I'd seen this email.
>
> Q. It's improper on its face, isn't it, Mr Thomson?
>
> A. Well, it's a bit gibberish-y, and it's Evan trying to be a lawyer. But, yes, it's -- it's -- it's seriously wrong, and I would have had something –
>
> Q. Who was it at Atkins Thomson who suggested this?
>
> A. Well, I don't think it was anyone at Atkins Thomson who suggested it, but I think Evan has said he spoke to James Heath, and you'll have to ask James Heath what -- about his conversation with Evan. This is completely wrong, in my view, and it's also -- it's wrong in the sense of what it's suggesting, it's wrong in suggesting that we're progressing claims at Atkins Thomson. We weren't. And I'm just trying to read the last paragraph. It's seriously inaccurate, and Evan may think he's a lawyer, but he's not, and it's -- it's nonsense.
>
> Q. The first –
>
> A. And I'm really concerned that Evan actually went -- a number of times went -- sent emails. When you look at this, he keeps sending emails to Sadie and Simon without copying me in, when he knows I'm -- I was their lawyer, even though not formally instructed on this matter. But I'm really concerned that he was doing this repeatedly, effectively behind my back.
>
> Q. This allegation was first raised in Ms Richmond's 14th witness statement in September, Mr Thomson. You'll recall that.
>
> A. I don't recall which one it was. It's been raised a number of times. But, yes, you're probably right.
>
> Q. That's when it was first raised. You accept that, on the face of it, what is attributed to your firm, Atkins Thomson, is quite improper?
>
> A. It is -- it is improper. It's whatever you want to call it, camouflage, yes, it is, and I'm -- I'm sure it's completely untrue that we had anything to do with

it. Certainly I knew nothing about it and I'm sure James did not give any such advice.

822. Mr Thomson confirmed he only first saw the email in disclosure in 2025 and categorically denied ever discussing or advising such a strategy **{E/388/6-7/§36}**.

823. Mr Heath confirmed that he had not given such evidence and the email "*doesn't really make sense*" (Transcript, Day 21, p.79, ll.2-13). In any event, he said that any scheme of the type alleged by D would be "*thoroughly improper and contrary to my professional duties*" and "*I would certainly not give the advice alleged and I have never given advice to the effect of what is alleged to anyone*" **{F/33/5-6/§15}**.

824. Sir Simon accepted such a scheme in principle would be "*improper*" (Transcript, Day 7, p.93, l.2). In fact, because he read the email chain together and the imperative to 'ignore' the emails at **{K/2211}** and **{K/2212}** in the final email at **{K/2216}** Sir Simon "*didn't give that* [how deterrence would be achieved by publication of stories in Byline] *considered thought. I've told you, I -- I saw this on the following Monday. I, as it were, recorded that I had received it, and within minutes saw them email saying, "Don't -- you don't need to deal with this now. Things are not ready", I said "Okay", and so I didn't give it further thought*." (Transcript, Day 7, p.94, ll.4-9). Indeed, Sir Simon was not at all concerned about limitation at the time because he had not seen evidence (Transcript, Day 7, p.95, ll.1-7).

825. Dr Harris categorically denies that he would suggest such a scheme (accepting that it would have been improper) and stated repeatedly and categorically on oath that he did not do so[135]. He accepts that the sentence was "*clumsily*" put into an email, and was a "*mangled*" interpretation, and so was not an accurate record of what was said to him by Mr Heath (Transcript, Day 10, pp.138-149). He explained that he expressed the answer he received from Mr Heath badly (Transcript, Day 10, p. 139, ll. 4-14).

826. In any event, it is clear that Dr Harris confirms that no Atkins Thomson lawyer advised any strategy as appears to be suggested in that sentence in **{K/2211}**. Mr Heath's

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[135] First Witness Statement paragraphs 31-33 ({**F/25/8-9**}); Second Witness Statement, paragraphs 5-9 ({**E/209/2-3**}); Third Witness Statement paragraphs 10-12 ({**E/391/1**}); Transcript Day 10 page 137 line 24 to page 150, line 6; and Transcript Day 11, page 55 line to page 59 line 14

recollection of the actual conversation confirms that no such advice was given (Transcript, Day 21, p. 85, l.18 to p.86, l.4):

> What I said to him was, as far as I could remember, the conversation was that we -- well, that I said this is how knowledge works, actual knowledge, in section 32, and if Byline were to publish an article, then -- and draw it to the attention of the person concerned, then that would give them actual knowledge. If Byline were to provide documents or show documents to the person whilst writing the article, then that would give them actual knowledge. And so it was -- it's very important that these people should get legal advice, because then the clock would be ticking for the purposes of limitation.

827. Prior to the completion of Dr Harris' evidence, the Cs disclosed {**L/800.2**} a contemporaneous note, made by Dr Harris in his notebook, of a call between Dr Harris and Mr Heath about what the point was from Mr Heath that Dr Harris had managed to "mangle" in his email of 11 July 2019. Although it is not dated, it took place in October 2025 shortly after D had made the (then still unpleaded) allegation of "limitation camouflage" in relation to this email. This demonstrates that Mr Heath did remember discussing with Dr Harris, on or prior to 11 July 2019, how a relevant article published would give a potential Claimant what was called actual knowledge. This was further set out in the oral evidence of Dr Harris. D chose not to challenge Dr Harris on this note or his interpretation of it (Transcript, Day 11, page 61, lines 16-21)

828. The email {**K/2212**} – in the same chain - that followed an hour later from Mr Johnson to Sir Simon, asking him for his help with publishing the article by consenting and providing a quote, clearly demonstrates that the purpose of the preceding email had been to reassure Sir Simon that there was some benefit to him in having the article published, as Dr Harris explained in his evidence was the purpose of his email.

829. Mr Waddell, who worked closely at that time with Dr Harris and Mr Johnson, also confirms in an unchallenged witness statement that there was no camouflage scheme ever discussed, and limitation was not a matter he and Dr Harris worked on in 2018 or 2019 or considered as an issue in relation to D at that time **{E/390/3/§§13-15}**.

830. Further, notwithstanding such a scheme did not exist, Sir Simon did not adopt it, as set out above. The allegation made by D reduces down to one inaccurate sentence

written by Dr Harris. A poorly expressed sentence is not an improper scheme. Such a scheme was not adopted, it was not implemented, and it has been conclusively disproved. As set out above, in any event there was no such limitation problem. It is not D's case that Sir Simon knew or had anything approaching a worthwhile claim in 2013. Further, if Sir Simon *was* aware he then waited for three years to bring a claim, which again makes no sense.

Limitation – Sadie Frost Law

831. Ms Frost Law explains that while she was aware of most of the articles at the time they were published and had pursued claims against NGN and MGN she did not know she had a worthwhile claim until well after the Applicable Date. Her witness statement **{F/18}** made clear that she felt she could not trust anyone because "*they were always written so close to home...*" (see para 98).

832. Ms Frost Law also explained the importance of advice (Transcript, Day 6, p.63, l.16 to p.65, l.6):

> "What I take seriously is getting information from my lawyer. My lawyer is the person that I've instructed to give me information. For me, it's like, if somebody tells me that I'm not very well and they offer me a diagnosis, I wouldn't believe that person. But if a doctor told me I wasn't very well, then I would know that I wasn't very well because it came from a doctor. It was very much the same as that. [...] when it comes to all the other people that are trying to kind of give you information, get information, yes, I'd be very polite on that kind of level, but really direct your serious conversations, your serious thoughts and claims to those people, and the hot air, just not really take any notice of it, because it -- because I -- because it's not -- it isn't concrete evidence, it's just a speculation, and a lot of times people say things that aren't real, and I know that a lawyer is going to say something to me that is real when it's real, you know."

833. Ms Frost's contact with Hacked Off, social contact with Dr Harris and general publicity all falls short of showing she had a worthwhile claim against D. Ms Frost Law did not ignore such matters but absent evidence it was simply 'speculation': the antithesis of a worthwhile claim.

834. The email on 17 March 2016 **{K/2042/5-6}** did not give Ms Frost Law such facts to found a worthwhile claim. As Ms Frost Law explained (Transcript, Day 6, p. 69, ll.4-10):

> Well, I wasn't going to make any assumptions until I spoke to my lawyer and found out, because often people would write things about things that weren't true. Sometimes -- you know, people have speculated about things. Sometimes I felt like there was a bit of a carrot being waved in front of my nose, so I wanted to talk to Mark about it.

835. Indeed, this is consistent with Ms Frost's approach to the claims in NGN and MGN where she did not believe she had claims against those publishers until "*I actually sat in the room with the police, sat in the room with the lawyers*" (Transcript, Day 6, p.72, ll.10-12). Ms Frost Law acted diligently in response to the request for a meeting from Dr Harris, however, and attended one with her solicitor, Mark Thomson.

836. The meeting of 14 April 2016 is an important issue in Ms Frost's limitation claim. The question of what happened at the meeting is disputed by D. However, Ms Frost's account of the meeting is clear (Transcript, Day 6, p. 84, ll.10-12):

> I asked for the evidence, he said he was going to give me the evidence, but there was no evidence.

837. So is Mr Thomson's account. He also makes clear that the meeting was frustrating because, contrary to what was indicated, he was then told there was no such evidence (Transcript, Day 16, p. 46, l.8 to p.49, l.15):

> Q. So your case is you were unaware prior to the meeting on 14 April of the 2006 emails?
>
> A. Yes, absolutely.
>
> Q. And you hadn't seen these tweets or been told about them -- or, sorry, been told about the 2006 emails by Dr Harris or Mr Johnson?
>
> A. I wasn't told about the 2006 emails at that time, or -- and I didn't see them until 2022.
>
> Q. Mr Thomson, if you hadn't seen the evidence referred to in Dr Harris' email of 17 March 2016, it must have been obvious to you that you needed to see it and get copies at the meeting –
>
> A. Yes.
>
> Q. -- do you agree?
>
> A. Yes, it was obvious, and I asked him and he said, "No, there's no evidence", and Sadie said the same thing. He promised to produce evidence and he said at the meeting there was no evidence.

Q. What was your reaction when he said there was no evidence having described in some considerable detail in the 17 March email what the evidence was?

A. I was really frustrated with why he had called me to a meeting, Sadie was as well, as you've seen in evidence, and I found it quite annoying, because he'd wasted my time.

Q. If he had really not shown you the evidence trail in his email of 17 March at the meeting, you would have asked him for it, wouldn't you?

A. I did. He said there's no evidence.

Q. And you'd have written asking him –

A. Well, I asked –

Q. -- what the evidence was and for copies of it?

A. Well, what happened was -- I have described in my evidence before, but what happened was, there was a meeting. He turned up, said a few things, Sadie or I said, "First, show us the evidence, explain what you have got", and he said, "There's no evidence, what we really need is the Mulcaire notes", and he mentioned some other references. And then I think Sadie and I went out of the room to discuss whether we should provide him with the Mulcaire notes and we agreed that we would and then we'd see what he came up with. But he came to show us stuff; in fact he wanted material, which I found annoying, but we were prepared to let him get on and update us when he found anything. So that's what happened.

[...] at the meeting on 14 April, when I asked him for evidence, Evan said there was none, "We need your Mulcaire notes", and I assume he was exaggerating what he had and actually what he wanted to do was to investigate, which is what we allowed him to do by providing a copy of the Mulcaire notes to Evan on the 14th.

838. Mr Thomson then emphatically confirmed this when asked by the Judge (Transcript, Day 16, p.59, l.7 to p.60, l.19):

MR JUSTICE NICKLIN: Do you have a clear recollection now that you asked him to provide it and he said, "There is no evidence"?

A. Yes, I do. And Sadie and I both said the same thing, and after that moment we -- he asked for the Mulcaire notes, I recall both of us leaving the room to discuss, if you like, the disappointment, and we said, okay, we can let him have the Mulcaire note, see what he gets on with. That's my specific recollection.

MR JUSTICE NICKLIN: Given the terms of his email of 18 March, which you had received and said that you'd read –

A. Do you mean the 17th? Is it 17 March?

MR WHITE: It is the 17th.

MR JUSTICE NICKLIN: Did it not strike you as odd that he had said he had got no evidence when he refers expressly in that email to having evidence? A. Yeah, it did strike me as odd. I thought he'd exaggerated, in the light of what he said. It seemed that he wanted -- it seemed that he came to the meeting actually wanting information and, whether deliberately or recklessly, exaggerated the promise in order to get information for himself and that was my impression at the time.

MR WHITE: You tell us you didn't make a note of the meeting, Mr Thomson?

A. No, I didn't.

Q. Why not?

A. Because it was unremarkable, because he promised to provide information or evidence and he didn't and all he wanted was evidence himself, which we gave to him.

Q. Mr Thomson, you're a careful and experienced solicitor. You would usually make a note –

A. Yeah, I would usually make a note. But I didn't -- I didn't make a note, I didn't open a file, I didn't record the time on this, there was no matter, it was a very frustrating meeting with Evan Harris. Not the first.

839. Dr Harris was also "*certain*" that he did not show documents to Ms Frost Law (cf. **{F/25/11/§44}** and Transcript, Day 8, p. 17, l.7) on the basis that they were the journalistic property of Graham Johnson, but "*cannot remember that meeting*" (Transcript, Day 8, p. 38, ll.9-10). Dr Harris confirmed that the purpose of the meeting "*from my perspective was to find out further information from her to enable me to investigate wrongdoing by Associated for the purposes of the Leveson 2 campaign*" **{F/25/10/§§39-41}**. He also confirmed that the email of 18 March 2016 "*was either rash (given this was not my information to share) or was designed to ensure that I got a meeting in order to progress the matter*" **{F/25/11/§45}**.

840. Mr Johnson confirmed that if asked to provide materials gathered by April 2016 he would not have done so "[t]*hey were my confidential journalistic materials and if I had provided them to them at that stage then I would have lost my exclusive story*" **{E/389/2}**. Mr Johnson was particularly concerned about providing information to potential victims' lawyers as they were "*uncooperative and untrustworthy*" (Transcript, Day 14, p. 112, l.24).

841. The memo to Hugh Grant dated 15 April 2016 **{L/780.019}** which is a point strongly relied on by D states Ms Frost Law "*met with Evan and an eccentic* [sic] *lawyer yesterday and agreed to launch an action against the MOS*" but this was wrong. It must be remembered at this stage that Mr Johnson was pitching (with the assistance of Dr Harris) for financial support from Max Mosley and Hugh Grant. D's interpretation of the email is entirely rebutted by the evidence of Ms Frost Law and Mr Thomson, who clearly remember the meeting itself (and the disappointment of being led on). Mr Johnson accepted that he did not know whether or not Dr Harris showed the emails to Ms Frost Law and Mr Thomson as "*I wasn't there*" (Transcript, Day 14, p. 32, ll.11-15) and though he cannot recall Dr Harris telling him about the meeting he would not have put it in if he did not believe it to be true (Transcript, Day 14, pp.34-35). Dr Harris explained he did not think Mr Johnson got this incorrect information from him, or he could have just made a false assumption (Transcript, Day 9, p.116, ll.23-25[136]) and – in respect of not sending a correction to the email on that point - that he did not remember reading the email and may have not read the email, or not in detail, or thought he did not want to undermine Mr Johnson's credibility (Transcript, Day 9, p.116, ll.1-5). (Dr Harris on 20 March 2016 emailed Hugh Grant to suggest that "*Heather Mills, Simon Hughes and Sadie Frost*" were "*in the frame*" **{L/780.015}** which (as set out above) Dr Harris suggested meant people they had in mind to approach if the material was stood up rather than anything more substantive: Transcript, Day 9, pp.57-58. The suggestion was, in any event, squarely rejected by Ms Frost Law and Mr Thomson, and there is no reason to disbelieve their clear evidence about the meeting.

[136] Also as set out at paragraph 8 of Dr Harris's Third Witness Statement {**E/391/3**},

842. The follow up email from Dr Harris to Ms Frost Law (copied to Mr Thomson) on 25 April 2016 makes clear that there was "*no action on you* [Ms Frost] *for the moment*" **{K/2054}**. The steps to be taken were tentative investigations including to see if material would "*reveal anything of value*". These are not the steps of a claimant who has discovered a worthwhile claim. Nor did the subsequent steps yield results and "*no article was found*" (Transcript, Day 9, p. 150, l.25). Dr Harris, a non-lawyer, thought that it would not be possible for there to be "*a claim without an article so I didn't go telling people that they had claims*" (Transcript, Day 8, p. 133, ll.1-3). It should be noted that in relation to the complaint by Clive Betts, D stated that in the absence of an article published D did "*not agree that your client could be entitled to damages*" **{L/621.1}**.

843. Further, Mr Thomson explained that he considered the email to be misleading (Transcript, Day 16, p. 72, l.22 to p.75, l.9):

> Q. Mr Thomson, if you felt there was anything incorrect about the action points recorded in this email, you would have said so, wouldn't you, upon receiving it?
>
> A. I wanted him -- I didn't want to irritate him. What I should have done in hindsight is to say, "Evan, I didn't -- I didn't agree this, the only thing I agreed to was to produce the notes, the ball's in your court, if you have any evidence come back to me". I didn't do that because I was waiting for the information and I was specifically annoyed when -- I remember being annoyed that he said I'd agreed to speak to a former client, Amanda Owen, which I did not do and I would not do, and I would not approach her without good reason and I had no good reason to do so.[137]
>
> Q. Well, then it would have been a simple matter, wouldn't it, Mr Thomson, to say, "I did not agree"?
>
> A. Because I didn't want to annoy him. I was annoyed with him. I wanted to be calm and professional and not say, "You've just written me a very misleading email". I just wanted him to produce the evidence, which he never did.
>
> Q. What about the –
>
> A. This is -- sorry, this is fairly typical of Evan. He will -- after a meeting, he writes an action list and you need to be really careful to see whether it's

[137] An email from Isabelle Ritchie to Dr Harris following the meeting set out her understanding of the agreed action points {K/2050.9/2}. For example, it said: "EH suggested MT speak to Amanda Owens and ask for her disclosure for NI claim". In the action points email circulated, that became an agreed action point with reference to Associated.

accurate or not. He's enthusiastic about things, but his action lists, on many occasions, don't reflect what was agreed. This is one example. There are lots more.

Q. If you thought it was inaccurate that there were actions for you to take "just on Mark and ourselves", surely you would have corrected that for your client so that she wasn't expecting you to take the actions listed in this email?

A. I didn't want to annoy him, because it was so inaccurate. I just wanted him to produce the evidence, which he never did.

Q. What about your client, though? Your client is being told that these actions are going to be taken, some of them by you, Mr Thomson. Surely you would -- if that wasn't true, you would have told her not to expect anything from you?

A. I didn't. I knew it was inaccurate. I didn't challenge him because I just wanted to see the material, and I never got it.

Q. Isn't the much simpler answer, Mr Thomson, that this did record what was agreed at the meeting and the basis for it was the 2006 emails –

A. No.

Q. -- that you were shown?

A. It's not. The 2006 emails I only saw in 2022. And I know you've said, as you keep saying it, and I'll explain why I distinctly remember the jaw-drop moment when I saw those emails, because those emails, when I saw in 2022 for the first time, I realised that the Mail on Sunday had hacked not one but three of my clients within one document, and that was a distinct memory that I will never forget, that then I realised for the first time that there was concrete evidence that the Mail were -- the Mail on Sunday were as involved in voicemail interception not with one of my client but in one document three of my clients. And that's what I distinctly remember, and it happened in 2022 and not before, and that's what happened.

844. The email on 22 August 2017 (almost a year after the Applicable Date) which refers for the first time to Ms Frost Law that Dr Harris had "*from a whistle-blower – evidence of a transcript of a voicemail you left Jade Schmidt being sent to a top Mail on Sunday executive*" **{K/2107.2}** also does not assist D, rather it assists the C's position. This is because the contents of this email are clearly entirely inconsistent with the suggestion that Ms Frost Law had *already* been shown the evidence in April 2016. Mr Thomson made clear any suggestion he was "*co-ordinating the legal side on the Mail*" was "*completely inaccurate*" (Transcript, Day 16, p.24, ll.24-25).

845. Mr Thomson does not recall whether he asked for the "*dossier evidence*" offered in the October 2018 exchanges with Byline, though it was an exceptionally busy period for him: Transcript, Day 16, p.121, ll.16-21; **{K/2175.1}** **{K/2175.3.1}** **{K/2175.1.1}** and **{K/2175.3}**.

846. Ms Frost's Personal Watershed Moment was the article showing that her private voicemails were the subject of interception by Glenn Mulcaire and the content of email exchanges between Greg Miskiw and the *Mail on Sunday* Associate Editor Chris Anderson **{F/18/20/§93}** and **{F/18/2/§§4-5}**. This was published on 1 January 2019 **{K/2196}**. This was the "*first time that I knew that I had a potential claim against Associated. The Byline Article was so detailed: it was not just scribbles on a page but context and detail*" **{F/18/2/§5}**; and contained "*confessions from whistle-blowers*" **{F/18/2/§5}**. Ms Frost Law was also told in 2020 that Gavin Burrows had come forward to admit his conduct, including in relation to her and her Associates **{F/18/2/§6}**.

847. This is again consistent with the email Mr Thomson sent to Ms Frost Law that (emphasis added) **{K/2200}**:

> ... I am aware that **<u>there is now</u>** considerable evidence that the Mail were using the product of Glenn Mulcaire's unlawful investigations and that some of the entries in his notes were for the Mail and not the News of the world ...

848. This again is entirely consistent with Mr Thomson having seen this evidence for the first time and the later watershed moment. [138]

So-called 'limitation camouflage'

849. The limitation camouflage scheme can be dealt with shortly (and is already addressed above). Such an allegation should never have been pleaded and does not stand up to scrutiny.

850. D's pleaded case is at §29A of the Amended Rejoinder **{A/31/20/§29A}**. It alleges a scheme between Graham Johnson and Mark Thomson inferred from the emails set out at Annex A **{A/31/41}**. Read in sequence and in their context, the emails in Annex

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[138] {F/6} paras 10-12 and {F/17} detail Ms Frost and Mr Thomson's knowledge of NGN's admissions for Mulcaire targeting of Ms Frost. That was not disputed at trial, nor was Mr Thomson's knowledge as to ANL's Leveson denials or Ms Frost's belief in the same.

A are entirely conventional. Mr Thomson asks Mr Johnson for an email about the proposed story **{K/2175.1}**. The language is not coded. It is a request for a comprehensive email that can be forwarded to (or the contents thereof can be put to) the client for comment. Mr Johnson agrees. The matter is put beyond sensible dispute by the 'proper email' (Mr Johnson's term for a "formal" email) at **{K/2175.1.1}**. It is a classic 'front-up' or right of reply email sent before publication to obtain comment from the subject of a proposed story, and in accordance with the usual journalistic practice (and that at BylineInvestigates.com). It was drafted so that Mr Thomson would be able, should he choose, to simply forward it to his client (who Mr Johnson did not know and had never met). Mr Johnson says exactly this **{E/389/2-3}**. The documents match both Mr Thomson's account and Mr Johnson's account and the natural meaning of the words. It is absurd to suggest that the email was asked for, and then drafted, with an eye on creating a false timeline through later disclosure.

851. Similarly, the later emails in Annex A also point towards an entirely straightforward explanation, consistent with the Cs' case. Mr Johnson on 18 October 2018 offers to hand over the 'dossier evidence' and asks for a quote, which is the opposite of concealment **{K/2175.3.1}**. Mr Thomson confirms he is taking instructions and asks for a copy of any article published by the *Mail* **{K/2175.3.2}**. If somehow this was a byzantine staged exercise whereby Mr Thomson was some mastermind trying to create false later knowledge it is extraordinary that Mr Thomson would be asking such basic factual questions. On the other hand, it is entirely consistent with Mr Thomson being presented with such evidence and information for the first time. Mr Johnson confirmed no story had been published **{K/2175.3.2}**. The email exchange on 29 December 2018 is equally mundane, when Mr Johnson chased for comment and whether Ms Frost Law might bring a claim **{K/2192}**. The reason for asking such a question was that it would be "*an extremely good line*" **{E/389/3/§12}**. Mr Thomson said he was away on holiday **{K/2192}**.

852. The pleaded documents at Annex A notably do not include the follow up emails from Dr Harris directly to Ms Frost Law on 31 December 2018 including the email {**K/2193/3**} seeking a comment (clearly sent at the request of Mr Johnson and failing to copy in Mr Thomson cf. {**E/391/3/§§6-7}**). See also the email {**K/2192.1/1**} from Dr

Harris to Tom Watson MP, setting out the proposed Sadie Frost story (which was "awaited (sic) final legalling") and seeking a quote from him.

853. These emails are only consistent with the obvious interpretation of the preceding email exchanges, which is that Mr Johnson was seeking to obtain a comment from Ms Frost Law for the story he was determined to publish (and did publish, on 1 January 2019 {**K/2196/1**}). For there to be any coherence to the fraudulent concealment allegation, it would have needed to involve Dr Harris, as the D realised during the trial. But Dr Harris was not pleaded {**A/31/20**} by D as being involved in this alleged scheme.

854. The emails from Dr Harris on 31 December 2018 {**K/2193**} show Dr Harris making no reference to any prior knowledge that – on D's case - Ms Frost Law had of these emails, and indeed shows him repeatedly offering to send her the unredacted versions of the emails shown in the draft Byline article, which he would not have done had Ms Frost Law or Mr Thomson been given these emails at the date in 2016 alleged by D.

855. The emails in Annex A do not mention limitation, nor do they suggest Ms Frost Law should say to the Court she learned something on a different date. The proper interpretation is what the documents show on their face and what Mr Thomson and Mr Johnson said they showed: Mr Johnson seeking comment on a proposed story.

856. Ms Frost Law was not on the October 2018 email chain at all. She was not contacted until 31 December 2018 when Dr Harris contacted her, and she was not aware of the Miskiw/Anderson emails until publication of the Byline article. Mr Thomson does not recall speaking to Ms Frost Law about those emails and accepted in cross-examination he ought to have forwarded the email (Transcript, Day 16, p.118, ll.10-19). This is fatal to any suggestion that Ms Frost Law 'adopted' any such scheme. For any such scheme to work, Ms Frost Law would have had to be party to it, but the D (rightly) does not plead that and could not therefore put the fraud allegation to Ms Frost Law in cross-examination.

857. There is not just a mismatch between D's pleading and the evidence, there is no credible basis for advancing it.

Limitation – The Ectopic Pregnancy Episode and Lee Harpin Article 5A

858. The Court need not adopt a singular approach to limitation for every cause of action or indeed for every later amendment. In circumstances where there are distinct causes of action, pleaded as such, the fact that some may be statute-barred does not necessarily mean that all should be. Such an approach is consistent with the Supreme Court in ***Potter v Canada Square*** where the task was to focus on the "*right of action*" and the relevant facts without which the cause of action is incomplete.

859. There were a number of amendments that arose and could be pleaded only as a consequence of later disclosure, two of which were separate causes of action: (a) in relation to the Ectopic Pregnancy (paragraph §23A); and (b) Unlawful Article 5A.

860. The Ectopic Pregnancy episode should be treated separately. It is not a claim founded on a published article but pleaded distinctly as a separate unlawful episode. It was pleaded after proceedings had commenced after disclosure of the Atex draft at **{K/411}**. The plea at §23A is not a further detail within the existing claim but a separate and distinct cause of action relating to unpublished medical information with essential facts that were previously concealed and only made available as a consequence of bringing the proceedings. The claim is not a compendious one as in ***Grant v NGN Ltd*** [2023] EWHC 1273 (Ch). D did not take the point that the principle of relation back should apply (likely as it would have assisted the Cs' case on limitation), but if it had, the Ectopic Pregnancy episode is a clear example of where the *Mastercard* approach would likely have applied, namely the new claim would be deemed to have been brought on the date of the amendment application: ***WM Morrison Supermarkets plc v Mastercard Inc*** [2013] EWHC 3271 (Comm). These are claims which plainly could have been brought separately (by a separate claim form) if not added to the present proceedings.

861. An analogous point arises in relation to the Lee Harpin article, namely Unlawful Article 5A of Sadie Frost ("*Sadie vs Jude*"). This was pleaded only after disclosure by D of a £750 payment to Lee Harpin on 29 February 2004 with the story description "*Jude & Sadie custody battle*" **{K/6}**. The article also appears in the clip of suspicious Lee Harpin articles, apparently compiled by the assistant to John Wellington on 3 April 2014 (during the phone hacking criminal trials) **{L/774}**. In that compilation, Unlawful

Article 5A appears at **{L/774/18}** the words "*he called her*" are specifically noted and double underlined by an unknown individual at Associated. The 'legal warnings' section records that there are legal warnings in place following complaints of inaccuracy by Ms Frost Law and Mr Law. This missing information and evidence did not bolster an already known generic article claim but was for an entirely new article and the associated narrow right of action of private information supplied by Mr Harpin that had been obtained by voicemail interception and/or itemised phone billing having been obtained by UIG before being used by Ms Nicholl and/or by Ms Newbon. It is expressly and separately pleaded at 9.12.1(i)(2)(i) **{A/12/32}** and as a new article in Schedule B. It is not a matter of more detail on an originally pleaded article but a distinct and previously unpleaded claim which only crystallised after disclosure.

862. The Ectopic Pregnancy Episode and Unlawful Article 5A should clearly be treated differently for the purposes of limitation. Any other approach is an endorsement of prophylactic litigation: a claimant who seeks any sort of generalised activity would have to sue immediately, as a holding exercise, just in case disclosure would reveal serious wrongdoing. That is precisely what section 32 is supposed to avoid. If a defendant chooses to keep a claimant ignorant of a fact to plead a claim it is just that the defendant should lose a limitation defence and concealment should not generate immunity for wrongdoing. The fact the defendant has only itself to blame that it was not sued earlier from the nature of the activities it undertook: covert unlawful information gathering.

863. In relation to her entire claim, Ms Frost Law did what a reasonably attentive claimant should do: took advice and attended the April 2016 meeting with her solicitor.[139] This process yielded no evidential platform. As soon as she was put on inquiry in 2019 (in fact strictly on 31 December 2018 by the front-up email from Dr Harris {**K/2195.1/3**}), she asked Mr Thomson shortly after the Byline article about whether she could bring a claim, sought an update, and did not hear from him. She subsequently instructed

[139] As Ms Frost made clear in her evidence, she wanted the advice of her solicitor before she would proceed (as she did in her MGN and NGN claim, and especially in circumstances where she had been a witness at trial in 2015). It was entirely reasonable for Ms Frost to want to proceed on such a basis, with the advice of her solicitor, especially in the context of those former claims. This is a circumstance that the Court should take into consideration.

Mr Galbraith **{F/18/11/§§44-45}** and issued proceedings. While the Claimant was in the possession of some documents upon which she subsequently relied, and alerted to the speculative prospect of wrongdoing on 25 April 2016, it is not a situation where knowledge (neither actual nor constructive) can be said to be close to sufficient until well after the Applicable Date.

864. At its highest, D's case on knowledge gets no higher than suspicion. Ms Frost Law may have been aware that some articles were intrusive and that other newspapers acted unlawfully, and that in 2016 there might be something involving the Mail on Sunday, though there was no evidence, but this is far from the knowledge of essential facts. Ms Frost Law and Mr Thomson sought evidence from Dr Harris who did not provide it. The blame for that cannot lie at Ms Frost's door in circumstances where she acted diligently.

865. In relation to the Ectopic Pregnancy Episode and Unlawful Article 5A, the causes of action were only revealed following disclosure.

866. Prior to the Applicable Date, Ms Frost Law did not have a proper starting point (and notably no published article on which a claim could be based) and undoubtedly would have received an aggressive denial from Associated if any queries were raised. It can be readily inferred that there would certainly have been no voluntary disclosure, given Associated's robust stance in these proceedings. Importantly, the Mulcaire notes on which Ms Frost Law now relies in any event were *admitted* by a different newspaper group, NGN, in Ms Frost's claim against NGN.

DAMAGES

Law

867. The law relating to damages in misuse of private information claims is set out in the law schedule to the Cs' skeleton argument, at §§49 – 50 **{CB/9/15 – 17}**. This is not repeated here but the Court is invited to re-read that section as part of these submissions.

868. The applicable principles for damages were also discussed and set out by Fancourt J in ***Duke of Sussex v MGN Ltd*** [2023] EWHC 3217; [2024] E.M.L.R. 5, [1524] – [1556] **{AB/116/261 – 267}**. His Lordship's approach to quantum is set out at [1557] – [1565] **{AB/116/268 – 269}**.

869. The following principles relating to damages for misuse of private information identified by His Lordship at [1524] – [1554] are particularly and obviously relevant in the instant case:

> *1524. Each individual wrong committed in relation to a claimant's private information is a separate occasion on which the defendant has committed the tort of misuse of private information: Gulati v MGN Ltd [2015] EWCA Civ 1291; [2017] QB 149. It is therefore appropriate to assess the quantum of a claimant's loss in respect of each such act of wrongdoing, whether that is the accessing of a voicemail message left by her on an associate's mobile phone, the blagging of her private information from a third party or the accessing of her own confidential information from unlawful searches conducted against her. It obviously also includes each occasion on which the claimant's own mobile phone inbox was accessed to listen to messages left for her.*
>
> *1525. The use made by a defendant of the information once obtained can also be a separate tort. So sharing the private information with others in the defendant's organisation or selling it to third parties is a separate tort, as, generally, is the publication of the information in a newspaper without the*

claimant's consent, unless her Article 8 rights are outweighed by the defendant's Article 10 rights.

1526. The principles to be applied and the general approach to quantum of loss were determined by Mann J in the Gulati case and his approach was endorsed by the Court of Appeal. I shall therefore apply those principles in reaching a decision about the amount of damages to award against MGN for each tort it committed against each of the claimants.

1527. In Gulati, Mann J had evidence that some of the claimants were on a list kept for the purpose of hacking their voicemail inbox on a daily or almost daily basis, for a number of years. The judge therefore awarded damages to those claimants on the following basis:

> *a. "general hacking activity" – a starting point for someone who was hacked at least every few days, as a matter of routine, was £10,000 for each year in which it happened;*
>
> *b. The PI investigations – there should in principle be separate awards for each proven occasion of invasion of privacy by PI activity;*
>
> *c. Distress caused by the publication of individual articles that would not have been published but for the UIG;*
>
> *d. General levels of distress (including distrust of and damage to relationships arising out of the pattern of conduct) caused, cumulatively, by the wrongdoing, but being careful to avoid any double-counting where awards are made individually for publications or occasions of UIG;*
>
> *e. Possibly, aggravated damages, depending on the circumstances of the individual tort.*

Damages are awarded both for distress and injury to feelings, and for the loss of autonomy or control over one's private information, on the basis that once the private information is publicised "the genie is out of the bottle" and cannot be replaced, and on the basis that even if nothing is done with

the information there is an unjustified invasion of the victim's right to choose, dignity and self-respect.

1528. The court must then ensure that the overall sum awarded is proportionate and a proper reflection of the overall pattern of wrongdoing.

1529. MGN submits that an important factor in many of these claims is the extent to which information published or obtained unlawfully is already in the public domain. While that may mean that the information itself was no longer private, and so be a defence to a claim based on publication, it cannot affect liability for hacking into a claimant's voicemails or invading their medical records, which are themselves private even if some of the content has been publicised already. However, I accept that it is likely to be a factor in assessing the quantum of any such claim…

1530. In these current claims against MGN, I have already determined that any claim for the tort of publication without consent of an article containing private information is statute-barred. That is because the private content of the publication was not concealed – on the contrary – and so there was no deferment of the primary limitation period, under s.32 of the Limitation Act 1980 or otherwise: see Sanderson v MGN Ltd.

1531.The claimants therefore cannot claim damages for loss caused by the relevant publication itself. But, subject to the limitation defence, they can claim damages for losses caused by the underlying UIG, which was concealed and of which they were unaware until some considerable time after publication.

…

1554. … losses flowing from publication are recoverable as damages for the original UIG wrong. For transparency, when I award damages in Part XII below I shall make awards separately for, first, loss of privacy and autonomy, and second, distress suffered as a consequence of the UIG and the publication.

870. The key principles to be borne in mind when determining the appropriate level of damages in each of the Cs' claims are set out at §50 of the Cs' skeleton argument **{CB/9/16 – 17}**.

<u>The Claimants' Evidence</u>

871. Each of the Cs has set out in their witness statements the impact that D's unlawful conduct has had on them. The Cs also gave oral evidence during trial of the effects that conduct and these proceedings have had on them.

<u>Baroness Lawrence</u>

872. The sense of profound betrayal that Baroness Lawrence feels as a result of the Unlawful Articles published by D is set out at §§28 and §30 – 31 of her Second Witness Statement **{F/12/7, 8}**. The impact of D's conduct towards her more widely is set out in her Second Witness Statement at §§32 – 34 **{F/12/8}**, where she says:

> *32. This case and the invasions into my privacy and the stealing of information from a grieving mother and the investigation into her murdered son has been another trauma to me.*
>
> *33. To discover that The Mail set private investigators and corrupt police officers on me to look into my phone calls and communications when I thought I was safe in my home, but that I was not safe and that the people who I thought were friends were in fact enemies, and that they were embedded with the police corruption that has caused so much harm and grief to me, has violated me and made me feel like a victim all over again.*

873. Baroness Lawrence also described, during oral evidence on Day 11 of the trial, the deep pain and shock she felt at learning about D's conduct towards her: Transcript, Day 11, pp.99 – 101, lines 24 – 11.

874. Baroness Lawrence further relies on the facts and matters set out in support of her claim for damages, including aggravated damages, at §§29.1 – 29.6 of her Re-Re-Re-Re-Amended Particulars of Claim **{A/7/55-56}**, including:

   a. The anger, shock, upset and deep sense of betrayal that Baroness Lawrence feels on learning that D and Stephen Wright targeted her through unlawful

acts, exploited her and her son's murder through the Unlawful Articles, and concealed this from her, both at the time and subsequently.

b. The damage caused to her relationships with those close to her and with others as a result of believing at the time that the Unlawful Articles published by Stephen Wiright and D must have originated from them.

c. Her deep concern that she will never know the true impact of D's conduct and the Unlawful Articles on her fight for justice for her murdered son.

d. D's bold denials of any and all wrongdoing, and the publication by D and Stephen Wright on 28 September 2022 of an article about one of her son's killers.

<u>Elizabeth Hurley</u>

875. The impact that the 15 Unlawful Articles have had on Ms Hurley is set out in her second witness statement.[140] The impact of D's conduct towards Ms Hurley more widely is set out in her First Witness Statement, §14, 15, 19 and 26 **{E/29/5, 6, 8}** and her Second Witness Statement, §§24 – 32 **{F/14/6 – 8}**.

876. The sense of violation that Ms Hurley feels is clear. She explains how she is devastated and feels "*crushed'* by "*this brutal invasion of privacy*" by D. She further explains how she feels "*as if my private life has been violated by violent intruders; that there had been sinister thieves in my home all along and that I had been living with them completely unaware*". Ms Hurley explains how she is deeply upset and troubled by the fact that she was not free to be comfortable in her own home, or to have personal conversations without those conversations being taped and broadcast to the world. Further, as she notes in her Second Witness Statement, the conduct towards her has included "*stealing my medical information when I was pregnant with Damian*", and the use of unlawfully obtained information in an article "*published the day after he was born*".

877. Ms Hurley also described, during oral evidence on Day 4 of the trial, the pain and sense of trauma she felt at bringing proceedings against D and attending Court:

[140] See the relevant paragraphs identified in the Cs' trial matrix for each Unlawful Article.

she felt at learning about D’s conduct towards her: Transcript, Day 4, p.109, lines 6 – 13.

878. Ms Hurley further relies on the facts and matters set out in support of her claim for damages, including aggravated damages, at §§28.1 – 28.4 of her Re-Re-Amended Particulars of Claim **{A/8/57}**, including:

a. Her shock and mortification at the revelation of D’s conduct towards her, and the sense of violation generated by the prospect of strangers listening into her telephone calls and bugging her private property;

b. Her particular outrage at D’s targeting of her during her pregnancy and following the birth of her baby; and

c. D’s denials of any responsibility and her anger at the fact that she will likely never fully know the full nature and extent of the unlawful activities to which she was subjected.

Sir Elton John and David Furnish

879. The impact that the 10 Unlawful Articles have had on Sir Elton and Mr Furnish is set out in the Second Witness Statement of Mr Furnish.[141]

880. The impact of D’s conduct towards Sir Elton and Mr Furnish more widely is set out in the First Witness Statement of Elton John, §7 **{E/32/2}** and the Second Witness Statement of David Furnish, §§20 and 74 – 75 **{F/13/5, 16}**. They feel that their home, and the safety of their children and loved ones, has been violated. Mr Furnish explains that they are “*profoundly affected by the uncertainty of not knowing how many times we were targeted… We still don’t know what was really done to us.*” They are horrified that D has used their friendships against them by stealing information through those friend (which Sir Elton describes as “*[t]he exploitation of love, connection, trust and bonds to find out information shared in confidence*”.

[141] See the relevant paragraphs identified in the Cs’ trial matrix for each Unlawful Article.

881. Both Sir Elton and Mr Furnish underline the outrage they feel in light of D's invasion into medical details surrounding the birth of their son Zachary, and the stealing of their son's birth certificate "*before we even had a chance to see it ourselves*".

882. Sir Elton described the sense of outrage and the incredible invasion of privacy he and Mr Furnish felt as a result of D's conduct during cross-examination on Day 15 of the trial: Transcript, pp.5 – 6, lines 22 – 24.

883. Sir Elton and Mr Furnish further rely on the facts and matters set out in support of their claim for damages, including aggravated damages, at §§28.1 – 28.5 of their Re-Re-Amended Particulars of Claim **{A/9/53}**, namely:

a. Their outrage at D's conduct and horror at the plundering of their private conversations;

b. Their particular affront at the notion that because their professions involve them having a public profile their private home was fair game in efforts to steal and exploit their private information;

c. Their distress at the deliberate tactics deployed to bypass the confidentiality and ethical protections afford to medical information; and

d. Their anger at D's conduct towards Ms Hurley and her son – their godson – when he was a baby, not least when they sought to offer a sanctuary by inviting her to stay at their home.

<u>Sir Simon Hughes</u>

884. Sir Simon explains at §100 of his trial witness statement {F/11/18} how distressing it has been for him to learn that he has been targeted by D using unlawful means, and how distressing he has found the completely unapologetic stance of D. Sir Simon also expressed his disappointment and frustration at D's conduct and continuing denial of any wrongdoing in oral evidence on Day 7 of the trial, as well as his utter resentment at the serious accusations levelled against him by D as part of these proceedings: pp.119 – 121, lines 19 – 20,

885. Sir Simon further relies on the facts and matters set out in support of his claim for damages, including aggravated damages, at §§29.1 – 29.4 of his Re-Re-Re-Amended Particulars of Claim **{A/10/49}**, namely:

a. His deep upset and shock at learning that D deliberately targeted him and sought to exploit a particularly sensitive and difficult time in his life in an appalling way.

b. The total absence of any justification for D's invading his privacy and obtaining his personal information.

c. His concern that he may never know the full extent of the activities carried out by D against him, or the full extent of the information relating to him, such as messages or communications with family, friends and others who trusted him, that was obtained and scrutinised by journalists who should never have had it.

Prince Harry, the Duke of Sussex

886. The impact of D's conduct towards the Duke of Sussex generally is set out in the Duke's Second Witness Statement, at §§81 – 84 **{F/16/18}**. The impact that the Unlawful Articles have had on the Duke is also set out in his Second Witness Statement. He notes, in relation to the Fourth Unlawful Article, how he felt "*like I was under constant surveillance*" and, in relation to the Second Unlawful Article, that *"It is disturbing to feel that my every move, thought or feeling was being tracked and monitored just for the Mail to make money out of it. And that knowingly false information was added to their stories in order to put me off the scent."* [§§30, 42 **{F/16/9, 11}**] He describes, in relation to the Third Unlawful Article, how it was "*a prime example of why*" a relationship he was in did not last long, and the distress caused by Ms Gerard-Leigh's parents being doorstepped, all of which made he and and Ms Gerard-Leigh feel "*nervous and unsure*". [§35, **{F/16/9}**]. Similarly, he describes how the Sixth Unlawful Article "*had a hugely negative effect*" on his relationship with Ms Chelsy Davy and "*added pressure and created a massive strain*" [§48 **{F/16/12}**]. Regarding the Eighth Unlawful Article, he describes the article's publication of private and sensitive information,

including his anger at the publication of a photograph of his dying mother in the Italian media, as "*extremely upsetting*" [§§53, 55 **{F/16/13}**]. He explains how he finds, in relation to the Eleventh Unlawful Article, "*[t]he total disregard for my safety given the security elements and risks associated with it… deeply disturbing*" [§65 **{F/16/14}**]. And he describes the Twelfth, Thirteenth and Fourteenth Unlawful Articles, each of which related to his personal relationships, as "alarming" and "creepy" [§§66 – 71 **{F/16/15}**].

887. The Duke also set out the effect that engaging in this litigation has had on him during oral evidence on Day 3 of the trial: see Transcript, Day 3, pp.81 – 83, lines 5 – 6.

888. The Duke further relies on the facts and matters set out in support of his claim for damages, including aggravated damages, at §§28.1 – 28.4 of his Re-Re-Re-Amended Particulars of Claim **{A/11/54 – 55}**, namely:

a. His shock and horror that D used their journalistic power and privilege to commit unlawful acts against him without any legitimate justification and in order to compete with other tabloid newspapers for profit.

b. His being largely deprived of important aspects of his teenage years due to suspicion and paranoia caused by D's publication of the Unlawful Articles.

c. The significant security risks caused to him, as a senior member of the Royal Family at all material times, by D's pursuit and publication of information relating to him.

d. The sense of betrayal he feels in light of promises by the media to improve its conduct following the tragic and untimely death of his mother, Princess Diana, in 1997.

e. The lies and cover-ups of D to conceal its unlawful conduct, even as it was proclaiming its stated values of representing the interests of British people.

<u>Sadie Frost Law</u>

889. The impact of D's conduct towards Ms Frost Law in general more widely is set out in her Third Witness Statement, at §§98 – 100 **{F/18/21 – 22}**. She describes feeling

"*violated*" by D's articles, becoming extremely paranoid, and her anger at how they aggravated already extremely difficult personal circumstances and health issues confronting her and impacted upon her children.

890. The impact that each of the 10 Unlawful Articles had on Ms Frost Law is set out at §§51 – 92 of Ms Frost Law's Third Witness Statement **{F/18/12 – 20}**, which the Court is invited to read. By way of example, she describes the awfulness of having her privacy, and that of her daughter, being invaded by the First Unlawful Article; the anger and paranoia she felt by the private medical information publicised by the Third Unlawful Article; the particularly distressing nature of the Fourth Unlawful Article, concerning the end of her marriage to Mr Law; her shock at the private and sensitive information disclosed a few months later in the Fifth Unlawful Article, and again the following summer in the Ninth Unlawful Article; the damaging effect of the Seventh Unlawful Article on her relationship with Mr Law; and the "*frightening*" level of detail contained in Eighth Unlawful Article.

891. Ms Frost Law also describes the background to her experiencing an ectopic pregnancy in 2003 and how "*shocked and upset*" she was contacted by D about it: Fifth Witness Statement, §§3 – 6 **{F/29/2}**. She describes her "horror" in relation to the Second Unlawful Episode [Third Witness Statement, §4 **{F/18/2}**]. She also explains how upsetting the publication of the article "*Sadie v Jude*" in *The Mail on Sunday* on 29 February 2004 was at §§7 – 8 of her Fifth Witness Statement statement **{F/29/2 – 3}**.

892. Ms Frost Law also described in detail, during oral evidence on Day 6 of the trial, the effects of D's conduct towards her and of the distressing and demanding nature of having to seek accountability through bringing her claim against D: Transcript, Day 6, pp.178 – 179, lines 1 – 16.

893. Ms Frost Law further relies on the facts and matters set out in support of her claim for damages, including aggravated damages, at §§28.1 – 28.4 of her Re-Re-Re-Amended Particulars of Claim **{A/12/56 – 57}**, including:

   a. Her incredible distress at the revelation of D's unlawful conduct.

b. Her sense of violation and anger at having her reliance on her telephone, which offered her essential support during deeply painful periods in her life, being exploited to create stories.

c. The vulnerability that D's conduct left Ms Frost Law feeling, and how it exacerbated already extremely difficult moments in her life.

Quantum

894. During the hearing on 15 January 2026, Mr Justice Nicklin queried whether D disputed that "*if, against their defence, they are found to have carried out unlawful information–gathering against any of these claimants, I don't currently understand the defendant to challenge that that will be a matter of significant impact on the claimants, relevant to the calculation of damages*." Transcript, **{C/26.1/48}**, p.185, lines 1 – 7. D does however deny that the Cs have suffered considerable distress or harm as a result the conduct alleged it: see e.g. §72.2 of D's Re-Re-Re-Amended Defence to the claim of Baroness Lawrence **{A/13/58}**. When lead counsel for the Cs informed the Court of this, His Lordship rightly said:

> "*it will be the responsibility of Mr White to put to Baroness Lawrence or any of the other claimants any challenge to their claim to have been caused distress by their learning about the extent, the nature of the unlawful information–gathering and they will give their answers to that*". Transcript, **C/26.1/48}**, p.187, lines 3 – 8.

895. D did not, however, mount any challenge *at all* to the Cs' evidence as to the distress caused by, and impact of, D's conduct. Nor could it. Each of the Cs' evidence was clear, compelling, consistent and wholly compelling.

896. The right level of quantum for each of the Cs' individual claims obviously turns on the extent of D's liability found. But in light of the Cs' evidence, and the principles governing damages awards and quantum above, it is submitted that each of the Cs is entitled to a very substantial award of damages to compensate them for the wrongs committed against them.

CONCLUSION

897. For the reasons and on the basis set out above, and in the Cs' skeleton argument and in the Cs' trial matrices, the Court is invited to make a substantial award of damages, including aggravated damages, in respect of each of the Cs for misuse of their private information, and, in the case of Baroness Lawrence, for breach of confidence, and such further or other Orders as are just and apposite.

DAVID SHERBORNE
BEN HAMER
LUKE BROWNE
HECTOR PENNY

5RB, Gray's Inn

26 March 2026