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

BEFORE THE HONOURABLE 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

EXTRACT FROM THE
CLAIMANTS' SKELETON ARGUMENT
on the Defendant's Applications

OVERVIEW

1. This is the hearing of the Defendant's applications for:

   1.1. derogations from open justice, including a reporting restriction order;

   1.2. an order to strike out the claims under CPR 3.4(2)(a) and/or (b) and/or for summary judgment to be entered for the Defendant on the issue of limitation ("**the Limitation Application**"); and

   1.3. an order to strike out parts of the Particulars of Claim that the Defendant contends are in breach of orders from the Leveson Inquiry dated 26 April 2012 and 29 November 2012 made pursuant to s.19(2)(b) of the Inquiries Act 2005 ("**the Restriction Order Application**").

2. The Claimants are neutral on the derogations from open justice sought by the Defendant, (albeit the Court needs to be satisfied that each derogation is strictly

necessary) but vigorously resist the Limitation Application and the Restriction Order Application.

3. The Claimants each claim that in different ways they were the victim of numerous unlawful acts carried out by the Defendant, or by those acting on the instructions of its newspapers, *The Daily Mail* and *The Mail on Sunday*. The unlawful acts which are the subject of these claims include illegally intercepting voicemail messages, listening into live landline calls, obtaining private information (such as itemised phone bills or medical records) by deception or 'blagging', using private investigators to commit these unlawful information gathering ("UIG") acts on their behalf, and even commissioning the breaking and entry into private property. They range through a period from 1993 to 2011, even continuing beyond until 2018.

4. Even at such an early stage, and critically prior to disclosure, the evidence so far revealed of the Defendant's unlawful information gathering activities (and unlawful articles which were published as a result) appears compelling, but ultimately this is a matter for the Court to determine at trial on the basis of a full and proper investigation of the facts.

5. However, the Defendant seeks to prevent this happening. It does so in two different ways. First, through the Limitation Application, it argues that all of the claims should be dismissed because each and every one of the Claimants, it says, could with reasonable diligence have discovered the claims which they now bring at least 6 years earlier (i.e., before October 2016). Second, by the Restriction Order Application, the Defendant argues that reliance by the Claimants on a substantial volume of material evidencing its unlawful use of private investigators, as disclosed to the Leveson Inquiry in 2011, should not be permitted and reference to it should be struck out of the pleaded claims. Both Applications are heavily resisted.

6. As to the first, Limitation, the application is as ambitious as it is unattractive. It sees the Defendant having to argue, simultaneously, that on the one hand no such acts were in fact carried out by its journalists or those acting on their behalf (not that they were somehow lawful) and on the other that (notwithstanding this) these

individual Claimants could reasonably have discovered that they *had* taken place at the time or certainly before 2016. This is argued, in circumstances where the Defendant itself has stated to the Claimants 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*". How then, the Claimants ask, can they have been expected to have discovered this, especially where, as a result of the Defendant's deliberate concealment and the intentionally covert nature of the underlying acts themselves, the vast majority of the evidence is necessarily in the Defendant's own possession (as is the case in such UIG claims). The Claimants did not discover it until recently, as they each explain separately in their witness evidence in response to this application.

7. Worse still, the Defendant says the Court can be so confident that the suggestion the Claimants could not have reasonably discovered this prior to 2016 is fanciful that it should dismiss all of these claims pre-emptively. The ambitiousness (not to mention, irony) of the application is demonstrated by the fact that the Defendant asks the Court to do so, through an exercise which is not merely a "mini-trial" (an exercise which the authorities unequivocally deprecate) but more akin to a trial itself, but, crucially, without any oral evidence, further disclosure or cross-examination. Given the multiple factual disputes raised on paper alone by the evidence filed in relation to this application, and the weight of documentation, it is respectfully submitted that the Limitation Application is hopeless, plainly inappropriate and suggestive of a tactical gamble by the Defendant to try to avoid (or at least delay) a full trial, when there are in any event clearly compelling reasons for one.

8. As to the Restriction Order Application, this is fundamentally flawed since it fails even to identify any ground on which the relevant parts of the Particulars of Claim should be struck out. In truth, there is no real basis for doing so. First, the matters set out in the Particulars of Claim are not the subject of any orders made at the Leveson Inquiry, nor are they otherwise subject to any confidentiality orders or obligations. The arguments which the Defendant advances are highly convoluted and specious; they are also plainly an after-thought since they were never raised (despite a complaint being lodged) when the same material was obtained by a

media publication in 2017 which used them as the basis for a number of detailed articles published over several months. These articles are still available online and the Defendant has brought no legal proceedings to stop the use of or for delivery up of this material.

9. The Restriction Orders made by the Inquiry simply do not cover the Defendant's Ledgers (summarising payments to (some) private investigator from 2005 to 2007), and, in the absence of any specific reference to this material being covered, the Defendant has been driven to newer and ever more spurious arguments in seeking to suggest that they are so covered, culminating finally in its supposition that an "order" was made by Lord Leveson on a date either on or sometime after 19 September 2012, an order which is nowhere to be found in existence. The Defendant's fall-back position, that the material has been used in breach of confidentiality obligations is no better, given that the material was provided to the Claimants by the same media publication (as opposed to any of the current Claimants or their legal representatives). In any event, confidentiality has been lost in the material by virtue of extensive reporting of them to the world-at-large as long ago as 2017 (without any proceedings being brought by the Defendant to enforce alleged confidentiality orders or obligations).

10. Finally, and perhaps most importantly, even if the Court were to accept the Defendant's argument that the material is confidential or somehow restricted, in circumstances where there is and can be no dispute that the material is highly relevant (as are the underlying payment records and invoices themselves), strongly supportive of the Claimants' claims and falls to be disclosed in the proceedings in due course (and has been in the parallel MGN and NGN litigation), that would still not justify striking out of the identified parts of the Particulars of Claim, as opposed to adopting other far less draconian measures which could be adopted to protect confidentiality. This is what the principles of the Court's furtherance of the "overriding objective" would clearly endorse.

11. The claims were commenced in October of last year, and through these applications (the first being made without warning on the eve of when the Defendant was required to file an acknowledgment of service, the trigger for these claims being publicly inspectable), the Defendant has already prevented their

progress, and full reporting of the proceedings, for five months, as well as incurred an enormous amount of time and resources in the process. The Claimants respectfully submit that they should now be dismissed and the claims should progress to trial.

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22 March 2023