Neutral Citation Number: [2022] EWHC 1610 (Ch)
**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERY COURTS OF ENGLAND AND WALES**
**BUSINESS LIST (CHANCERY DIVISION)**

**HC-2000-000003/**
**Various (Listed in Register of Claims)**
**Rolls Building**
**7 Rolls Buildings**
**Fetter Lane, London**
**EC4A 1NL**

**4 February 2022**

**Before :**

**MR JUSTICE FANCOURT**

**IN THE MATTER OF THE MIRROR NEWSPAPERS HACKING LITIGATION**
**4th Wave**

**BETWEEN :**

---

**VARIOUS CLAIMANTS**

Claimants

-v-

**MGN LIMITED**

Defendant

---

**MR DAVID SHERBORNE and MR JULIAN SANTOS** (Instructed by Thomson Heath & Associates) appeared on behalf of the Claimants
**MR RICHARD SPEARMAN QC and MR RICHARD MUNDEN** (Instructed by RPC) appeared on behalf of the Defendant

Hearing date: 4th February 2022

---

**APPROVED RULING**

---

Digital Transcription by Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London, EC4A 1JS
Tel No: 020 7404 1400
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)
WordWave International trading as DTI

**MR JUSTICE FANCOURT:**

1. The claimants in this litigation seek a variation of two previous orders relating to disclosure made by Mann J. The first is the ninth CMC order on 9 July 2015 and the second is the tenth CMC order made on 16 May 2016.

2. In the ninth CMC order, the managing judge introduced for the first time a regime for early disclosure. The purpose of the early disclosure regime almost self-evidently was to enable a claimant who had served a claim form to see at an early stage and before settling the particulars of claim what prima facie material there was that would support the allegations of unlawful information-gathering that had been identified in the claim form and in the letter before claim previously served.

3. So far as material to today's purposes, the relevant parts of paragraph 30 and 31 of the ninth CMC order is the following:

> *"Together with service of his/her claim form each claimant shall, save in the early disclosure cases where such information has already been provided, serve a letter 'early disclosure letter' upon the defendant, such letter to be copied to the lead solicitor setting out the following information ... B, the mobile telephone numbers of the claimant during the period from 1998 to 2010 inclusive 'the relevant period'; C, an outline of the nature of the remedies he/she seeks; and D, the mobile telephone numbers of not more than four persons associated with the claimant during the relevant period 'associates'.*

31:

> *"The defendant shall disclose to each claimant by provision of copies ... as soon as reasonably practicable the following documents 'early disclosure': A, call data for the relevant period, howsoever stored, including call records, call traffic, telephone account or billing data or similar information, including records of calls made from the defendant's landline telephone system and/or from the mobile telephones of its employees or agents in relation to all the mobile telephone numbers provided to the defendant in the early disclosure letter with such material to be disclosed in electronic, Excel or CSV format."*

4. The claimant, therefore, by identifying his or her own mobile telephone numbers and mobile telephone numbers of not more than four associates was enabled to receive at

an early stage call data for calls between those identified numbers and any of the defendant's telephone numbers.

5. The tenth CMC order provided at paragraph 9 as follows:

> *"The claimant shall by the deadline for service of any reply provide the defendant with the mobile telephone numbers of any additional associates named in the particulars of claim for which call data disclosure is required."*

The purpose of that order was so that when further associates or family members were identified in the particulars of claim the claimant could obtain disclosure of call data in relation to those other individuals' mobile telephone numbers.

6. As will be seen, the terms of both orders were with particular reference to mobile telephone numbers and did not refer to landline telephone numbers. The reason for that is that the focus of the litigation at that stage and until relatively recently was solely the interception of data from mobile telephone numbers and interception of landlines had not been raised.

7. The claimants now wish to amend both those orders so that the references there to mobile telephone numbers include also landline telephone numbers. The basis of that application made for this case management conference is two witness statements relatively recently provided which contain, on the face of it, some detailed evidence alleging that there was extensive landline interception and hacking, both in the sense of listening to calls being made on landlines and accessing data in the form of voicemail on machines associated with landline telephone numbers.

8. The witness statements are those of Mr Dan Evans of June 2021 and Mr Gavin Burrows of January 2022.

9. The application is opposed by the defendant on the basis that allegations of landline voicemail interception and call interception are not part of the generic particulars of claim as currently pleaded and are clearly a generic issue and not an issue relating only to individual claimants and as such should be pleaded in the generic particulars of claim. The defendant says unless and until they are so pleaded individual claimants are not allowed by the terms of orders previously made to make allegations in relation to matters such as landline telephone interception and voicemail interception because the case, the generic case, is defined by the generic particulars of claim.

10. I accept Mr Spearman's submission that the generic particulars of claim as currently drafted do not encompass a generic case of landline interception and landline voicemail interception. There are some references to the obtaining by private investigators of ex-directory numbers of some claimants, but there is no specific case pleaded of landline interception. It follows that it does not currently form part of the generic case.

11. Mr Spearman relies in particular on paragraph 4 of the order made by Mann J on 10 March 2020 as follows:

> *"The current and future claimants have permission to rely upon the particulars of common facts and issues and must plead their claims by reference to the same. Claimants shall not be allowed to plead any additional or alternative material going to matters in the particulars of common facts and issues without the consent of the defendant or an order of the court."*

That order was made at the time that permission was given for the generic particulars of claim. They are referred to as the particulars of common facts and issues.

12. Mr Spearman submits that the purpose of paragraph 4 and the correct interpretation of paragraph 4 is that it requires all allegations of unlawful information-gathering to be pleaded in the generic particulars of claim and disentitles any individual claimant in claimant-specific particulars of claim to plead any different material relating to unlawful information-gathering at all. In other words, that the individual claimants, although they could plead particular articles and particular occasions of interception, could not make any different allegations about different forms of unlawful information-gathering.

13. Mr Sherborne submits that on its true interpretation paragraph 4 is concerned only to prevent duplication of the generic particulars of claim and the claimant-specific particulars of claim and what it does and what it is intended to achieve is prevent individual claimants from pleading in claimant-specific particulars of claim the same allegations that are already pleaded in the generic particulars of claim or additional or alternative material going to the same allegations.

14. If Mr Sherborne is right then the effect is that unless and until landline interception is pleaded as a generic issue, which Mr Sherborne has indicated he intends to do, there is nothing that prevents the individual claimants from making allegations in their claimant-specific particulars of claim about landline interception, and so there is no reason why early disclosure and indeed further disclosure after the service of the statements of case should not extend to landline numbers.

15. On any view, it is clear that there needs to be certainty as to whether the generic particulars of claim will encompass the allegations of landline interception. Mr Sherborne has indicated that he will, within 28 days, on behalf of the claimants, provide to the defendant a draft amended generic particulars of claim setting out any generic case that the claimants intend to bring in relation to landline interception.

16. What should be done until the question of the generic case amendment is resolved? Mr Spearman accepts that once, if it is the case, the generic particulars of claim include allegations of landline interception, then disclosure, either early disclosure or standard

disclosure, relating to landline numbers is clearly appropriate in just the same way that disclosure currently in relation to mobile telephone numbers is appropriate. But until that happens, he says, there should be no disclosure, no early disclosure, in relation to landline numbers. Until that happens there should be no pleaded case in relation to landline interception and therefore no early disclosure.

17. Everything seems to me to turn on the right interpretation of paragraph 4. I prefer the argument of Mr Sherborne on this point. It seems to me that the purpose of paragraph 4 of the particulars of claim is not to limit any claims that could be brought by any claimants against the defendant in the Mirror Newspapers Hacking Litigation, but to ensure that individual claimants in claimant-specific particulars of claim do not plead the same material, or slight variants of the same material, that are already pleaded in the generic particulars of claim. The purpose of that is to benefit the defendant so that they only have to deal by way of defence with the same material once.

18. I do not accept the argument of Mr Spearman that the matters in the particulars of common facts and issues, as referred to in paragraph 4, are unlawful information-gathering of any kind whatsoever. It seems to me that the matters there referred to are only the matters that are pleaded in the generic particulars of claim. Those matters do not include allegations of landline interception yet and they may never do so.

19. There is, therefore, no restriction in paragraph 4, as I interpret it, on different material – not additional or alternative material related to what is pleaded in the generic particulars of claim; but different material making a different type of allegation – being pleaded by individual claimants.

20. I recognise that the decision that I have made will mean that there falls to be given some disclosure by the defendant in relation to landline numbers. However, there is no argument advanced on behalf of the defendant that such disclosure, whether early or at a later stage, is disproportionate. Effectively, the defendant's argument is that it should not be allowed simply because the claims themselves should not be permitted to be brought and can only be brought in the generic particulars of claim.

21. There are, I am told, indications given in the defence to recent particulars of claim that the defendant considers that such matters may not properly be pleaded on behalf of the claimants. However, I do not consider that the pleading of landline interception is precluded by paragraph 4 of the order of 10 March 2020. There may be other reasons, I know not, why it is said by the defendant that such claims cannot properly be advanced, but the correct way in which to deal with that is for the defendant to bring an application to strike out those parts of the claim, if so minded.

22. It seems to me therefore that good case management and encouraging the settlement of claims where possible is furthered by the early disclosure regime extending to landline telephone numbers in a case where in the claim form there is a plea made by the claimant that there has been unlawful information-gathering extending to landline

telephone numbers. If all that is alleged is interception of mobile telephones, then of course there is not a sufficient case for early disclosure or later disclosure of landline telephone numbers under the tenth case management conference order.

23. **Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: civil@epiqglobal.co.uk