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[2021] EWHC 3612 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Claim No. HC-2000-000004

Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Wednesday, 8 December 2021

Before:

MR JUSTICE FANCOURT

B E T W E E N :

VARIOUS CLAIMANTS Claimants

- and -

NEWS GROUP NEWSPAPERS LIMITED Defendant

MR D. SHERBORNE (instructed by **Hamlins LLP**) appeared on behalf of the Claimants.

MR A. HUDSON QC, **MR B. SILVERSTONE** and **MR T. JAMES-MATTHEWS** (instructed by **Clifford Chance LLP**) appeared on behalf of the Defendant.

MS C. OVERMAN appeared on behalf of the BBC and The Guardian.

Approved Judgment

MR JUSTICE FANCOURT:

1. This morning there were read 15 statements in open court relating to claims by various claimants against News Group Newspapers Limited ("NGN") which have settled in the course of the current phase of this litigation. Some of those statements were joint statements, some of them unilateral statements, but all of them were agreed statements in the sense that there was no dispute about the wording of the content.

2. I now have to deal with three further statements where has not been agreement by the parties as to the appropriateness of the wording that the respective claimants wish to include in their unilateral statements.

3. Mr Hudson QC, on behalf of NGN, applied to me this morning for a direction that the argument as to what is appropriate content of the statements in open court should be dealt with either in private, so far as that was necessary to deal with certain disputed passages, or, alternatively, on the basis that counsel and the court would adopt a convention of not referring to the exact words of the particular passages but allude to them, read them on paper and/or describe their effect in more general terms, and then deal with the argument that way. The reason for that, he submits, is that in the event that I uphold some of NGN's objections to the contents of the draft statements, those will not be matters that are capable of being read out and reported by the press. He refers to the fact that a statement in open court is an occasion of absolute privilege and the court is, of course, astute to ensure that such an occasion is not abused by the party making the statement. Mr Hudson submits that NGN would be prejudiced in the event that the press were able to report the content of the argument, and in particular the disputed passages, when the court, for whatever reason, then comes to a conclusion that the passages in question should not be included in the statements to be read in open court, for example, because the particular passage was misleading or inaccurate, or vindictive, or whatever the reason might be.

4. Mr Hudson recognised, correctly, that in order to persuade the court to sit in private to any extent he had to bring himself within the terms of Part 39 Rule 2 of the Civil Procedure Rules. Rule 2 starts by propounding the general rule that a hearing is to be in public. As Mr Sherborne, on behalf of the claimants, submitted there is a very strong presumption that a hearing should be held in open so that justice is able to be seen to be done by the public. It is a very important check on the way that the court is carrying out its duties in adjudicating on the rights of members of the public. The exception provided for in Rule 2 is as follows:

> "(3) A hearing, or any part of it, must be held in private if, and only to the extent that, the court is satisfied of one or more of the matters set out in sub-paragraphs (a) to (g) and that it is necessary to sit in private to secure the proper administration of justice –"

   The sub-paragraph invoked is paragraph (a) which is that: "publicity would defeat the object of the hearing".

5. Mr Sherborne, on behalf of the claimants, emphasises that it must be strictly necessary to sit in private, which includes, he says, any extent to which the true material being argued about in court is not available to be understood by members of the public, either in court, or through

the medium of fair media reporting, and that therefore that would, in principle, include, coded reference to particular parts of the draft statement. He makes the following principal submissions as reasons why there should not be, to any extent, any privacy in relation to the argument that is to take place:

(i) The material referred to in the statements in open court is already, to a large extent, material that is in the public domain as a result of being contained in statements of case which are publicly available documents, or alternatively as having been deployed previously in case management and other public hearings.

(ii) The material in dispute is not in the nature of confidential information, it is rather allegations that are made by various claimants against NGN and against the individuals employed by that company who, it is said, must have known what was going on in terms of unlawful information gathering. It is not, therefore, a category of material where it can easily be said that any publicity would defeat the object of the hearing.

(iii) The decision of the court on the dispute which would, itself, be made in open court and reported would necessarily have to explain why, if there were elements of the draft statements that should not properly be contained in the statements to be read, that material was either inaccurate, misleading or unfair such that it should be excluded.

The net effect, therefore, would be that the press, although it would have access to the disputed material, would also understand the reasons why the court had decided that it was inappropriate material to be contained in a statement in open court.

6. Mr Sherborne's submissions were supported by Ms Claire Overman, who appears on behalf of the BBC and Guardian Newspapers Ltd. She adopted his points and added that, in circumstances in which the parties have not been able to agree statements and have chosen to invoke the court's decision-making process on what is appropriate content, they can be expected to take the consequences of that in terms of a proper determination by the court. She also emphasised that, in order to attract qualified privilege that attaches to reporting of matters that are argued in court, the press is, and should be, astute to report in a reasonable and fair way, and is therefore likely to be alive to the point that the matters disclosed are merely arguments or allegations, and can also be expected to reflect the extent to which the decision of the judge has considered those allegations that are inappropriate to be contained in the statements.

7. In reply, Mr Hudson submitted that the court should bear in mind that the usual practice is to deal with disputes on the statements in open court on paper. He said that reflects an approach which is designed to keep inappropriate material out of the public domain and that, although these matters are being dealt with in court rather than on paper, the same principle should apply.

8. I have come to the conclusion that there should be no restriction imposed on the reporting of the argument, or on the way that the disputed passages can be referred to in court. It seems to me to be extremely difficult for NGN to be able to satisfy the test that it is necessary to sit in private, or adopt some proxy for sitting in private, in order to secure proper administration of justice.

9. The passages that are in dispute in the draft statements are all allegations that are made by various claimants against NGN as an entity and against particular individuals at that company. As Mr Sherborne submitted, these allegations are already in existence in court documents. They are not confidential material where the confidence needs to be protected. Further, it seems to me that to the extent that I rule against the propriety of any of the content of the draft statements in open court, that is necessarily going to be accompanied by my reasons why the particular material is inaccurate or misleading, or a misrepresentation or unfairly prejudicial, or whatever the reason is for the decision that I have come to, and I accept Ms Overman's argument that the press can reasonably be expected and, indeed, my judgment makes clear, that care must be taken not to confuse what are allegations with matters that have been proved in a trial.

10. Of course, there was no trial in this case, so the allegations are not proved in that way, but I am satisfied that any publicity attached to the allegations and arguments would not defeat the objects of the hearing, which is to ensure that only proper content of the statements in open court attract absolute privilege in that form. I accept that the exercise is sometimes conducted on paper, which means that there will de facto be no publicity for what is struck out; but there was no objection raised at the CMC to my direction that any dispute about the content of statements in open court would be resolved at the start of the hearing. I do not accept that it is obligatory for any objections to statements in open court to be dealt with on paper, though in many cases that may prove more convenient. FFor those reasons, I dismiss the application for this argument to be heard in private.

L A T E R:

11. Further to my decision this morning that NGN's objections to three unilateral statements in open court should be addressed in a public hearing and not a hearing in private, objections have been indicated in relation to the statements proposed to be made on behalf of Sienna Miller, Paul Gascoigne and Evan Harris. At this stage, only the detailed arguments in relation to the draft statement of Sienna Miller have been considered, but in opening his submissions on behalf of Ms Miller, Mr Sherborne addressed the general principles that I should apply in deciding whether to intervene in relation to the draft statements and to what extent I should do so. I will address those general principles first: they were not disputed by Mr Hudson QC on behalf of NGN. I will then deal specifically with the draft statement of Sienna Miller and consideration of the other two draft statements will be adjourned until tomorrow.

12. Mr Sherborne submitted that the policy reason for allowing an opportunity to make a statement in open court for vindication, in a claim for invasion of privacy just as in a libel claim, is that there is an opportunity for the claimant to explain what happened to them, why they brought a claim, their feelings about the allegations or actions that were taken against them, and their feelings about and reasons for reaching the settlement.

13. The leading authority on the principles to be applied is *Murray v Associated Newspapers Limited* [2015] EWCA Civ 488. That was a decision of the Court of Appeal in relation to a settlement in a libel claim brought by JK Rowling, in the name of Murray, against Associated Newspapers. Lady Justice Sharp (as she then was) set out in a few helpful paragraphs of her judgment the right principles in the context of a settlement of a libel claim. She said, at para.25:

> "25. Looking at these issues more generally however, the procedure by which a statement in open court is made as an incident of the settlement of a libel action, is one of long standing: see **Gatley on Libel and Slander**, 11th edition, para 31.10. It antedates by many years the introduction of the offer of amends regime, or its ineffective predecessor in section 4 of the Defamation Act 1952. A statement in open court is often a valuable endpoint to litigation brought to achieve vindication, since it provides the means for more publicity to be given to a settlement (and therefore to a claimant's vindication) than might otherwise occur. Such statements often include an explanation of why proceedings were brought, why what was said was particularly hurtful or damaging, and the effect that the publication complained of, and of events associated with it, has had on a claimant. It is conventionally said in such statements that in the light of the settlement and the reading of the statement in open court, the particular claimant is now "content to let the matter rest". The existence of the procedure benefits both litigants and the public, by facilitating settlement.
>
> 27. The court is unlikely to intervene in the absence of any real or substantial unfairness to the objecting party or other third party and 'nit-picks' are to be discouraged. This relatively high threshold for intervention is correctly calibrated in my view, for two reasons. First, because as the judge pointed out, a party making a statement in open court is exercising their right to freedom of expression and the court should not be too ready to intervene in those circumstances, not least because a defendant is free to say what it wants about the settlement, without interference from a claimant. Secondly, the value of the procedure might be undermined if disputes preceding settlement were permitted to leach too readily into the settlement mechanism designed to bring the proceedings to an end, thereby giving rise to further, collateral disputes.
>
> 29. I quite accept that a statement in open court (whether unilateral or joint) must be fair and proportionate. It should not misrepresent a party's case, or the nature of any settlement that is reached. The interests of third parties should also be borne in mind having regard to the fact that a statement in open court is made with the benefit of absolute privilege, and so can be freely reported. Beyond that however, I think it would be unwise to be overly prescriptive. What is fair and proportionate for litigants to say in a statement in open court must depend on the facts."

And later, in para.37, the Lady Justice said that what is fair and reasonable was not to be judged simply by reference to the four corners of the pleaded case.

14. In the case of *Webb v Lewis Silkin LLP* [2016] EWHC 1225 (Ch), a decision of Nugee J, similar principles were explained and applied to the claim for invasion of privacy and breach of confidence. Nugee J said, at para.38:

> "It does not seem to me that a case of breach of privacy gives rise to any very different considerations. One would expect, in a case of breach of privacy, that a statement in open court would explain why proceedings were brought, why not what was said, but what was done was particularly

> hurtful or damaging and the effect that, in this case, not publication, but the breach of privacy complained of and events associated with it has had on the claimant…
>
> 39. It is true that in a case where what is at stake is not the claimant's reputation but her privacy, the nature of the vindication that she wants is different and is not a case so much of setting the record straight as a case of being able to point to a public statement that her rights have been infringed and the effect that that has had on her…"

In para.45, Nugee J, having referred to the decision in *Murray v Associated Newspapers*, said:

> "…both in that judgment and in the judgment of Eady J…"
>
> (I interpolate, in a case called *Winslet v Associated Newspapers Limited*)
>
> "… it is made clear that a unilateral statement by a claimant is not intended to be, even though approved by the court, a substitute for a bipartisan, bilateral statement. It is the claimant's statement. As Sharp LJ puts it, a party making a statement in open court is exercising *their* right to freedom of expression and the court should not be too ready to intervene in most circumstances, not least because the defendant is free to say what it wants about the settlement without interference from the claimant. As Eady J stated, in the passages I have referred to, what the claimant is doing is representing her point of view, which is obvious from the fact that it is a unilateral statement, and she should be allowed to publicise her understanding of the settlement, provided that she does so in a fair and proportionate way."

Paragraph 48, finally:

> "It does not seem to me that I can or, in accordance with the authorities, should do anything towards seeking to resolve those very contentious issues. The very purpose of a settlement is to avoid resolving those issues. It is in that spirit that I look at the draft that is put forward by the claimant, not to see whether it is what I would regard as a neutral exposition of both parties' cases, but to see whether it is fair and proportionate in the sense described by Sharp LJ and that, in particular, it does not misrepresent either party's case or the nature of any settlement that is reached."

That last passage is emphasised by Mr Hudson QC, but both parties accept that both the judgments of Sharp LJ and Nugee J correctly state the test that I should apply. I bear in mind that guidance and will endeavour to apply it to the facts of these cases.

15. Mr Sherborne further submitted, so far as the criterion of proportionality is concerned, that it should be judged in the light of, in particular, the importance of the claim; second, the seriousness of the allegations advanced in the claim and, third, the amount of the settlement. I accept the first two propositions, which are not disputed by Mr Hudson; I do not accept the third consideration should be taken into account insofar as it depends on the exact amount or even the broad level of the settlement that was reached, at least in this case, because the settlement was confidential and agreed by the parties to be confidential. However, it is

common ground that it was a substantial amount of damages and not simply a nominal or modest sum.

16. Mr Hudson submitted that, above all, what I should endeavour to ensure is that the unilateral statement is fair and proportionate and that it does not misrepresent either party's case in the litigation, or misrepresent the nature of the settlement. Further, he submitted that third parties are to be protected so far as possible, because they are more vulnerable and making unfair statements about a third party can clearly be an abuse of the occasion of absolute privilege.

17. Turning to Ms Miller's case, the proceedings were settled on 1 October 2021 by a Tomlin Order made by consent. Two provisions are material. First, there was a recital in the following terms: "And upon the parties having agreed and noted that the defendant makes no admission as to liability in relation to the claim, including the allegations relating to The Sun newspaper," Secondly, para.6 of the order in the following terms: "The claimant shall have permission to read a joint statement in open court in the terms of agreement between the parties or a unilateral statement in terms approved by the court after considering the objections, if any, from the defendant." It was therefore the essential basis of the settlement that was reached that Ms Miller should have the opportunity to make a statement in open court, and that the parties understood and agreed that the settlement was on the basis of no admissions as to liability being made by NGN.

18. A draft statement having been supplied by solicitors on behalf of Ms Miller, a number of far-reaching objections were taken on behalf of NGN. Those objections were considered and a second draft was produced. The second draft was also objected to to a substantial extent, so at that stage it had become clear that a joint statement would not be capable of agreement. Ms Miller applied for permission to read a unilateral statement in the terms of the second draft. The draft runs to some seven pages and the objections raised on behalf of the defendant are 18 in number.

19. In an attempt to cut to the real issues in this particular hearing, I asked Mr Hudson before Mr Sherborne made a start on his submissions in relation to each of the 18 objections what were the essential points that the NGN contended made the statement, as drafted, inappropriate and one which the court should not approve. He helpfully submitted, by reference particularly to para.23 of the statement, that the following principal points arose.

20. First, that the statement would be misleading as to the true nature of the settlement in that it did not fairly refer to the fact that the settlement was on the basis of no admissions as to liability or it included statements that gave the opposite impression to the fair reader or hearer of the statement and he submitted that the draft statement infringed that principle in a number of respects.

21. Second, he submitted that it was quite wrong, given the nature of the settlement, for the statement to present certain aspects of the claimant's case as if they were findings of fact that had been made by a court at a trial. There has, of course, been no trial and therefore there are no findings. [*continue here with the content of para numbered 22*]The draft statement nevertheless refers to a number of factual matters. Some of them are dealt with by reference to the pleaded allegations, some of them by reference to Ms Miller's belief as to what the position was. Others appear to be presented in the draft statement as if they were facts that were undisputed by the defendant. Mr Hudson submitted that it would clearly be unfair and, indeed, a misrepresentation if the statement were allowed to perform that latter function.

22. Third, he submitted that it would be unfair and inappropriate for the draft statement to name third parties if it was done not in terms of allegations which had been made against them in the statements of case, but as if there had been findings of fact made against them in relation to their involvement in the matters complained of. It therefore relates closely to Mr Hudson's second objection, with particular reference to various third parties who are identified in the draft statement, in particular, Ms Rebekah Brooks, Mr Parker and Ms Hart.

23. Having read and re-read the draft statement carefully a number of times and listened to the lengthy competing submissions on the objections that have been taken to it, I consider that the principles that Mr Hudson advances as to NGN's objections are correct in principle, that is to say that I accept the three propositions that I have just summarised as being a correct approach in principle in deciding whether or not the content of the statement that is inappropriate to be read. I am also satisfied, though only to a relatively limited extent, that there are parts of the draft statement that infringe those principles as the statement is drafted, because they either imply that there was admission of liability, or something close to it, on behalf of the defendant or, alternatively, they present acts relating to Ms Miller's claim as if there was no dispute about the facts when, as I have said, there have been no facts found in this case and liability is not admitted. As I have said, and as I shall explain by reference to the particular objections, I do consider that that criticism is well-founded in some cases, but not in others. I also think that in most cases the objection is easily capable of being dealt with by modest re-drafting of the statement.

24. I turn, then, to the individual objections that have been raised. The first is to para.2 of the statement. In order to shorten the delivery of this judgment, I will not read out each of the paragraphs that I am going to refer to, but simply summarise the salient points. Paragraph 2 states that The Sun published numerous intrusive stories about Ms Miller containing intimate private details about her relationships and feelings, and confidential medical information. The objection is that that appears to make a factual averment where there has been no finding of fact made. The defendant therefore wishes the paragraph to state that Ms Miller believes that The Sun published articles of such a character. In my judgment, it is sufficiently clear, in the content of para.2, that what is being said is Ms Miller's own subjective opinion of what was being published; and, in any event, having seen the schedule of articles that are referred to, I consider it to be indisputable that there clearly were articles that are accurately described as containing intimate, private details about her relationships and, to a more limited extent, relating to her pregnancy and confidential medical information. In my judgment, therefore, there is insufficient in the objection to para.2 to warrant any change to that paragraph to be made.

25. The next paragraph is para.4, in which Ms Miller makes a statement about the claim pursued by her ex-partner, Jude Law, and comments that were made on behalf of The Sun newspaper in relation to his claim. The objection advanced in relation to this paragraph is simply that the paragraph is disproportionate, by which I think Mr Hudson meant that setting out the material relating to Mr Law's claim and events that happened in relation to it were unnecessary, as he put it, in a statement of vindication on behalf of Ms Miller. I do not accept that the relevant criterion is necessity. The right approach is whether what is said is disproportionate or whether it is unfair or otherwise inappropriate. The paragraph introduces Mr Law's matter simply in order to refer to the comment made on behalf of The Sun that denied that the allegations of phone hacking had any foundation whatsoever. It seems to me it is an important part of the explanation of how Ms Miller's claim came about and why she has the strong feelings that she does have about the matters that happened to her. I therefore require no change to that paragraph.

26. In para.6, where there is a summary of a letter that was written at an early stage in relation to Ms Miller's claim. The paragraph is a short one. Mr Hudson objects that the letter referred to is not accurately quoted and suggests additional material to insert. In my judgment, the additional material Mr Hudson wishes to insert does not really add anything of materiality and the paragraph without that material is not misleading, it is just that it is a brief summary of the most urgent matter referred to in the correspondence. There will therefore be no change to that paragraph.

27. The next paragraph, para.7 of the statement, is where matters become a little more difficult. In that paragraph, Ms Miller states what happened when she, having issued her claim, was provided with generic disclosure. The generic disclosure is described in terms as documents that "News Group was ordered to disclose relevant to the claimant's general allegation of some illegal activity" that relates to the claimant. The first point Mr Hudson raises is that this should be stated instead in terms that do not refer to illegal activity, there having been no finding of illegal activity. However, it is quite clear in context that what is being referred to is an allegation of illegal activity at The Sun, which is pleaded and as an allegation is a matter of public record. In those circumstances, it is not unfair for the allegation to be repeated in this way.

28. There is then the following passage which is more problematic. "Ms Miller was horrified to learn from this disclosure that there were expenses claimed by Nick Parker, a senior Sun journalist, which show that he had met with a medical records tracer in July and August 2005 to discuss Ms Miller's pregnancy. Ms Miller also learned that the medical records tracer was Christine Hart, who is well-known in this litigation to have obtained private medical information." The objection to this passage is twofold; first, that it appears to assert a fact, namely that there were expenses claimed by Mr Parker showing that he met a medical records tracer at that time, when there has been no finding to that effect and, second, that the allegation involves naming Mr Parker, a third party, when there has been neither a conclusion reached against him, nor the opportunity for him to comment on the allegation in relation to this statement. The response from Mr Sherborne is that this is doing no more than repeating a matter that is pleaded in the statements of case and that the documents, he submits, plainly show that there was an expenses claim and that Mr Parker and Ms Hart were both named on the relevant documents.

29. Be that as it may, I consider that it is unfair, in the circumstances, however persuasive certain documents may appear to be, to implicate third parties specifically without there having been findings made against them in circumstances in which they will not have the opportunity to comment. It is perfectly acceptable, of course, for the paragraph to read that Ms Miller, in light of disclosure that was given to her, believes something is the case or, indeed, that documents disclosed appeared to show that something is the case. The difficulty is that the sentence is couched in terms of an absolute factual conclusion. To that extent, but to that extent only, I agree that the objection was properly raised. It is not a matter for the court to decide how the sentence should be reconstructed in which of the ways I have mentioned, or in some other way so that it is presented so as not to be objectionable. The principle that I have expounded in relation to that paragraph applies to a number of other edits in the same paragraph, as to which the same principle should be applied.

30. Para.8 deals with initial disclosure relating to the claimant herself, which was received in January 2020. The statement says that disclosure comprised records and phone calls made by NGN journalists to mobile phones in relation to Ms Miller and four of her friends and

members of her family, as well as private investigator invoices to sent to The Sun and records of contributor payments by The Sun to private investigators, such as Christine Hart. The suggestion from Mr Hudson is that the reference to "private investigator" should read "alleged private investigator" and the reference to "private investigators" should "alleged private investigators" with Ms Hart's name expunged from the statement. In my judgment, it is perfectly reasonable for the statement, and not unfair, to say that they are private investigator invoices addressed to The Sun. It is unrealistic to suggest otherwise. But nevertheless, the naming of an individual such as Ms Hart should not be done without being qualified in one of the ways that I have indicated previously, either by saying Ms Hart is an "alleged private investigator" or that the invoices appeared to be invoices to a private investigator called Ms Hart. Again, that is a matter for the claimant to decide.

31. There are other objections taken in relation to that paragraph. In my judgment, the changes that ought to be made really follow from the principle that I have mentioned. There is reference to a company called Express Locate International, said to be a PI company specialising in unlawful searches relating preparatory to phone hacking. That reference to a third party must be qualified in a similar way to say that it is alleged to have carried out such activities. Similarly,in the next sentence, which states that these invoices were ordered by The Sun journalist, Nick Parker. That is a statement of fact that may or may not be borne out by the documentary evidence, but nevertheless there has been no finding and, in my judgment, it similarly needs to be qualified, either by being couched in terms of an allegation that it was ordered by Mr Parker or, alternatively, by omitting his name and saying that it was apparently ordered.

32. Paragraph 9. This relates to Ms Miller's particulars of claim. There was, at one time, a dispute in relation to the number of articles referred to, but that dispute has happily been resolved and I need say no more about it.

33. Paragraph 10 relates to Ms Miller's reliance on statements made by representative of News Group stating that Sun journalists were not involved in unlawful activities, containing an assertion by Ms Miller that she firmly believes those statements to be false. Objection was taken to the use of the words "relied upon", as in "Ms Miller also relied upon numerous statements made" and suggested that a different word should be used, but I have no difficulty in principle with Ms Miller explaining what she relied upon and find that objection is not sustained. There is also an objection to the clause at the end of that paragraph, in which it is said that her belief was supported by the evidence which she produced to support her claim. Again, it seems to me that that is, obviously, a statement made by Ms Miller as to what she believed the evidence established and is not a statement of fact which needs to be qualified.

34. Paragraph 11 reads as follows:

> "Ms Miller also relied upon generic disclosure only disclosed by NGN in March 2021 which showed that there had been an internal investigation at The Sun into voicemail interception. Ms Miller was shocked to discover that the findings of this investigation explicitly referred to phone inquiries into her and her associate, Jude Law, and yet they have been never informed."

NGN submits that the whole of this paragraph should be deleted on the basis it is not necessary for a statement of vindication and it is too tendentious. Subject to one minor change, I consider that the paragraph is unobjectionable. It refers to matters that are pleaded, so it

cannot be said to be unfair to refer to it as long as what is said is not presented as an undisputed fact. Accordingly, I therefore consider that the paragraph should say that disclosure showed that there had been an internal investigation that *appeared* to show, or something of that kind.

35. Paragraph 12 refers to the defence of NGN, in which it neither admitted nor denied that The Sun was involved in illegal activities. Objection is taken by NGN to what is said about the state of the pleadings and how comfortably or uncomfortably they sit with NGN's public denials of any responsibility previously. The objection is that the wording is too tendentious. I agree that that may be an accurate description of the words "contradictory" and "nonsensical" as attached to the pleadings. I do not consider that it is otherwise the case. I would therefore not allow the objection that is made to this paragraph, save to that limited extent.

36. Paragraph 13. This paragraph pleads a reply served by Ms Miller and various points that were made in the reply. It seems to me that the whole of this paragraph takes matters no further at all and is, if anything, overly confusing. I therefore consider that referring to these matters in the reply is disproportionate in the context of the statement and I would disallow that paragraph.

37. Paragraph 14 states that, after the disclosure process, Ms Miller was intent on discovering the extent of what had happened and the unlawful activities had been used against her. One of the objections made to this paragraph is that it states that she learned of the targeting of her and her associates by The Sun from the disclosure. It is said that that presents a matter of fact. It seems to me that it is not a matter of fact, it is an expression of her understanding that she derived from reviewing the disclosure that was provided, and it is therefore unobjectionable. Insofar as this paragraph refers to "unlawful activities", however, I consider that there should be a qualification of that by reference to what is alleged in the claim rather than, as it currently does, implying that unlawful activities have been proven or otherwise established or admitted. The other suggested changes in relation to that paragraph seem to me to fall into the "nit-picking" category.

38. Paragraph 15 reads:

> "The parties exchanged standard disclosure on 16 November 2020. There was a huge amount of material provided by NGN, which showed to Ms Miller how she and those around her were targeted for such a prolonged period. There was also further incriminating call data relating to many of the claimant's associates."

All but the first sentence of this paragraph is objected to on the basis, again, that the wording is unduly tendentious and, it is said, amounts to a collateral attack on NGN. I do not follow the argument of collateral attack, which was not, in the event, pursued by Mr Hudson. It seems to me that this paragraph, fairly read, is an expression of what Ms Miller perceived as a result of the exchange of the standard for disclosure. Nevertheless, it is capable of giving the unfair impression that what the disclosure showed was incontrovertible and that NGN accepts what Ms Miller said that it showed. In those circumstances, some similar qualification along the lines that I have identified in previous paragraphs should be made.

39. Paragraph 16 relates to the exchange of trial witness statements. This is another paragraph where there is a substantial dispute between the parties. Ms Miller says that it was particularly painful for her to have to relive what NGN have done to her over a number of years, including

times when she was extremely vulnerable. The defendant suggests that needs to be qualified by the words that "she believed NGN had done to her". However, I do not consider that that is necessary in the interests of fairness. It is obvious that Ms Miller is simply explaining what her pleadings were at the time when she prepared her witness statement.

40. The next sentences are a bit more difficult. They say:

> "The Claimant specifically remembered that it was Rebekah Brooks, then editor of The Sun, who first called the Claimant's representative to say that she knew the Claimant was pregnant. She found it incredibly upsetting to realise that Ms Brooks, Mr Parker and Ms Hart were in fact responsible for leaking the pregnancy and that their actions… had led her to being unable to trust her close associates."

The evidence relied upon is in fact not first-hand knowledge of Ms Miller, but is something that she was told by her assistant, the assistant also having made a witness statement to that effect. There has, therefore, been no finding as to who it was that said that they had found out that the claimant was pregnant. The paragraph, as drafted, in my judgment does strongly imply that there is no doubt but that Ms Brooks, Mr Parker and Ms Hart were responsible. The paragraph says they were, in fact, responsible for leaking the pregnancy, in other words, this paragraph appears to present a factual conclusion which has not been reached, however strong Ms Miller may think the evidence is to justify that conclusion. In those circumstances, in my judgment, there needs to be a similar qualification, either by referring to an allegation that those individuals were responsible, or by omitting their names but couching it in terms of Ms Miller's belief as to what had happened. It is not appropriate to present a factual conclusion against a third party in unqualified terms.

41. The penultimate sentence starts, "They were constantly hounding her…" In my judgment, the same applies to that comment. It needs to be qualified as the previous sentences, so that it says that Ms Miller felt that they were constantly hounding her so that she could not even visit a doctor without being followed, or similar words.

42. Paragraph 17 starts with an objection by the defendant to use of the words "she also realised how extensive The Sun's activities against her were during preparation of her statements". It is suggested that that ought to be qualified by the words "believes that", but I do not consider that that is necessary in the interests of fairness. It is obvious that what is being said is what Ms Miller thought at the time of preparing her witness statement.

43. There is then an objection to the following sentence, where it is stated that it became clear to Ms Miller that Jude Law and her ex-partner were targeted by various private investigators. I consider that it is sufficiently clear, in the context of this paragraph, that what is being said is the opinion that Ms Miller formed at the time when witness statements were being prepared. In my judgment, no alteration is required to that paragraph.

44. Paragraph 18 says that Ms Miller wanted to find out what NGN's journalists had done with her private information, however, there was to paraphrase) little witness evidence forthcoming on behalf of the defendant. In my judgment, there is no proper objection to this paragraph either. It is simply an expression of Ms Miller's feelings at the time and the distress that she says she suffered, which she is perfectly entitled to express.

45. Paragraph 19 then explains why Ms Miller, although she wanted to pursue the matter to trial, felt unable to do so. The assertion that because of the position on costs she felt unable to do so is objected to on behalf of the defendant, but I do not consider there is a proper objection here. That is part and parcel of Ms Miller's explanation of why it is that she settled this claim and did not pursue the matter to trial, as she might otherwise have been expected to, even though she says that she considered she had a very strong case. That is a necessary part of her explanation of what has happened. I similarly do not consider that there is any proper objection to the explanation why she has provided a generic witness statement, and the reference to unlawful behaviour undertaken against her is clearly an expression of her own opinion and her motivation for providing that witness statement.

46. The next paragraph is para.21, which starts in the following terms:

> "Despite the overwhelming disclosure evidencing that it was the unlawful activities by journalists at The Sun that led to the publications exposing Ms Miller's pregnancy and other intensely sensitive information, NGN's position throughout these proceedings is that it makes no admissions in relation to The Sun newspaper and the parties have settled the claim on that basis."

The first part of that sentence leading upon to "NGN's position" is objected to by NGN. It is said that it misrepresents the nature and circumstances of the settlement. I consider that an adjustment is required to the first line of the paragraph, which otherwise appears to be stating that disclosure does prove that it was unlawful activities by The Sun that led to exposure. The claim did settle on the basis of no admission as to liability and therefore a qualification such as "appears to show it" is appropriate in the interests of fairness to the defendant. The final sentence of that paragraph explains why Ms Miller found NGN's position particularly upsetting. She was unaware of the illegal activities that had been undertaken against her. That is clearly to be understood in the context of the allegations that are being made and rehearsed in the rest of the statement. It is not to be taken as a statement of proven fact that illegal activities were being carried on, but that Ms Miller considers that that is what was happening. I do not accept the objection to the final sentence.

47. Paragraph 22 states that Ms Miller was targeted in pursuit of The Sun's aim to profit out of her misery. This, by way of contrast, is presented as a statement of fact and in my judgment should have been qualified by the use of words such as "believes she was" in order to present her position fairly. It is not necessary, having made that adjustment to that sentence, to make the further adjustment sought by the defendant by inserting the words "she believes" following the words "she cannot ever forgive what" and before "they did to her". In that context, it is obvious that what is being expressed is a matter of the claimant's belief.

48. Finally, to para.23, which is where Mr Hudson started in order to illustrate the principal objections that his client was taking to this draft statement. It is necessary for me to read it in full.

> "Given the fact that the publishers of The Sun have agreed to pay such a substantial sum by way of damages, and have thereby avoided a public trial, in relation to her claim for unlawful information gathering solely relating to that newspaper, as well as the knowledge and concealment of those illegal activities by the Editor and Senior Executives there, Ms Miller believes that this is tantamount to an admission of liability on the part of

> The Sun and she therefore feels fully vindicated in having brought this claim."

The paragraph is something of a peroration at the end of a reasonably detailed statement. Whether the purpose of it was to provide a convenient sound bite or not, it seems to me that it is highly likely that that particular paragraph (or part of it) will be seized upon and publicised, perhaps ahead of other paragraphs in the statement.

49. In those circumstances, Mr Hudson submits that for Ms Miller to say that she believes that the settlement is tantamount to an admission of liability on the part of The Sun misrepresents the nature of the settlement, even though it is qualified by the express words "Ms Miller believes that", because what she is effectively saying in that sentence is that in reality a settlement is to be regarded as an admission of liability on the part of The Sun. It is, of course, the case that in para.21, only two paragraphs before, the statement does say that NGN's position throughout has been no admissions and that the parties settled on that basis. In view of that provision at para.21, I do not consider that Mr Hudson was right to say that this paragraph should not be allowed at all because it amounts to misrepresentation and is misleading as to the circumstances of the settlement. In my judgment, Ms Miller is entitled to say how she regards the effect of the settlement that has been reached. However, the question remains whether, because of the potential use of para.23 of the statement in isolation, it ought to be qualified it by making reference to the fact that the settlement was achieved on the basis of non-admission of liability.

50. I have given this matter anxious thought. It is perhaps the most subtle and difficult of the points that I have to decide. I fully accept in principle that Ms Miller was entitled to make the statement that she does, saying that she regards it, in the light of what has happened, effectively to be an admission of liability. It is her right to make that statement. But I have to consider whether, read in that way, the statement is misleading about the basis of the settlement reached and therefore objectionable.

51. I accept Mr Hudson's submission that that paragraph and that sentence read in isolation is likely to give the impression to the reasonable reader or listener that the settlement was effectively (regardless of what the statement as a whole may say) an admission of liability on the part of The Sun. Accordingly, I consider that some qualification should be introduced, such as that the words "notwithstanding that the settlement was made on a no admissions basis" in order to make it transparently clear that it is Ms Miller's personal opinion that is being expressed and that she recognises that the settlement reached was on the agreed basis there had been no admissions of liability.

52. I am conscious that in determining all these points I may have strayed into the territory of doing what some of the authorities suggest that the court should not do, of scrutinising too closely the content of the statement. However, in view of the terms of the settlement and the way that the parties have presented these matters to me, I have felt it necessary to engage not just with the broad principles, but with their application to the particular paragraph to which very specific objections are raised. The points that I have made on the individual paragraphs of the statement are really no more than the application of the same primary principles propounded by Mr Hudson that I accepted. It was also necessary to go further and deal with the individual objection in order to ensure that a final version of the draft statement can be produced and read in open court tomorrow, which it is accepted is the appropriate time at which it should now be done. To reject the statement and send the parties away to agree a

different one in light of broad principles only would, I fear, given the nature of this litigation, have meant that we would be little further forward by tomorrow morning.

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