Neutral Citation Number: [2025] EWHC 142 (KB)

Claim Number: QB-2022-001397

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

Royal Courts of Justice
Strand
London
WC2A 2LL

Date: Monday, 20th January 2025

Before:

MRS. JUSTICE STEYN

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Between:

NOEL ANTHONY CLARKE	**Claimant**
- and -	
GUARDIAN NEWS & MEDIA LTD	**Defendant**

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- -

PHILIP WILLIAMS, ARTHUR LO and **DANIEL JEREMY** (instructed by **The Khan Partnership LLP**) appeared for the **Claimant.**

GAVIN MILLAR KC, ALEXANDRA MARZEC and **BEN GALLOP** (instructed by **Wiggin LLP**) appeared for the **Defendant.**

In attendance: MR. D. GLEN appeared for the **first proposed new Defendant**
MR. I. HELME appeared for the **2nd – 6th proposed new Defendants.**

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Approved Judgment

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

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MRS. JUSTICE STEYN :

1. As currently pleaded, this is a claim in libel and data protection brought against a single defendant, Guardian News & Media Ltd, in respect of the publication of eight articles, of which seven were published in April and May 2021 and one was published in March 2022.

2. The six-week trial was listed as long ago as 11 June 2024 to begin on 3rd March 2025, that is six weeks from today. This is a very substantial trial, primarily in libel. The claimant has served 15 trial witness statements and the defendant has served 34. It is anticipated that almost all of them will be called to give live evidence. The defendant has raised defences of truth and publication in the public interest.

3. On 8th January 2025 the claimant filed and served on the defendant an application to join six proposed new defendants and to re-amend the particulars of claim to add a new cause of action in unlawful means conspiracy, as well as amending the damages claim to claim special damages of more than £70 million.

4. The application has not been served on the proposed new defendants. The first question that arises is whether it should have been, or should now be, served on the proposed new defendants and whether they should be given an opportunity to respond to it.

5. On behalf of the claimant, Mr. Williams submits that the proposed new defendants have no standing in relation to this matter. In accordance with CPR 19.4(9), a new defendant does not become a party to the proceedings until the amended claim form has been served on them. Mr. Williams draws my attention to Practice Direction 5A, paragraph 3.1, which deals with supply of statements of case, evidence, et cetera, to new parties, once they have been joined, which the proposed new defendants have not been, at least at this stage.

6. In my judgment, it is clear that the proposed new defendants are respondents to the application. Such an application must be made under Part 23: see CPR 19.4(2)(b)(ii). CPR 23.1 provides:

> ".... 'respondent' means (a) the person against whom the order is sought; and (b) such other person as the court may direct."

In accordance with CPR 23.4:

> "A copy of the application notice must be served on each respondent unless a rule, practice direction or court order permits otherwise."

7. The proposed new defendants are persons against whom the order is sought, as is plain on the face of the claimant's draft order.

8. I note that position accords with the practice in other cases. For example, in *Vardy v Rooney* [2022] EWHC 304 QB, Ms. Watt was a respondent to the joinder application served with the application and represented at the hearing of that application. In *Gaia River SA v Behike Ltd* [2020] EWHC 2981 (Comm) (cited in the White Book at 19.2.3), the court refused an application under both r.19.2(2)(a) and (b) to join new

parties, and it is clear from paragraph 3 of the judgment that the proposed additional parties were represented. In *Molavi v Hibbert* [2020] EWHC 121 (Ch) the proposed new parties were respondents and the question arose whether the existing parties should have been served, to which the answer was that they should have been.

9. The notes to the White Book at 19.4.1, in particular the statement that such "an application may be considered with or without a hearing where all the existing parties and the proposed new party are in agreement" (emphasis added), also clearly envisages that the proposed new party has standing to make submissions in response to the application.

10. In any event, it is common ground that the court has a discretion to direct that the proposed new defendants are respondents. I would, if it were necessary, direct that the proposed new defendants are respondents to the application. They ought, in fairness and in the interests of justice, to have an opportunity to respond to it.

11. I accept that the failure to serve the proposed new defendants does not put the claimant in breach of any order, but it does mean that the application which was filed on 8th January has not yet been served on six persons who are respondents to it. It also has an impact on how swiftly the application can in practice be heard. That is because the proposed new defendants need a reasonable period to read into a very substantial case before they could fairly be expected to file and serve evidence in response to the application.

12. At this stage, I am only concerned with what directions I should make for the hearing of the joinder and amendment application. The key issue between the parties and the proposed new defendants (who have been represented by counsel today) is whether I should give directions for determination of the application before trial in circumstances where it is agreed on all sides that if the application is allowed, the trial, at least of the full claim, could not go ahead.

13. The directions sought by the claimant are predicated on the defendant alone being a respondent to the application. The claimant proposes a tight timetable in which the defendant would respond to the application by 22nd January, so two days' time, the claimant replying by 24th January, a bundle for the hearing being filed and served by 27th January, skeleton arguments by 28th January, anticipating a hearing of this application next week.

14. In circumstances where the proposed new defendants are, for the reasons I have given, respondents to the application, that is clearly not a fair or reasonable timetable. I agree with the proposed new defendants that given the amount of material they will need to review, and given that in the case of five of the proposed new defendants, they are coming to this completely, or almost completely fresh, a period of three to four weeks for their evidence would be necessary, in fairness, if the court were proceeding to list this application now. It also has to be borne in mind that one of the proposed new defendants, Mr. Lewis, will be heavily engaged in the preparation for the trial in six weeks' time and so any preparation for responding to this application would be taking place in addition to that work. Directions for listing would have to allow time also for reply evidence, skeleton arguments, hearing and authorities bundles.

15. The reality, in my judgment, is that if the application were to be listed at this stage, it could not fairly be listed until about five or six weeks' time. The consequence is that the listing would end up coinciding with the trial, and clearly that would be completely unsatisfactory.

16. I have also borne in mind the lateness of the application. As I say, it was filed on 8th January. It has not yet been served on six of the seven respondents to the application and we are currently only six weeks away from the start of a six-week trial. Whilst I hear what the claimant says about the need to consider the defendants' disclosure before pleading the new cause of action and proposing to join new defendants, almost the entirety of the disclosure (about 99% of it) was given when standard disclosure took place on 3rd October. Whilst that was two months' later than was originally proposed, the reality is that if this application was going to be made and heard prior to the trial, with any prospect of keeping the longstanding trial date, then it needed to be made many months ago.

17. In my judgment, the balance of interests between proceeding to determine the joinder and amendment application prior to the trial, and the prejudice to the party opposing it, favours adjourning determination of this application until after the trial that is due to begin on 3rd March. For the reasons I have given, listing the application to be heard on the earliest date consistent with fairness to the respondents would hugely disrupt trial preparation and in and of itself put the trial date at risk.

18. The application, if it were to be granted, would inevitably result in the need to adjourn the trial (unless the court were to limit the issues to be tried to the liability of the sole current defendant in respect of the claim as currently pleaded, and in that case, there is no need to determine the application prior to the trial). I agree with the defendant that any adjournment of the trial would seriously prejudice the defendant, and it is likely to cause serious distress to third parties. The nature of the claim is such that there are numerous witnesses who are due to give evidence in relation to allegations of sexual harassment and sexual misconduct. The articles, as I have said, were almost all published four years' ago, and the trial has been listed for quite some time. I accept that many of the witnesses have been anxiously awaiting it and that it has been looming over them, casting a shadow over their lives. If the trial date were to be adjourned, potentially for many months, then there is the risk that the court would not necessarily have the benefit of all the witnesses who are currently prepared to give evidence.

19. I am not persuaded that these factors are outweighed by any prejudice to the claimant in not determining the application at this stage. There is a clearly pleaded and self-contained libel and data protection claim against the current defendant that can be properly determined at the trial in March. As Mr. Millar stated in his submissions, the claimant would be able to put to the defendant's witnesses the allegation that documents are fabricated and the allegation that they are part of a conspiracy could be made in support of his response to the defendant's defence of truth and also in respect of the public interest defence. It seems to me that it would not be fair to the respondents to hear this application next week or even in a couple of weeks' time. There is simply no benefit and much to be said against hearing it just a week or so prior to the trial. The only reason to do so would be if the court was entertaining the possibility of adjourning the whole trial if, at that stage, the application were to be successful. But for the reasons I have given, in my judgment, it is plainly in

accordance with the overriding objective for the trial to go ahead. The trial can deal with all the issues of liability that are pleaded against the defendant and so that will include the defences of truth and public interest as well as the data protection claim.

20. I have borne in mind that it would potentially be possible to hive off the application to amend the damages claim from the remainder of the amendment and joinder application. It would potentially be possible for that both to be heard prior to the trial and, even if it is allowed, that would not have the impact of losing the trial fixture, or at least, it does not appear likely on the evidence and submissions that I have received that that would have such impact.

21. Nevertheless, in my view the more sensible course at this stage, given the application to amend encompasses a new cause of action against the defendant, is to determine liability only in respect of the existing claim against the defendant, leaving any question of damages and other relief for later determination.

22. Accordingly, I will adjourn the listing of the application to amend and to add new defendants until after resolution of the trial, and that trial will now go ahead on the liability issues that are pleaded.

23. I note that there is a mismatch between the value of the pleaded claim in the existing amended particulars of claim and the value stated in the amended claim form. It follows that the claim form requires re-amendment. I will give permission for that amendment to be made. Mr. Williams has undertaken that that amendment can be filed by 31 January 2025 and the appropriate court fee paid (or confirmation given that it has already been paid, if that is the case).

(After further legal argument)

MRS. JUSTICE STEYN:

24. This is an application for an anonymity order, in the sense of both a withholding order and a reporting restriction order, in respect of six of the defendant's witnesses. In addition, the defendant has drawn to my attention the position of seven women who will not be giving evidence before the court, who are at this stage anonymous and reference to whom is likely to be given in the trial. The defendant does not know whether those women would wish for anonymity, and so makes no application on their behalf, but the question for the court is whether those individuals, too, ought to be subject to anonymity orders. The defendant also applies to withhold the addresses of two further witnesses (in respect of whom anonymity is not sought to be maintained) and for special measures to be adopted when hearing the evidence of three of the defendant's witnesses.

25. The position is that a confidentiality order has been in place, made by Collins Rice J, on 17th January 2024. An application was made by the claimant on 14th June 2024, seeking to vary that confidentiality order. As the claimant accepts, the claimant's application has been effectively superseded by the defendant's application of 6th January 2025 as the individuals who were sought no longer to be anonymised by the claimant's application would no longer be subject to anonymity in accordance with the defendant's application.

26. In relation to those 12 individuals, the confidentiality that has stood since the order of Collins Rice J of 17th January 2024 is to be discharged. That is agreed between the parties and I, having considered it, also agree that their anonymity should not be maintained.

27. Turning first, to the application for special measures. In respect of two witnesses (identified as 'Willow' and 'Phoebe'), an order is sought permitting them to give evidence at trial from behind a screen so that they are not visible to and cannot see the claimant. In respect of the third witness (identified as 'Penelope'), permission for her to give her oral evidence at trial by way of a video link is sought.

28. Provision for special measures for witnesses is made in Practice Direction 1A. The purpose of such special measures is to assist a vulnerable witness to give their best evidence. I have considered the evidence in support of the special measures application given in the third witness statement of Ms. Furhmann, and the statements of Willow, Phoebe and Penelope. The special measures application is not contested, and I am entirely satisfied, having regard to the evidence of each of those witness, and bearing in mind the nature of the evidence that they are going to give, that special measures ought to be directed in the form sought. Doing so will assist each of those witnesses to give their best evidence and so it is in the interests of the administration of justice to make those special measures orders.

29. Turning, then, to the anonymity and reporting restrictions sought. A detailed summary of the legal principles can be found in the judgment of Nicklin J in *PMC v Local Health Board* [2024] EWHC 2969 (KB) which I have read and apply. In short, anonymity and reporting restrictions are derogations from open justice. Such derogations can be justified in exceptional circumstances when they are strictly necessary to secure the proper administration of justice and/or to protect against harm to legitimate interest, including the article 8 rights of individuals to respect for their private and family life. Such harm can stem from intrusion into an individual's private or family life resulting from mainstream or social media reporting of a person's identity in conjunction with sensitive and/or sexual allegations concerning them. Any derogations should be no more than what is strictly required to achieve their purposes, and the need for such derogations must be established by clear and cogent evidence.

30. The Claimant took an essentially neutral position on each of these applications. The Defendant had given due notice to any enable any member of the press to raise an objection to the proposed derogations from open justice, if they wished, but no such objection was raised. Nevertheless, it is for the court to determine whether such derogations are justified.

31. So far as the witnesses are concerned, they fall into two categories: first, the six witnesses for whom anonymity is specifically sought on the basis that they themselves have given instructions that they wish to be anonymous. All six have given witness statements. Four are individuals who the defendant proposes to call to give live evidence (identified as 'Aria', 'Imogen', 'Penelope' and 'Mila'). The defendant proposes to adduce the statements of the other two witnesses (identified as 'Sophia' and 'Maya') as hearsay evidence.

32. Having regard to the particular nature of the evidence that the six witnesses will give, and the evidence of Ms. Furhmann as to the impact on them if their names were to be

reported, I am satisfied that the anonymity and reporting restrictions sought are strictly necessary both in order to ensure that the court is able to receive their best evidence and also to protect their article 8 rights to privacy. I have borne in mind the evidence as to the impact on each of them if they were to be named and the subject of publicity in this high profile case.

33. In my judgment, it is strictly necessary to make that order in respect of all six of those witnesses, both the four who it is proposed to call and the two who have explained their reasons why they are unwilling to give evidence. I am also satisfied that it is strictly necessary to withhold the home addresses of the two additional witnesses (currently identified as 'Ava' and 'Isabella') who will not be anonymised following this hearing but who have particular reasons to wish to withhold their home addresses with a view to ensuring that they are not the subject of unsolicited visits.

34. The question then arises whether I should make any order in relation to the seven other individuals: identified as 'Florence', 'Mia', 'Isla', 'Ivy', 'Alice', 'Ella' and 'Evelyn'. This is not an application by the defendant for anonymity, but the defendant has quite properly drawn these individuals to the court's attention for the court to determine whether a derogation from open justice in the form of an anonymity order ought to be made in respect of this additional group of seven.

35. In relation to each of them, the defendant has no instructions as to whether they would wish to be anonymised, so the court has no information whether they wish to be anonymised. It is evident that in relation to all of them there is information which does concern their private lives, including evidence regarding their sex lives. None of these individuals are going to give evidence and so, in my judgment, the public interest in them being named is relatively marginal. It is likely that given the nature of the evidence that may be given about them, that they would wish to be anonymous and would wish, if they were aware of these proceedings, to have their privacy protected. As they will not be giving evidence, they will not have an opportunity to respond to any evidence given about them. In my judgment, it is strictly necessary in relation also to this group to maintain their anonymity on article 8 grounds. Of course, that is subject to any further order. If any of those seven women were to indicate that they did not wish for anonymity, then of course the order can be promptly lifted.

36. That deals with all the applications for withholding orders, reporting restrictions and special measures.

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(This Judgment has been approved by the Judge)