Neutral Citation Number: [2019] EWHC 265 (Ch)

Case No: BL-2018-001047 and the cases listed in Schedule 1

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/02/2019

Before :

THE HON MR JUSTICE NORRIS

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Between :

Winstone and Others	**Claimants**
- and -	
MGN Limited	**Defendant**

- -
- -

Mr D. Sherborne (instructed by **Atkins Thomson Ltd**) for the Claimants
Mr R. Spearman QC and Mr R. Munden (instructed by Reynolds Porter Chamberlain) for the Defendant

Hearing dates: 30 January 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

....

THE HONOURABLE MR JUSTICE NORRIS

Mr Justice Norris:

1. From 1999 onward editors and journalists at newspapers owned by the Defendant ("MGN") were involved in the routine use of "phone hacking" as a journalistic tool either to source stories or to make stories "stand-up", mainly by hacking into voicemail boxes. The practice involved the unlawful obtaining of private information on a large scale. Perhaps unsurprisingly, those involved in hacking adopted a policy of concealment through limited use of "landlines", the destruction of potentially incriminating documents and the use of disposable "pay-as-you-go" mobile phones. The full story and the relevant findings appear from the judgment of Mr Justice Mann in Gulati and others v MGN Ltd [2015] EWHC 1482 (Ch). One of the journalists involved in "phone hacking" (of which he was later convicted on his own plea) was Mr Graham Johnson ("Mr Johnson").

2. Until September 2014 MGN had made no admissions as to the existence of phone hacking: rather it made public pronouncements that such activity had not gone on. One such instance involved Mr David Brown ("Mr Brown").

3. Mr Brown had been a journalist at "The People" from 1995 until he was dismissed in April 2006 for gross misconduct. The misconduct was not related to hacking, but involved writing up for "The People" stories that belonged to the "Daily Mirror". Notwithstanding that he admitted the misconduct, Mr Brown commenced proceedings in the Employment Tribunal alleging unfair dismissal. The thrust of his case was that his dismissal was completely inconsistent in the light of far worse behaviour of others of the paper which went unpunished or was treated less harshly. The member of the "in-house" legal department dealing administratively with Mr Brown's claim was Marcus Partington ("Mr Partington"): he reported to Paul Vickers (Company Secretary and Group Legal Director and a board member) ("Mr Vickers"). But MGN retained external solicitors in relation to the claim ("DLA"). The tenor of MGN's formal response in the Employment Tribunal proceedings was that this case was entirely without foundation.

4. On 16 May 2007 Mr Brown served a witness statement ("the Brown Statement") evidencing his case of unfair treatment in the context of common wrongdoing. One of the examples he used was "phone hacking". He recounted being sent to confront someone who was suspected of being the new lover of a TV presenter "on the basis of information being gleaned from her mobile phone", explaining that "this was done by "screwing" or "tapping [her] phone's message bank". He went on to list other celebrities who were regularly targeted, and of one couple said that "associates of [theirs] had their phone message banks monitored to find out what the celebrity couple were doing". He stated that:-

   > "The People regularly used information from "screwed" mobile phones, where private citizens' mobile phone numbers were hacked into for personal information."

5. Towards the end of the Brown Statement Mr Brown noted the arrest of Mr Clive Goodman, an editor at "The News of the World", in August 2006 on phone hacking charges. Mr Brown stated that shortly thereafter

> " …[the head of resources] contacted executives on Trinity Mirror's national titles to tell them that if they were asked by other newspapers or trade publications whether they had used information from "screwed" mobile phones, they should deny it… Harrison's advice indicates that a major media plc was not only allowing its staff to carry out illegal activity by at best turning a blind eye to it, but also taking part in organised cover-up of that activity. "

6. The allegations in the Brown Statement were along very much the same lines as those of Mr Hipwell, a former MGN journalist who had given his own "phone hacking" story to "The Guardian" at the time of Mr Goodman's arrest. So there was a great deal of publicity around the allegations.

7. On one copy of the Brown Statement Mr Partington made a marginal note which may record some oral advice received from DLA or may be revelatory of his own assessment of some of Mr Brown's allegations. I will call this "the Partington Note".

8. Shortly after the service of this statement Mr Brown's claim was settled by the payment by MGN of a significant sum. (At trial there will argument about what inferences might be drawn from the size of the payment: I ignore that issue).

9. When the contents of the Brown Statement became the subject of press comment MGN said:-

> "These are unsubstantiated allegations. All our journalists work within the criminal law and the Press Complaints Commission's Code of Conduct. We have seen no evidence to suggest otherwise."

In Gulati and others Mann J found (at paragraph [214]) that MGN had put up what was in effect a strong denial of the existence of "hacking", from which it had subsequently had to resile: and that the adoption of a position of denial, and the apparent denial of the existence of evidence pointing to hacking, was capable of affecting any award of damages against MGN for breach of individual privacy rights, depending on the precise circumstances.

10. The uncovering of "phone hacking" has led to a large number of claims from those who say that their private information was accessed by means of voicemail interception and their right to privacy thereby infringed. These claims are not the subject of group litigation orders. They are gathered together in "waves" (recorded in "group registers"). Each claimant in a wave will have his or her own solicitor, but there is a "lead solicitor" who deals with common issues relating to that wave.

11. The first wave commenced in December 2012. The first four Claimants in that wave referred in their Particulars of Claim to the Brown Statement and to the Partington Note. The evidence of MGN in support of the application before me states that orders were obtained by MGN "the effect of which was to remove the relevant parts of the pleadings". But this is not accurate. MGN obtained *ex parte* orders from Chief Master Winegarten (pursuant to CPR 5.4C(4)(c)) sealing up the Court file to the extent that only redacted copies of the Particulars of Claim (not containing the contentious

references) would be provided to non-parties, and directing that a non-party would have to apply to the Court to inspect the unredacted copy. As the rule relied upon demonstrates, the reference to the Partington Note was not struck out of the statement of case, so that at trial the claimants could rely on it (albeit that it would have to be dealt with in a closed session). Through repeated inaccurate reference to the Chief Master's order at subsequent hearings it appears to have become accepted in the first wave that there was some restriction of the use of the Partington Note by the claimants themselves.

12. The second wave claims commenced in 2014. All but two have settled. The two surviving claims (Leslie and Houghton) contain pleas for general and for aggravated damages. In October 2017 those claims were amended to plead specifically (a) that the MGN board and legal department were aware of the habitual or widespread use of unlawful information gathering activities by 2002 and certainly by 2007; and (b) that they deliberately took steps to conceal those activities and to provide false statements to the public (including to the Leveson Inquiry) rather than prevent or reduce such activities and thereby spare the claimant the harm which he or she suffered. Amongst the matters relied on in support of this plea are the allegations made in Mr Brown's Statement and

> "the investigation, verification and confidential settlement of [that] claim by MGN…. thereby demonstrating the Board and the legal department were well aware of these illegal activities".

There is no specific reference to the Partington Note and the plea does not necessarily presage deployment of it.

13. MGN pleaded to this amended case by saying that Mr Partington communicated with Mr Vickers about Mr Brown's Statement both orally and in writing, but those communications were made confidentially and were made and received in their professional capacity as legal advisers to MGN and for the purpose of providing legal advice to MGN and the obtaining of legal advice by MGN, and privilege was asserted: Defence v.4 paragraph 24.5A.5(6)(d)(ii). MGN pleads that Mr Partington was not aware of phone hacking until after 31 October 2010; and that Mr Vickers was not aware of any evidence until December 2013. MGN thereby advances a positive case about the state of knowledge of those two individuals in the MGN Legal Department.

14. The third wave of claims began in 2016, and claims continue to be added to that group register. Many of these claims have settled. But there remain over 40 live claims. Since 7 June 2018, the Particulars of Claim in newly commenced third wave claims have contained a plea about board knowledge of phone hacking, particularised in 44 subparagraphs, two of which are central to this application.

15. First, subparagraph (35) deals with Mr Brown's unfair dismissal claim and its settlement, and sub-sub-paragraph (c) says:

> "The settlement had been discussed with and known about by "two main board directors", namely Sly Bailey and Paul Vickers, as well as the "in-house lawyer (reporting to PV)",

> Marcus Partington, who considered the strength of the evidence was sufficient to force them to settle. However, they appear not to have informed the other board members."

There is no explicit reference to the Partington Note: but anyone who knew of its existence would understand from the assertion about Mr Partington's view that it would be deployed in evidence (alongside other circumstantial or inferential material) in support of the plea.

16. The quoted words come from some background notes prepared on 6 September 2011 by David Montgomery ("Mr Montgomery"). Mr Montgomery had been Chief Executive of Mirror Group plc from 1992 to 1999. He evidently retained a shareholding sufficient in size to cause him to prepare a draft letter to the Board in November 2011 asking them to uncover the truth about "phone hacking" and so to protect shareholder interests since it was in the interests of shareholders to know the extent to which the company might be exposed to damage from "phone hacking". Mr Montgomery's draft letter to the Board contained what appears to be a quotation from the Partington Note.

17. Having drafted his letter to the Trinity Mirror Board Mr Montgomery intended to send it for review to "Guy" (whose identity is not known) supported by the background notes. The background notes also include what purports to be a quotation from the Partington Note. It follows that Mr Montgomery must have seen the Partington Note (or been told its terms) by early September 2011. The circumstances in which he gained this knowledge are not known.

18. From the material before me it is not clear that Mr Montgomery's draft letter was ever sent to the Board, or that the review material (including the background notes) was ever sent to "Guy". The process of disclosure and the exchange of witness statements may clear this up: but for now, it is in doubt.

19. Second, in sub-paragraph (41) the Claimants alleged that Mr Partington and Mr Vickers must have been aware of the widespread use of phone hacking activities "at the time they were taking place": and in support of that plea they rely upon what are said to be "admissions" by the Chairman of MGM's parent company, Trinity Mirror plc ("Mr Grigson") at the annual general meeting ("AGM") of Trinity Mirror plc in May 2015. The plea is now to be found in some 40 separate Particulars of Claim served in or since June 2018. MGN has declined to plead specifically to this allegation (and may therefore have admitted it), advancing only the defence which is advanced in the Leslie and Houghton cases (quoted above).

20. At the 2014 AGM shareholders in Trinity Mirror plc were told that very extensive investigations had been undertaken into phone hacking short of "ripping up the floorboards" in a way that would have disrupted the good running of the company. At the 2015 AGM Mr Johnson (who had pleaded guilty in January 2015 to phone hacking for MGN) took up that issue and asserted to the meeting that the Brown Statement disclosed phone hacking, and that MGN had chosen to cover it up with the result that it was now costing MGN millions of pounds in legal fees. He asked Mr Grigson to explain to shareholders why this was. Mr Grigson's response was that MGN had not denied that phone hacking had taken place, but that MGN had to operate on the facts, and if it were shown that there were other people whose phones

had been hacked then compensation for that intrusion would be paid. After taking other questions (including more questions about phone hacking) Mr Grigson closed the AGM but said he would answer any further questions at the post-AGM reception.

21. At the post-AGM reception Mr Johnson "held court" with a circle of journalists and others and presented his argument that MGN had known the truth in 2004 (when some journalists were interviewed under caution) and in 2007 (when Mr Brown had given his evidence about phone hacking). First Mr Fox (the CEO of Trinity Mirror plc) and then Mr Grigson came across and joined this group. (There is a dispute on the evidence before me as to whether Mr Grigson joined a "group" or spoke to Mr Johnson on a "one-to-one" basis. I obviously cannot resolve that at an interlocutory stage. But it seems to me that the Claimants have the better of the argument that it was a "group". The transcript seems to show the presence of others: and I think it improbable that journalists who were sufficiently engaged with the story to converse with Mr Johnson would drift away when they had the chance to see Mr Johnson confront the CEO and the Chairman on matters actually raised at the AGM). Mr Grigson immediately acknowledged that MGN "were slow to get on top of it" and that he had inherited "[a]…"head in the sands" kind of mentality around [the issue]".

22. Mr Johnson then raised with Mr Grigson (in the presence of the journalists and others) the position of Mr Partington (who had by then been promoted to legal director of MGN). The conversation continued:-

> "Johnson: He was told in 2006 that phone hacking was going on in the employment tribunal involving David Brown ..
>
> Grigson: Yes
>
> Johnson: …and he chose … to pay out and cover it up.
>
> Grigson: Right, yes."

MGN make no claim to privilege in respect of that exchange (though they point out that Mr Johnson was inaccurate with the dates).

23. However, Mr Johnson went on to enquire of Mr Grigson whether Mr Partington had been asked about the matter and what he said: Mr Grigson dealt with those questions ("the Grigson Comments"). Mr Johnson suggested that Mr Grigson make further enquiries (which revealed that Mr Johnson knew of the Partington Note, the effect of which he summarised for Mr Grigson). The Grigson Comments are summarised in subparagraph (41) of the latest version of the Particulars in the wave three claims.

24. The conversation between Mr Johnson and Mr Grigson continued. Mr Grigson revealed what investigative steps were taken, and recounted the discovery of some documents (notwithstanding MGN's document destruction policy). At that point he said "This is off the record. It has to be off the record": he must have meant that his revelation could not be published (or alternatively, could only be published on a non-attributable basis). MGN do not claim that this part of the conversation contains privileged material.

25. There was a pre-trial review for the third wave claims held on 5 December 2018. Immediately before that hearing MGN decided that it wished to claim legal professional privilege for (a) the Partington Note (as constituting a record of legal advice) and (b) the content of the Grigson Comments (as revelatory of what Mr Partington knew as a result of his professional role as an in-house solicitor). It did so, not by making an application, but by preparing redacted hearing bundles and seeking to explain in oral submission at the PTR the reason for doing so. Mann J described this process as "a complete shambles". Whilst

> ".. extremely tempted to say that it was far too late for the defendants to be raising a privilege claim in relation to these matters in the present, rather extraordinary, circumstances"

Mann J directed MGN to issue an application.

26. That is the application before me: it may be said still to be in a state of some disarray. The application is brought against "Various Claimants" who are not identified. In opening the matter Mr Spearman QC said that the application was also directed to anybody else in the phone hacking litigation who might want to introduce the Partington Note or the Grigson Comments into their pleaded case whether by amendment of an existing claim or the issue of a new claim or otherwise rely on such material (i.e. an injunction against persons unknown): and in argument he suggested that it be in a form that effectively removed the contentious material from the public domain entirely so that it would be a contempt of Court for a non-party (such as Mr Johnson) to refer to it (but without notifying any of those potentially bound by this restriction on their rights to free expression). However, at the end of the day Mr Spearman QC helpfully confined the relief sought to (a) an injunction to restrain claimants (to be identified) who had expressly or implicitly referred to the Partington Note or the Grigson Comments in the wave three claims from relying on the Partington Note or the transcript of the Grigson Comments: and (b) an order striking out specified words in sub-paragraphs identified in the Winstone Particulars of Claim (which could be applied to the statements of case of other identified Claimants) which effectively pleaded the Partington Note or the Grigson Comments.

27. For the relevant Claimants (whoever they were) Mr Sherborne resisted the grant of this relief. He did not challenge the availability of legal professional privilege in relation to the Partington Note. He did mount a challenge to the availability of privilege in relation to the Grigson Comments, but he did not elaborate it. He did not allege express waiver of privilege: the Claimants did not obtain knowledge of either the Partington Note or the Grigson Comments *from MGN*, but from third parties who themselves had obtained it in unknown circumstances. He did not argue that there was implied waiver of privilege in relation to the Grigson Comments by reason of the advancing of a positive case about the state of knowledge of Mr Partington and Mr Vickers. He did not argue that claims to privilege could not arise because the "iniquity principle" prevented privilege claims in relation to documents or information disclosing the dishonesty or trickery involved in phone hacking or in its concealment. These arguments may or may not survive for another day.

28. The argument followed two lines:-

(a) The foundation for a claim to privilege was not laid because the material for which privilege was sought could not sensibly be regarded as either initially or still confidential;

(b) As a matter of discretion an injunction should be withheld.

29. I address first the Partington Note. It is common ground that when it was made its contents were privileged (either as recording advice tendered by DLA, or conceivably recording an assessment by Mr Partington as to what should be sensibly done). It is also common ground that once privilege attaches then the privilege is absolute, and is not to be disregarded on the ground that some higher public interest (such as the exposure of routine "phone hacking" and concealment of the practice) requires that to be done.

30. The issue is whether the Partington Note has lost the character of confidence which underpins the assertion of legal professional privilege. I hold

(a) that it has not lost that character;

(b) that injunctive relief may be obtained against those claimants who have pleaded reliance upon it, restraining its use in their action;

(c) that MGN had not lost the right to seek such an injunction;

(d) that no part of any pleaded case should be struck out.

31. The Partington Note was made in May 2007. The evidence establishes that by September 2011 Mr Montgomery had seen it or learned of it and was purporting to quote it in intended correspondence with other interested parties. The evidence does not establish that his intended correspondence was sent to "Guy" or to the MGN board: nor does it establish that it formed part of either (i) his chain of communication by e-mail with Nick Miles of the City public relations operator "M:Communications"; or (ii) his dealings with the other individuals ("Mark K" and "Martin"- probably Mark Kleinman and Martin Brunt of "Sky News") mentioned in that e-mail. The evidence does not establish that Mr Montgomery quoted or summarised the content of the Partington Note to Parliamentarians or Trinity Mirror plc shareholders generally (as his drafts indicated he might).

32. The evidence further establishes that the existence or terms of the Partington Note were by October 2012 known to Mr James Cusick of "The Independent on Sunday": and, of course, also to Mr Johnson. It is not suggested that knowledge of the Partington Note came to Mr Montgomery, Mr Cusick or Mr Johnson as the result of a disclosure by MGN.

33. In my judgment, the position is that the privileged content of the Partington Note has come into the hands of a small group of investigative journalists and at least one investor: it may (the evidence does not establish that it probably did) have come into

the hands of others. None of the press articles to which my attention was drawn directly refers to or quotes from the Partington Note.

34. Mr Spearman QC submits that in such circumstances the quality of confidentiality is not lost. I agree. Information only ceases to be capable of protection as confidential when it is in fact known to a substantial number of people: *per* Sir Nicholas Browne-Wilkinson VC in Stephens v Avery [1988] 1 Ch 449 at 454. The evidence does not establish that.

35. Since privilege in the Partington Note subsists it may be asserted against those claimants who would seek to produce it in evidence in support of their claims against MGN. No claimant has a copy of the Brown Statement endorsed with the Partington Note. If through the disclosure process or otherwise Claimants were to obtain a copy of the Partington Note then it is clear that they would intend to rely on it in evidence at trial (and otherwise call such secondary evidence of its contents as they are able). But the mere fact that they intend so to do is no answer to a claim by MGN for an order restraining them from making use of the contents of the Partington Note: Goddard v Nationwide [1987] 1 QB 670 at 683d-e. Such an order can be made against the Claimants notwithstanding that they have come innocently into possession of the confidential information about the Partington Note, because equity gives relief against all the world including the innocent (save only a bona fide purchaser for value without notice): Goddard (*supra*) at 685d-e.

36. There are, of course, cases where an injunction can properly be refused on general principles affecting the grant of a discretionary remedy e.g. on the ground of inordinate delay: Goddard (*supra*) at 685f. What is inordinate delay is an evaluation to be made in each case. In Goddard the delay was 18 months but an injunction was nonetheless granted: but that simply illustrates the exercise of discretion on the facts of that case and does not establish a principle or a "tariff".

37. In my judgment, delay is not a bar to the grant of injunctive relief in relation to the Partington Note. It is right that disclosure of the Montgomery material (with its reference to the Partington Note) occurred on 5 January 2018 whereas the application for the injunction was only made on 12 December 2018. But in assessing whether this is "undue" delay a number of other factors must be taken into account.

38. First, in the first wave claims it came to be accepted that reference in the pleadings to the Partington Note should be treated as deleted and that there was a restriction on the use of the Partington Note. Although there is no Group Litigation Order and the entirety of the litigation is continuing as individual claims prosecuted by different solicitors (so that technically the consent of a first wave solicitor could not bind a third wave solicitor) it is important for the case management of multiple cases that each case is conducted substantially according to the same ground rules: and MGN can be forgiven for thinking that an understanding reached in the first wave should apply also to second and third wave claims, and so not react immediately (but only when it was clear that there was a shift in the ground rules).

39. Secondly, the form of pleading in the second wave did not telegraph an intent to deploy the Partington Note: and it was met by a Defence pleading privilege.

40. Third, when the Montgomery material was disclosed (with its citation of the Partington Note) it was met with a prompt assertion of privilege in correspondence, sufficient to avoid reference being made to the Partington Note at the PTR on 11 January 2018. The availability of the Partington Note was therefore in issue.

41. Fourth, as regards parties themselves, given what is known about the content of the Brown Statement and about the sundry events following its service, I do not think that the availability of a single item of evidence (the precise content of the Partington Note) can have significantly influenced the approach of any claimant to the apparent strength of his or her damages claim whilst the availability of the Partington Note was in doubt.

42. Fifth, as regards third parties and what they might have learned from the statements of case prior to the interim "sealing" of the Court file, neither the amended second wave claims nor the post-7 June 2018 third wave claims make clear reference to the existence or content of the Partington Note. Anyone who already knew of the existence of the Partington Note would (from the third wave Particulars) appreciate the likelihood of reference being made to it: but anyone who did not know of the existence and/or contents of the Partington Note would not be alerted to it and would not surmise its contents.

43. My judgment, balancing the length of the delay against the circumstances of, reasons for and consequences of that delay, is that I do not consider that MGN has lost the right to seek injunctive relief.

44. However, the fact that I am prepared to grant injunctive relief to restrain the deployment by any claimant of the Partington Note does not mean that I think it right to strike out any part of paragraph (35)(c) of the Winstone Particulars (or the same words in other claims). The words to which MGN objects (as necessarily referring to the Partington Note) in my judgment do no such thing and are capable of being proved by other evidence.

45. Accordingly, all that needs to be done is

(a) for MGM forthwith to provide the lead solicitor for the Claimants with a copy of the Brown Statement which bears the Partington Note (but with the Partington Note itself redacted in such a way as to indicate its precise location in the document);

(b) for the Montgomery documents to be redacted by removing the words in the background note and in the draft letter to the board which purport to quote the Partington Note;

(c) for the transcript of Mr Johnson's questions following the 2015 AGM to be redacted by removing the last seven words of line 26 and the first three words of line 27 on page 38 (so as to prevent reference to the content of the Partington Note.

46. I turn to the Grigson Comments. I shall assume that what Mr Partington knew about "phone hacking" (whether deriving from instructions received from MGN or coming to his knowledge in the course of acting as a lawyer for MGN or having some other origin) is capable of being privileged information. In my judgment

    (a) the Grigson Comments lack the requisite quality of confidentiality;

    (b) it is in any event inappropriate to grant injunctive relief.

47. The knowledge of the MGN management about "phone hacking" (and the truth or falsity of senior management's denial in the autumn of 2011 to the Leveson Inquiry of any knowledge of it) was a "hot topic". It had been the subject of reported "whistleblowing" disclosures by Mr Brown, Mr Hipwell, Mr Johnson himself and Mr Dan Evans. It had been the subject of investigation by journalists at "The Financial Times", "The Guardian" and "The Independent". The issue was well in the public domain and had been ventilated at Trinity Mirror plc's 2014 AGM and again quite pointedly at its 2015 AGM.

48. The 2015 AGM and the reception which followed it were public occasions. Mr Grigson cannot reasonably have thought that his answers to questions on this hot topic at such public occasions could be confidential (even if he wanted to keep some of his answers unattributable). Nor would listeners to what he said think that they were being imparted confidential information. Those listeners were not confined to Mr Johnson but (assessing the evidence at an interlocutory stage) probably included other journalists and shareholders.

49. In truth Mr Grigson spoke on a public occasion: what he said was not said on a confidential basis. MGN argue that he had no authority to answer questions in the manner he did. But that I think is to confuse notions of express waiver of privilege with communications made on an open basis. Mr Grigson was the Chairman of Trinity Mirror plc speaking on a public occasion. Unless the board restricted his freedom of speech he was free to communicate with shareholders, pensioners, journalists and others as he judged best in Trinity Mirror plc interests. It was for him to judge whether Trinity Mirror plc reputation and public profile was best protected by openness and transparency or by fearful concealment. He chose to speak openly to a known campaigner in the presence of journalists and others (as he had freely offered to do at the AGM). Whether what he said is itself correct or is correctly described as "admissions" (as it is in the statements of case and was in written and oral argument) is a question for the trial judge: I have been careful in the judgment to use the label "Grigson Comments".

50. It is in any event too late to claim that the communication was confidential and to assert privilege. A transcript of the Grigson Comments was provided by the lead solicitor for the Claimants to MGN on 6 June 2018. There can have been no doubt as to is intended use. It was immediately followed by a form of Particulars of Claim (adopted in 40 cases) which unmistakably pleaded the Grigson Comments as a material fact establishing knowledge by management of "phone hacking". Neither the disclosure of the transcripts nor the form of the pleadings prompted any claim to privilege. MGN pleaded to the allegations (albeit in a curious fashion). When in November 2018 MGN launched a major strikeout application it made no attack on the

pleading of the Grigson Comments. Accordingly, these Particulars of Claim lay on the Court file and were open to inspection by third parties until 5 December 2018 (when a temporary "sealing up" order was made). Anyone reading the statement of case would see the Grigson Comments set out. It cannot be known who availed themselves of the opportunity: but it is the existence of the opportunity which evidences the lack of concern to assert or protect privilege. As to the parties themselves, paragraph 25(41) sets out a discrete event which it was said was separate evidence of knowledge of "phone hacking" at board level. It was new material not covered by any established ground rules and Claimants were entitled to know quickly whether it could form part of their several cases when assessing the strength of their damages claims (although I think, given the range of other particulars given in support of the "Knowledge" plea, the addition of this discrete plea must have a relatively small impact).

51. Notwithstanding that the delay is shorter than that concerning the Partington Note, in my evaluation, the time has passed when (if the point is open at all) MGN can take any point about the Grigson Comments. I am not the case-managing judge: but it is interesting to observe that this was the provisional view of Mann J who knows far more about this entire litigation than do I. I refuse to grant any injunctive relief in relation to the Grigson Comments.

52. My provisional view is that I do not see fit to make any order about the costs of this application. But if the parties wish to argue the matter (or there is a dispute about the terms of any order) so that I cannot effect a formal hand-down in the absence of the parties, then there will be another hearing to be fixed through the usual channels at which I will consider all unresolved matters afresh.