Neutral Citation Number: [2015] EWHC 1482 (Ch)

Case Nos: See page 2

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Rolls Building, 7 Rolls Buildings
London EC4A 1NL

Date: 21/05/2015

Before :

MR JUSTICE MANN

- -

Between :

Shobna Gulati & ors	**Claimant**
- and -	
MGN Limited	**Defendant**

- -
- -

Mr David Sherborne and **Mr Jeremy Reed** (instructed by **Atkins Thomson as lead solicitors**) for the **Claimants**
Mr Matthew Nicklin QC and **Ms Alexandra Marzec** (instructed by **RPC LLP**) for the **Defendant**

Hearing dates: 2nd-6th March, 9th-13th March, 19th March, and 24th -25th March 2015

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IMPORTANT NOTE – This version is unredacted and replaces a previous version which was redacted in order to reflect reporting restrictions which have now come to an end

Judgment Approved by the court for handing down

Case nos:

Alcorn – HC14E07267

Ashworth – HC14 F03184

Frost – HC14F03189

Gascoigne – HC14F03143

Gulati – HC – 2012 000102

Roche – HC14F01927

Taggart – HC14B01234

Yentob – HC14B01645

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Mr Justice Mann :

I - INTRODUCTORY

Introduction

1. This is a claim based fundamentally on infringements of privacy rights. The defendant is the proprietor of three newspapers - the Daily Mirror, the Sunday Mirror and The People. The claimants are persons in the public eye such as actors, sportsmen, or people with an association with such people. In one case (Mr Yentob) he held important posts in the BBC. In all cases the infringements of privacy rights were founded in what has become known as phone hacking, though there are also claims that confidential or private information was also obtained in other ways (principally from private investigators). In all cases except Mr Yentob's there is also a claim that infringements of privacy rights led to the publication of articles in the various newspapers just described, which articles were themselves said to be an invasion of privacy rights and which would not have been published but for the earlier invasions which provided material for them.

2. In the events which have happened these proceedings are now, in essence, an assessment of damages, since liability is in all cases conceded save that it is not conceded that a handful of articles were published as a result of phone hacking. The present 8 cases are brought before the court as part of managed litigation, in which a large number of similar claims have been brought. Other claims have been, or are to be, taken up to but not including disclosure but then stayed pending the outcome of these proceedings. Several prior cases have been settled. The professed aim of this trial is to ascertain the damages payable so that the damages can be fixed in these cases and some guidance given as to the damages payable in other cases.

3. Although this trial is described as a trial to fix quantum, there is an important sense in which liability still remains to be determined. Although the defendant has admitted that there were illicit hacking activities conducted against all the claimants in these cases, and it is admitted that most of the articles were their product, the extent of those activities is not admitted. This is not a trial in which the only hacking activities that matter are those which resulted in published articles. The claims are also based on hacking which did not result in articles (of which, on any footing, there was a substantial amount). It is necessary to reach conclusions on the level and intensity of that hacking in order to determine that aspect of the claims. The defendant's concessions on liability do not enable one to make that assessment.

4. As well as a difference between the parties as to the level of hacking that went on, what underlies the difference between the parties on quantum is a fundamental disagreement as to what it is that compensation can and should be paid for. The defendant says that what the claimants are entitled to is damages for distress, and nothing more. That is said to provide a lower limit to the sums properly claimable and is also said to justify the methodology of computation adopted by the defendant, which is very different to the claimants'. It is not necessary to identify those

differences at this point in the judgment but their stark effect can be seen from comparing the range of damages which the defendant's analysis would allow with the figures claimed by the claimants before any element of aggravation is added. The defendant's figures range from c£10,000 (Mr Yentob) to c£40,000 (Mr Gascoigne). The claimants' lowest figure claimed for damages is Miss Alcorn, whose claim is valued at £168,000, and the highest is Miss Frost's, which is £529,000. The claimants also claim an additional element of 100% of their respective damages by way of aggravated damages. The parties are therefore a very long way apart.

5. The claimants in this case were all represented by Mr Sherborne and Mr Reed. The defendant was represented by Mr Nicklin QC and Miss Marzec.

What phone hacking is

6. Although the colloquial expression "phone hacking" has for some time been used to describe the activities which lie at the heart of this case, (and I shall continue to use it) a more accurate description would be "mobile voice-message interception". It does not involve listening in to actual two-way phone conversations. It works in the following way.

7. A mobile telephone account comes with a voicemail box in which the account holder can receive, and listen to, voice messages left by callers when he or she does not answer the phone. The messages can be retrieved from the phone itself, or by ringing in from an outside line. The mailbox can be protected from an unauthorised person ringing and listening to voicemail messages by a PIN code. At the time of the events covered by this action some of the mobile phone companies had default PIN codes, and many users did not bother to change them (if indeed they knew that they existed). Other users changed the PIN codes but used codes that were predictable - perhaps consecutive numbers, or years of their birth or of others close to them. An unauthorised person who knew or could guess those PIN codes could use them to access another's voicemail account.

8. There were two ways in which an unauthorised person could access another's voicemail box. The trick is to get through to the voicemail system, and not the owner of the phone in person. If the owner answered the phone the hacker would not be in the voicemail system. So, unless one knows that the owner will not pick up (so that the call goes through to voicemail after a number of unanswered rings) one has to ring when one knows the phone line is in use so that the call goes through to voicemail. The first hacking technique produces this effect. It involves the use of two phones simultaneously. The technique was described by Mr Evans, one of the witnesses. The first phone was used to ring the telephone number of the victim. He would count to three and then use the second phone to dial the same number. Because a call was already being made the second phone was likely to go to the caller's voicemail box. Phone 1 was immediately disconnected, usually without

actually ringing the receiving phone so as to alert the owner of the phone, so the owner would often not know that an attempt had been made to ring his or her phone. At that point the unauthorised caller could concentrate on the second phone, and the voicemail box. Once the voicemail system had responded the hacker could behave like the owner, and press keys which allowed the entry of a PIN, which in turn allowed access to the messages that had been left there. This, of course, required knowledge of the PIN, but because so many people never changed their PIN number from the default number provided by the network, or used a predictable number which could be accurately guessed by the hacker, their phone accounts were vulnerable to this activity. This technique was given the slang term "double tapping".

9. The other access route applied only to the Orange network. This network provided a separate number which would be dialled into from any phone in order to get voicemail messages. The dialler would have to identify the phone number whose messages were being recalled, and then enter the PIN. This route in was available to anyone who knew the number of the phone in question and could ascertain or guess the PIN. The voicemail messages could then be accessed.

10. This activity proved to be a very useful source of information for the newspapers involved in this case. Once into a user's voice mailbox, a journalist could listen to messages left there and often find out the numbers of the people who left them. The content of the message might itself be of significance, as might the identity of the person who left it. Furthermore, the number of the person who left it could also be ascertained, and if it was a mobile number an attempt could be made to hack into that user's voicemail as well. In that way a pattern of sources of information could be built up. Mr Evans, the principal witness about the actual hacking activities in the case, described this extended activity as "farming".

11. Further details of how all this operated in the present case will appear below.

The general nature of the claims made and the generic evidential case

12. All of the claimants in this litigation, except Mr Yentob, make claims which are similar in their nature, though their particular details vary. They all claim that MGN journalists hacked their phones as described above so as to listen to voice messages left by others. Those journalists also listened to the voicemail messages left by the claimants on the phones of others. In that way the journalists became privy to private information about the personal affairs of the claimants, and were able to write stories and publish photographs that the newspapers would not otherwise have been able to publish, either because they did not have the information absent the voicemail

messages, or because messages enabled information obtained from elsewhere to be filled in, or stories to be "stood up" (corroborated) by phone messages. In addition, most of them claim that private information was obtained from private investigators employed by the newspapers to find out that information. Mr Evans gave evidence about this, and his unchallenged evidence was that among the information that private investigators were charged with finding were telephone numbers of targets (so that they could be hacked), the owners of given telephone numbers ("spinning"), call histories (phone bills, or extracts from them) from which the identity of telephone numbers called by the victims could be ascertained, credit card details (useful for establishing how and where money was spent) and some medical information. While invoices have been disclosed which demonstrate that private investigators were used against the claimants, and MGN has conceded that the information thus obtained will have contained private information, no evidence has been produced as to what information was actually obtained in any particular case. It is said that such evidence as there once was has been routinely destroyed. The information obtained by these investigators is likely to have been obtained by techniques including "blagging" - the process of obtaining information from the person holding it by deception, including wrongfully claiming to be the person entitled to it or otherwise convincing the holder to part with it by some form of pretence.

13. Thus the claimants make claims which are said to fall into three main categories - wrongfully listening to private or confidential information left for or by the claimant, wrongfully obtaining private information via private investigators, and the publication of stories based on that information. MGN admits all those activities (but not the extent of the first two) and accepts that damages are payable as a result, but does not accept that those three "layers" should be treated as separate compensatable matters when it comes to assessing damages. This point will be developed below in considering detailed matters of quantum.

14. For the sake of completeness I should add that there was a fourth possible unlawful technique for getting information, which is blagging by the journalists themselves. That probably happened too, but I do not need to consider that separately.

15. Mr Yentob's case is different from the other claimants in that it does not have one of those layers. While there was evidence of a lot of hacking directed at him, no stories were published about him as a result. It is likely that the information left for and by him was used to investigate other individuals of more interest to the newspapers.

16. The cases of the other claimants do not depend exclusively on articles published about them. They also rely on phone hacking which did not result in articles (as does

Mr Yentob – that is the essence of his claim). The direct evidence of actual hacking against them is limited for reasons that will appear below. For that reason each of them relies on evidence which has been described as the "generic" case, or "generic" evidence. That is evidence as to general practices at the Mirror group, in the form of oral evidence as to the sort of things that went on (from two journalists), phone records which are said to support the general practice, and a limited number of emails relating to other individuals which are said to support the evidence of general practice. From this general practice I am invited to draw conclusions as to the extent of the activity directed against each claimant.

The openings

17. Mr Sherborne opened this case at some length. That was necessary and appropriate because there are eight separate claims, each sharing a lot of common material but each having their own features. Because of the detailed nature of the documentary evidence it was necessary for Mr Sherborne to explain how much of the material worked for him, which is why the opening took as long as it did (and it was also significantly interrupted by the need to consider reporting restrictions and other allied matters). His opening was what would, in traditional terminology, be correctly characterised as a very "high" one.

18. Mr Nicklin also took the opportunity of making an opening statement, but it was short. It did not deal with any of the detail or substance of the case, but in the main amounted to repetition of his client's acceptance (and the acceptance of its parent company) that what had happened was wrong, and it was apologised for. It accepted that proper compensation should be paid, and pointed out its case that it had co-operated in full with the Metropolitan Police in the latter's investigations. It foreshadowed an attempt to disprove some of Mr Sherborne's more extravagant claims and disclaimed any suggestion that the board of the parent company knew of hacking at the time of the recent Leveson Inquiry into The Culture, Practices and Ethics of the Press, that that company had participated in any kind of cover-up and that a large number of journalists had been involved in wrongful voicemail interception. He indicated other areas of intended challenge. This sort of opening was, I suppose, to be expected in the light of the high opening of the claimants.

Admissions and apologies

19. Until relatively recently the Mirror group has firmly and publicly denied knowledge of any phone hacking activities at any of its titles. Various executives and employees told the Leveson Inquiry that it did not happen, at least on their respective watches. Mr Nicklin does not accept that there were blanket denials in the strong form relied

on by Mr Sherborne, but having considered various of the pronouncements there is in my view no doubt that the impression built up is one of denial of the activities.

20. The original form of defences in all the actions made a series of non-admissions. There were attempts to strike out two of the original claims and parts of two others. Those applications all failed ([2013] EWHC 3392 (Ch)).

21. Then at the end of last summer the position suddenly changed. In September 8 cases were progressing for trial. Suddenly, immediately before a hearing intended to undertake costs budgeting, 4 of them settled, apparently as a result of an offer from the defendant and admissions of liability in relation to them. This heralded a complete change of approach on the part of the defendant. On 24th September 2014 the defendant's solicitors sent a letter admitting liability in the particular cases in general terms in relation to the cases then being taken forward. The defendant went so far as to seek judgment against itself on liability which (at first sight paradoxically, but on reflection entirely justifiably) the claimants resisted (successfully). The defendant resisted the idea that it should have to make clearer the scope of its admissions, and there was a risk that it would seek to confine the case to one which considered just the pleaded articles and did not consider any wider case of hacking or other intrusions which did not necessarily result in articles. It resisted the idea that it ought to particularise its admissions so that their scope was clear, but I ordered that it should on 26th September 2014.

22. The product of that order was Defences in the actions which admitted, in general terms, that the defendant was responsible for the unlawful interception of voicemails and the blagging of call data. It admitted that the articles then complained of were likely to have been the product, at least in part, of those unlawful activities, but went on to say that the defendant did not know, and could not establish, the extent of the unlawful activities. Certain more specific admissions were made as to particular types of activities carried out by Mr Dan Evans and private investigators. The Defence went on to plead that "In the light of the admissions above, the Defendant does not plead further to the Particulars of Claim". That left a considerable number of specific allegations in the Particulars of Claim unpleaded to. Later forms of Defence in later actions were in similar terms. More than once in the history of this matter Mr Sherborne has complained about the formulation of the Defence (the refusal to plead to a number of allegations), and with some justification. It was plainly a tactical move, as was the attempt on the part of the defendant to get judgment against itself. It seems a bit disdainful of the requirement for pleadings and was contrary to my expressed insistence that the scope of the admissions made be clearly delineated.

23. This pleading point has had some effect on the case. The technical effect of not pleading to an allegation under the CPR is actually to admit any allegation not pleaded to (CPR 15.5(5)). As part of each originally pleaded case the claimants pleaded that each article contained private information, and ran a claim for infringement of privacy as a standalone case on each article (ie a claim not dependent on that article having its source in preceding infringements). It is true that the private information in each article was not specifically identified, but the point was there. As a result of the final forms of Defences those standalone claims were not pleaded to and therefore fall to be treated as admitted. Mr Nicklin nonetheless sought to take the point that in some of the articles none of the information disclosed was information in respect of which such a standalone claim could be made. Mr Sherborne submitted that Mr Nicklin could not take that point as a matter of pleading, and that the defendant had to be taken as admitting those allegations to which it had expressly declined to plead. I accept Mr Sherborne's submission. The result is that the defendant, as a result of its tactical step, is to be taken to have admitted a standalone privacy infringement case in relation to each article (save for late-introduced articles). If that puts it in a difficult position then that is as a result of its own acts.

24. In due course the admissions made in the Defences were followed up and amplified by formal admission documents in November and December 2014. These, when combined, added the following admissions (amongst others):

(i) As a result of voicemail interception and/or the blagging of call or other data, the defendant obtained mobile telephone numbers and other telephone account data.
(ii) Mobile telephone numbers were obtained from journalists, mobile telephone companies (by blagging), from blagging carried out by private investigators and the interception of voicemail messages.
(iii) That the admissions of Mr Dan Evans in various police interviews and statements were true, including his modus operandi. This is an important admission because his evidence is the bedrock of the generic case against the defendant. There are particular admissions in the admissions document about: the use and periodic destruction of pay as you go mobile phones by journalists to avoid detection; and that "Activities" (voicemail interception and blagging) were frequently carried out, including a "substantial" but unquantifiable number of Activities (hacking) using pay as you go mobile phones.
(iv) The information obtained from the unlawful activities was information that the defendant was unlikely to have been able to obtain lawfully.
(v) The call data disclosed by the defendant showed that voicemail was in intercepted "on a regular basis".
(vi) That it is likely that further voicemail interception was carried out using pay as you go mobile phones (PAYGMs).
(vii) That (in relation to the articles that were then pleaded, which is most of the articles in play at the trial), but for the wrongfully obtained information the articles would not have been published. This is a very important admission for the purposes

of these trials.
(viii) The invoices of private investigators disclosed by the defendant in the action were evidence of wrong-doing in relation to the relevant claimant as relating to call data blagging (that is my paraphrase of the admission). In a later admission the scope of this admission was widened to cover information other than call data blagging.

25. It is unnecessary to set out other admissions. It is sufficient to observe that these admissions are extensive, but do not amount to any admission as to the scope of unlawful activities beyond the use of the word "substantial".

26. As the actions approached trial the defendant added apologies to the admissions, and made a public admission in its newspapers. On 10th February 2015 it wrote in a similar vein, but in different terms, directly to the various claimants. The letter was signed by the Chairman and Chief Executive of the holding company Trinity Mirror plc. It expressed "sincere apologies" for the "wholly unacceptable intrusions" to which the claimants were subjected, and said that the activities which involved the procurement of personal information which had "no place in our newspapers", and were "improper and should never have happened". The letter went on:

> "We accept that it has taken us longer than it should have, to investigate exactly what happened. Our internal investigations have, however, been very time-consuming and extensive and we believe that we have taken every practical step to try to get to the bottom of precisely what was done. Given the amount of time that has elapsed, we do not claim to have perfect knowledge of what went on. Indeed we don't believe it will ever be possible for us to get to the bottom of precisely what was done.
>
> In our endeavours to get to the truth, we have actively co-operated with the Police whose enquiries are ongoing. We are sure that in due course you will see the outcome of those investigations and you will then gain some insight into the extent of Trinity Mirror's assistance to the Police.
>
> Although we cannot undo what has happened we are personally determined to ensure that nothing like this ever happens again. We are also concerned to do the right thing by the victims such as yourself by making this apology and by providing you with

appropriate redress, including financial compensation, for what has happened."

Some letters contained a repetition of the apology at the end.

27. This was followed by an apology published in the Mirror titles on 13th and 15th February in a box on page 2. The box in which it was contained was outlined in black. In height it was about a quarter of the page's height, and about 75% of the width of the page. It acknowledged the unlawful activities which had happened, accepted that there had been an unwarranted and unacceptable intrusion into private lives, it was unlawful and should never have happened. The papers apologised, and apologised for the distress caused.

28. In due course I will have to return to these apologies, because most of the claimants were distinctly unimpressed by them and their timing. The solicitors acting for the claimants responded to them, and that triggered a further letter from the same individuals to each claimant. That letter sought to justify the delay in uncovering the matters and professed (repeating something in the earlier letter) that the group was co-operating with the police.

29. Some of the claimants expressed the view, in various ways, that the apologies were triggered by the approach of court proceedings. No-one gave evidence about their genesis, but the timing suggests that they were. They came some months after admissions were made. Insofar as it matters, I find that the apologies were made at least partly as a tactical matter with an eye to the forthcoming trial. That does not mean that the apologies were not genuine, but the timing suggests a tactical element as well.

Witnesses

30. The defendant chose not to call any witnesses. The claimants deployed a large number of witness statements, but not all witnesses were cross-examined by the defendant. The defendant sought to cross-examine only the claimants, together with one witness lending support to a particular claimant, and the two journalists who gave evidence of the nature and extent of the phone hacking at the Mirror group. In fact, when called, one claimant (Mr Gascoigne) was not cross-examined (to his obvious disappointment).

31. I shall deal with the content and effect of the evidence of the various witnesses when I come to consider the individual cases, but there are some generally applicable observations which it useful to set out here.

32. There were some common themes running through the evidence of the various claimants.

(i) They all spoke of their horror, distaste and distress at the discovery that Mirror group journalists had been listening, on a regular and frequent basis, to all sorts of aspects of their private lives. Their use of voicemail was such that many aspects of their personal, medical and professional lives were, to a very significant degree, laid bare in the voicemails they left and in the voicemails they received. Several of them re-visited their distress in the witness box. I am completely satisfied that these expressions of their emotions were accurate, and that the emotions they felt were genuine, not exaggerated and entirely justified.

(ii) They all spoke of the effect on their lives caused by the distrust that the newspapers' activities engendered in them and those around them. When newspapers were publishing matters known only to a very few (sometimes only two) people, those privy to the information suspected others of leaking it. That led to distrust which had a very adverse effect on close relationships, including family relationships. It also got in the way of claimants seeking to forge new, or retrieve damaged, personal relationships. In other words, the published stories were very damaging to their personal lives. Again, they were forced to re-live this in the witness box, to the obvious distress of some of them. Again, I was completely satisfied that their evidence on these points was correct and without exaggeration.

(iii) They all spoke of their personal distress and anxiety of seeing articles published about them. This was, in the main, great. Their evidence on this was convincing and I accept it.

33. All the witnesses were, in my view, reliable in the evidence that they gave. They were pressed on certain matters to varying degrees, and they answered in a straightforward and honest fashion. At least two of them (MrYentob, and Miss Frost until I intervened) were cross-examined in a manner which was, in my view, plainly inconsistent with the contrition expressed in the apologies I have identified above. At the very end of the evidence Mr Nicklin apologised for the offending part of his cross-examination of Miss Frost (I had not taxed him with his cross-examination of Mr Yentob at the time).

34. In addition to the claimants, their supporting witnesses and two journalists who spoke as to practices in the defendant's newspapers at the time, the claimants provided witness statements from three other individuals (Bobby Nankeville (also known as

Bobby Davro), Alex Best and Abi Titmus), the relevance of whose evidence was not readily apparent. It played no part in the proceedings and I do not need to refer to it further.

II – THE GENERAL FACTUAL BACKGROUND

The general hacking background to all the claims in these actions

35. The case of the claimants seeks to establish the scale of phone hacking (and other illicit activity) in the MGN with a view to showing that it was very widespread indeed, and to suggest that general evidence about that scale can be used to inform a judgment as to the scale of the activities in relation to individual claimants. In principle that approach is a legitimate one, though of course care must be taken in drawing inferences in any individual case. Accordingly evidence as to scale is relevant.

36. The defendant submitted that seeking to establish the scale of wrongdoing is impossible and irrelevant. I agree that seeking to produce a precise account of the scale would not be possible because, as will become apparent, the activities were covert and those who carried them out were careful to cover their tracks. That means that precision is impossible to achieve. The defendant has not called any evidence on the point and gave no disclosure of documents covering the point save for that which it was compelled to give on (resisted) applications.

37. Some inferences can be drawn from the evidence, both as to the general scale of hacking and the extent of hacking against any given individual. It is in my view plainly relevant to form some idea of scale. The defendant has admitted hacking and other activities in terms which usually involve the word "substantial". That is a broad term, capable of covering something more than small scale (distinguishing it from "insubstantial") to very great. It is not clear how far it goes. The claimants seek to establish that the activity was very great indeed, and that that translates into its being great in relation to each claimant (which, if true, is what matters for each of their respective claims). I agree that that inquiry is a relevant one. The greater the degree of hacking, the greater (potentially) the invasion of privacy and therefore the damage to the claimants. Mr Nicklin submitted that that was irrelevant since at the heart of the claims was damage to feelings, which arose from perception of the extent not the actual extent. In a later section of the this judgment I deal with this point. For present purposes it is sufficient to say that I consider it to be wrong.

38. It is therefore relevant and necessary to consider the evidence about the scope of invasions, and the scope of the practice in the newspaper, generally in order to inform a judgment about the scope in relation to any given individual.

39. The evidence about this came from various sources. So far as oral evidence is concerned there was the evidence of Mr Dan Evans, a journalist employed by MGN on the Sunday Mirror, and to a lesser extent the evidence of Mr James Hipwell, a former Daily Mirror journalist. Mr Sherborne also relied on documentary evidence from which he said the scale could be judged, in the form of email traffic, call data and evidence of payments made to private investigators. That evidence is summarised below. In that summary any recitation or summary of fact should be taken as a finding by me unless the contrary appears.

The oral evidence of practices at the Mirror group

40. Mr Dan Evans was formerly employed by the Sunday Mirror and was able to give an account of the phone hacking and other activities that went on there. He was a clear witness, most of whose evidence in chief was admitted before he went into the witness box in any event (see above). I accept his evidence.

41. Mr Hipwell was formerly employed on the Daily Mirror. With another, he wrote and ran a column entitled "City Slickers". In circumstances that are now well-known if not notorious, he and that other were prosecuted for buying shares before tipping them in the column. He was (as his witness statement admits) convicted and sentenced to 6 months imprisonment. That, and another occasion on which it was suggested that he wrote a defamatory argument which was found to have been published maliciously, were deployed in a sustained attack on his credibility by Mr Nicklin, some of which included putting unfounded suggestions about the content of Sir Brian Leveson's report. It turned out that that attack was not directed at undermining that part of Mr Hipwell's evidence in which he spoke of the carrying out of phone-hacking activities at the Daily Mirror, but on that part of his statement in which he sought to implicate Mr Piers Morgan, the then Editor of the Daily Mirror, in knowledge of phone hacking. The rest of his evidence was not challenged.

42. The following facts emerge from the evidence of those witnesses. Mr Evans' account is fuller, and I shall deal with it first.

43. Mr Evans joined the Sunday Mirror as a freelancer in 2001 and joined the staff in 2003. In 2003 the editor was Ms Tina Weaver, and Mr Nick Buckley was head of News. In April 2003 the deputy editor, Mr Mark Thomas, left the paper to become the editor of The People. Mr Evans was called into an office by Mr Buckley and told that Mr Thomas had taken with him a valuable source of information, which turned

out to be information about telephone numbers which could be hacked. Mr Buckley then showed Mr Evans how to access a voicemail message, using Mr Yentob's voicemail as an example. It seems that he was bold enough to dial straight through to the number and get the voicemail without using double-tapping - he explained to Mr Evans that Mr Yentob never picked up his phone (so it would always go to voicemail). He showed him how to press certain keys once the voicemail system intervened in order to access the voicemail menu and then to listen to the calls, having entered the PIN. Later on at the meeting Mr Buckley produced two mobile phones and told Mr Evans about the double tap method. During this meeting Ms Weaver popped in and out on more than one occasion. Mr Evans' evidence was also that she made it clear that Mr Evans' job for the foreseeable future was to rebuild Mark Thomas's database. For this purpose Mr Evans was given hundreds of mobile phone numbers and other details, such as dates of birth. This information came from Ms Weaver and Mr Thomas.

44. Mr Evans gave details of how he carried out the double tapping technique of accessing voicemail messages, and of his use of the generic Orange number (see above), which number is still ingrained in his mind all these years later. He had to use a lot of trial and error to crack PINs, and was not always successful, but often he was. There came a time when two of the networks changed their security procedures, and required their subscribers to select their own PINs, and on those occasions existing hacking opportunities were lost and Mr Evans had to set about cracking the new PINs.

45. In order to do all this he generally used PAYGM phones (pay as you go phones), but he did not use any given phone or SIM card for very long (usually not longer than 2 months) for reasons of "safety", which I take to mean in order to avoid traceability. When he deemed a mobile phone was not safe any more he would snap the SIM and throw the phone into the Thames at Canary Wharf. The SIM card was disposed of separately. This was despite the fact that these phones did not generate call records, and could not be traced to any particular owner. These mobile phones were called "burners" (at least by him). When he bought a new phone he would pay cash and be reimbursed by the newspaper. (He also had a separate mobile phone for more legitimate activities.)

46. He was not usually given express written instructions, in terms, to hack a number, but from time to time he would receive a message containing a name, a telephone number and the date of birth of the apparent owner of that phone number. That was in substance an instruction to hack, and he so took it. If he found anything useful he would report back to Ms Weaver or Mr Buckley. Other journalists gave him similar "instructions", including Mr James Weatherup, Mr James Scott, and to a lesser extent

Mr Euan Stretch (whom Mr Evans was at pains to emphasise was not seriously involved in phone hacking though he provided details and knew about the list that was being constructed) and a Mr Stephen Martin.

47. Having successfully hacked some phones and acquired targets Mr Evans then listened to their messages to see if there was anything of interest. He was expected to check the phones most mornings (from his home) and then in the evenings as well. If he heard a call of interest he could get the incoming number from the voicemail system and he would then try to hack that phone as well. If it was not clear from whom that message came then he could, and did, instruct private investigators to find out where it came from (by asking them to identify the owner of the number). If the hack was successful he might, and often could, get information from messages left on that second number by his intended target. He called this process of acquiring groups of targets "farming". Thus he could listen to messages left by, as well as for, his intended victim, and extend the reach of his information source. It is plain that his activities grew over time as he managed to crack more and more PINs. He himself managed to crack at least 100 PINs. At least one other journalist had a bigger database than he did. If he got useful or interesting information from listening to a message he would pass it "up the chain of command" (which meant to Mr Buckley and Ms Weaver, and Mr Richard Wallace after his appointment as deputy editor, and Mr James Scott) for consideration of what action to take about it. Sometimes his exploitation of his phone hacking database took several hours a day.

48. Mr Evans collated his information on a Palm Pilot, a handheld device capable of storing (inter alia) address information in various fields. It synchronised to a desktop application. His Pilot was used to store names and numbers, and some addresses, but not PINs. Not every number on the Pilot was a successfully hacked number, but some were. His Palm Pilot records have survived, and have been used as an indicator of hacking or attempts to hack.

49. In addition to that record Mr Evans kept a "back pocket" list. In line with security considerations that he was told to adopt, this was never stored digitally. He created it by typing the details up and printing them, via a word processor, but without ever saving the list to disk. It was a a list of regular targets whose PIN numbers he had cracked and whose voicemail messages he could listen to easily. At the height of his activities he said that he probably had 100 targets on his list, and he checked them daily. Of the present claimants, all except Mr Gascoigne were on this list. The effect of his evidence was that those targets would be checked twice a day (morning and evening), every day, as a minimum. Doubtless if something interesting was thought to be happening they would be checked more frequently. This list was updated from time to time, and he prepared copies for Mr Buckley and James Scott.

50. Not all the information that was obtained from phone hacking was usable for a story. If it was it would be passed to other journalists (who would often not know where the story came from), and they would investigate through more legitimate means and, if possible, write the story. Information that was obtained from hacking would, if published, have its source disguised by attributing the source to a "friend" or "pal". As will appear, this had a particularly caustic effect on the relationships of the victims. Sometimes the detail was changed so that a victim could not work out what the source was. Sometimes a comment was perceived as useful, and the victim, or a PR person, would be called to see if more detail could be elicited. Mr Evans said that Ms Weaver was particularly good at that.

51. Private investigators were involved in getting information for these activities. There was much use of a company called Express Locate International Ltd ("ELI", which later changed its name to Trace Direction International Ltd - "TDI"), though other companies were also used. This company could apparently find out the telephone number and address of an individual (for £125) or a quarterly phone bill (£250). It could "spin" a number - find out the individual who owned a number - particularly useful for identifying someone who left message on a victim's phone if it was not apparent from the message. They were also employed to provide credit card details (potentially useful for identifying stays in hotels, the amount spent there, meals in restaurants, and the like). In one case they obtained details of gambling transactions between a celebrity and bookmakers. Mr Evans said that if a story broke elsewhere about a celebrity (and he gave someone breaking up with a partner as an example) the first thing he would do was to call ELI/TDI to ask for the target's phone number and call data for the past quarter. That would reveal who had been called first thing in the morning and last thing at night, who was frequently called and what patterns there might be. Once other individuals were identified in that way an attempt was made to hack their phones. If useful information was revealed, a photographer could be despatched to maintain a watch (on both sides of the apparent affair) and get incriminating photographs. If photographs were obtained the story could be centred around those photographs and presented (if necessary) as the fruit of a lucky paparazzo, achieving what Mr Evans referred to as a degree of deniability. Sometimes medical information was obtained (probably by blagging) and communicated. It does not seem that this took the form of complete medical records, but would be more in the nature of confirmation about a condition, such as the existence of a pregnancy (to give one example given by Mr Evans). The extent to which medical information was provided was not apparent from Mr Evans' evidence. He himself could only recall two occasions on which he received medical evidence. Mr Evans was not alone in using private investigators for these purposes. Other journalists used them too (as is apparent from the appearance of names on invoices).

52. Although on occasions information was communicated by ELI over the phone, it was usually supplied by fax. All details were apparently handwritten or (according to his witness statement) typed up - Mr Evans did not remember often receiving a straight copy of the phone company's bill. The fax would be picked up off the fax machine by a PA and given to Mr Evans (or any other journalist requesting it). This paperwork was destroyed as part of the security precautions surrounding the activity. Some ELI invoices, have, however, survived. They tend to identify the person about whom the inquiry was made, but they never particularise the work done. The use of the inquiry agents was obviously fairly intense - Mr Evans said he often spent over £1000 per week on their activities. In its admissions the defendant admitted paying over £2.25m (in over 13,500 invoices) to certain named private investigators in the years from 2000 to 2007. The peak years were 2003 to 2005, which coincided with the period of most phone hacking, but it is dangerous to extract too much from these figures. The total covers a lot of agents, and some of their work may have been legitimate. The defendant has admitted that "an unquantifiable but substantial" number of the inquiries made of the agents is likely to have been to obtain private information that could not be obtained lawfully.

53. Mr Evans received clear instructions from Ms Weaver about the need to cover his tracks for these unlawful activities. Those steps included:

(i) Not listening to messages until they had been listened to by the victim. If he had listened before they did the messages would have gone from "new" messages to "saved" messages in the mailbox, and the victim might have been alerted to something going on.

(ii) He did not use traceable phones for his activities. He "largely" used the burners, paid for with cash and destroyed periodically as referred to above. He knew that Mr Buckley and Mr Scott also used PAYGM phones for hacking purposes.

(iii) He did not record PINs in electronic format, and destroyed old copies of his back pocket list which contained them. On occasions he would record what he heard on a tape recorder, but he destroyed all tapes. If he transcribed a message to show to Mr Buckley or Ms Weaver he would create and print the document on a computer without saving it.

(iv) At one stage MPs were targetted, but Ms Weaver told Mr Evans to stop that because she did not want to risk attracting the attention of the security services.

(v) Mr Buckley told Mr Scott and Mr Evans to stop referring to "phones" and "messages" in any communications and there should be no email overtly referring to voicemail hacking activity. If it was necessary to refer to victims they should be referred to as "muppets". In fact no words of instruction were necessary in an email - an email containing just a phone number and a date of birth would be understood as

being an instruction to hack.

54. In addition to those measures, the newspaper was sensitive to the possibility that in some cases it would be possible for a victim of hacking to identify the source of a story by looking at it and working out where it must have come from, unless something were done about that. So steps were taken to disguise the source, and Mr Evans said that in some cases a week would be spent putting in place other plausible sources of the story to achieve the disguise. This demonstrates both the importance of the hacking tool and the lengths to which the journalists would go to achieve concealment.

55. Mr Evans' time as a journalist was not completely taken up with phone hacking, but once he had started to rebuild the database a lot of his time was. He estimated that once he had got going on the activity he would make between 60 and 100 calls per day - thousands over his career at the newspaper. This is obviously very extensive activity. Mr Evans said that he was aware of many other journalists who were doing it. Given that many others were doing similar things, it would not be unfair to describe the activity as happening on a very large scale. He started doing these activities in the office, but after a while he was allowed to do his morning trawl from home. He also hacked for messages while in his car, filling in dead time. The Sunday Mirror office was open plan, and in order to try to keep some confidentiality in relation to the activity Mr Evans would do it in one of the separate offices - that of the deputy editor, and occasionally Ms Weaver's. When Mr Richard Wallace joined the newspaper in that role he would still do it in the office, sitting across a table from Mr Wallace.

56. Mr Evans stayed with the Mirror group until January 2005, when he joined the News of the World. He has frankly admitted that he continued his hacking activities there.

57. In some of his police statements Mr Evans put some specific flesh on the bones of his narrative by pointing to certain newspaper stories which were published as a result of phone hacking activities. Most do not involve the current claimants, but the narrative is clear in its claim (not disputed by the defendant) that hacking was the ultimate source of the story, and in its claim of the disguising of that fact by attributing information to "a friend". He is clear in saying that Mr Buckley was often involved in the decision to take the story forward, and on occasions Ms Weaver also knew and even participated in writing the story up. Other journalists are also said to have known the source. He specifically refers to his involvement in one particular story involving Mrs Taggart and one involving Miss Gulati. It is unnecessary to go into details about all this. It is sufficient to say that he was able to give plenty of examples as to how stories were worked up from information acquired from phone hacking. It

demonstrates clearly how routine phone hacking had become and how big a part it played in generating, developing or standing up stories.

58. Ms Weaver's involvement in Mr Evans' initial instruction about hacking, and her subsequent involvement in stories knowing their source, means that knowledge of and participation in phone hacking existed at the highest level on the actual journalism (as opposed to the Board or administrative) side of the business. This is also demonstrated by Mr Evans' evidence, which I accept, that Ms Weaver instructed Mr Evans to try to acquire an electronic "box" which would help in working out PIN numbers. Mr Evans never found such a product (not surprisingly - it is hard to see how it can have existed), but the fact that she gave her instruction is a demonstration of how high up, and how embedded, phone hacking had become in getting stories for the newspaper.

59. Mr Evans' evidence was centred around the activities at the Sunday Mirror. Mr Hipwell gave evidence of practices at the Daily Mirror, albeit in more general terms. He worked there as a journalist from April 1998 to February 2000. His paper shared the 22nd floor at One Canada Square, Canary Wharf, with the Sunday Mirror. It was an open plan office so he could detect the working practices of other journalists. His desk was next to the paper's showbusiness desk, and he could still, at this remove in time, identify 8 of the more numerous journalists who worked on that desk. It is unnecessary for me to identify them in this judgment, and inappropriate for me to do so because of potential forthcoming police inquiries. It is sufficient to say that they ranged from writers to more senior staff.

60. He did not give any evidence that he himself was involved in phone hacking, and said he did not believe it had started by the time he arrived, but it had started in earnest on the showbusiness desk by mid-1999, when it was "rife" and "endemic". At a time when it had become common he asked a journalist (unidentified) to explain how it worked, and he was shown by means of hacking into Mr Piers Morgan's voicemail. During his time there he saw some of the individuals he had referred to hacking telephones, and heard junior reporters being instructed to "trawl the usual suspects", which became a widely used euphemism for phone hacking. He did not see all the individuals that he identified as working there, but expressed the view that it was inconceivable that any of them would have been unaware that hacking was part of the daily life of the desk. His impression was that several of the showbusiness desk journalists got a large proportion of their stories from phone hacking.

61. He could identify the name of only one victim of the hacking, and that was Mr Yentob. He could remember his name because when hacking journalists used his

name they transposed it into the "Ying Tong Song" recorded by the Goons many years ago. He understood that Mr Yentob's phone was a particularly rich source of stories.

62. The only other specific hacking incident he could remember was when a journalist got a story from hacking the phone of one of the Spice Girls and then deleted the message after listening to it. The newsdesk personnel were pleased about that because it would have prevented a rival newspaper from listening to it.

63. The last section of Mr Hipwell's witness statement was devoted to his belief that Mr Piers Morgan, the editor at the time, must have known of the hacking. This is the only part of his evidence that was challenged in cross-examination. It did not amount to direct evidence of knowledge, but was Mr Hipwell's conclusion based on his knowledge of the involvement of Mr Morgan in the affairs of the newspaper. Other than indicating that his evidence was convincing, and I was far from satisfied that he was (as suggested by Mr Nicklin) motivated by a desire to pay back Mr Morgan for events surrounding Mr Hipwell's conviction, I do not find it necessary to make a finding about Morgan. It is, in the event, not necessary to do so, since the rest of Mr Hipwell's evidence implicates the newspaper at levels above the journalists investigating the stories, and I accept the rest of his evidence. It is true that he does not in terms implicate particular journalists, but I accept its import that senior journalists would have known of the hacking and accepted its fruits, whether or not they did it themselves.

Email traffic

64. In a world in which almost infinite resources could be devoted to the disclosure operation the disclosure which ought to be provided in relation to generic disclosure (disclosure of general practices so the extent and likelihood of hacking against particular individuals, and the level of involvement of newspaper personnel, could be ascertained) could be vast, or at least the search exercise could be vast. A vast number of internal documents ought to be searched across all three newspaper titles to look for material which might be said to evidence phone hacking, and since the evidence of Mr Evans is that express references were to be suppressed (which evidence I accept) the search would have to be for more subtle indications, the nature of some of which appears below. In pre-trial management hearings it became apparent that it was necessary to seek to keep the disclosure exercise within proportionate bounds, but there was a dispute as to what those bounds should be. The defendant resisted the idea of generic disclosure, and I ruled against it on that point. The more difficult question was how that should be achieved.

65. During the course of the debate it became apparent that at least part of the exercise had been undertaken already, because the group was said to have been cooperating with the Metropolitan Police Service ("MPS") in a criminal investigation in relation to phone hacking within the Mirror group. In that connection a (relatively small) number of what were described as "slim" lever arch files had been provide to the police, and I ordered that, at least in the first instance, those files should be disclosed as an alternative to huge searches in relation to vast numbers of emails and other documents in order to provide disclosure as to the generic case, which is capable of supporting the individual cases.

66. Some of that material was email traffic. It was available at this trial. Mr Sherborne took me to some of it. It demonstrated a number of things.

67. There were a number of emails which showed the provision of mobile phone numbers of people in the public eye, or those connected with them, from one internal person to another, and a number of requests for numbers. Sometimes that information, or those requests, contained or sought the date of birth of the person in question. Mr Evans' evidence demonstrated that dates of birth could be useful material when it came to guessing the PIN code of any given voicemail account. This pattern of conduct is supportive of Mr Evans' evidence as to the techniques adopted. No other reason has been suggested for the apparent need to know mobile phone numbers and dates of birth. It was not suggested that the phone numbers were provided so that journalists could ring the owner of the number to talk to him or her.

68. The tone of this traffic suggests that the activity was run of the mill and frequent. Nearly all of the emails relate to the Sunday Mirror, with a handful relating to the People. Virtually none relate to the Daily Mirror. When (eventually) the arrangements with the MPS, which led to the disclosure, were revealed it became apparent that the nature of searches required (particularly the accounts to be searched) were more likely to throw up Sunday Mirror emails and not the emails of the other titles.

69. The emails also reveal the levels at which phone hacking was known about, and indeed being conducted, within the Sunday Mirror. Various emails are to or from the editor, Tina Weaver. Some demonstrate data being provided to her, and the only sensible inference in the context of this case is so that she could conduct some hacking activity herself. Otherwise it is apparent that the emails are passing to and from journalists and editors at all levels, and supports the inference that hacking was being carried out at all levels.

70. There are certain emails which contain terminology which is almost a direct reference to phone hacking. Thus:

(i) An email of 26th December 2003 from James Saville to Nick Buckley, about a television personality, contains a number of elements. It refers to some information as to an affair that she was thought to be having and goes on:

"The last time we checked they were still phoning each other."

That information is most likely to have come from listening to their voice messages. The email goes on to refer to the need to get a "bike, a reporter and a snapper" to the man's addess. Various of the claimants in this litigation complain about the apparent opportunity provided by voicemail intelligence to get some photographs of the target which would otherwise not have been obtainable. This demonstrates an intention to do the same thing. The email refers to the desirability of trying to get a week's letting of vacant offices opposite the man's address, and the possibility of blagging the woman's agent to find out what the woman was doing next week.

(ii) An email from Euan Stretch to Nick Buckley comments on something "priceless" in relation to a well known actress: "and she sounds so cute on the voicemail [number supplied]." This must, in the circumstances, be a reference to an attempt to hack her voicemail.

(iii) On 6th July 2004 Nick Buckley provided Dan Evans with the mobile number and date of birth of a member of a girl band. Within seconds Mr Evans reponded: "Dead". I infer that that is a reference to the fact that there was an attempt to hack the voicemail which failed.

(iv) An email from Mr Evans to James Scott dated 2nd September 2004 provides the telephone number of Mr Bobby Davro, under the subject line: "one for the palm pilot". This demonstrates contact data being shared, because the palm pilot was a shared resource.

(v) An email from Mr Evans to James Saville refers to Mrs Taggart (one of the claimants) and Mr Holland Hanton (with whom she had a relationship) settling on a £400,000 home into which they were moving after Christmas. Although the email does not demonstrate the source of this knowledge, Mrs Taggart's evidence was that an estate agent left messages on her phone about this purchase, and the inference (which I draw) is that that is the source of the information in this email.

(vi) An email from Tina Weaver to Mr Evans, copied to James Weatherup and dated 2nd April 2003 is, in its context, an important email about Robert Ashworth (one of the claimants) and Tracey Shaw (his then wife). The relationship was of great interest to the Mirror group titles. It forwards an email sent by Suzanne Kerins, a

journalist whose byline appears on a lot of relevant articles, and which suggests a telephone number for Mr Weatherup. Tina Weaver passes this on to Mr Evans with the words:

"It may be Robert ashworth's tel but he's answering … don't call yet he's answering."

The only sensible explanation for this email in its context (and bearing in mind that this email has been proffered to the police in relation to hacking) is that the number has been tried and Mr Ashworth answered it, which is the last thing that a hacker wants - the hacker wants the voicemail service. Hence the closing words - a warning not to call at that time.

(vii) An email from Simon Young to Mr Evans provides the telephone number and date of birth of a well-known footballer "for the muppets".

(viii) An email of 21st September 2004 from Mr Evans to Mr Saville indicates that the date of birth of a child of some unspecified victim "would be of use". This is consistent with trying to crack pins by using information of individuals associated with the victim.

(ix) Two emails of 11th April 2003 from Ms Weaver to Mr Evans shows her first sending the mobile number (and a landline number) of an actress to Mr Evans, then following it up with an inquiry as to whether he already had it, and suggesting that he get the number of the son of a public figure from Mr Stretch. This demonstrates her directing the activity. Mr Evans replied that he would check the actress's number "forthwith" and that he had "looked at … [the son] … already to no avail".

(x) An email of 2nd July 2003 from Mr Ian Edmonson at the People makes an inquiry of Mr Thomas relating to Mr Ashworth's date of birth. This is one of the few emails in this part of the disclosure which involves the People, but it does demonstrate the involvement of The People staff in the activity (which is not in fact denied in these proceedings by the defendant).

It is unnecessary to set out further detail. There is a lot more of the same sort of material.

71. It must be borne in mind that the material referred to in this section was material provided to the MPS pursuant to its inquiry into phone hacking. That, of itself, demonstrates that, in the view of the defendant, the material arguably supports the existence of hacking. But in fact, in the light of other evidence, it demonstrates it plainly. The emails are limited in number, but the scope of the disclosure that gave rise to it must be remembered. The documents were provided pursuant to a Memorandum of Understanding with the MPS. That Memorandum provided for certain search parameters, agreed with the police. They included those whose emails

would be searched, time periods (eventually extended) search terms and certain targets. It was obviously (and understandably) a targeted exercise, for the purposes of the police. Although the searches were expanded as part of an ongoing process, it remained confined mainly to the documents of Sunday Mirror journalists. There were also other search parameters which meant that the search exercise was not one which would throw up every possible indication of phone hacking that existed in the group's records. It was not intended to, and reliance on the material in this action was a convenience to try to obviate the need for further generic inquiries.

72. Bearing all that in mind, it is fair and right to conclude that this material supports and demonstrates a widespread culture of phone hacking extending from journalists up to editors. It shows that editorial staff not only knew about the practice, but are also likely to have conducted it themselves. This evidence concerns mostly the Sunday Mirror, but there is also evidence that journalists at the People did it as well.

Telephone data

73. The claimants seek to bolster their case as to the extent of phone hacking by relying on Mirror group call data from the group's phone records, both landline and mobile. Having obtained some records they seek to draw conclusions from the data. However, the potential dataset is far from complete. This is for the following reasons:

(i) The defendant has searched its available landline data, which runs from mid-June 2002. Their most recent disclosure statements on the point, produced during the trial, say (in essence) that records are not available for prior periods because they have not been preserved. There was a change of phone system in mid-2002, and the non-availability of the prior records may be explained by that. For some considerable time it was thought that there was a mysterious 2 days of records from 2000, but it now transpires that those records were mis-dated and they relate to a later period.

(ii) A very large amount of the phone hacking activity was carried out using "burner" PAYGM phones, as described by Mr Evans. Records are not available for such phones.

74. The defendant's landline phone records cover all three newspapers. Those records show the number called, the date, time and duration of the call, and the extension from which they were made. The extension numbers can be attributed to individual journalists via an internal directory, and the claimants have sought to attribute calls to journalists in that manner. That attribution technique is not going to produce a completely correct attribution, because, as Mr Evans said, the office was open plan. There might be occasions on which phones were used by journalists other than those

whose extension it was. Nevertheless, the consistency of use of some phones, together with links to bylines and other material, enables one to conclude that attribution to journalists, while not 100% accurate, is likely to be substantially accurate.

75. Searches have been carried out against the phone data to the following effect:

(i) Calls to the Orange platform number from the Mirror group landline have been identified and tabulated. Production of this information was resisted by the defendant, and was ordered by me. It has turned out to be significant data.

(ii) Calls from the Mirror landline to the mobile numbers of the claimants have been identified and tabulated.

(iii) Calls to some of those with whom the claimants are associated have been identified and tabulated. These are relevant because part of the case of the claimants (which is accepted by the defendant) is that the hacking activites could move from the intended victim to the phones of associates so that messages left by the victim could be listened to - see "farming" above. The claimants have complained that not all relevant "associates'" numbers have been searched for. I doubt if that has made a material difference to this litigation, bearing in mind the admissions that have been made and the other evidence that is available.

(iv) Calls made by mobile phones of certain journalists have been searched to identify calls to the numbers in (i) to (iii). Some journalists were given non-burner mobile phones, and some call details for those phones are available.

76. Some of the analysis of those calls appears below in the sections relating to the individual claimants. In more general (generic) terms those records give rise to the following findings and inferences, all of which I make or draw, as the case may be. In making the findings I rely on schedules that the claimants' team prepared for the purposes of this trial once they had the data. Their analysis appeared in various schedules prepared pursuant to one of my orders. The presentation of the data, and its analysis in mathematical and factual terms, was not challenged by the defendant, but it did not accept the conclusions and inferences which were sought to be drawn from them (although half way through the trial, as will appear, one important inference was accepted).

(i) There are almost 13,500 calls to the Orange platform. Between June 2002 and 2008 there were over 12,000 calls. There was a very sudden and dramatic drop in the calls to this number after 8th August 2006, the date on which Mr Glenn Mulcaire and Mr Clive Goodman were arrested for phone hacking. Mr Mulcaire was a private

detective who carried out phone hacking for the News of the World, as he later admitted. Mr Goodman was a journalist who was accused (and found guilty of) hacking for the News of the World. In the light of an admission by Mr Nicklin in the course of this trial I do not need to go into much of the detail of this reduction. Suffice it to say for present purposes that the data shows an average of 7.4 calls per day to the platform in the pre-arrest period, and 0.9 calls per day in the post arrest period. Looking at the data another way, the number of calls in each of the years from 2003 to 2006 were 2357, 3827, 2059 and 2318 respectively . In 2007 and 2008 they were 693 and 393 respectively. Whichever way one cuts the data (and there are other analyses) the drop from August 2006 was very striking. It always was implausible that Mirror group journalists were making so many calls to the Orange platform in relation to their own accounts in the years from 2002 to 2006, and the drop off from August 2006 is not coincidental. Mr Sherborne invited me to infer from this data that the sudden drop was because publicity was given to the Mulcaire arrest (which it was) and journalists on the Mirror took fright and immediately cut back on phone hacking, and that this drop in calls to the Orange platform was a result. In other words, the bulk of the calls to the Orange platform from the Mirror group landline were for phone hacking purposes. On Day 6 of the trial (but not until then) Mr Nicklin accepted that he was not going to invite the court to draw any other inference, and that this material was material from which I could infer substantial hacking via this route. I do so infer.

(ii) In so inferring I bear in mind that the landline was only one route into the Orange platform. Journalists could also use the "burners" without leaving a trace, and Mr Evans did this on a large scale. Accordingly there were a lot more calls to the Orange platform than those recorded in this period. Bearing in mind Orange was only one of four mobile phone providers, one can infer a far larger number of total calls made for hacking purposes across the four mobile phone networks.

(iii) There are 5 particular journalists whose calls to the Orange platform account for 40% of the total calls by number (43% by time). They are Mr Scott, Mr Saville, Mr Buckley, Mr Graham Johnson (who was convicted of hacking) and Mr Evans (likewise). This analysis was carried out by analysing the extension numbers attributed to individuals. This demonstrates the vigour with which those particular individuals were carrying out the activity, but the data also shows that a large part of the activity was being carried out by others - it was not confined to a narrow selection of journalists. This corroborates what Mr Evans has said about the people involved. The pattern of calls by these men demonstrates the dramatic fall off of calls from the date of the arrest, or announcement of the arrest, of Mr Mulcaire.

(iv) The calls attributed to Mr Evans' extension support his account of his being shown how to hack in mid-2003. Between March and June 2003 16 calls to the Orange platform are recorded as having been made by him (there was no evidence as to why). In July that shoots up to 62, and thereafter until he finished in December 2004 the numbers remain significant - often in the 20s, more often in the 30s and 40s, and once at 60. The sudden step up of calls by him in July 2003 supports his

evidence that he started hacking then, which in turn supports his evidence about having been shown how to do it then and having been tasked with re-creating Mr Thomas's database.

(v) There are no complete figures for 2002, but for the period for which figures exist there are 868 calls, at an average of 4.4 calls per day. In the next 3 years the daily averages were 6.5, 10.5 and 5.6. Thus the 2002 figures are not way out of line with later years (though less than them). It is likely that they betoken hacking activity in that year, and it is to be inferred that that average figure of 4.4 calls per day was (as a minimum) applicable for the whole of the year. Hacking was, by then, a common activity, and bearing in mind the activities of Mr Thomas at the time I find that that average is likely to be a minimum.

77. It must always be remembered that use of the corporate landline was not the only way of getting the Orange platform. The use of burners was large, and it is likely that they were used to access the platform as well, in all probability in greater amounts than the landline. It is neither possible nor necessary to put a figure on that use. It is the large scale of hacking that is important. Mr Sherborne submitted that the landline call data is the tip of the iceberg. That is an apt metaphor.

78. One particular point surfaced from time to time in relation to the Orange land line and hacking of particular claimants. Mr Nicklin sought to make the factual case that the technicalities of the Orange voicemail box could not be accessed via the landline number unless the user had set his or her own specific PIN. The default PIN would not work. That point was not accepted by the claimants. The significance was said to be that some of the witnesses who used Orange phones did not seem to have set their own PIN, so Mr Nicklin wanted to say that their phones could therefore not have been hacked as the claimants alleged. Mr Nicklin applied to introduce late technical evidence about the point, and was refused by me. The point was therefore not in play until Mr Evans gave his evidence. In cross-examination he said that he understood that the position was as Mr Nicklin contended it to be, so it became live. However, it seems to me that even once it had an evidential base it was a point without any real evidential significance. For all Orange users Mr Evans' unchallenged evidence was that he hacked them successfully up until the time that he left the Sunday Mirror, and the defendants have essentially admitted that they hacked all claimants substantially for all or most of the periods alleged. If they were hacking Orange users then either the users had set a PIN, or Mr Evans was wrong. The point ultimately seems to have gone nowhere.

Invoices from private investigators

79. Mr Evans gave evidence about the use of private investigators to get information about targets. The defendant has disclosed investigators' invoices in relation to all the claimants. The defendant has in terms admitted (in their formal admissions) that the investigators' were used to obtain mobile telephone numbers, and has also admitted that the information obtained in relation to each invoice was obtained as a result of call data blagging, and that each invoice is evidence of wrongdoing in relation to the claimant in question. In a further admission the defendant has admitted that in relation to the whole corpus of invoices (going well beyond those relevant to the claimants), a substantial proportion were likely to have been for obtaining private information that could not be obtained lawfully. So far as specific activities are concerned, the admissions seem to cover only the obtaining of call data and other telephony related data.

80. However, the evidence of Mr Evans, which was not challenged on the point, was that other forms of data were obtained, of the nature referred to above - credit card data, medical data. I find that all these kinds of data were obtained by the investigators. No record of the instructions given or the fruits were available at the trial. It would be consistent with Mr Evans' evidence that it has been destroyed, though he did not quite say so in terms. So far as it matters in any particular case, it will have to be a matter of inference what the information covered by each invoice was. The existence of the practice of engaging private investigators to carry out these exercises is part of the picture of the extent of unlawful information gathering which is relevant to the present 8 cases.

81. Mr Sherborne invites me to find that the vast majority of the information obtained by the private investigators could not have been obtained by legitimate means. I do not think I have to go that far, or to work out what the difference is between "the vast majority" and "a substantial number" (which is the wording in the defendant's admission documents). It is sufficient to find (as I do) that the activity was part of a large-scale pattern of the unlawful obtaining of private information.

PAYGM vouchers

82. In the course of supplying information to the MPS the defendant has disclosed expense vouchers relating to the purchase by 5 of the reporters (Mr Scott, Mr Saville, Mr Buckley, Mr Thomas and Mr Evans) of PAYGM phones (burners) and top-up call credits for those phones. Those invoices were disclosed in these proceedings. It is not clear that this information is complete. Indeed, for Mr Evans it is clear that it is not complete because it comprises invoices for only the last 4 months of his employment when his oral evidence (which I accept) is that he was using mobile

phones from when he was first trained in 2003. For the others there is no data before June 2004. Bearing in mind that burners were used for a considerable period before then there must be some missing data.

83. What the disclosed vouchers show is that between 2004 and 2006 those individuals claimed at least £7,500 in respect of burners and top up call vouchers. No explanation has been tendered as to what these were for if not for hacking activities, and Mr Evans' evidence leads one to the conclusion that that must be what they were for. Since the records are incomplete one cannot conclude how much activity they reflect, but it must have been a great deal (when coupled with Mr Evans' evidence). Mr Sherborne invites me to conclude that the real expenditure, and therefore the activities covered by them, must be several times greater than the pure data suggests. I am prepared to find that the activities were very much greater, but do not need to find whether it was "several times" greater, or greater by any particular factor. The really significant point is that this evidence supports a finding that phone hacking went on on a very considerable scale. Furthermore, many of the vouchers were approved for payment by Ms Weaver and Mr Buckley, strengthening the inference of their involvement in the operation.

84. Because these were pay as you go phones, there are no records of the calls made from them. Since this must have been the reason that they (rather than phones which leave a record) were chosen for the process, this amounts to a deliberate step taken to suppress evidence, with consequences that appear hereafter.

III – THE APPROACH TO THE EVIDENCE AND GENERAL FINDINGS

Drawing inferences where evidence has been lost or destroyed by one party - Armory v Delamirie

85. The claimants make much use of the principles applicable where one party to litigation has lost or destroyed information. They say that the defendant has been responsible for the destruction, non-provision and deliberate non-creation (or concealment) of evidence so that, in accordance with the authorities, I should make findings about what happened (for example, what the nature of the content of the voicemails was, how often they were listened to, and so on) to the "greatest extent possible" albeit ultimately tempered with realism.

86. The principle relied on by the claimants has its roots in well-known case of *Armory v Delamirie* (1722) 1 Strange 505. In that case a defendant was responsible for the non-production of a jewel where a claim to the value of that jewel was in issue, and

the jury was directed to "presume the strongest case against him". A more modern encapsulation of the principle is that of Staughton J in *Indian Oil Corporation Ltd v Greenstone Shipping SA* [1988] QB 345:

> "The analogy with *Armory v Delamirie* ... is striking. If the wrongdoer prevents the innocent party proving how much of his property has been taken, then the wrongdoer is liable to the greatest extent that is possible in the circumstances."

87. The effect of the principle was summarised by Simon Brown LJ in *Mount v Barker Austin* [1998] PNLR 493. This was a case in which the court was not trying to value a lost chattel. It was seeking to value the loss where a solicitor's negligence had led to an action being struck out. It demonstrates the width of the range of circumstances in which the principle is capable of applying. Simon Brown LJ said:

> "If and when the court decides that the plaintiff's chances in the original action were more than merely negligible it will then have to evaluate them. That requires the court to make a realistic assessment of what would have been the plaintiff's prospects of success had the original litigation been fought out. Generally speaking one would expect the court to tend towards a generous assessment given that it was the defendants' negligence which lost the plaintiff the opportunity of succeeding in full or fuller measure. To my mind it is rather at this stage than the earlier stage that the principle established in Armory v Delamirie (1722) 1 Stra. 505 comes into play."

88. That is not to say that the court will ignore the evidence that is available, or will make purely speculative or fanciful findings. The missing evidence must be put in the context of the actual evidence, and any assumptions made against the wrongdoing party must be realistic (as is accepted by the claimants). Thus In *Glenbrook Capital LP v Hamilton* [2014] EWHC 2297 (Comm) Mr Jonathan Hirst QC, sitting as a deputy judge of the Commercial Court, said:

> "42. In those circumstances Mr Emmet Coldrick for the Claimant argued that I should apply the well established presumption in *Armory v. Delamirie* (1722) 1 Strange 505; 93 E.R. 664. In that famous case, a chimney sweep found a jewel and took it to a jeweller. The jeweller offered a nominal price and the sweep asked for the jewel back. The jeweller refused to return it. In an action for trover, Lord Pratt CJ directed the jury that:

> "unless the defendant did produce the jewel, and shew it not to be of the finest water, they should presume the strongest case against him, and make the value of the best jewels the measure of their damages".
>
> 43. The decision has been followed in many different contexts where a defendant's actions have made it impossible for a Court to make an informed assessment: see for instance *Browning v. Brachers (a firm)* [2005] EWCA 753, *Phillips v. Whatley* [2007] UKPC 28; [2008] 2 Lloyd's Rep 111 and *Keefe v. The Isle of Man Steam Packet Company Ltd* [2010] EWCA Civ 683, where Longmore LJ put the point pithily:
>
> [19] ... a defendant who has, in breach of duty, made it difficult or impossible for a claimant to adduce relevant evidence must run the risk of adverse factual findings.
>
> 44. This is no doubt a salutary principle, but it should not be punitive. Any adverse conclusion should take account of any evidence that does exist and it should be realistic."

89. The case is an example of a judge doing just that. It was a case which involved the valuation of converted silver. Mr Hirst rejected a submission that the principle required that the missing silver was acquired at a premium of 100% above the bullion rate, and substituted a lower figure more in line with the evidence.

90. Those principles, as such, were not materially disputed by the defendant. Their application to the case, however, was.

91. Mr Nicklin first said that there was no scope for the operation of the principle in this case. He submitted that the claimants were seeking to apply the principles to what had become an irrelevant factor, namely the precise scope of the wrongdoing. That was not a relevant point in the case because the material point was how much distress was caused in the claimants. This point depends on his thesis that the only compensatable effect of the privacy infringements is distress. I rule later that this point fails, so its absence undermines his submissions as to why *Armory v Delamirie* is irrelevant. In my view the scope of the wrongdoing is relevant, because (inter alia) it goes to the extent of the invasion of privacy which itself goes to damages. The scope is a live issue in the case because the admissions of the defendant only admit (in substance) that the invasion was substantial, which gives no real idea of level or scope, and that each of the invoices from the private investigators was in respect of

the unlawful acquisition of private information without admitting how significant that information was. Those are significant points in the case.

92. Next Mr Nicklin submitted that the principle was not applicable to define what he described as "the scope of what is missing". What was unknown was (he accepted) the "duration, pervasiveness and volume of the hacking", or the "boundary conditions". I think that that is what he meant by scope. He accepted that the principle could be applied to make a finding of fact in order assess damages, but it could not be used to "create the scope of what is missing".

93. It is not clear to me quite what he meant by that. He said that his point was made by the judgment of Sir Andrew Morritt V-C in *Zabahi v Janzemini & Others* [2009] EWCA Civ 851. That case involved a claim for some jewellery passed to the defendant and not returned. In order to assess damages the court had to value the jewellery which (a fortiori) was not available to be valued. In the course of his judgment Sir Andrew said:

> "30. So I pass to the second limb of the second ground, namely the proper application of *Armorie v Delamirie***.** Blackburne J referred to it in paragraph 285 of his judgment but it is unclear to me whether and to what extent he applied it. In *Armorie v Delamirie* a chimney sweep's boy took 'a jewel' which he had found to a goldsmith for a valuation. The goldsmith's apprentice removed the stones from their socket, offered the sweep's boy three halfpence and when the offer was refused merely handed back the socket. The sweep's boy sued the goldsmith for damages in trover. Several valuers gave evidence as to the value of jewels of a size to fit the socket. Pratt CJ directed the jury that:
>
> "...unless the defendant did produce the jewel, and show it not to be of the finest water, they should presume the strongest against him, and make the value of the best jewels the measure of their damages."
>
> 31. Such a presumption cannot be of unlimited application. As I pointed out, with the agreement of the other two members of the court, in *Malhotra v Dhawan* [1997] Med.L.R. 319, 322 the principle must be subject to, at least, the following limitations:
>
> "First if it is found that the destruction of the evidence was carried out deliberately so as to hinder the proof of the plaintiffs claim then such finding will obviously reflect on the credibility of the destroyer. In such circumstances it would enable the court to

> disregard the evidence of the destroyer in the application of the presumption. That is not this case.
>
> "Second, if the court has difficulty in deciding which party's evidence to accept then it would be legitimate to resolve that doubt by the application of the presumption. But, thirdly, if the judge forms a clear view, having borne in mind all the difficulties which may arise from the unavailability of material documents, as to which side is telling the truth I do not accept that the application of the presumption can require the judge to accept evidence he does not believe or to reject evidence he finds to be truthful."
>
> 32. In this case the difficulty in assessing the value of the Jewelry is due to the dishonest evidence given by both sides. A presumption against either is matched by the equal and opposite presumption against the other. So I do not think that the principle can be applied to the facts of this case for that reason alone. But, equally, there must be some limit on the extent of the presumption. In *Armorie v Delamirie* the socket from which the stones had been removed was available to indicate the size of stone required and the evidence of the expert valuers was, I assume, directed to the value of stones required to replace those taken. No doubt they testified to a range of values and the jury, as directed, took the top of the range. But, on the conclusions of Blackburne J in this case there are no similar parameters, save that the jewelry comprised diamonds mounted in gold, by which the extent of the presumption may be restricted. Without such parameters an application of the principle would lead to little more than guesswork. In my view for that reason too the principle of *Armorie v Delamirie* cannot be applied without some limitation in this case. But I do not think that the judge did so. It is clear from what he said in paragraph 285 that he tempered the principle, but then applied it so tempered only as a check on the conclusion he expressed in paragraph 282. I do not accept that this ground is any reason for us to interfere with the judge's conclusion."

94. The emphasis is Mr Nicklin's - he seemed to suggest that it supported his limitation on the application of the principle. If he means that *Armory v Delamirie* has to operate within some evidential boundaries then that is obviously right. Thus in *Amory* itself, the principle would not allow the jury to find that something the size of the original Koh-i-Noor was missing. The jury had the size of the mount to go on as a starting point. And even if it did not, then it could still not find that that a diamond of that size was missing, because no other diamond of that size was known and it would be perverse to assume that the ring in that case contained another. To that extent Mr Nicklin is right. He would also be right to say that *Amory* does not justify

guesswork or pure speculation. But he is wrong when he seems to say that those limitations mean that the *Armory* principle cannot be used to find the "duration, pervasiveness and volume of the hacking". Those are matters which are central to the inquiry which I have to conduct and whose details were deliberately concealed by acts of the servants or agents of the defendant. They go to the extent of liability. They operate within "boundary conditions" which are defined by the evidence. There is evidence as to the practices of the newspaper from those who did it; there is evidence as to the starting point of the activities; there is inferential evidence from the phone data as to its sudden diminution on the date of the arrest of the other journalists. Within those (and other) parameters there is plenty of legitimate scope for the operation of the principles. It will not (if properly confined) amount to pure guesswork.

95. Nor do I accept a submission by Mr Nicklin to the effect that the *Armory* priniciple is confined to findings of fact which are required to assess damages, though that may be a frequent area of application. There is no reason in principle why it should be so confined. But in any event that is, in essence, the purpose for which it is to be used in the present case, and it matters not that technically each hack was a separate wrong. The extent of the wrongdoing, which goes to damages, has been concealed by acts of the defendant, and there is no justification for excluding the application of the principles in relation to the inquiry as to that extent.

96. Mr Nicklin's submissions all flow from a misappreciation of what the *Armory v Delamirie* line of cases is all about. The principles flowing from *Armory v Delamirie* are principles relating to how the court should assess evidence and find facts. They are evidential points designed to govern and assist the process of finding facts when that process has been obstructed by the acts of one of the parties. The facts which might be found in that way are not, as a matter of principle, limited to any particular kinds of facts, or facts relating to any particular area of inquiry. They are facts. Accordingly the principles can be used to assess, for example, the scope and nature of the hacking that went on in terms of period and frequency, and they can be used to assist in assessing the likelihood of an article having its source in phone hacking in the few instances where that is in dispute in these cases. I have borne that in mind.

Inferences from a failure to call witnesses

97. Mr Sherborne invoked the principle that in certain circumstances an adverse inference can be drawn from a failure to call witnesses whom it would be expected would be called to support a party's case. Bearing in mind the admissions in this case, the historical nature of much of the evidence and the fact that a number of potential witnesses are under police investigation, and bearing in mind the evidence that is

available, I do not think that there is much scope for these sort of inferences in this case.

Other factors relevant to evidential findings

98. The events upon which these claims are based took place some considerable time ago. That means that some of the recollections of the witnesses are sometimes generalised and specific incidents are likely, in some cases, to have merged into general perceptions. That may make it harder to identify particular incidents that underpin these claims. For example, witnesses could not remember specifically all messages that were left for them, or that they left for others. Sometimes they could only speak of the likelihood of these events happening. That is understandable. The fact that these actions are being bought so long after the event is attributable to the concealment of the activities at the time, and the subsequent concealment and denials. In those circumstances the claimants are entitled to more leeway in assessing the probabilities of events. That does not mean to say that they can make things up and have them accepted. It means that I should be much more ready to accept matters of reconstruction and the like than might otherwise have been the case.

Findings of fact in relation to phone hacking - generally

99. When I come to consider each individual claim I will have to make certain specific findings in relation to each of them. In the course of reciting evidence that I have accepted I have already made substantial findings of fact on generic background matters that will be relevant when it comes to considering the damages payable to each claimant. It will be useful to draw together some of the strings of that to form the background to that consideration, and in particular to indicate how far the *Armory v Delamirie* principle operates in this case (albeit at the expense of a certain amount of repetition). The following points emerge:

(i) In relation to the seven claimants who were on Mr Evans' back pocket list, they will have been hacked at least twice a day. That was the purpose of the list. There will have been more frequent hacking if the regular calls, or other factors, alerted journalists to potential stories.

(ii) Journalists other than Mr Evans are likely to have been hacking the claimants as well. The practice was so widespread and so frequent in the newspaper that it is likely that some of them will have hacked, though not all the time. That conclusion is justified by the *Armory v Delamirie* principle. However, by way of illustration of the limits of the principle, I certainly do not infer that every journalist hacked every claimant every day. That would be to take it too far.

(iii) Considerable areas of the private life, or the private affairs, of each of the

claimants will have been revealed, going a long way beyond stories that were published. Each of the claimants gave evidence that the use of voicemail was a very significant part of their personal communications, and I accept that evidence. That means that their exposure was great. I also find that it is likely that a very substantial amount of this material will have passed to journalists other than those who listened to the voicemails. It is likely that there will have been discussions about it amongst the journalists either as a matter of salacious gossip, or as part of discussion as to whether to publish or develop a story. In all events, aspects of their private lives will not have been confined to single journalists actually listening to the voicemails. This would be a sensible inference anyway, but it is strengthened by the *Armory v Delamirie* principle. Again, however, it has to be kept within bounds. It was not the case that everything that was heard was shared with all journalists and more senior personnel. That would not be realistic.

(iv) Each private investigator invoice which can be matched to a claimant represents an invasive activity. That much has been admitted by the defendant. Precisely what that invasion was is not known, and cannot be identified on the evidence. In one or two cases (as will appear) there are indications of what the information was that might have been obtained, and I shall draw appropriate inferences in that context. Otherwise the appropriate inference is that on each occasion the information obtained was serious, though not at the most serious level. If one assumes, by way of example, that medical details would be the most serious category of information disclosed, then it would not be appropriate to assume that level of seriousness in the case of every invoice. However, it would often be appropriate to infer information of a level of seriousness comparable to a list of numbers called (essentially an itemised phone bill) or a credit card bill, at least.

Alleged shortcomings in the defendant's disclosure

100. In his final submissions, and from time to time during the trial, Mr Sherborne complained about shortcomings in the disclosure provided by MGN. He did so without making an actual application for disclosure, against a background in which there were no outstanding applications for disclosure as the case arrived at trial. One would have thought that if aspects of disclosure were that important, and if the failures of the defendant were as obvious as Mr Sherborne's submissions implicitly suggested they were, then there would have been such applications. Mr Sherborne's written final submissions sought to justify the non-making of any further disclosure applications (above and beyond those that were actually made pre-trial) on the footing that time did not allow them to be made before trial, and it would not have been sensible to have sought to adjourn the trial to enable the disclosure to be given. In my view if the material had been perceived to be very important to the claimants' cases I think it likely that additional applications would have been made.

101. Mr Sherborne listed several areas in which disclosure ought to have been given and criticised the defendant's perception of relevance. His points only have a real impact if he can demonstrate that, had an application been made, it would have succeeded. That would have required that the disclosure points be argued in final submissions as if there were an application, or that it can be seen that it is really obvious that such an application would have succeeded. The former did not happen, and it was not sufficiently apparent that his various points were so obviously right that an application would have succeeded. It would be surprising if the latter were the case, because if the documents were that obviously relevant, and that important, one would have expected a formal application to have been made.

102. I accept that some of his points are more promising than others. For example, Mr Sherborne said there should have been disclosure of documents showing the genesis of the stories. The defendant did not give any disclosure of those documents (presumably relying on their admission that the articles, apart from a few late-pleaded ones, were the fruits of an unlawful information gathering) and there are reasons for supposing that there is some material going to this point (the existence of some draft articles is apparent from some of the MPS disclosure). However, even in the case of those points the claim for disclosure, both in terms of relevance and disclosability (including proportionality), was not sufficiently obvious to enable me to say, at this stage, that they were plainly disclosable.

103. It is said that shortfalls in disclosure mean that some flesh cannot be put on the bones of the individual claimant's complaints, and that adverse inferences should be drawn from that. As far as I can tell, that could be the only real significance of the complaints to the extent that they were good. This potential significance is, in my view, reduced by two factors. The first is that the continued existence of some of the documents which are said to have been not disclosed is probably fairly speculative. Complaint is made (inter alia) about the non-production of reporters' notebooks, and of documents evidencing the fruits of the instructions to inquiry agents. On the basis of the evidence of Mr Evans as it was given to me, it is unlikely that that material exists, because of the policy of destruction of potentially incriminating documents. I am not making a finding that they do not, but their continued existence at this stage does not seem to me to be highly likely. The second is that, in relation to some of them (for example, additional invoices for the purchase of burner phones and pay as you go credits) I do not think they would add much to the debate anyway, because inferences can be drawn from the material that has been disclosed. Any additional invoices that exist would be disclosable, but the exercise of looking for them might not have been proportionate bearing in mind the admissions that have been made, the lack of any evidential case being advanced by the defendant and the fact that there was probably enough evidential material anyway (as it turned out).

104. There was, however, some scope for legitimate complaint about the defendant's disclosure exercise. During the course of the cross-examination certain additional material (in the form of additional articles) was put to some witnesses. This was not done merely to challenge credibility. They were deployed and put as material going to the scope of harm. Since they went to that issue then they ought to have been disclosed, and I so indicated during the hearing. They were not documents which would have assisted the claimants' cases and would probably not have been deployed by them if disclosed earlier, but they were documents which were said to assist the defendant's case and ought to have been disclosed as such. The failure to disclose them meant some claimants were unfairly ambushed. This ought not to have happened, and is some material justifying Mr Sherborne's expressed misgivings about the apparent perception by the defendant of its disclosure obligations. However, it does not justify a more wide-ranging finding against the defendant in this area.

105. Accordingly, while there might be some legitimate complaints about discovery, I cannot determine at this stage that those complaints are justified sufficiently to require the drawing of any adverse inferences. However, that may not be an end of the point. One of the heads of relief that the claimants seek is further disclosure of details of the invasions of their privacy. This, if granted, would require further inquiries and disclosure. I shall have to consider whether such relief can be granted in principle, and if so whether and to what extent it should be granted on the facts of these cases. The question of the extent of the hitherto existing search and disclosure will arise in considering the second of those two factors. I may therefore have to return to the point in that context. Nothing said in this section of this judgment should be taken as exoneration of the defendant from disclosure obligations, whether for the purposes of this trial, or for the purposes of the relief to be granted in it.

106. There is one other disclosure-related point I need to deal with. Mr Sherborne submitted that other privacy-infringing articles would have come to light if the defendant had carried out proper searches. He said (quite frequently) that his clients did not have access to a database of articles which would have enabled them to identify all infringing articles, and they had to make do with what they had found. It seems that his clients have not kept copies of all the articles of which they now complain. This is not in the least surprising to me, in the circumstances - why would they keep articles about which they felt they could not complain at the time and which caused them mental hurt? They have had to search such databases as are available to them. According to Mr Sherborne, the defendant has not made generally available on line all their articles for searching, so what is available to the claimants is not complete. He says the defendant has got a complete database but have not made it available and have not searched it for potentially infringing articles. If it had looked, it would have found some. He went on to submit that the currently complained about articles should therefore be treated as samples. He did not go so far

as to say that I should award damages for articles which were not the subject of these proceedings, but he did say that this non-availability of articles means that were I minded to reduce sums which might be thought overall to look a bit large, then I should not do so to reflect the "sample" point.

107. I reject this point. This case turned on certain specified articles, with which the witnesses dealt in their evidence. When other articles came to light before the start of the trial the pleadings were amended. It was not about other articles which were not in evidence and which were not pleaded. Damages will be assessed in relation to those articles only (so far as they are article-specific damages). If it was thought that there were other articles which might found a claim then an application for disclosure ought to have been made. In the absence of such a (successful) application, I shall determine this case on the footing of the articles pleaded and before the court.

IV – THE LAW AND THE CORRECT APPROACH TO DAMAGES

The basis of a damages claim

108. At the heart of the difference between the parties on damages is the question of what the claimants can and should be compensated for. The case of the claimants is that the compensation should have several elements. There is compensation for loss of privacy or "autonomy" resulting from the hacking or blagging that went on; there is compensation for injury to feelings (including distress); and there is compensation for "damage or affront to dignity or standing". The defendant disputes this and submits that all that can be compensated for is distress or injury to feelings (I shall use "distress" as a shorthand for this in this judgment). It is accepted that such things as loss of autonomy are relevant, but only as causes of the distress which is then compensated for. They are not capable of sustaining separate heads of compensation. On the assumption that this is right, this takes the defendant into an argument that authority has laid down some bands for distress claims which impose serious limits on the claims in this case, and it is also the starting point for its case on methodology for the computation of damages. If it is wrong then the claimants' position enables them to claim in relation to matters going beyond distress, and they have a starting point for a methodology which is said to be capable of getting to much greater damages. This difference of view as to what compensation is for in privacy cases is therefore central to the determination of this case.

109. It will be useful to illustrate the end consequences of this in terms of the claims made in this case. In the case of Mr Yentob there was hacking but no publication of articles about him. Accordingly, unlike the other claimants he has not suffered the distress and upset of seeing the fruits of hacking in print in the form of articles about him or

about those close to him. In terms of his feelings, he has a claim in respect of the personal effects on him when he discovered how comprehensively his phone had been hacked over several years, but that is said to be of lesser strength than those whose commercial and personal affairs had been written about publicly. Mr Nicklin's approach gives damages for what he says is a lesser degree of personal hurt than that sustained by others, and for nothing else. Mr Sherborne's approach seeks damages for that aspect, but also for the extent of the hacking per se, given its nature, extent and intrusiveness. This is obviously capable of increasing the damages claim. The same sort of points arise in relation to the other claimants, in all of whose cases there is evidence of extensive hacking going way beyond the sort of hacking which resulted directly in articles.

110. The privacy right to which the UK is obliged to give effect under the Human Rights Act 1998 is reflected in (though not itself created by) Article 8. The purpose of the right, in terms of the interests that it is intended to create, has been identified in authority. In *Campbell v MGN Ltd* [2004] 2 AC 457 a well-known model was allowed a privacy claim against a newspaper which published otherwise unpublished details of drug addiction therapy and photographed her coming out of a Narcotics Anonymous meeting. Various of their Lordships spoke of the values underlying Article 8. Thus Lord Nicholls said:

> "18. … It is sufficient to recognise the values underlying articles 8 and 10 are not confined to disputes between individuals and public authorities."

He did not in terms identify those values, but Lord Hoffman did:

> "50. What human rights law has done is to identify private information as something worth protecting as an aspect of human autonomy and dignity …
>
> 51. … As Sedley LJ observed in a perceptive passage in his judgment in *Douglas v Hello! Ltd* [2001] QB 967, 1001, the new approach takes a different view of the underlying value which the law protects. Instead of the cause of action being based upon the duty of good faith applicable to confidential personal information and trade secrets alike, it focuses upon the protection of human autonomy and dignity—the right to control the dissemination of information about one's private life and the right to the esteem and respect of other people."

Baroness Hale referred to the privacy right in these terms:

> "134. …Inside its scope is what has been termed "the protection of the individual's informational autonomy" by prohibiting the publication of confidential information…."

111. Mr Nicklin did not dispute that these values underpinned the right to privacy. Those values (or interests) are not confined to protection from distress, and it is not in my view apparent why distress (or some similar emotion), which would admittedly be a likely consequence of an invasion of privacy, should be the only touchstone for damages. While the law is used to awarding damages for injured feelings, there is no reason in principle, in my view, why it should not also make an award to reflect infringements of the right itself, if the situation warrants it. The fact that the loss is not scientifically calculable is no more a bar to recovering damages for "loss of personal autonomy" or damage to standing than it is to a damages for distress. If one has lost "the right to control the dissemination of information about one's private life" then I fail to see why that, of itself, should not attract a degree of compensation, in an appropriate case. A right has been infringed, and loss of a kind recognised by the court as wrongful has been caused. It would seem to me to be contrary to principle not to recognise that as a potential route to damages. Mr Nicklin acknowledges the rights or values, and accepts that an injunction can be granted to protect those interests. In my view that would make it all the more anomalous, as a matter of principle, were damages to be unavailable for them. Of course, in a great number of cases the emphasis will be on the distress caused, both because it will be that distress which motivates an action in the first place and because it will be the most focused on result of the infringement when it is discovered. Distress will often be the consequence of the infringement to such a degree as to subsume any potential separate award for the infringement itself; but where appropriate the stated values ought of themselves to be protectable with an award of damages.

112. This is consonant with the stated requirements of the ECHR in *Armonienè v Lithuania* [2009] EMLR 7. At paragraph 38 the court referred to the margin of appreciation allowed to the contracting parties in determining what remedies should be available to protect Article 8 rights, but added:

> "The Court nonetheless recalls that art 8, like any other provision of the Convention or its Protocols, must be interpreted in such a way as to guarantee not rights that are theoretical or illusory but rights that are practical and effective…"

This echoes the wording of Article 13 of the Convention:

> "Everyone whose right and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority …"

113. In my view a regime in which damages were confined to damages for distress would render the rights (to a degree) "illusory" (to use the word used by the ECHR) and would, to a degree, fail to provide an effective remedy.

114. Mr Nicklin's approach is also contrary to the effect of some authority in this jurisdiction. In *AAA v Associated Newspapers Ltd* [2012] EWHC 2103 (QB) a claim was made (inter alia) by a small child (one year old at the time of the events in question) based on the taking and publication of a photograph of that child. There can have been no question of the child suffering any distress as a result of this, yet an award of £15,000 was made in the child's favour. Nicola Davies J held:

> "127. …In publishing the photographs, the rights of the claimant have been breached, any award should reflect this fact and serve as notice, both as to the present and the future as to how seriously the court regards infringement of a child's rights. This is particularly so in a case when there is such interest in the public persona of the alleged father. To reflect these matters, I assess a total award of damages in the sum of £15,000."

115. Mr Nicklin's submission is that this case was wrongly decided, and it is true that the judge's remarks followed from what Eady J said in *Mosley v Newsgroup Newspapers Ltd* [2008] EMLR 20 at paragraphs 216 and 217, which Mr Nicklin said had themselves been modified by later authority. I shall have to consider this aspect of *Mosley* in considering Mr Nicklin's case in more detail shortly, but unless Mr Nicklin is right in his submission on *AAA* it is an important point against him. For my own part I observe that the result in that case seems quite right. The absence of distress does not mean that there was any the less an invasion of privacy (and Mr Nicklin would not suggest otherwise). If there was an invasion of a right then prima facie there ought to be a remedy.

116. In *Weller v Associated Newspapers Ltd* [2014] EMLR 24 there was a claim by children (one aged 16 at the date of the incident, two aged 10 months) for misuse of private information by publishing photographs of them on a family outing in California. It was the publication which was said to be misuse of private information and Dingemans J held that it was. He awarded damages to all three children. The younger children cannot have suffered any distress (or any analogous feeling) because they were too young, and indeed that was acknowledged in the judgment:

> "196 … Fifthly I have in mind the fact that the twins will not have suffered any immediate embarrassment from the publication but that Dylan [the older one] did suffer real embarrassment."

117. Dingemans J then awarded £5,000 to Dylan and £2,500 to each of the younger children. This award is completely inconsistent with Mr Nicklin's thesis. It is expressly recorded that the younger childrens' feelings (embarrassment) were not affected, yet they received compensation. The older child got more because her feelings were engaged - so part of her award must have been for other reasons.

118. Mr Nicklin starts his counter argument by referring to a series of privacy cases where the assessment of damages was by reference to the distress caused, and suggests that they demonstrate the correctness of his position. The first is *Cornelius v De Taranto* [2001] EMLR 12. In that case there was a wrongful disclosure of medical information from one practioner to others. Morland J treated the case as one of breach of confidence, rather than privacy in terms, but Mr Nicklin said that if it were brought today it would be brought in privacy. I am not sure about that, but will assume for present purposes that that is correct. Morland J gave damages for the distress caused by the disclosures. Mr Nicklin draws attention to the fact that the damages were indeed given for injury to feelings, and says that the judge deliberately so confined it. He draws particular attention to paragraphs 77 and 80:

> "77. My conclusion is that I am entitled to award damages for injury to feelings caused by breach of confidence …
>
> 80 .The damages that I award for the unauthorised transmission of the medico-legal report causing injury to the claimant's feelings will be strictly limited to injury to feelings caused by the breach of confidence..."

119. It is true that that is what damages were awarded for. but two important things have to be noted about that decision. First, there is no suggestion that anything else was sought. The sort of points which have arisen in this case simply did not arise, or were not made to arise. Second, if it is suggested that the sentence quoted from paragraph 80 is some sort of limitation as to the nature of the damages that can be sought then that suggestion is wrong. The two preceding paragraphs of that judgment reveal that what the judge was doing was separating out injury to feelings caused by different causes from those caused by the breach of confidence.

120. In fact there are indications in the judgment that matters beyond actual injury to feelings are taken into account. The judge went on:

> "81. In the assessment of damages in this case the nature and detail of the confidential material disclosed, the character of the recipients of the disclosure and the extent of the disclosure are material factors in weighing up the true injury to the claimant's feelings."

121. I find myself a little puzzled by this formulation as it stands. The true injury to her feelings is what that injury actually is. The assessment ought to be as to what that actual injury actually was. The level of injury might be explicable by looking at those other factors, but the injury is the injury. What in fact I think that the judge may well have been contemplating was the fact that the extent of the overall harm to her interests is affected by those factors, and he seeks to feed them into the assessment by using her feelings as a sort of notional overall substitute. But at least he says they are relevant. If they are relevant then in my view it is better to address them directly, though I accept that in most cases of that kind, and indeed in most cases of invasion of privacy involving a publication which becomes known to the claimant, the focus will be on feelings, and other factors are likely to be swept up into the damages in an unbroken-down sort of way. (The same technique is applied by Mr Sherborne to the damages said to be attributable to each individual published article in the present cases.)

122. The next case relied on by Mr Nicklin is *Campbell*, supra. The only passage from the first instance decision in that case relied on by Mr Nicklin demonstrates that all Miss Campbell was seeking in that case was damages for injured feelings, and that is what she got. There was no consideration of other matters which might be the subject of compensation. The point which I am considering was simply not raised. Mr Nicklin relies on the fact that despite the identification of the protected interests contained in Lord Hoffman's speech (cited above) the damages sum was restored by the House of Lords without comment. In my view that is because no head of damages other than

distress was propounded in that case. Their Lordships were dealing with other aspects of the case.

123. In *Applause Stores Productions v Raphael* [2008] EWHC 1781 (QB) Richard Parkes QC (sitting as a Deputy High Court Judge) said:

> "81. It is reasonably clear that damages in cases of misuse of private information are awarded to compensate the claimant for the hurt feelings and distress caused by the misuse of their information: see for instance *McKennit v Ash* [2006] EMLR 271."

That statement, in my view, does not advance the debate. The sort of point which is now under consideration was simply not in play in that case. The same is true of the *McKennit* case cited.

124. There is a little more consideration of damages in *Mosley v News Group Newspapers Ltd* [2008] EWHC 1777 (QB), and this case, and what is said about vindicatory damages, is really the main foundation of Mr Nicklin's submissions in terms of the authorities. In this case Mr Mosley was recorded visiting women for sexual and sado-masochistic purposes and the resulting story was published online and in print. He sued in breach of confidence and the unauthorised disclosure of personal information was said to infringe Mr Mosley's Article 8 rights (see paragraph 3). At paragraph 7 Eady J records that:

> "the law is concerned to prevent the violation of a citizen's autonomy, dignity and self-esteem."

125. In a passage starting at paragraph 212 Eady J considers "The nature of compensatory damages in privacy cases". In paragraph 214 he points out that the case, not being framed in defamation, was not one directly concerned with compensating for or vindicating loss of reputation. He uses a similar formulation to that used in paragraph 7:

> "the law is concerned to protect such matters as personal dignity, autonomy and integrity".

126. Paragraph 216 contains the material relied on by Mr Nicklin. In that paragraph Eady J turned to the make-up of the damages:

> "216. Thus it is reasonable to suppose that damages for such an infringement may include distress, hurt feelings and loss of dignity. The scale of the distress and indignity in this case is difficult to comprehend. It is probably unprecedented. Apart from distress, there is another factor which probably has to be taken into account of a less tangible nature. It is accepted in recent jurisprudence that a legitimate consideration is that of vindication to mark the infringement of a right: see e.g. *Ashley v Chief Constable of Sussex* [2008] 2 WLR 975 at [21]-[22] and *Chester v Afshar* [2005] 1 AC 134 at [87]. Again, it should be stressed that this is different from vindication of reputation (long recognised as a proper factor in the award of libel damages). It is simply to mark the fact that either the state or a relevant individual has taken away or undermined the right of another – in this case taken away a person's dignity and struck at the core of his personality. It is a relevant factor, but the underlying policy is to ensure that an infringed right is met with "an adequate remedy". If other factors mean that significant damages are to be awarded, in any event, the element of vindication does not need to be reflected in an even higher award. As Lord Scott observed in *Ashley*, *ibid*, " … there is no reason why an award of compensatory damages should not also fulfil a vindicatory purpose".

Mr Nicklin analyses that as saying that there were two elements to the award. The first is distress (compendiously used) and the second is vindication. Then he turns to *R (Lumba) v Secretary of State for the Home Department* [2012] 1 AC 245, which he says removes "vindication" from the frame, thus leaving only distress.

127. *Lumba* was a case concerning the unlawful detention by the state of individuals. In the specialised circumstance of the case the Supreme Court had to consider, amongst other things, damages, and the claimants sought "vindicatory" damages. It is plain that this was using "vindicatory" in the sense of non-compensatory, intended to mark "the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter future breaches" (see the citation at p282 H). It is upon Lord Dyson's speech that Mr Nicklin relies. He explains the concept at paragraph 98, accepting that damages of this nature might be appropriate for violation of consitutional rights, but rejected the idea of a further extension. In paragraph 99 he identifies a speech of Lord Scott in *Ashley v Chief Constable of Sussex Police* [2008] AC 962, and then refers to *Mosley*:

> "98. …Lord Scott's view that vindicatory damages have a role in the compensation for civil wrongs and the breach of ECHR rights was endorsed, at least to some extent, in *Mosley v News Group Newspapers Ltd* [2008] EWHC 1777 (QB). In awarding damages for breach of the claimant's right to privacy, after recognising the compensatory nature of damages for infringements of privacy, Eady J said at paras 216-7 that there was another factor which "probably" had to be taken into account, namely vindication to mark the infringement of the right.""

He apparently considers Eady J to have been referring to vindicatory damages in the sense which he was addressing. Lord Dyson then goes on to rule against their recovery.

> "100. It is one thing to say that the award of compensatory damages, whether substantial or nominal, serves a vindicatory purpose: in addition to compensating a claimant's loss, it vindicates the right that has been infringed. It is another to award a claimant an additional award, not in order to punish the wrongdoer, but to reflect the special nature of the wrong. As Lord Nicholls made clear in *Ramanoop*, discretionary vindicatory damages may be awarded for breach of the Constitution of Trinidad and Tobago in order to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach and deter further breaches. It is a big leap to apply this reasoning to any private claim against the executive. *McGregor on Damages* 18th ed (2009) states at para 42-009 that "It cannot be said to be established that the infringement of a right can in our law lead to an award of vindicatory damages". After referring in particular to the appeals to the Privy Council from Caribbean countries, the paragraph continues: "the cases are therefore far removed from tortious claims at home under the common law". I agree with these observations. I should add that the reference by Lord Nicholls to reflecting public outrage shows how closely linked vindicatory damages are to punitive and exemplary damages.
>
> 101. The implications of awarding vindicatory damages in the present case would be far reaching. Undesirable uncertainty would result. If they were awarded here, then they could in principle be awarded in any case involving a battery or false imprisonment by an arm of the state. Indeed, why limit it to such torts? And why limit it to torts committed by the state? I see no justification for letting such an unruly horse loose on our law. In my view, the

> purpose of vindicating a claimant's common law rights is sufficiently met by (i) an award of compensatory damages, including (in the case of strict liability torts) nominal damages where no substantial loss is proved, (ii) where appropriate, a declaration in suitable terms and (iii) again, where appropriate, an award of exemplary damages. There is no justification for awarding vindicatory damages for false imprisonment to any of the FNPs."

128. While no other Justice considered the point in the same terms, and while the interlocking judgments are complex, it would appear that Lords Collins and Philips shared the same view, as did Lords Brown and Roger (implicitly) and Lord Kerr (probably). It should therefore be taken as authority for the proposition stated, and I propose so to treat it. McGregor on Damages (19th Edition) at paragraph 45-007 expresses the view that *Mosley* has been overruled insofar as it justified the award of vindicatory damages in the sense identified in *Lumba*. In *Weller* (supra) Dingemans J held that vindicatory damages in that sense could not be awarded in a claim for misuse of private information.

129. Thus Mr Nicklin claims to be entitled to subtract vindicatory damages from the reasoning in paragraph 216 of *Mosley*. He says that all that is left is damages for distress, and thus he seeks to establish his point.

130. I do not think that Mr Nicklin's line of reasoning gets him to where he wants to be. I do not consider that Eady J is necessarily setting out the entire basis of compensation in his paragraph 216. It is true that he concentrates on the concept of distress (and allied feelings) and does not consider compensation for other elements other than vindication, but he does use the word "includes". It might be taken as foreshadowing merely his later attempt to introduce vindication, but I do not think that that is necessarily so. There is no indication that there was any argument in that case about the sort of compensation for misuse, not involving distress, that is in issue in the present case. It was a case, like most of the other authorities, in which the misuse was inextricably tied up with the distress-causing event so as to make it unnecessary, if not inappropriate, to separate out the misuse as a separate element worthy of compensation. It is not surprising that Eady J should be taken as having expressed himself as he did, and he should not be taken as pre-empting an argument about a further head of compensation of the kind claimed by the claimants in this case.

131. Furthermore, there are indications that Eady J did indeed make an award which went beyond merely reflecting the distress caused. In paragraph 231 he observed:

> "Accordingly, it seems to me that the only realistic course is to select a figure which marks the fact that an unlawful intrusion has taken place while affording some degree of *solatium* to the injured party." (my emphasis)

And in paragraph 235 he said:

> "235. It is necessary, therefore, to afford an adequate financial remedy for the purpose of acknowledging the infringement and compensating, to some extent, for the injury to feelings, the embarrassment and distress caused." (my emphasis)

The emphasised words reflect the possibility of allowing for damages for something beyond what Mr Nicklin would descibe as distress.

132. This conclusion is not to reintroduce vindicatory damages by the back door. I treat as being ruled out for these purposes the sort of damages referred to by *Lumba* and *Weller*. What is still open is to allow for compensation to be given for the act of misuse itself, where appropriate. I do not see in principle why that should not be allowed, and good reasons why it should be. If one assumes for the moment that what each claimant alleges to have happened has happened, the defendant will have helped itself, over an extended period of time, to large amounts of personal and private information and treated it as its own to deal with as it thought fit. There is an infringment of a right which is sustained and serious. While it is not measurable in money terms, that is not necessarily a bar to compensation (distress is not measurable in that way either). Damages awarded to reflect the infringement are not vindicatory in the sense of *Lumba*. They are truly compensatory.

133. This conclusion is supported by the result in *Halford v United Kingdom* (20605/92, 1997). In that case a claim under Article 8 was brought by a senior police officer in respect of the interception of some of her phone calls. Having concluded that that interception was an infringement of her Article 8 rights the ECHR went on:

> "74. Ms Halford claimed compensation for the intrusion into her privacy and the distress it had caused. She informed the Court that in 1992 she had required medical treatment for stress. ….

> 76. The Court, bearing in mind that the interception of calls made by Ms Halford on her office telephones at Merseyside police headquarters, not subject to any regulation by domestic law, appears to have been carried out by the police with the primary purpose of gathering material to be used against her in sex-discrimination proceedings, considers what occurred to have amounted to a serious infringement of her rights by those concerned. On the other hand, there is no evidence to suggest that the stress Ms Halford suffered was directly attributable to the interception of her calls, rather than to her other conflicts with the Merseyside police.
>
> Having taken these matters into account, the Court considers that GBP 10,000 is a just and equitable amount of compensation."

Since no additional distress was caused by the interception, it must follow that the award was for something other than distress, namley the "intrusion into her private life" referred to in paragraph 74.

134. As already observed, it will not be in all cases that it will be necessary or appropriate to consider separating the misuse from the distress, because the infringement and its consequences will be so wrapped up. Mr Sherborne runs his case consistently with that. While he seeks compensation for the misuse of private information as such, in general terms, when it comes to his claims on an article by article basis he does not seek one figure for the distress and a separate award for acquiring the information wrongly and another for actually using it to produce an article. He claims one overall figure per article which reflects all elements, including the seriousness of the misuse.

135. This rationale has the support of the reasoning of the ECHR in *Armonienè*, and must be the underlying but unexpressed reasoning behind the awards in *Weller* and *AAA*. It provides compensation for an infringement of the values protected by the right and it avoids the undesirable consequences of using distress as some sort of measure of the seriousness of the wrong, for which purpose it is highly imperfect. It leaves distress where it should be - one of the consequences (perhaps in many cases the prime consequence) of the wrong, for which compensation should be given, but not necessarily the sole determinant of compensation elements for which it is an imperfect measure. Reflecting, where necessary, the nature and seriousness of the infringements and reflecting them in compensation is a much more satisfactory, and intellectually justifiable, way of reflecting them than the sort of exercise which Morland J seems to have been reflecting in paragraph 81 of his judgment in *Cornelius*. In my view, properly viewed, no authority rules out this approach.

136. This approach also avoids an anomaly which would appear to be highly undesirable. Suppose a case of persistent and serious, but covert, invasions over a period of time against two individuals. One dies before discovery of the wrong, one survives and discovers it, and is duly distressed. If Mr Nicklin were right then the latter would have a claim and the former would have none. That would, in my view, be anomalous. It may be that the latter would have a greater claim, having sustained a greater loss (distress) but the former has also suffered a loss (unknown at the time) via the comprehensive misuse of information. I fail to see why that should not attract compensation.

137. Support for this approach is also apparent from one brief reference in *Tugendhat & Christie on the Law and Practice of Privacy and the Media*, 2nd Edn at paragraph 13.107:

> "The act of intruding on a person's privacy may justify an award of damages in its own right, irrespective of whether any distress has been caused."

The sentence is supported by instances given in its footnote.

138. Since the argument in this case concluded the Court of Appeal has delivered judgment in *Google Inc v Vidal-Hall* [2015] EWCA Civ 311. In that case the court classified the cause of action for misuse of private information as a tort for the purposes of the provisions as to service out of the jurisdiction and considered the nature of damages claims under the Data Protection Act 1998 ("the DPA"). Mr Nicklin sought to rely on that case in support of his submission that distress was the only head of recovery in claims for privacy. The parties each provided written submissions on this case.

139. The relevant part of the case involved a claim for damages for breach of statutory duties imposed by the DPA. Mr Nicklin submitted that that did not make it irrelevant to the basis of a privacy claim, because there is an overlap between the two claims, and indeed they are often pleaded together. The Court of Appeal had to consider the effect of section 13, which provides for damages claims, and whether that was compatible, or could be rendered compatible by interpretation, with Directive 95/46/EC ("the Directive"). Its conclusion was that it could not. In the course of its deliberations the court reflected on claims for distress. In paragraph 92 Lord Dyson MR and Sharp LJ said:

> "Distress is not a rare consequence of a contravention. In some cases it may be insignificant. But it is often the only real damage that is caused by the contravention."

Mr Nicklin relied particularly on the last sentence in that citation. He also relied on paragraph 77:

> "It is the distressing invasion of privacy which must be taken to be the primary form of damage (commonly referred to in the European context as 'moral damage'" and the data subject should have an effective remedy in respect of that damage."

And paragraph 177 (which related to whether the case raised serious claims):

> "On the face of it, these claims raise serious issues which merit a trial. They concern what is alleged to have been the secret and blanket tracking and collation of information, often of an extremely private nature, as specified in the confidential schedules, about and associated with the claimants' internet use, and the subsequent use of that information for about nine months. *The case relates to the anxiety and distress this intrusion upon autonomy has caused*." (Mr Nicklin's emphasis)

140. Mr Nicklin submitted that all these pointed to distress being the sole determinant of recoverable compensation, even to the extent that the loss of "autonomy" had to be reflected in distress if there was to be compensation. He went on to point out that no other form of damage was considered, and said that that was because no other type of damage was available.

141. I did not find this case helpful on the point in issue in this part of this judgment. The case concerned the specific drafting of the DPA and what it provided by way of compensatable loss. The sort of issues which arise in the present case were completely unaddressed, and it would be to read far too much into the case to conclude that it contained inbuilt assumptions which supported Mr Nicklin. It concerned different points on different legislation. "Distress" obviously figured heavily in the claim, but on one reading of paragraph 19 of the General Particulars of Claim (set out at the end of the judgments), the claimants were claiming both for distress and (separately) for loss of dignity and automony, and no adverse comment was made on that. However, I will not read too much into that either. It is sufficient to say that the case was particular to the relevant legislation and claims made in their own circumstances, and it does not impact on the present point either directly or by inference.

142. In one sense the fallacy underlying Mr Nicklin's approach can be demonstrated by how he described privacy rights at the end of a short rejoinder speech which was allowed to him. He said:

> "It is all focused on the bundle of rights that make the article 8 right, that I should be able to control this information, I should not have this information taken from me and published in a way that causes me upset. That essentially is what, we say, is the tort."

143. That, in my view, is a misdescription of the tort. The tort is not a right to be prevented from upset in a particular way. It is a right to have one's privacy respected. Misappropriating (misusing) private information without causing "upset" is still a wrong. I fail to see why it should not, of itself, attract damages. Otherwise the right becomes empty, contrary to what the European jurisprudence requires. Upset adds another basis for damages; it does not provide the only basis.

144. I shall therefore approach the consideration of quantum in this case on the footing that compensation can be given for things other than distress, and in particular can be given for the commission of the wrong itself so far as that commission impacts on the values protected by the right.

145. One brief point needs to be made about deterrence. Mr Nicklin submitted that deterrence was not an additional basis on which damages could be awarded, perceiving that that was part of the claimants' case. If it ever was, it was not a claim made as such by Mr Sherborne. The most that he said was that a deterrence effect was a sort of "touchstone" by which one could consider the adequacy of the compensatory damages awarded. There is no dispute between the parties which is worth resolving here, and a consideration of this point does not assist my conclusions on the issues discussed in this part of this judgment.

One award per claimant or several?

146. The claimants invite the court to make awards of damages for or within each of what I will call 3 strands or layers of activities. In respect of each claimant I am invited to make one overall award for the voicemail interception activities (taken all together, with the qualification referred to below). Then I am invited to make a further award for the blagging of personal information, which is assumed to be the activity of the private investigators, based on their invoices. Third, I am invited to make an award in respect of each of the articles which are admitted, or which I find, to have been the

fruits of the voicemail interception (or PI blagging activity). Mr Sherborne does not claim double recovery with this third element - he accepts that if voicemail interception activities result in an article then compensation for that article will include the interception activities which will (if the exercise is meaningful) be not counted in the compensation in the first strand.

147. The defendant, through Mr Nicklin, advocates a different approach, in part engendered by his submission (which I have found to be wrong) that damages should be awarded only for distress. He says that each claimant should receive an overall sum for all wrongs, whether hacking which did not result in an article, hacking which did, blagging by private investigators or the publication of an article. All wrongs should be subsumed in one overall award. This award would compensate for the overall distress caused by the totality of the wrongful acts.

148. I have already determined that damages for invasion of privacy are not necessarily distress based, so part of the reasoning underlying Mr Nicklin's submissions goes. However, the rejection of that part of his reasoning does not necessarily mean that an overall sum, not divided up into strands, should not be awarded, so I should still consider that point. Furthermore, even if he were correct in his analysis that distress is the only compensatable effect, that would still not necessarily mean that one award per claimant would be the correct approach. As will appear, the question of how many awards should be made is more sophisticated than that.

149. Certain things were common ground between the parties. It was common ground that each invasion of privacy, and each article, is a separate cause of action. However, it was also common ground that that does not of itself determine how compensation should be treated - it does not mean that a separate award has to be made for each separate invasion. How to make up the award is a matter for the judgment and discretion of the court. Thus, in a libel action, while each publication of a libel in each newspaper sold is an actionable publication, an overall award is generally given encompassing all the publications in the edition in question. There was no dispute about that. Thus it is a matter of judgment as to how many awards to make in a case of multiple infringements.

150. Mr Sherborne sought to distinguish between a case where there were multiple causes of action arising out of the same event or incident (which prima facie justified a single award) and different causes of action arising on separate or distinct occasions (which would require separate awards). In support of that he invoked libel cases in which separate libels or slanders published on different occasions gave rise to different awards - *Thornton v Telegraph Media Group Ltd* [2011] EWHC 1912 (QB);

Levi v Bates [2009] EWHC 1495 (QB); *Nail v News Group Newspapers* [2004] EWCA Civ 1708. I do not think that the first two of those cases makes Mr Sherborne's point particularly well. In each of them the trial judge expressed his conclusion on damages in an overall sum and then split it out "if necessary" as between separate wrongs. The third does contain awards of separate sums for separate publications (a newspaper article and a book), but as Mr Nicklin pointed out the publishers of the book and the newspaper were different and sued in different actions (see paragraph 8). It therefore does not completely support Mr Sherborne.

151. Mr Sherborne then pointed to *Cray v Hancock* [2005] All ER D 66 (QB) and *Cooper v Turrell* [2011] EWHC 3269 (QB) as being examples of cases where separate sums were awarded for separate legal wrongs. The second of those does indeed make Mr Sherborne's point. The report of the first is too brief to be able to understand the structure of what is expressed as a total award.

152. Drawing on these strands, Mr Sherborne submits that it is appropriate, in the present cases, to divide up the layers of compensation in the manner outlined above. Separate damage was caused by each article, in the same way that separate damage would be caused by separate defamatory articles. To lump everything together, regardless of the impact of the separate articles, or of the separate types of wrong, would not achieve an adequate reflection of the separate damage caused by the various different types of wrongdoing.

153. Mr Nicklin started by pointing out that the existence of separate causes of action did not inevitably lead to separate damages claims for each, and in support of this relied on *Letang v Cooper* [1965] 1 QB 232 at 242-3. I do not think that the cited passage actually of itself supports Mr Nicklin's proposition, but in any event it is common ground that the proposition is correct and that the court can award an overall sum for multiple causes of action. He then went on to cite various defamation cases in which overall awards were given for publications which were done in various manners - *ReachLocal UK Ltd v Bennett* [2014] EWHC 3405 (QB); *Cruddas v Adams* [2013]EWHC 145 (QB); *Cairns v Modi* [2013] 1 WLR 1015; *Flood v Times Newspapers Ltd* [2013] EWHC 4075 (QB). The first two of those cases are indeed cases in which overall awards were made in respect of more than one publication, but they all turn on their own facts, and the publications were all of a kind and it made sense to take them globally. In the third (*Cairns*) the Court of Appeal made remarks about the desirability of a global award, but in doing so it was not addressing the question of multiple wrongs. It was addressing the question of how analytical the court should (or should not) be in splitting compensation between the three elements of damage which a defamation judgment is intended to address (hurt feelings, vindication and reputation) - see paragraph 37. That is a different point. The last

case (*Flood*) does not help Mr Nicklin in this area. The judge made one award for the three traditional elements, as in *Modi*, as is entirely conventional.

154. In my view the case law does not bind me to take either a wrapped up approach, or a divided up approach. It demonstrates that the court can, and should, take an approach which is appropriate to achieve the objective of a compensatory award - to compensate the claimant properly and fairly for the wrong that he or she has sustained. In some cases a global award will be appropriate to that end; in others a more divided up approach will be appropriate.

155. In my view in the present case it would not be appropriate to grant some global sum to compensate each claimant for the wrongs sustained. The wrongs have too great a degree of separation for that. Articles published are, in most if not all cases, spread out in time, and not analogous to the situation where the same libel is published in different media as part of a pattern of conduct. Furthermore, I accept that there are three areas of wrongful behaviour which need to be looked at separately. First there is the general hacking activity. Each of the individuals had their voicemails (and some of those whom they rang) hacked frequently (in their own cases daily), with most hacks not resulting directly in an article. Their private information was thus acquired and their right to privacy infringed, irrespective of whether an article was published. That fact makes it appropriate to take the activity separately and assess its effect (in terms of compensation) separately from damage arising from publication. It is something in respect of which the claimants are entitled to be compensated and if it is not treated separately from the effect of the articles its real impact may be lost, or perhaps even exaggerated. The only sensible approach is to take it separately from the effect of the articles. It amounts to a separate category of wrong which has to be separately reflected in order to ensure that the objective of the damages award achieves its aim.

156. That, therefore, justifies at least two layers. I also think that it is right that, as a starting point, each article should be treated separately in terms of an award of damages. While some of them may have a common or repeated theme, they are not analogous to the repetition of the same libel which might justify a global award for more than one publication of the libel. Some articles are significantly removed in time from others, and that too makes it inappropriate to lump them all together as if they were part of the same overall damage flowing from a central wrong. They are each capable of giving rise to a separate privacy claim, with separate distress caused. Having said that, an eye must be kept on three things. First, it may be appropriate to take two or more articles together in certain circumstances - perhaps if they are close in time, and/or seem to relate to the same thing or flow from closely related privacy infringements. I shall do that. Second, one must avoid double counting in the form

of allowing a global sum for hacking generally, including hacks which gave rise to articles, and then allowing a further "per article" sum which counts again the hack or hacks which gave rise to the article. Third, I have to bear in mind that so far as distress or hurt feelings are concerned, the effect of the articles is likely to have been cumulative, so some later distress builds on that already caused and should not be assumed to have been caused completely anew by a new publication. One must avoid double counting here too.

157. The way of dealing with those points is not to resort to Mr Nicklin's global approach. It is to make sure that any particular sums are adjusted appropriately, and to make sure (as I shall) that the overall sum appears to be proportionate and a proper reflection of the overall pattern of wrongdoing.

158. I have thus far not considered Mr Sherborne's other strand, the private investigator investigations. There might be a case for lumping that in with the general hacking figure, but it seems to me clearly to call generally for separate treatment. While the content of the investigations is not known in any particular instance, I do not think that generally it will be possible to reflect the particular activities without considering them separately. They are worthy of being a separate layer, as submitted by Mr Sherborne.

159. However, I also think that in the cases before me a separate element has to be considered. It is possible to attribute certain levels of distress to each article. However, all the witnesses spoke of general levels of distress (including distrust of and damage to relationships arising out of the whole pattern of conduct). I think that it is right to reflect this in a separate award, again being careful to avoid double counting for particular facets of this already taken account in awards for each article.

Simmons v Castle - whether 10% should be added to the damages

160. This is a point which emerged in a casual, almost embarrassed, way during Mr Sherborne's reply. It was triggered by a passing reference to a footnote to paragraph 45-008 in McGregor on Damages, 19th Edition, which referred to *Simmons v Castle* [2013] 1 WLR 1239 as requiring the addition of 10% to all damages claims for non-pecuniary loss. Mr Sherborne, in passing, submitted that that addition should apply in the present case. This point was not foreshadowed in any of the lengthy prior submissions, and I was left with the strong impression that it had only just occurred to him.

161. Mr Nicklin's first submission (provided in writing after the close of the trial) was that, the point not having been referred to at all prior to that point of the trial, Mr Sherborne ought not to be allowed to run it. There is much to be said for that point, but in the end the point is a short one which (in the circumstances) is not dependent on any ungiven evidence and it can be dealt with as a new authority.

162. His next point was that the decision of the Court of Appeal in that case should not apply to a case like all 8 of the present cases in which the claimants instruct their solicitors on conditional fee agreements ("CFA's") and in which the success fee would be recoverable as part of an adverse costs award. He analysed the Court of Appeal decision and its background in order to arrive at that conclusion. Mr Sherborne's written reply dismissed this reasoning in one sentence which said that Mr Nicklin's interpretation of authority was not accepted, but without saying why. In my view the length of Mr Sherborne's submissions are directly proportional to their merit.

163. I can deal with the point shortly. It is quite plain from a reading of the decision in *Simmons v Castle* that the Court of Appeal intended its increase of 10% in damages for non-pecuniary loss as being a sort of substitute for the loss of the opportunity to claim CFA success fees, which was removed by section 44(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"). In the reported decision the court amended an earlier direction and re-stated it at paragraph 50 as follows:

> "Accordingly, we take this opportunity to declare that, with effect from 1 April 2013, the proper level of general damages in all civil claims for (i) pain and suffering, (ii) loss of amenity, (iii) physical inconvenience and discomfort, (iv) social discredit, or mental distress, will be 10% higher than previously, unless the claimant falls within section 44(6) of LASPO. It therefore follows that, if the action now under appeal had been the subject of a judgment after 1 April 2013, then (*unless the claimant had entered into a CFA before that date*) the proper award of general damages would be 10% higher than that agreed in this case, namely £22,000 rather than £20,000".

164. The emphasis is mine. It shows that the uplift in damages is in lieu of the opportunity to recover the success fee, though that is not articulated in terms. The whole of the reasoning of the court leading up to that formulation, and its recitation of the Jackson reforms relating to the point, supports that conclusion. See in particular paragraph 27:

> "In our view, it is clear from these observations that both Sir Rupert and the MoJ envisaged and intended the primary purpose of the 10% increase in damages would be to compensate successful claimants, as a class, for being deprived of the right which they had enjoyed since 2000 to recover success fees from defendants, in cases where a claimant was funding the legal costs of pursuing his or her claim by a CFA."

165. It is common ground that the claimants in this action have the benefit of CFA's, and Mr Nicklin's submissions accepted (slightly ruefully) that this litigation is of a class in which an uplift is still potentially recoverable notwithstanding the LASPO reforms. To allow them that benefit and to uplift their damages by 10% would, in the words of the Court of Appeal, give them both the penny and the bun (see paragraph 31). I consider it clear that the Court of Appeal reasoning does not entitle them to such benefits. They have CFA's which are of a type which allows them to claim a success fee (the bun) and they are not entitled to the additional 10% on the damages (the penny).

166. I therefore rule that in assessing the damages in this case, no provision should be made for the *Simmons v Castle* 10% uplift.

Quantum in privacy claims

167. This case occurs in what are relatively early days in claims for compensation for infringement of privacy rights, and there is as yet no large body of case law which gives clear guidance as to how compensation should be awarded in the present cases. As well as proceeding from such current case law as there is, each side sought to draw on other fields by way of comparison (or to dismiss the other side's reliance on those fields, as the case may be). It is therefore necessary to consider that case law.

168. I have already found that the damages should compensate not merely for distress (still using that word as a shorthand, as described above), but should also compensate (if appropriate) for the loss of privacy or autonomy as such arising out the infringement by hacking (or other mechanism) as such. (This may include, if appropriate, a sum to compensate for damage to dignity or standing, so far as that is meaningful in this context and is not already within the distress element.)

169. In the present cases that second element is going to be significant. Each of the claimants (in differing degrees) had their private information rendered freely available, on a daily basis (if on any given day there was any private information in the voicemails) to journalists who used it as they thought fit. Even if not used it was known to them. This was not a situation in which there was a one-off, or two-off, penetration of private information. As pointed out more than once, all or most of the claimants had all their voicemails, and some of the voicemails of their confidants ("associates" in the parlance of this case), listened to twice or more per day for several years. Their privacy was set at nought by the newspaper. I shall come to detail in due course, but in all cases, and again in differing degrees, the claimants' right to control their information was taken from them. It would be quite wrong to confine any damages to compensation for distress, or injured feeling, which they experienced from articles published at this time, and then for additional distress when the enormity (which in my view is the right word) of what happened to them was slowly revealed via information from the police, disclosure and (to a degree, but not fully) admissions by the newspapers. For reasons already given, there ought to be some compensation for this invasion per se, and it will inevitably be significant.

170. So far as privacy claims are concerned, the comparables (all listed by Mr Nicklin) are as follows.

171. *Cornelius v Taranto* [2001] EMLR 329. This was a claim (inter alia) for breach of an implied duty of confidence when a doctor's report was, in breach of confidence, added to the patient's medical records. £3,000 was awarded for the distress caused. Treating this case as being the equivalent of a privacy case, it is early, and the scale of the disclosure and its effect is nothing like the scale involved in the present cases.

172. In *Campbell v MGN Ltd* Miss Campbell (in 2002) received £2,500 plus £1,000 aggravated damages for the publication of details of her drug therapy sessions and photographs of her leaving such sessions. This was treated as "very low" in *Spellman v Express Newspapers (No 2)* [2012] EWHC 355 at para 114 (Tugendhat J). In so concluding he referred to unspecified information about settlements in phone hacking litigation (which must have been a reference to claims against News International, not the Mirror Group). I should make it clear that although I have seen various settlement orders in that litigation (as the managing judge) I have not taken any of those settlements into account in my thinking in this case because I have a recollection only of a sort of range, and I have no knowledge of the facts of any of those settled cases in any event.

173. In *Archer v Williams* [2003] EMLR 38 the claimant was awarded £2,500 for the wrongful disclosure of the fact that she had had plastic surgery. The judge (Jackson J) was influenced by the prior awards in *Cornelius* and *Campbell.* Its value is diminished by the doubts cast on the appropriateness of those levels of compensation.

174. In *Douglas v Hello* [2003] 2 All ER 996 £3,750 was awarded for the unauthorised publication of wedding photographs. The same remarks about its value apply.

175. In *Applause Store Productions* [2008] EWHC 1781 (QB) £2,000 was awarded for an infringement of privacy in disclosing details about relationship status and sexual orientation on the internet. There was also a libel claim in this case and, while it is not possible to dissect the reasoning, it seems to me the award was pitched low to avoid double counting with the libel case.

176. In *McKennit v Ash* [2006] EMLR £5,000 was awarded for wrongful disclosures in a book (with a limited number of sales) about the claimant's business and personal life. This is a low award, but in comparing it with the present case the scale of publication, and the level of intrusion, are far less.

177. In *Armoniene v Lithuania* [2009] EMLR 7 (above) an article was published revealing that an individual in a village had been diagnosed as being HIV positive. The ECHR found that an appropriate award of damages was €6,500 (see paragraph 52). Mr Nicklin relied on this as demonstrating that the award should be low in the present cases. This was a one-off infringement, and it is not easy to ascertain the material which the court had available to it. As an award I did not find it provided any helpful guidance.

178. In *Mosley* the invasion of privacy consisted of the publication of articles and photographs about the activities of the claimant at a sex party. It was a serious case, and in the last paragraph of his judgment Eady J said:

> "236. It has to be recognised that no amount of damages can fully compensate the Claimant for the damage done. He is hardly exaggerating when he says that his life was ruined. What can be achieved by a monetary award in the circumstances is limited. Any award must be proportionate and avoid the appearance of

> arbitrariness. I have come to the conclusion that the right award, taking all these considerations into account, is £60,000."

I note the reference to the effect on the claimant - that his life was ruined. That underlines where this case stands in terms of seriousness. In arriving at his conclusion Eady J had considered the purpose and role of damages:

> "231. Notwithstanding all this, it has to be accepted that an infringement of privacy cannot ever be effectively compensated by a monetary award. Judges cannot achieve what is, in the nature of things, impossible. That unpalatable fact cannot be mitigated by simply adding a few noughts to the number first thought of. Accordingly, it seems to me that the only realistic course is to select a figure which marks the fact that an unlawful intrusion has taken place while affording some degree of *solatium* to the injured party. That is all that can be done in circumstances where the traditional object of *restitutio* is not available. At the same time, the figure selected should not be such that it could be interpreted as minimising the scale of the wrong done or the damage it has caused."

179. Mr Nicklin cited the Northern Irish case of *McGaughey v Sunday Newspapers Ltd* [2011] NICA 51. In that case a newspaper had published photographs of the claimant and his house without his consent, and suggested that a well-known loyalist had recently lived there. The point in the case was whether the claim should be transferred to the county court, for which purpose the likely level of damages was a key factor. The thrust of the reasoning in that case was that damages for infringement of privacy would be likely to be "modest" (see paragraph 19). *Mosley* was regarded as an exceptional case and it was said that the distress element of these cases would be likely to be below those applicable in employment harassment cases (a point I consider further below). This case would support generally modest damages, but on its facts the level of infringement of privacy in this case does not begin to approach the levels in the present cases.

180. In *Cooper v Turrell* [2011] EWHC 3269 (QB) the privacy claim was for disclosure by one director of a company to another of private health information relating to a third (the claimant, which information had been obtained by covert recording. There was also a libel claim. Tugendhat J expressed the view that since this was medical information the disclosure was "at a high level of seriousness" (para 103). The information (actually an erroneous version of it) was published on a subscriber website with a substantial readership among important participants in financial

markets. The judge regarded *Mosley* as being a more appropriate guide to the level of damages than earlier cases. He regarded the comparatively lesser level of dissemination in his case as important, along with the deliberate publication of falsehood, and said:

> "107. I shall award £50,000 to Mr Cooper as damages for libel and an additional £30,000 for damages for misuse of private information. Since damages for libel include compensation for distress, I must avoid double counting. If I had been awarding damages for misuse of private information alone, I would have awarded £40,000 for that."

181. In *WXY v Gewanter* [2013] EWHC 589 a claim was bought in both harassment and invasion of privacy (and breach of confidence). The first two elements were closely intertwined on the facts, and indeed so closely intertwined that the judge declined to separate damages for each of them separately (see paragraph 53). The invasion of privacy consisted of the publication on a website of various personal details. The judge (Tugendhat J) awarded general damages of £19,950 (excluding aggravated damages). I consider the reasoning of this case below. It is sufficient to observe for present purposes that it seems to me that this case proceeded predominantly on a harassment basis, not privacy, and it is an uncertain guide for this reason alone. The case is heavily relied on by Mr Nicklin, not least because its reasoning relies on *Vento v Chief Constable of West Yorkshire Police* [2002] EWCA Civ 1871, a case which Mr Nicklin makes one of the cornerstones of his reasoning on damages.

182. In *AAA v Associated Newspapers* (above) a child was awarded £15,000 for the publication of three photographs. Claims for privacy in respect of associated articles were rejected. This is a very significant award for these three incidents, even allowing for the factor, expounded by Nicola Davies J, that the award:

> "should serve as notice, both as to the present and the future as to how seriously the court regards infringements of a child's rights" (para 127).

Mr Nicklin said that this was over-generous. The children should have got no more than nominal damages. That follows, logically, from his analysis of what damages for infringement of privacy are designed to compensate. Since I have found that analysis to be wrong his criticism fails. I would, however, have thought that those sums are at the top end of what would be appropriate in the circumstances.

183. I have already referred to *Weller*, in which £5,000 was awarded to a 16 year old girl for publication of unauthorised photographs, with £2,500 being awarded to younger siblings.

184. It is not possible to analyse the effect of these disparate judgments in too refined a fashion. However, the following observations can be made:

(i) They show an increasing tendency to appreciate, and give effect to, the seriousness of invasions of privacy. The difference between the amounts awarded in the later cases and the amounts in the earlier cases cannot be explained by inflation or the seriousness of the later cases. The amounts awarded in the earlier cases were too low because (as it were) they were too low, as was acknowledged in *Spellman*.

(ii) With the exception of *WXY*, the judges did not seek guidance from other areas in the sense of drawing parallels which they followed, though no doubt in some of the cases where libel was also alleged libel damages may well have been in mind.

(iii) None of the cases involved the award of sums which begin to approach the sums claimed by the claimants in my 8 cases. They are all (even the most serious) very much less, even in cases which were expressed to be very serious cases. Having said that, it is apparent to me that if the factual cases of the claimants on the scale of the invasions in the present cases are correct (and even on the admissions of the defendant) the scale of the invasion of privacy in the cases before me is very much greater than in any of the reported cases. The invasions of privacy in the present case were not invasions on a few closely related occasions, or invasions which ultimately led to the publication of one article (or a small number of factually closely related articles). Nor were they the equivalent of the publication of a photograph on two or three occasions. They were invasions which are said to have been carried out on a daily basis, and to have resulted in a number of articles which, while they may have a common theme, are not the equivalent of a libel repeated in several articles over a period. The present cases also contain invasions of privacy on a grand scale which did not result in any form of publication (save for discussions amongst journalists in some instances), and none of the reported cases involve that. So far as all that is true (and I think it is) they are very important distinguishing factors, which make the direct application of any of the figures in those cases inappropriate.

Comparison with *Vento*

185. Each of the parties sought to draw parallels with the assessment of damages in other areas.

186. Mr Nicklin's prime comparative area was that of the tort of harassment, and at the heart of his submission was *Vento v Chief Constable of West Yorkshire Police* (above). That was a case in which harassment led to clinical depression and loss of employment. The important part of this case, from Mr Nicklin's point of view, was that part which dealt with damages for distress (or injury to feelings, as it was termed by the Court of Appeal in that case), and it was closely allied to his submission (which I have rejected) that distress is the only area of general damages in privacy cases. So far as the damages in this case consisted of, or included, that element, he said that the damages should be constrained by the bands of compensation established by that case (the "Vento bands"). The importance of the point to his submissions can be judged by a document prepared during final submissions in which he allocated each of the 8 cases to a Vento band (updated for inflation) and proposed an approximate sum of damages accordingly.

187. The court in that case (in the judgment of Mummery LJ) was concerned that damages under that head should not get out of hand - see the citation in paragraph 53 and paragraph 61:

> "61. At the end of the day this Court must first ask itself whether the award by the Employment Tribunal in this case was so excessive as to constitute an error of law. That was the conclusion of the Appeal Tribunal and it is clearly right. The totality of the award for non-pecuniary loss is seriously out of line with the majority of those made and approved on appeal in reported Employment Appeal Tribunal cases. It is also seriously out of line with the guidelines compiled for the Judicial Studies Board and with the cases reported in the personal injury field where general damages have been awarded for pain, suffering, disability and loss of amenity. The total award of £74,000 for non-pecuniary loss is, for example, in excess of the JSB Guidelines for the award of general damages for moderate brain damage, involving epilepsy, for severe post-traumatic stress disorder having permanent effects and badly affecting all aspects of the life of the injured person, for loss of sight in one eye, with reduced vision in the remaining eye, and for total deafness and loss of speech. No reasonable person would think that that excess was a sensible result. The patent extravagance of the global sum is unjustifiable as an award of compensation. It is probably explicable by the understandable strength of feeling in the tribunal and as an expression of its condemnation of, and punishment for, the discriminatory treatment of Ms Vento."

188. The court then proceeded to give guidance and to establish the "bands" in paragraph 65:

> "Employment Tribunals and those who practise in them might find it helpful if this Court were to identify three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury.
>
> i) The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.
>
> ii) The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band.
>
> iii) Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings."

189. Mr Nicklin uprated those bands, to allow for inflation, to £21,795 - £36,325, £7,265 - £21,795 and £727 - £7,265 respectively. He cited other harassment cases in which awards were made which demonstrated these sort of levels of awards, and which were said to show that they applied even in the case of sustained and vicious campaigns. He then impliedly equated the worst cases of the 8 sample cases with the cases in the top Vento band, and fitted others in lower down.

190. I do not consider that this approach is correct. First, the hypothesis from which it gets its primary significance in this case is false - it is not right that damages can only be claimed for distress (or the equivalent to "injury to feelings" in *Vento*). I have dealt with this point above. An award for infringement of privacy rights is capable of including other elements, and when those are added in the idea of a scale, let alone the *Vento* scales, becomes inappropriate.

191. The same was held of libel actions in *Cairns v Modi* [2012] EWHC 756 (QB). In that case *Vento* was relied on by the defendant as requiring what the court described as a more analytical approach in libel cases, requiring judges to break down general damages and attribute discrete amounts to different heads. It is not recorded that the claimant submitted that the *Vento* bands should be applied to any "injury to feelings"

part of the damages, and there is no hint that the Court of Appeal thought that they should. The conclusion of the court was that *Vento* was dealing with its own specialist area, and the multiplicity of factors that made up a libel damages award made an analytical approach (and presumably an "allocation into bands" approach) inappropriate:

> "36. Mr Tomlinson suggested that having regard to the need for consistency and proportionality a similarly analytical approach would be appropriate in the context of defamation. In *Vento* the court was seeking to establish a workable but consistent convention, tailored to meet the relatively new context of discrimination in the work place. The process of compensation in defamation cases is well established, and in any event is multi-layered, and in the overwhelming majority of cases goes well beyond the assessment of compensation for injury to feelings arising in discrimination cases.
>
> 37. We can foresee practical difficulties in adopting a comparably analytical approach in libel cases. Because there are the three elements of hurt feelings, injury to reputation and the need for vindication, there would arise almost infinite opportunities to appeal based on criticism of the judge's allocation of particular sums under these respective headings and for arguments that one of them ought to have received more or less monetary recognition relative to the others. It is not unrealistic to put forward three broad bands in the limited context of hurt feelings for discrimination in the workplace. By contrast, the combination of circumstances and the different features which fall for consideration in libel claims vary enormously and do not lend themselves to straightforward categorisation."

192. I think that the same applies to privacy cases.

193. Furthermore, the nature of the wrong in harassment cases, compared with the wrongs in the cases before me, makes direct application of the bands inappropriate. Harassment consists of a course of conduct over a period, building up to harassment, causing distress to feelings. In the present case that is not the analysis. The systematic hacking might be viewed as a course of conduct, I suppose, but then every so often its fruits rise the surface in the form of a published article. Each article is capable of giving rise to a level of distress. Another article might cause more distress, either building on an earlier article, or on its own. It is not apparent how *Vento* is to apply to that even if one focuses just on distress.

194. Nor is it apparent even just the distress element of privacy claims should be equated with harassment for these purposes. The distress in harassment cases comes from having sustained the harassment in question. Each case will be different, but ultimately the source and its consequences will be of generic kinds, although differing in their degree of severity. This sort of situation lends itself better to the sort of banding that the Court of Appeal thought was appropriate in that case, in order to give guidance to tribunals in the future. The ways in which privacy is invaded, and the resulting distress, does not fall under that sort of description, in my view.

195. Mr Nicklin submits that *Vento* was apparently applied in *WXY*, above, and he seeks to draw support from that. It does appear that *Vento* formed a material part of the judge's reasoning, but that seems to me to be for two related reasons. The first is that while the case was put in both harassment and privacy (and breach of confidence) - see the trial decision of Slade J at [2012] EWHC 496 (QB) - it appears that Tugendhat J (who was assessing the damages arising from the preceding decision) seems to have considered that in damages terms it was really a harassment case:

> "52. … the claim for harassment is not separate from the claim for misuse of private information. The harassment consisted in the actual and the threatened publications."

196. The second is that that parties had agreed that the *Vento* bands applied (see paragraph 25) and the judge proceeded on that basis. That made sense on the footing that it was really a harassment case (or was treated as such).

197. In this context it is of note that none of the other English privacy cases have apparently relied on *Vento,* as Mr Sherborne pointed out. Even Tugendhat J's cases, other than *WXY,* where he had an agreed position as between the parties, do not refer to it. The only exception in the above catalogue of case is *McGaughey*. At paragraph 10 the Northern Irish Court of Appeal observed:

> "16. The hurt and distress arising from discriminatory treatment within an employment relationship is in our view aggravated by the fact that an employee is entitled to expect compliance with the obligation of mutual trust and respect within that relationship. The context is, therefore, completely different and explains why the level of damages for hurt feelings will generally be higher in the field of discrimination in employment."

198. With respect, I do not think that that level of generality can be applied. Some cases will, and some cases will not, exceed levels of hurt and distress in an employment relationship. I do not consider that this case compels me to confine the damages in these cases to *Vento* bands.

199. Accordingly I do not think that this case requires me to apply the *Vento* bands in any privacy case, let alone the present cases. I do not propose to do so.

Other areas relied on for guidance and conclusions

200. Mr Sherborne submitted that *Mosley* demonstrated that there was scope for an analogy between libel damages and privacy damages. Paragraph 214 of Eady J's judgment in that case said there was "some scope for analogy" because both defamation and privacy had their roots in Article 8. However, he went on to point out the differences between the constituent parts of defamation and privacy damages, and did not indicate how the analogy would work. No-one in this case was able to show how it worked either. At least on the facts of this case I was not assisted by any analogies in terms of assessing quantum, other than to acknowledge that one should have an eye to the same constraints imposed in defamation cases by keeping an eye on personal injury general damages and making sure that defamation damages did not get out of line with those, a point made by Eady J in paragraph 218. The need to keep an eye on personal injuries compensation was urged on me by Mr Nicklin, and I accept that submission. I have done that but its significance in these cases is very limited. An analogy with personal injury works on a single wrong by single wrong basis. Thus the effect of a single given libel can be compared with a personal injury award arising out of a single accident. But where there are multiple occurrences (which there have been in the present cases) one has to make sure that sufficiently discrete wrongs are not treated discretely and treated as single wrong. If there is any useful reality check from personal injury cases in the present matter it is not against the total award for each claimant, which is made up from the aggregate of a number of wrongs, but with individual elements within it.

201. Mr Nicklin sought to draw a parallel with cases involving surveillance, and pointed to apparently low sums paid in that area. He cited *H and H v The Police Federation* IPT/03/23/CH, *Gibbon v Rugby BC* IPT/06/21/CH and *Halford v United Kingdom* (20605/92, 1997). This parallel is not without its attractions, but the trouble with all those cases is that it is not possible to reach any conclusions as to the level of surveillance in those cases. Nor is it possible to discern what the applicants were being compensated for. Accordingly those cases do not assist. I have already made the point that in *Halford* the compensation seems to have been in respect of something other than distress. That sum (£10,000) demonstrates that substantial amounts can be awarded for the intrusion itself.

202. I therefore proceed on the basis that there are no other torts, or at least no decisions in relation to other torts, which provide decisions, amounts or criteria which can be directly transposed into privacy cases. Having said that, they cannot all be ignored. They are capable of providing a sort of sanity check on any amounts which are

proposed. If an award looks way out of line with personal injury cases, then it might have to be tempered. If an award in relation to something that looks like a single privacy incident (comparable to an incident of defamation) vastly exceeds the current ceiling on defamation awards (£280,000), then it may have be questioned and adjusted. Beyond that, those other areas do not clearly assist.

Aggravated damages - principles and generally

203. It is common ground that, as a matter of principle, aggravated damages are available to the claimants when suing for infringement of privacy. There was substantial agreement on the underlying principles, but some disagreement as to some of the nuances and clear disagreement as to the extent to which such damages should be awarded in this case. However, the underlying agreements mean that I can deal with this point more shortly than would otherwise have been the case.

204. The main underlying point, on which there was an agreement, is that aggravated damages are compensatory in their nature. They are not punitive. They may be given where the conduct of the defendant has increased the loss beyond that which would have existed in the absence of that conduct. Lord Reid put it thus in *Broome v Cassell (No 1)* [1972] AC 1072 at 1085:

> “"It has long been recognised that in determining what sum within that bracket should be awarded, a jury, or other tribunal, is entitled to have regard to the conduct of the defendant. He may have behaved in a highhanded, malicious, insulting or oppressive manner in committing the tort or he or his counsel may at the trial have aggravated the injury by what they there said. That would justify going to the top of the bracket and awarding as damages the largest sum that could fairly be regarded as compensation."

205. The topic has recently been reviewed by Underhill J in *Commissioner of Police for the Metropolis v Shaw* [2012] ICR 464. I do not need to set out extensive passages from that helpful judgment. In the light of the areas of non-controversy on this point in this case it suffices if I say that it establishes the following points:

(i) It reiterates that the damages are compensatory, not punitive.

(ii) They are, at least usually, an aspect of injury to feelings. The aggravating factors cause greater hurt, and thus increase the damages.

(iii) There are typically three aspects of conduct of the defendant which are capable of triggering an aggravated damages award - the manner in which the wrong was committed, motive and subsequent conduct.

(iv) The third of those factors can include the manner in which the trial (and a fortiori the litigation as a whole) is conducted by the defendant.

(v) A separate figure for aggravated damages can be given; or it can be wrapped up in one overall figure. Underhill J tended to favour the latter course.

206. The amount of aggravated damages is a matter for the court assessing the general damage. There is no conventional award. It is conceptually possible for aggravation to double the non-aggravated damage, though in my view that is likely to be rare.

207. The claimants variously rely on various aspects of the conduct of the defendant as giving rise to aggravated damages. They are:

(a) The systematic, widespread and long-standing nature of the unlawful activities.

(b) Their covert nature.

(c) The effect on the claimants, leading to what Mr Sherborne (and some claimants) described as "paranoia" and wrongful suspicion of friends and relatives.

(d) The knowledge and complicity of senior MGN officers.

(e) The defendant's uncooperative attitude to disclosure, contrary to its protestations that it was anxious to get to the bottom of the matter.

(f) The deliberate impression given to the public that no unlawful activity had taken place and that the defendant was unaware of that activity. Disingenuous statements were said to have been given to the Leveson inquiry and subsequently.

208. The extent to which any of these, if established, affects the claims of any of the individual claimants will be dealt with in the sections of this judgment dealing with each claimant, but some general determinations can be made here.

209. As to (a), I have already made findings that the practice of phone hacking was indeed widespread, institutionalised and long standing. I have already found them to be covert within (b).

210. As to (c), I do not consider that this is really an aspect of aggravated damages. So far as it is true of any claimants it is part of the overall effect of the activities, and not really separable out as somehow aggravating something that already existed. Using aggravated damages to deal with this introduces unnecessary complexity.

211. The facts relating to (d) have already been found.

212. (e) revisits the disclosure point which I have dealt with above. It is not appropriate to base aggravated damages on a series of deemed but non-existent (and unargued) disclosure applications. I cannot make a finding that some of them would inevitably have succeeded; and I cannot make a finding that the deemed resistance of those applications was beyond the scope of what would be viewed as normal litigation postures (which would not attract aggravated damages).

213. (f) requires some more exposition. Until it made admissions in this litigation, no prior admissions had been made by or on behalf of the Mirror group as to the existence of phone hacking. Public pronouncements were made which presented the posture that it had not gone on. The claimants rely on these as aggravating the damage. The relevant pronouncements were as follows:

(i) An internet report on Sky News referred to the contents of a statement of a Mr Brown, who had been a Mirror journalist in and prior to 2006. In 2007 he is said by the article to have provided a statement in connection with unfair dismissal proceedings, which were settled. The statement provided information about phone hacking practices at The People. It contained a riposte from the holding company which is recorded as saying:

"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." A similar version of the story and statement appeared on a Reuters website.

(ii) In evidence given to the Leveson inquiry Mr Wallace (by then editor of the Daily Mirror) denied knowledge of phone hacking amongst the showbusiness team. I have already accepted Mr Evans' evidence that he sat across the table from Mr Wallace doing it, so it follows that the inaccuracy of this statement has been established for the purposes of this trial.

(iii) In evidence given to the Leveson inquiry Ms Tina Weaver, then still editor of

the Sunday Mirror, denied knowledge of phone hacking or even of gossip of it. I have already found that she was involved in it, and she clearly had knowledge of it in the evidence I have referred to, and in the light of those findings this evidence was wrong.

(iv) Ms Sly Bailey, Chief Executive of Trinity Mirror, told the Leveson Inquiry that she had seen no evidence of phone hacking, but she also said that there had been no investigation to see if there was any. She considered that there was no evidence and that in the light of that it was not healthy to "go around conducting investigations". Whether or not she had personal knowledge of phone hacking is not something that I can make a finding on, but Mr Brown's statement might be thought of as being some evidence, but the main point of this for present purposes is the firm position of denial adopted by the group.

(v) In an online report in the Independent on 29th October 2012 the group maintained this position when the new chief executive, Mr Simon Fox, is recorded as saying "We have no reason to believe that there is any substance to a [particular accusation of phone hacking]". However, the words are preceded by an acknowledgment that if there was any wrongdoing it would have to be investigated. This was in the context of the first four actions having been commenced against the defendant (including Ms Gulati's).

214. I find that on the evidence I heard (which I accept did not include evidence from the individuals concerned) wrong, not just disingenuous, statements were made to the Leveson inquiry by at least 2 deponents, and that the newspaper group was indeed putting up what was in effect a strong denial, from which it has had to resile. I also find it likely that some of the witnesses were aware of Mr Brown's allegations by the time of the Leveson inquiry if not before - it is inconceivable that in the face of that inquiry, with senior journalists and executives giving evidence, that some of them did not know about it. However, the extent of that knowledge is not something that was investigated at this trial, and there are limits to the proper findings that can be made about it. It is sufficient for the claimants' aggravated damages cases that the newspapers were adopting a posture of denial, and apparent denial of the existence of evidence. That is capable of being an aggravating factor. Whether it was in any particular case is something that I will consider later.

215. The last point about aggravated damages, at this point of this judgment, is a general one about quantum. Mr Sherborne's case was that in all cases the aggravating factors justified extra damages of 100% of the "unaggravated" damages. I am far from convinced that applying a markup like that is an appropriate way of going about the exercise, but in any event I can say at this stage that while some aggravated damages are going to be appropriate, they are not going to be anything like 100% of "unaggravated" damages.

Mitigation of damages by the defendant

216. This a point taken by Mr Nicklin. He says that the apologies that have been tendered in this case should be taken into account when assessing the totality of the hurt suffered by the claimants. He made the somewhat internally inconsistent submission that the apology did not necessarily reduce the damages, but it should be taken into account in assessing the level of hurt. If it were capable of doing the latter it would be capable of reducing the damages, so I do not understand how those two propositions stand together. I accept that in some circumstances an apology would be capable of having the effect contended for my Mr Nicklin, but not in this case. On the evidence it has not done much to reduce the hurt because most of the claimants were unimpressed by it (or them). More than one commented on the comparative (lesser) prominence of the newspaper apology when compared with the prominence given to some of their stories. In my view it is largely an irrelevance. It has come very late in the litigation (an early apology is capable of having more effect than a late one – see, in the defamation context, *Thornton v Telegraph Media Group Ltd* [2011] EWHC 1881 (QB)), and whatever the internal motivation may have been (as to which there was no evidence other that what can be gleaned from the terms of the letters themselves) it is the objective impact that is significant for the claimants. The view that the apologies were a sensible tactical move for the purposes of the litigation rather than being than born purely of a donning of a genuinely litigation-independent contrition and desire to make amends is a justifiable one in the circumstances. It is quite understandable that the apologies have done nothing to mollify the claimants or reduce their level of hurt, which I find is the case.

V – THE CLAIMS IN THIS ACTION – GENERALLY

The individual claims

217. In this section of this judgment I shall set out and make findings about the individual claims of the various claimants respectively.

218. It was a characteristic of the evidence of the individuals that, not surprisingly, they could not remember lots of details of what messages they received in their voicemails, or details of messages that they left for others. Accordingly their descriptions of the sort of voicemail traffic that they say was listened to by Mirror group journalists and editors were understandably general in their nature. That does not detract from their importance or the privacy of the material. Each claimant can justifiably say that their privacy was infringed when any voicemail was listened to, whatever its content. The extent to which their complaint is magnified by the fact that private information was heard and shared is something for me to assess in the light of the evidence of each claimant as a whole. I have in mind the application of

Armory v Delamirie in this area, and make proper assumptions in favour of each claimant but within the bounds of reality.

219. In each case I shall start by setting out the rival contentions of the parties as to the overall general damages. In the case of each claimant the figure will not include any element for aggravation. The reader can assume a claim for aggravation which doubles the general damages claim. The defendant's figures include such elements of aggravation it might be prepared to allow, but it is not apparent that there were any. I shall then make findings about the extent of the hacking in relation to the claimant; set out information about the activities of the private investigators; set out the gist of the articles complained of; and then make findings about the general effect of the activities on the claimant. Then I shall consider the compensation payable, taking the articles first and then dealing with more global sums. Mr Yentob is slightly different because of the absence of articles in his case.

220. I should record a remarkable stance taken by the defendant in relation to submissions on damages. The defendant, of course, does not accept the claimants' methodology, and is not obliged to do so. However, insofar as the claimants' methodology is to be preferred it would have been of great assistance to me to know what view the defendant took on figures assuming the claimants' methodology to be correct. I asked, in terms, for such assistance. I was completely rebuffed for reasons that were completely unconvincing. They included a submission that the defendant could not suggest figures because to do so would be to participate in an exercise which it considered to be without utility, flawed and impractical. It certainly would not have been impractical, and it seemed to me that the defendant's stance suggested an unfamiliarity with the everyday litigation occurrence of a party making submissions on the assumption that on a prior point it is wrong. The defendant also refused to engage on the question of the amount which would be appropriate for other layers of compensation which the claimants relied on. The refusal to assist the court was, in my view, a surprising step taken for tactical reasons, which sat ill with the frequently professed anxiety of Trinity Mirror to co-operate with the claimants, get to the bottom of things and resolve matters. It is made all the more regrettable by the fact that these cases were test cases intended to establish some sort of guidance for settling or deciding future cases, in which I would have expected full assistance on potentially relevant matters. In the end I did not make an order that the defendant should supply submissions, and decided to proceed without the benefit of them. That meant that not only did I not have the benefit of figures from the defendant; it meant that I did not have the defendant's comments on the seriousness or otherwise of every individual article (though I did have limited comments on a limited number of them, particularly where the level of privacy was disputed). Nor did I have any assistance in relation to the "global" parts of Mr Sherborne's computational technique. That does not mean, of course, that the claimants' figures are to be accepted on all fronts. I still have to apply judgment. But I would have been assisted by submissions from the defendant.

221. When considering the amounts to be awarded in relation to publications I have born in mind the circulation and readership figures of the newspapers, which were substantial. The daily circulation figures for the Daily Mirror were just over 2m in 2003, falling to 1.5m in 2008. However, its readership would be much more than that. The claimants said it was 2.5 times that, making it over 4m in every year except 2008. During the same period the circulation figures of the Sunday Mirror were 1.7m in 2003 declining to something over 1.3m in 2008. The same multiplier is applied to the readership. The People's figures for the same period were 1.1m falling to 669,000. These figures, and the readership figure, appeared in the report whose figures were not challenged by the defendant. They demonstrate a considerable readership for the articles in issue in this case. Furthermore, all the articles in the present cases were made available online. It is not clear whether the online readership was included in the multiplier.

222. One point that tends to arise in relation to a number of articles is the question of a low level of privacy in relation to the article in question. In relation to a number of them Mr Nicklin submitted that the content of the article was not really private with, I presume, the consequence it should therefore attract no compensation. This point is not technically open to him in relation to any admitted article because of the deemed admissions arising out of the manner in which the defendant chose to plead its Defences. Each of the articles has to be deemed to contain some private material. However, that does not entirely deal with the point, because the offensive nature of each article in privacy terms, and therefore the compensation payable, must be relevant to the level of compensation to be attributed to it, so I cannot ignore the level of privacy which they attract. The question arises as to what the approach should be if the level of privacy does seem to be virtually non-existent.

223. The problem has been magnified before me because, first, while the claimants have pleaded standalone privacy cases, they have not pleaded which parts of the various articles are said to attract privacy. As the narrative shows, many articles contain some plainly non-private information. For their part, the defendant has not sought to dissect most of the articles into the private and non-private. Furthermore, the emphasis in this litigation has been more on the first act of infringement of privacy, namely the hacking, rather than the second one (the publication), so there has been little debate about just how private and sensitive some of the information is, beyond assertion and counter-assertion.

224. The answer to the point seems to me to be twofold. The first is that the defendant's deemed admission does not admit to any particular level of privacy, and it is open to me to find that the privacy is at a trivial level if the facts require it in any particular case. The second is to recognise that merely identifying triviality does not necessarily

mean that no substantial (ie other than nominal) compensation is payable in respect of that item. In respect of the bulk of the articles (the "admitted" articles) the defendant's admission about source and causation has to be borne in mind – it has been admitted that they would not have been published but for the prior invasion of privacy from hacking (or, perhaps, other allied wrongs). That means that the article is the exploitation of a wrong, and could attract compensation even absent any real privacy level in the information itself, albeit that a low, or even non-existent, privacy rating is likely to lead to low compensation. Insofar as it is realistic to assume that the particular piece of information was acquired as a result of activity which itself was an infringement of privacy (which is in most if not all cases) then a useful parallel would be to treat it as if it were covered by an express confidentiality obligation. The publication of such an item would be a breach of obligation. The significance of the information would be capable of affecting the compensation payable, but one would also have to bear in mind the fact that, on the admissions in the case, the article would not have been published had it not been for the wrongful act. That means one has to take into account the effect on the victim of the disclosure, who was in the circumstances entitled to have the matter not disclosed, and even if there might be a question-mark about the privacy of the item, if the effect is serious then substantial damages ought to be payable even if someone else, discovering the information from a different route, and publishing it, might not be liable.

225. I can also usefully anticipate another point which occurs in relation to a number of articles. Some of them disclose the existence of a new relationship between the claimant and a third party. Mr Nicklin has taken the point that there is no privacy in the existence of a relationship, and attacks the level of privacy claimed for the article (and the preceding infringement of privacy rights which led to its discovery) on that basis. It will be useful to set out what I consider to be the true position in relation to that.

226. Mr Nicklin relies on *Trimingham v Associated Newspapers Ltd* [2012] 4 All ER 757 at para 285. In that case Tugendhat J said:

> "285. While there will commonly be a reasonable expectation of privacy in respect of the details of a sexual or family relationship, the position is not the same in respect of the bare fact of a sexual relationship: *Lord Browne of Madingley v Associated Newspapers Ltd* [2008] QB 103, Sir Anthony Clarke MR at [59]; *Ntuli v Donald [2010] EWCA Civ 1276*; [2011] 1 WLR 294 paras [3] and [55]; *Hutcheson* paras [8] and [10]; *Goodwin v NGN Ltd* [2011] EWHC 1437 para [90]."

I note the use of the word "commonly", which qualifies both parts of the sentence. That the existence of a relationship may attract privacy is anticipated by one of the authorities relied on, namely Tugendhat J's own judgment in *Goodwin* at paragraph 91:

> "Ntuli is not authority for the proposition that the bare fact of a relationship never attracts a reasonable expectation of privacy."

227. I therefore consider that Mr Nicklin's proposition is over-stated. The existence of a relationship is capable of being a private matter, and one can imagine good reasons why, in the initial stages, it would be right so to treat it. There may be good reasons why, in a great number of cases, it should not be treated as private, or why any privacy evaporates after a short period of time, but I do not see why there should be a blanket rule. The individuals may, for example, wish to control how it is revealed to the world. They may wish to be able to conduct it free from any purely salacious interest that might arise if it were conducted publicly. Although the point was not argued before me, it seems to me, therefore, that there is no blanket rule such as that contended for by Mr Nicklin.

228. Furthermore, even if there were such a blanket rule, it would not operate so as to justify (or allow) reporting in such of the present cases to which it might apply because, in the cases where the point arises, the relationship was only found out about by an act which was itself an infringement of privacy – phone hacking (or associated unlawful activities). In those cases, for the reasons given in the preceding paragraphs, the wrong becomes the composite act of finding out about the relationship unlawfully and then publishing it. The position would be very similar to that obtaining if the relationship were a matter capable of being protected by privacy rights.

229. In making my assessments in respect of the individual claims I do not apply any general bands or tariffs, with one exception. The variable nature of privacy claims makes that a difficult, if not impossible, exercise. I have, however, sought to apply the following principles (inter alia):

i) The subject matter of the disclosure is not a rigid guide to the amount of compensation. However certain types of information are likely to be more significant than others. Thus medical information is more likely to be high in the ranks of information which is expected to be private, so its interception and disclosure is likely to attract a higher, rather than a lower, figure. That information can relate to matters of mental health as well as physical health (if that is an appropriate description of non-mental health issues). However, even that kind of information has a range – not all medical-related disclosures will be treated equally seriously. It depends on the nature of the information.

ii) Information about significant private financial matters is also likely to attract a higher degree of privacy, and therefore compensation, than others.

iii) By contrast, information about a social meeting which is used to get a photograph is, of itself, likely to attract a lower degree of privacy (in terms of compensation), though it is capable being magnified by other factors, such as contributing to a sense of persecution.

iv) Information about matters internal to a relationship will be treated as private. The amount of compensation payable will depend on the nature of the information listened to and disclosed, in part on the amount of distress and upset caused and in part on the effect on the relationship. Information which is disruptive of the relationship, or which is likely to affect adversely the attempts of the couple to repair it if that is what they are trying to do, is likely to be treated as a serious infringement deserving substantial compensation.

v) Further categorisation is not realistically possible.

vi) The appropriate compensation will depend on the nature of the information, its significance as private information, and the effect on the victim of its disclosure. A short-lived effect based on embarrassment will attract less compensation than a life-changing intrusion such as that inflicted on Mr Mosley.

vii) The effect of repeated intrusions by publication can be cumulative. What starts out as irritation or embarrassment on the first disclosure can become a justified persistent feeling of distress or upset on repeated disclosures.

viii) The extent of the damage may be claimant-specific. A thinner-skinned individual may be caused more upset, and therefore receive more compensation, than a thicker-skinned individual who is the subject of the same intrusion. Mr Nicklin accepted that, in relation to distress, the "egg-shell skull" principle applied, though I should add that I do not think that any of the claimants in the 8 cases before me were particularly sensitive.

230. The one exception is the figure for general hacking – a figure to reflect the fact that for a considerable period an individual's voicemail, and those of associates, were listened to and the private lives exposed there were studied by at least one journalist and probably more, on a frequent, sometimes daily, basis. All the claimants in this case have this common factor. I think that a starting point for that element should be £10,000 for each year of serious levels of hacking. By "serious" I mean hacking every few days, if not daily, as a matter of routine – the difference will not matter much in the case of a non-deleter of voicemails – with more frequent hacking if something interesting seemed to be happening. It also includes a degree of farming to widen the information pool in relation to that individual. This would require adjustment to reflect various things. First, if the frequency of hacking is less then the amount might go down; and vice versa. Second, the sort of levels of information likely to be available both in terms of amount and in terms of levels of privacy is therefore likely to affect the amount – those whose calls reflected more deeply private matters might have an increased sum, and vice versa. Third, if there is very extensive farming then the amount might be more, and vice versa. Fourth, some of

the hacking will have resulted in articles, and an allowance must be made to avoid double counting for that. But I shall take £10,000 as a starting point for the serious case in serious years. It seems to me to be the appropriate sum. Neither party made submissions for a tariff along these lines, so I received no submissions going directly to the point. Mr Sherborne proposed global figures for his clients in respect of a corresponding element of their claims which do not of themselves allow the figure to be extracted, but are not way out of line with it. Mr Nicklin, for reasons I have already given, did not propose any corresponding figure at all.

231. It will be apparent from that that this particular element will not be applied slavishly as a mathematical calculation. When I give the figure for each claimant I will carry out such adjustments as seem to be appropriate in their respective cases.

232. I need to draw attention to one further point before turning to the individual claims. The penultimate section of this judgment ("The 'Disclosure' Relief") I draw attention to the possibility of a further award for all claimants once it has been established whether they are pursuing and should have further inquiries and disclosure to ascertain what private information the defendant actually became privy to. My final conclusions on each claimant are subject to the possible adjustment referred to in that section.

VI - THE INDIVIDUAL CLAIMS – THE DETAIL

233. In taking the individual claims it will be useful to take Mr Yentob first because he is the only claimant who did not have articles printed about him on the basis of overheard voicemails. His case therefore turns on listening to voicemails and the activities of the inquiry agents. Where I recite articles it should be assumed that all articles are "admitted" unless the contrary appears. By "admitted" I mean that they fall within the scope of the admission of the defendant that the article would not have been published had it not been for preceding unlawful activity (which, in essence, generally means hacking).

Mr Yentob

234. Mr Yentob's claim: £125,000.

Defendant's proposal: c £10,000 (middle *Vento* band).

His position, use of voicemail and why he was likely to be of interest to the Mirror group newspapers

235. Mr Yentob, as set out above, had a series of important positions within the BBC. Leaving aside some of his earlier roles, he was Director of Programmes in 1997, and Director of Television in 1998. Since 2004 he has been the Creative Director, and for

many years has been a member of the BBC's Executive Board. He gave his evidence clearly and in a measured way and I accept it all. I reject Mr Nicklin's suggestions that he was not a witness who was at all times trying to assist the court. As will appear, the tone of his cross-examination was, in the circumstances, surprising.

His use of voicemail, and its contents

236. During the period in question Mr Yentob had two mobile phones, but the vast majority of the calls were to just one. He said that that was the one given to him by the BBC, and that that was the phone he carried with him for most of the time. He was immensely busy and frequently was not able to answer his phone because of his activities. For that reason he made extensive use of his voicemail. Callers would leave messages, and they would build up and he would deal with them when he could. As noted earlier in this judgment, he was known not to answer his phone (so he could be used as a demonstration of hacking without fear that he might actually answer). Because of the nature of his job he frequently communicated about various matters relating to programming and other matters important to the BBC, such as its involvement in the Hutton inquiry. Some of this information is likely to have been commercially sensitive. It will have been of interest to the newspaper because much of it will have related to the entertainment industry which provides the basis of so much of its output. He gave or accepted as examples his involvement in the storyline of Eastenders; his involvement in the development of, and participation of celebrities in, Strictly Come Dancing; and discussions about who might be replacing Kylie Minogue as a judge on The Voice. It was not suggested that he could recall any of these matters actually being the subject of any messages; they were examples of the significance of the material which would routinely be left. In short, Mr Yentob's phone traffic would have contained an enormous amount of entertainment-related material of interest to journalists. It will also have contained more political material.

237. He, and those whom he contacted, were often in meetings, so immediate telephone contact was frequently not possible. That meant, in his case, that a lot of messages were left in his voicemail, and he left a lot of messages for others. He was not, however, a great deleter of messages. He would allow his mailbox to fill up before eventually deleting some, then the process would start again. Accordingly at any given time his voicemail box would be likely to have plenty of messages for listening to. It was an attractive target for finding out all sorts of things about the BBC and the entertainment world.

238. He also received and left a lot of messages involving his personal and social life. His social life was extensive, and involved many well known people in whose affairs the press might well be interested. He provided a list of social contacts in the public eye. It is unnecessary to reproduce that list. It is sufficient to observe that they would be

people of interest to the press, so any messages left by them would have been potentially very interesting. Two of his close friends were Lord and Lady Rogers. A significant amount of his voicemail traffic related to that relationship. At one stage the information led Mirror journalists to wonder whether Mr Yentob was having an affair. The belief that he was was passed from one journalist to another. In fact they were wrong - he was not - and nothing was published about it. That point, however, demonstrates how the information from hacking was likely to spread round journalists, to the further detriment of privacy in the item in question.

239. In short, the material available to the Mirror journalists who hacked Mr Yentob was wide-ranging, sometimes highly confidential, usually private, related to a lot of matters of great significance to Mr Yentob and others and was available to use to pursue, develop or stand up stories about people other than Mr Yentob.

The duration and extent of hacking

240. Mr Yentob presents the earliest evidence of phone hacking. Mr Hipwell describes how he was hacked as early as 1999. I accept that evidence. He was a regular and frequent target. During Mr Evans' period he was on his back pocket list, which means that he was hacked as a minimum twice a day, and the nature of his voicemails coupled with the fact that there are likely to have been a lot of them makes it more likely that he was often hacked more often than that. It is likely that journalists other than Mr Evans will have been hacking him.

241. Call data is consistent with this, at least for 2002. The first call recorded in the newspaper's landline records is on 9th September 2002. It will be remembered that no data is available for the period before mid-2002. Mr Hipwell's evidence makes it impossible to conclude that this was the first call. There are the 360 calls (according to Mr Nicklin's count) to Mr Yentob's mobile phone between September 2002 and March 2005, though the pattern of calls in the years is different. There are more in 2002, fewer in 2003, and the records tend to peter out in that year. None are recorded in 2004, and only 2 are shown in 2005. Some are so short as to indicate that there was nothing to listen to, or nothing was listened to, but others are long enough to demonstrate listening. One set of entries, early on, may demonstrate an attempt to crack a PIN rather than a successful hack, but most must reflect an actual access to listen to voicemails. They come from 18 different extensions, covering all three titles. That does not necessarily mean 18 different journalists were conducting the operation, but in my view it is likely that a significant number were involved - far more than Mr Evans.

242. This particular set of data is not the entire story. Mr Nicklin submitted that the data shows that hacking stopped in 2005. That is an unjustifiable inference which does not reflect the totality of the evidence. It shows that no use was made of the Mirror landline after 2005; and indeed it shows that there was none in 2004, though Mr Nicklin does not go so far as to submit there was no hacking in 2004. But that is not the only route for hacking. One must remember Mr Evans' evidence about the use of burners. Most of his calls will have been done on burners (indeed, there is only one call from the landline which emanates from Mr Evans' extension, but on the basis of his unchallenged evidence it is known that he hacked Mr Yentob daily), and the same is likely of many other journalists. Mr Yentob's phone was such a valuable source that it is inconceivable that it was not hacked a lot more than is reflected in the landline records. It is impossible to conclude that the his voicemail interception stopped in 2005. It is likely that it went on on a very serious scale until hacking stopped, or was largely cut back, when Mr Mulcaire was arrested in 2006.

243. All this means that Mr Yentob's phone was hacked at least twice a day, and often several times a day, for a substantial part of a period of about 7 years, though perhaps for not the whole of that 7 years. I expect the intensity rose as more and more people got used to the technique and its usefulness. All aspects of his personal and business life were exposed because of the nature of his use of voicemail. This is an enormous intrusion. In those terms this is a serious case. To this one adds the possibility of "farming" his other contacts, the extent of which it is impossible to determine.

The use of private investigators

244. Just 2 invoices have been disclosed relating to Mr Yentob. The first is dated 31st July 2002, is in the sum of £70, is referenced to Mr Scott and is for "extensive inquiries". The subject matter is "A Yentob". Nothing about it or its context at the time enables one to infer with any degree of reliability what it was, but its amount suggests little time was spent. It may have been for "spinning" a number, but in any event it is admitted that it was for an unlawful activity. The second is dated 10th September 2002, and is headed "Yentob/Rogers. It is in the sum of £260 (plus VAT). It is described as being "for extensive inquiries on your behalf", addressed to Mr Buckley. The subject matter suggests that it was in pursuit of something passing between Mr Yentob and Lady Rogers - it may well have been for information which was thought to go to the supposed affair. It is most likely to have been for phone records or a credit card bill.

245. Only those two invoices have been disclosed. It does not seem that inquiry agents played a large part in putting together patterns for Mr Yentob. This layer will add little in terms of compensation to the hacking layer.

The impact on Mr Yentob

246. Mr Yentob gave compelling evidence of the effect of the hacking on him. He did not know at the time that he had been hacked, and only found out when the Metropolitan Police told him that he had apparently been a victim, relatively recently in the course of their inquiries. His "distress", to use Mr Nicklin's portmanteau term, dates from then. The extent of it will only have become apparent as the case unfolded, and in particular when Mr Evans' and Mr Hipwell's evidence became available. In his evidence in chief he said that the scale had only become apparent to him in the preceding couple of weeks.

247. He described himself as being "appalled"; he felt he and his family, friends and associates had been "violated on a truly massive scale". It was as though someone had been able to search through his personal belongings ; he was left feeling "invaded and sickened". He lost the sense of security in relation to what he had considered a secure method of communication. He denied the suggestion in cross-examination that this was now historic. He was particularly concerned that even now he does not know what information was obtained. It has affected his children who have been upset about what may have been revealed. While he did not claim it had ruined his life he did say that it has unsettled his family, which must have had an effect on their relationships.

248. He was plainly also angry. Mr Nicklin submitted that anger was not an appropriate subject of compensation. I disagree, in the context of this sort of claim. To a degree it is part of the hurt and upset, and feelings of anger are, for these purposes, akin to hurt. It is probably difficult to separate the two, psychologically speaking.

249. Mr Yentob would have been partly appeased by a prompt apology, and his letter before action had asked for one. However, no apology came until less than a month before the trial. He regarded the apology as feeble, and considered there was more that could have been done to investigate the matter, though it seems to me that in the circumstances some of that may have been a bit unrealistic in the light of the evidence that I have heard about how steps were taken to cover tracks. He remembered hearing the denials made to the Leveson inquiry (see above) and felt "very let down" by those and by the statements which were apparently intended to be denials of wrongdoing.

250. Mr Yentob's evidence about this was given in a straightforward fashion, and I do not consider that he has exaggerated or embellished for the purposes of this trial. While he has not sustained the anxieties over a long period from the publishing of articles, he has nonetheless experienced real deep hurt and anger at having gradually discovered the apparent extent of the invasion of his privacy.

251. Mr Sherborne listed various matters as going to aggravated damages. Some of them are repetitions of some of the significant underlying facts, and not appropriate to aggravate the damages. Two require mention:

(i) As I have mentioned, Mr Yentob feels that not enough has been done by the defendant to investigate the matter, and he was particularly irritated and disappointed (I think that those are appropriate words) at assertions in the apologies that practical investigations had taken place internally and did not accept it. The fact is that it is not known in these proceedings what internal investigatory steps were taken in these proceedings, though it has to be said that not much, if any, of the material emanating from the defendant comes from its own investigation as opposed to the requirements of the disclosure obligation or the agreed disclosure given to the Metropolitan Police (which by no means amounts to a full investigation of the whole background). I can see why Mr Yentob is disappointed, but it does not seem to me that this feature materially increases his hurt and I do not consider it to be a particularly aggravating factor.

(ii) The second is the manner and content of his cross-examination, which led to him feeling indignant. I have to say that at the time of the cross-examination it struck me that the tone (but not necessarily the content) was completely at odds with the expressions of regret, contrition and apology made by the defendant, in the pre-trial apologies and during the course of the trial (and in particular in Mr Nicklin's opening). While the avenues of inquiry pursued by Mr Nicklin were in the main legitimate in relation to the issues at the trial, his tone, and some of the questions within those avenues, were far more hostile and combative than a contrite posture would have led one to expect it would be. I think that in the case of Mr Yentob it is worthy of a small amount of aggravated damages, but I shall not specify it as a separate sum.

Alan Yentob - Findings on damages

252. In the case of Mr Yentob I shall specify one overall sum, which takes into account the extent and nature of the invasion of his privacy from the phone hacking, the activities of the private investigators and the effect on Mr Yentob. I shall allow a very modest amount of aggravated damages in respect of his cross-examination, and consider the effect on him of the retracted denials by Mirror officials as part of an assessment of his degree of hurt rather than aggravated damages. The overall figure which I have

come to for Mr Yentob is £85,000.

Lauren Alcorn

253. Ms Alcorn's claim: £168,000 (before aggravated damages)

Defendant's proposal: c £15,000 (middle *Vento* band)

254. Ms Alcorn is the only one of the eight representative claimants who was or is not in the media spotlight because of her profession. Rather, she was and is a flight attendant with Virgin Atlantic who, between December 2000 and sometime in 2006, was in an on-off relationship with Mr Rio Ferdinand, who went on to become a top national and international football player. It was for that reason that she attracted the attention of the Mirror group newspapers. Other than that, she is not someone in the public eye at all. She is still employed by Virgin Atlantic, although was on maternity leave at the time of the trial.

255. I found her to be a completely genuine witness who was genuinely distressed at what happened to her, and indeed by the fact that she had to give oral evidence. I record that in her case Mr Nicklin's cross-examination did not betray the surprising vigour brought to bear against Mr Yentob.

256. When she could, Ms Alcorn used her phone frequently. However, given the nature of her job, Ms Alcorn would be unable to access it for long periods of time, sometimes for several days at a time. On occasions she would return from an overseas trip to find her mailbox full. She was therefore a heavy user of voicemail and explained how people would leave her messages, some lengthy, about issues including relationships and family issues whilst she was flying. She would also leave voicemails for friends and family, including, during some periods of their relationship, daily messages for Mr Ferdinand.

257. When she first met Mr Ferdinand and started her relationship with him she was relatively young - just 19. She and Mr Ferdinand left lots of messages for each other during their relationship, which will have reflected the ups and downs of that relationship. Members of her family left messages for her, including messages relating to the death of her father which occurred during this period. Other messages will have related to other aspects of her private life which, while of no interest to the newspapers, will nonetheless have been private. She also left a large number of private and sometimes intimate messages for Mr Ferdinand on his voicemail.

The duration and extent of the hacking

258. Ms Alcorn met Mr Ferdinand in December 2000. Since that is the beginning of the relationship which triggered press interest, hacking cannot have started before then. When it did start is not clear but the first entry in the landline logs is on 30th October 2002. Calls to Mr Ferdinand's phone were apparently in full swing from when the new system was installed. Far more calls were made to Mr Ferdinand's phone than to Ms Alcorn's. It is notable that there are some groupings. Thus in November 2002 there are days on which several calls were made to both Ms Alcorn and Mr Ferdinand's phones. It is to be inferred that something had happened to pique the interests of journalists on those days and they were ringing more than once a day in order to try to get some information. Mr Scott was particularly active in making calls at that time, judging from the consistency of the use of his extension. Some of the calls have a "null" duration, suggesting that they were the first call in the double tap procedure. The first three months of 2003 have daily calls, mainly to Mr Ferdinand, often with more than one call per day, and the rate per day then falls a little during 2003, though for extensive periods calls were nonetheless made every day from the landline. The entries thereafter are somewhat sporadic.

259. Ms Alcorn believed she changed her number in about 2004. However, there is no evidence that there was any particular break in hacking activity, and call data shows calls to her former number after that date. It was not suggested that hacking stopped after the change of number, so this event seems to have had no significance. Mr Nicklin pointed out some equivocation as to whether she set a PIN on her Orange account, but for the reasons that I have given above that is of no real significance in her case. It is admitted she was hacked, and Mr Evans had her on his back pocket list, so one way or another the Mirror newspapers got into her voicemail messages.

260. The records show far more calls to Mr Ferdinand than to Ms Alcorn. That may reflect the fact that he was hacked more because he was of more general interest to the newspapers. It may also reflect the fact that, as an Orange user, the journalists could access her voicemails by ringing the generic landline number. Those calls must have been hacking calls. In the course of that hacking the journalists will have heard much information private to Mr Ferdinand, and it cannot be assumed that every call to Mr Ferdinand's number represented the acquisition of information private to Ms Alcorn. However, messages that she left for him on his phone will also have been her private information, so a significant number of the calls (more so in the first half of the period than the second half) will have involved listening to matters in which Ms Alcorn had a legitimate privacy interest.

261. As with all claimants, however, the landline does not tell the complete story. First, she had an Orange phone, so the Orange landline number was available to hackers. It

is known that Ms Alcorn was on Mr Evans' back pocket list, so she was called by him at least twice a day, from his burners. I find that it is likely that other calls were made from burners which are not recorded anywhere. The disclosed records show a handful of calls made to Mr Ferdinand from journalists' non-burner mobile phones. That supports the inference that calls were made from other phones. Few calls are recorded on the landline in 2004 and 2005. The last call to Ms Alcorn's number is recorded as being on 25th January 2006, and the last one to Mr Ferdinand's phone was on 22nd March 2006. It was in 2006 that the relationship finally ended. An email from Ben Proctor to Mark Thomas dated 25th January 2006 contains her telephone number, indicating some continued interest in Ms Alcorn at that point. A further email of 31st January 2006 from David Jeffs to Debbie Manley, both on The People, asks:

> "can we keep trying the rio girl from last weekend Laura Alcorn".

This is probably a reference to an article published two days before, and again demonstrates a continued interest and, in particular, an intention to hack. There is no other sensible inference from the word "trying".

262. An email from Mr Evans to Mr Buckley dated 29th July 2003 says that Mr Ferdinand is almost certainly still in a relationship with Ms Alcorn, and asks if it is worth revisiting the story. It is likely that Mr Evans picked this up from his hacking activities.

263. The sensible inference from this material, which I draw, is that Ms Alcorn was of interest to the newspapers (calls from both The People and Sunday Mirror journalists extensions are recorded) from 2002 until 2006. Since interest in her was in one relationship only, I do not consider it likely that her phone was under intense scrutiny for all that time in the same way as, for example, Mr Yentob's probably was. The principles in *Armory v Delamirie* do not compel me to conclude that she was. Nevertheless for part of this time she was the subject of Mr Evans' daily attention during this period, and from time to time of the attentions of others. Her private life, however, was also invaded when Mr Ferdinand's phone was hacked, because of the messages that she left for him. That is likely to have been more frequent (though doubtless there were many occasions on which Mr Ferdinand's phone contained nothing from her).

Articles published

264. Two articles were originally pleaded as having been obtained as a result of misuse of private information, and it is expressly admitted that they would not have been published without the benefit of such information. The articles were as follows:

265. **Article 1**

Date - 5th January 2003; Sunday Mirror (hard copy and online)

Headline - "Rio playing away - Star cheats on his girl with Air Hostess".

This is a 3/4 page spread with 1 large picture of Ms Alcorn outside her mother's house taken without her knowledge; 1 picture or Mr Ferdinand; and 2 smaller pictures of other women Mr Ferdinand has been associated with. The article "exclusively" reveals that Mr Ferdinand is having an affair with Ms Alcorn, details how they met and a "friend's" account of their relationship. It describes her job, that Mr Ferdinand lavished gifts on her and that he sends a car to pick her up because it would be too risky for him to pick her up himself. It quotes a "friend" about the relationship. It is said that the article is offensive because it describes how certain girls were "picked" to join Mr Ferdinand and friends when they first met, and because the "friend" (likely to be non-existent) is reported as saying she was "starstruck". I reject the first point, and the second adds little to the case.

266. **Article 2**

Date - 19th October 2003; Sunday Mirror; hard copy and online

Headline - "Rio Phone Sensation - Ferdinand's secret call"

This article was published in conjunction with another article about Mr Ferdinand missing a drugs test. That second article does not refer to Ms Alcorn at all - it is about other events and contacts surrounding that test. The first article is not identified as such in Ms Alcorn's pleaded case as an article relied on, but it seems to have been accepted that it was the fruit of hacking . It reports that "Rio Ferdinand phoned his mistress on the day he missed his drugs test, it was claimed last night". It was "behind the back of his long term partner Rebecca Ellison". Mr Alcorn is quoted as saying they were close and talked on a daily basis, but had reportedly admitted to friends that their affair was based on sexual chemistry. She admits that she did tell a reporter that they talked and spoke on a daily basis, but explained that she only felt she had to talk to the reporter in the context of his existing knowledge of the relationship which the newspaper ought not to have acquired in the first place. The article reports that they were seen leaving a Docklands

Hotel. A friend reported on the quality of their sex life but that Mr Ferdinand always returned to his long term partner.

267. **Article 3 (not admitted)**

Date - 2 November 2003; Sunday Mirror; hard copy and short version online

Headline - "Football: Rio 'shopped'".

This article is about Mr Ferdinand's missed drug test, and whether he was the victim of an anonymous tip-off. It contains no reference, explicit or implicit to Ms Alcorn. Her evidence is that it should be inferred that the information from this story comes from unlawful activity in relation to the original article.

268. Whether or not Ms Alcorn is right about that, it is clear that this article as such adds nothing to her claim in relation to particular articles. Her evidence about source is just speculation. Even if it is right its publication does not amount to a material further invasion of privacy.

269. **Article 4 (not admitted)**

Date - 21 December 2003; Sunday Mirror; hard copy and online

Headline (of the relevant part) - "Soccer star who can't resist playing the field"

This article is in a "box" within a very much larger (2 page) article about Mr Ferdinand's activities. It briefly summarises Mr Ferdinand's relationships with his girlfriend, Ms Alcorn and another woman. The article mentions that he spent the day before his missed drugs test with Ms Alcorn and called her on the same day. Ms Alcorn says that this information would not have been available but for the hacking of her telephone. I find that that is true. Against the background of this case, the knowledge their being together and of the telephone call is likely to have come from hacking, or (in the case of the call) from private investigator material. The defendant has not produced any evidence as to the source.

270. **Article 5**

Date - 29th January 2006; The People - hard copy and online

Headline - Dad-to-be Rio meets Ex for Showdown - Exclusive - You're history, he tells Lauren

This article describes the purpose and nature of a meeting that took place between Mr Ferdinand and Ms Alcorn the previous weekend, at which it is said that Mr Ferdinand indicated the end of their relationship, in the context of his partner's recent pregnancy. It is said that he "bumped into" Ms Alcorn at a hotel where the latter had already booked a room (and the room is identified). There are references to Ms Alcorn having repeatedly telephoned and texted him.

271. The defendant has produced no evidence as to the source of the article. It is significant that in the few days between the meeting and the article there are several calls to both Ms Alcorn's and Mr Ferdinand's phones, which look like the first part of a double tap. There are also at least two invoices for private investigators covering work in that period (albeit in relatively small sums) and two other invoices which might have covered that period too. Three of those four invoices are addressed to Debbie Manley, from whose extension one of the apparent double-tap calls was made. Having regard to that evidence, the general background of hacking and the lack of any evidence the other way, I find (although it is necessary to do so in the light of the admission) that this article was the product of unlawful information gathering - probably both hacking and blagging (the private investigator material).

Private investigator invoices

272. There are thirteen private investigator invoices covering a period from 3rd January 2003 to 3rd February 2006. 7 have her name on as the subject; 1 has her and Mr Ferdinand's; 2 have Mr Ferdinand's alone; 2 have "R Ellison" (Mr Ferdinand's girlfriend); and one has a name ("E Berkovic") which Ms Alcorn did not recognise, but is the name of someone mentioned in one of the articles about drug testing. They are all admitted as being in relation to the wrongful obtaining of private information about Ms Alcorn. The first two were 2 days before the first article; the next six were in the 9 days before the second article. The next was 3 days before the 5th article, and the remaining 4 were in the 5 days following it. While their subject information cannot be ascertained with any certainty, it is likely that the activities were in relation to the articles that were published. It is plausible that the one preceding the 5th article was to get information from the hotel (perhaps from a bill) which enabled the newspaper to identify the room number or the fact that Ms Alcorn had herself booked in.

The impact on Ms Alcorn

273. Ms Alcorn had sought to keep her relationship with Mr Ferdinand private. That was quite likely to become a tall order when it was a relationship with such a high profile figure as Mr Ferdinand, but she was entitled to privacy for her communications. She found it "scary" and particularly upsetting that private investigators had been digging into her private information. She felt sick about the email traffic that she has seen (which is very limited) about her, passing between senior journalists. She had managed to identify only a limited number of articles but felt there were more because she remembers a number of articles being published.

274. She was completely shocked at the first article, and could not understand how the newspaper can have known she was visiting her mother (which is where the article's photograph was taken), or about her relationship with Mr Ferdinand, which she had sought to keep private. She found it sickening to know that this was done by hacking her phone. At the time she thought that leaks were coming from friends, and began to doubt her friendships, and even her own family. Having seen her in the witness box I am satisfied that this caused her deep and lasting upset. Mr Ferdinand accused her of leaking things to the press, causing inevitable upset in that relationship.

275. The second story was upsetting again, and increased what she described as her paranoia about her family and friends. This caused the break-up of friendships. She also suffered from stress at work, because she feared being recognised by crew or passengers. The later articles added to the stress. Knowing that the stories came from going through her private information made it even worse. Having to relive them in the period leading up to the trial "cast a shadow" over the last year.

276. The result of the fourth article was that people started questioning her about the story, apparently believing that Ms Alcorn knew more than the newspaper printed. She felt hounded and bombarded.

277. Mr Nicklin submitted that I should not accept all her evidence about the effect on her of the publications at face value, but did not really articulate why. I do accept her evidence. Where it is entitled to take her is, of course, a potentially different point.

278. Like other claimants, she considered the apology sent to her to be too little too late. In fact it made her even more angry because she was none the wiser as to what she called the reasons and justification for the activities. She was being a little harsh

here. It is obvious that the newspaper was not putting forward any justification, and the reasons for what went on were pretty plain - it was to get stories to sell newspapers. She considered that the only adequate public apology would have been one published on the front page of the newspapers.

279. On 12th February 2006 the Sunday Mirror published an article about Ms Alcorn and her relationship with Mr Ferdinand which was, on this occasion, published after an interview with Ms Alcorn. She said it was a twisted version of what she had said, but that was not investigated in her evidence. She had various reasons for giving that interview. One was to achieve a demonstrable break with Mr Ferdinand. However, she also said, and I accept, that she would not have given it had the previous articles not appeared. She was paid for it, and she wished to have some money to acquire a house of her own because living at home had become difficult as a result of the newspaper's disclosures. As a result of that interview more details of her relationship with Mr Ferdinand were put in the public domain, this time with her consent.

Ms Alcorn - findings on damages

280. I shall deal with the articles first, before considering damages within the other "layers".

281. In his submissions Mr Nicklin said that the information published in the articles was not private information because the existence of a relationship was not inherently private - *Trimingham v Associated Newspapers Ltd* [2012] 4 All ER 757 at para 285. Accordingly the first article disclosed little that was private (he did not indicate what he accepted to be private).

282. I have dealt with the proper approach to this point above. In my view this point is not open to Mr Nicklin on his pleadings, and is weak on the evidence. Nor is it open to him to say that there is no standalone privacy claim in relation to the articles (so far as that might be relevant). So far as the pleadings are concerned I have outlined above the shape of the Defences as they arrived at the trial. There is a clear allegation of privacy in relation to information in the article and a clear statement that a standalone allegation of infringement of privacy (as opposed to repetition of private information unlawfully acquired) in paragraphs 18 and 22 of Ms Alcorn's Particulars of Claim. The defendant deliberately chose not to plead to those allegations. They are therefore deemed to be admitted. It is not now open to Mr Nicklin to dismiss the allegations of privacy in relation to those articles in the manner he does. That is not to say that every statement in the articles has to be treated as private, but it is not open

to him to say that none are, or to mount an attack on the clear allegations of what is said to be private.

283. **Article 1**

The first article is the fruit of serious intrusion on Ms Alcorn's privacy rights, and contains information about a relationship which she would not have wished to make public. She was shocked and upset about it. Mr Nicklin made his point about the non-private nature of relationships in relation to this article. The answer to it appears above. This relationship was capable of being private, or treated as private, and his deemed admission on the pleadings makes it impossible for him to argue otherwise in this instance. That is not to say that every statement in the articles has to be treated as private, but it is not open to him to say that none are, or to mount an attack on the clear allegations of what is said to be private. In any event, I find that the information was ascertained from an infringing act which gives it much the same quality for the purposes of assessing compensation. There is a photograph taken without her permission, and unknown to her, and the only reason it was taken is because of the private information which revealed the relationship. Ms Alcorn is entitled to significant compensation in relation to that article, including compensation for the distress it has caused, and I consider that she should receive £12,000. This figure includes the prior invasions of privacy (hacking and blagging) which led to it and supported it.

284. **Article 2**

The second article repeats the existence of the relationship, and if that were all then it would attract a probably much lesser sum if it merely relied on the same material. However, it adds additional details - a telephone call on the day that Mr Ferdinand missed the drugs test (likely to have been ascertained by hacking or blagging) and that they visited a particular hotel (again likely to have been determined by hacking or blagging, or both). It therefore deploys different material, and makes further disclosures. It understandably added to Ms Alcorn's distress, and will have contributed to the paranoia about her relationships to which I have referred. I consider that she should receive a further £10,000 for this article, again to include the infringements of privacy which led to it. Mr Nicklin submitted that the disclosures had to be viewed in the light of the quote given to a journalist by Ms Alcorn. I disagree. The quote only had to be given because the journalist was in a position to confront Ms Alcorn with material he or she should not have had in the first place.

285. **Article 4**

This article essentially repeats what is said in the second. It probably does not represent any additional hacking or blagging activity aimed against her, but will inevitably have

added to the distress and hurt and disruptions to relationships arising from the preceding infringements and publications. I consider that as compensation for the publication of this article she should receive £5,000.

286. **Article 5**

This article develops new infringements. It is an intrusive article containing information about the distressing circumstances of the end of a relationship. It must have been very distressing to see it published and I consider that she should receive £15,000 in respect of that article as well.

287. Those awards include compensation for the acts of invasion of privacy (hacking and private investigator blagging) which led to the publication of the articles and the acquisition of the information on which those articles was based. In addition she is entitled to compensation for the commission of the wrongs (depriving her of her autonomy). I must avoid double counting. More than half of the private investigator invoices were probably attributable to the published articles and have therefore been taken into account in the figures I have already awarded. The last four (three of which have her name in the subject title and are therefore likely to have been investigations in relation to her) have not been taken into account. She should receive a further £3,000 in respect of those.

288. So far as hacking generally is concerned, she is entitled to a figure to reflect the fact that her private messages were listened to frequently over several years. Without wishing to suggest that her information is any less private than Mr Yentob's, conceptually speaking, I consider that the amount of significant private information that was listened to will have been rather less than his, and that she will not have been hacked as often as he probably was, though I also allow for the fact that some of her private information will also have been on the phone of Mr Ferdinand. Taking out of account the hacking acts which I have already counted in awarding the sums per article, I consider that the proper sum for to compensate her for those invasions generally is £17,500.

289. In Ms Alcorn's case I have taken into account much of the general effect on her life in the specific sums awarded. However, there was an additional effect in terms of general upset and effect on relationships which should attract a further sum of £10,000.

290. I do not think that it is material to these conclusions that Ms Alcorn made her own disclosures to the newspaper in 2006. She did not do that because she was content for her private matters to be disclosed. She did it for a variety of reasons and that was not one of them. However, the key point is that she would not have done it had it not been for the prior articles published by the Mirror newspapers. They put her in the position that aspects of her life had already been disclosed, and the damage therefore

done, and in the position that the effect on her home life was such that she wished to have some money to enable her to move out. This does not affect the damage done by the publication of the articles, or of the intrusion into her private life by frequent hacking.

291. In Ms Alcorn's case there is not much scope for aggravated damages. She does not seem to have been affected by denials of liability made by Mirror employees, and she was not cross-examined harshly. Mr Sherborne submitted that the presentation to her, without warning, of the article written as a result of the interview she gave in 2006 was an unfair ambush with a disclosable document. He said it caused her distress which aggravated the damage. I think that the document was disclosable, and Ms Alcorn certainly indicated that she did not wish to read it again, but that particular incident in cross-examination is not sufficiently significant to require any aggravated damages. Such aggravating factors as there were have already been taken into account in the sums for the articles.

292. It follows that Ms Alcorn should receive aggregate compensation of £72,500

Robert Ashworth

Amount claimed - £327,000 (plus aggravated damages)

Defendant's proposal - c £20,000 (top of middle *Vento* band)

293. Mr Ashworth was, between June 2001 and late 2004, married to Ms Tracy Shaw, a long-standing actress in the popular soap opera Coronation Street. In his own right, Mr Ashworth was a freelance TV producer. This meant that both Mr Ashworth and Ms Shaw would be filming for large portions of the day and therefore unable to use their phones. As a result, they were both, it seems, heavy users of voicemail.

294. Mr Ashworth's marriage to Ms Shaw was, at times, turbulent. Eventually it collapsed and they divorced. During periods of such turbulence, the couple would leave voicemail messages for each other covering private issues relating to their relationship difficulties, Ms Shaw's personal struggles and their plans, including fertility treatment. Voicemail was also an important method of communication with others, including his mother, his lawyer, Ms Shaw's therapist and Ms Clare McGlinn, a friend Mr Ashworth shared with Ms Shaw. Amongst other things, Mr Ashworth would recount problems he was experiencing in his marriage to this small group of individuals and would receive messages from them on the same topics. In addition general private matters in his life would be referred to in voicemails.

295. Ms Shaw was a particular leaver of voicemail messages during her troubled times, particularly during a period when she had problems with alcohol and an eating disorder. Mr Ashworth explained that he would sometimes not want to pick up calls from her, and she would leave him long drunken messages about him, her, their relationship and her wishes for it. As he put it, journalists who listened to these messages, and messages he left for her on her phone, would have "a front seat view of the darkest places in Tracy's life and my life". When they were considering IVF treatment, the clinic would leave messages for him on his voicemail. He also received messages from a therapist known for treating stars with addiction problems. Some of these messages would contain private details. I would expect that a responsible therapist would be careful about not leaving details that were too private, but the fact that he was ringing about Ms Shaw at all would be of interest to journalists, and any other little details would also be of interest, and (in any event) private. He said he never deleted his voicemails.

296. Tabloid journalists often report on soap actresses' off-set lives, which would have made Mr Ashworth's messages of interest to them. That MGN was particularly interested in Ms Shaw's, and by association her husband's, off-set life in the period of her marriage to Mr Ashworth is evident from the emails and landline call data disclosed in these proceedings.

297. Mr Ashworth gave oral evidence to me of his life at the time and the effect of various articles written about him as a result of phone hacking. Like the other claimants, he was not aware that he was a victim until told by the police over a year ago. As the case developed he became more aware of the extent of what had gone on. I accept all of his evidence.

298. Mr Ashworth also relied on witness statements of his mother (Mary Ashworth) and Clare McGlinn (his friend) on which they were not cross-examined. His mother gave corroborative evidence of her own experience of being hounded by Mirror group journalists (because she was his mother and it was thought she might have information) and of the effect the matter (including the collapse of the relationship with Ms Shaw) had on her son (as she saw it). Ms McGlinn, too, gave corroborative evidence of the effect of the articles on Mr Ashworth and Ms Shaw's relationship. She spoke to them most days. In her view the Mirror group articles helped to destroy the marriage. She herself got "paranoid" about whether private conversations would be leaked because she, and her two friends, could not understand how personal material was being leaked. Her own mother and grandmother had to change their ex-directory telephone numbers because they too were being pursued by Mirror group journalists anxious to pursue Ms McGlinn's relationship with the two. That, of course, is not something which sounds in damages in this action, but it does make clear the voracity of Mirror group journalists in pursuit of stories about the couple.

299. One must, however, be a little careful about some of what Ms McGlinn has said. She is actually quoted in some of the articles. Her unchallenged evidence is that she did not speak to journalists about what either Mr Ashworth or Ms Shaw said to her, yet Mr Ashworth himself has surmised that Ms McGlinn did actually speak to the press about an assault that occurred between him and Ms Shaw. It is not likely that the newspapers would compromise their secrecy regime by identifying Ms McGlinn's calls as the source of information from her unless she had spoken to them, so there must have been some contact.

The duration and extent of the phone hacking

300. There is very limited data going to phone hacking in Mr Ashworth's case. The landline shows calls to Ms Shaw's and Mr Ashworth's phones on only 10 days between 9th October 2002 and 2nd April 2005. The bulk of the calls were in March and April 2003. There are no records of calls from individual journalists' phones. However, as with the other claimants, it is clear that the absence of data does not mean only a small amount of hacking. This is for a number of reasons:

(i) The defendant has admitted that all the articles except one are the result of unlawful phone hacking and blagging of call data. The sort of material in the articles cannot have been acquired from blagging of call data alone. It must therefore have been the fruit of hacking, and the content of the admitted articles is such that it must have been the result of very substantial hacking.

(ii) Mr Ashworth was on Mr Evans' back pocket list. That means that for most of the period during which Mr Evans was hacking Mr Ashworth must have been hacked at least twice a day. That must have happened via burner phones.

(iii) The bylines on the stories are those of a number of journalists. They may not all have been hackers, but some of them must have been, on the probabilities. That adds to the amount of hacking that must have gone on.

(iv) The lengths to which Ms McGlinn's evidence demonstrates that journalists were prepared to go makes it inconceivable that they did not use their favourite weapon of hacking frequently.

(v) Ms Shaw was an Orange subscriber, so hacking her voicemail messages could be done by using the generic Orange landline, not her own mobile number.

301. Email traffic supports the existence of significant hacking.

(a) On 6th March 2003 Mr Buckley wrote to Polly Graham:

"[number given] is T Shaw's number - have lost Ashworth's though TDI will have it somewhere".

The sensible inference from this is that the number was wanted for hacking. The only reason Mr Buckley will have had it in the first place is for hacking purposes, though this email does indicate that he was not doing it frequently (otherwise he would presumably not have lost it). There is a TDI invoice dated 15th October 2002 with Mr Ashworth as the subject. It is to be inferred either that the newspaper already had the number and supplied it to them for further information to be extracted, or that TDI supplied it on that occasion (probably with call data - the invoice is for about £300). Either way, the number was available from or at that time, and it is unlikely that it was not used for hacking from that time.

(b) On 2nd April 2003 Susan Kerins emailed Ms Weaver under "Subject: Tracy Shaw:

"robert (not 100 percent sure this is right no) - [number given]"

(She was right about the number - it was Mr Ashworth's.)

Ms Weaver forwarded this to Mr Evans at either 6.40 or 7.25 (the email is equivocal as to time) in the terms referred to above:

"this may be robert ashworth's tel but he's answering … don't call yet he's answering".

The landline records do not show a call to Mr Ashworth's number from Ms Weaver's extension prior to that time, even though Ms Weaver must have called him, thus demonstrating yet again the inadequacy of the landline as a reliable indication of the level of hacking. Ms Weaver, too, must have used a separate phone for these activities, though there is a record of a call 5 minutes later at 7.30.

(ii) An email of 15th May 2003 from Mr Thomas to Mr Edmonson says:

"Scott is going to have a go at tracy shaw next week."

Mr Scott was a journalist whom Mr Evans described as having a bigger database than he (Mr Evans) did. This is likely to be a reference to an intended hacking session.

(iii) An email of 12th November 2003 from Mr Buckley to Emma Cox says:

"Let's do the girl."

The sensible inference from this is that it is an instruction to carry out the tried and

tested technique of hacking.

302. These emails are themselves intermittent, but they show a propensity to apply the technique of hacking. They are not necessarily demonstrative of a technique of constant surveillance (other that that admitted by Mr Evans in relation to his daily trawl) but they are at least consistent with the idea that hacking would take place when a journalist thought it would be useful.

303. The defendant admits that the hacking period started in January 2002. It is not clear why that is the admitted start date. The only document from that date is the first admitted article (3rd January 2002). It is admitted that that document is the fruit of phone hacking or call blagging (the latter is unlikely) and it is unlikely that that article was written immediately after hacking started. I find that it is likely to have started some time before then. Mr Ashworth said that his relation with Ms Shaw started before 2000, and that they were in the public eye before any of the articles which are the subject of this action were published.

304. The first article over which a claim is made is dated 14th March 2001. That is outside the admitted time period of the hacking. As will appear, I find that it is likely that it was the fruit of hacking, so hacking had started by then. Quite how far before then is not clear, but the precise period is not going to be important for this action.

305. The defendant admits that it went on until September 2004 . Again, it is not clear why that date was chosen. There is a TDI invoice dated 20th September 2004 with the subject "R Ashworth", so he was still a person of interest then. It is unlikely that he suddenly ceased to be a person of interest immediately after that invoice, and it is likely that hacking continued for a while after that. Mr Ashworth left the country in mid-2005. I think it likely that hacking stopped then.

306. As to the scale of the hacking in that period, I consider that for at least large periods of it, when articles were being written, it was very significant. His story was a rich vein as far as the papers were concerned, and I think that his phone (and Ms Shaw's) are likely to have been mined frequently to see what they were up to. Often there will have been no story in it, but I doubt if those calls which led to articles were happy accidents. I expect that they were more the result of patience, with regular calls each day and other calls when a journalist thought it was worth making them. The end of the period may have been marked by a tailing off, but otherwise the voicemail boxes of the two individuals will have been the subject of frequent intrusion. As a result a

very significant amount of private information about Mr Ashworth will have been listened to.

Articles published

307. In Mr Ashworth's case there were 19 articles, of which all but the first were admitted as being the result of illegal information gathering (hacking), and that they would not have been published but for those activities. I shall therefore have to make a finding about the source of the first article; otherwise it will not be necessary.

308. **Article 1 (not admitted)**

Date – 14th March 2001; Sunday Mirror; hard copy and online.

Headline − "Maxine's fears for wedding."

The article reports that Ms Shaw's wedding plans had been "thrown into turmoil" by the foot and mouth epidemic. It reported that the venue which had been chosen for the wedding of Mr Ashworth and Ms Shaw (which was identified) had closed because of the disease and that Ms Shaw "faces the prospect of having to walk through pools of disinfectant in her wedding dress". A friend said: 'Tracy doesn't want to be wading in wellies through disinfectant on the big day'.

309. Mr Ashworth's evidence was that the wedding venue was not made public; nor was it discussed with other people. The couple had agreed to keep the wedding private and secret and had agreed a deal with OK! Magazine who were to have exclusive rights to the event. Mr Ashworth told me in oral evidence that this was so that they could obtain some control over publicity for the occasion, and one of the conditions of the deal was that the details of the wedding were kept very secret. The "fears" of Ms Shaw about having to wear wellingtons for her big day were said by Mr Ashworth to be the sort of thing that would have passed between them in telephone conversations and, therefore, it is quite possible that such remarks were actually left on voicemails, along with the identity of the wedding venue. It is that, against a background of the interest which the press had in the couple at the time, which led Mr Ashworth to assert that the article is likely to have been the result of voicemail interception.

310. The defendant has not put forward any evidence about this article. It has not disclosed any documents going to its genesis, and simply makes no admission as to

its source. In his written final submissions Mr Nicklin pointed out that there was no call data supporting this allegation of hacking. That is true, but is of no significance in this case because there is no call data at all in that period because, as Mr Nicklin's own disclosure demonstrates, no call data at all exists before mid-2002. In my view, on the balance of probabilities, this article is likely to have been the result of hacking. No plausible source other than hacking has been put forward by the defendant, though I accept, of course, that the burden of proof lies on the claimant. In the circumstances, bearing in mind Mr Ashworth's evidence about the secrecy of the event (which I accept), bearing in mind that he and Ms Shaw certainly were subsequently hacked, bearing in mind the press interest in the couple, and bearing in mind Mr Ashworth's evidence that the remark about wellingtons was the sort of thing that might well have been left in a voicemail message, I find that this article was the result of hacking.

311. That has a double significance in this case. First, it significantly extends the period of hacking to a period prior to that admitted by the defendant. Second, it gives Mr Ashworth the right to claim specifically in respect of this article, because I find that it contains private information both as to the venue and as to Ms Shaw's anxieties (or more materially Mr Ashworth's knowledge of her anxieties).

312. **Article 2**

Date – 3rd January 2002; Daily Mirror; hard copy and online.

Headline − "Coro star future is not Shaw."

The article starts by referring to uncertainty as to whether Ms Shaw was going to leave Coronation Street or not. It says that there were claims that she might not renew her contract "because she wants a baby". The next sentence reads:

> "Tracy married TV producer Robert Ashworth last year but is said to be anxious her fertility may have been affected by her battle with anorexia."

313. **Article 3**

Date – 9th March 2003; Sunday Mirror; hard copy and online.

Headline – "24/7: Rovers and Out; husband prangs Corrie Tracy's MG."

This article states that Mr Ashworth "trashed" a new sports car that the makers had lent to Ms Shaw. A highlight describes him as "prang man", and said that from then on MG would prefer it was only Ms Shaw who drove it.

314. **Article 4**

Date – 23rd March 2003; Sunday Mirror; hard copy and online.

Headline − "Tracy Shaw."

This article reads as follows:

> "Former Corrie star Tracy Shaw has told friends husband Robert Ashworth wants a divorce from her. The actress was devastated when she learned that Robert had approached a solicitor about getting a divorce.
>
> But the couple, who wed just 21 months ago, have decided to give it one last go before they head to the courts. The marriage has been under strain since Tracy, 29, quit the ITV1 soap and toured the country in erotic play The Blue Room". A friend said: "The marriage has been suffering since Tracy left Corrie. Tracy was upset when there were reports that it was her seeking the divorce when it was Robert who spoke to a lawyer." "

315. **Article 5**

Date – 23rd March 2003; The People; hard copy and online.

Headline − "Husband is divorcing TV's Tracy."

This reports that Ms Shaw was being divorced by her husband, not the other way round. It went on:

> "Despite some reports, Tracy…is now battling to save their rocky 21-month marriage.
>
> TV producer Robert, 30, is feeling the strain of being at their Manchester home while the actress is away baring all in sexy drama The Blue Room. "

A pal explained: "The rest of the world is seeing more of her than he does. He's had enough." Tracy, 29, staying in Eastbourne, has told friends: "I'll fight tooth and nail for Robert"."

316. **Article 6**

Date – 24th March 2003; Daily Mirror; hard copy and online.

Headline – "TV Tracy's marriage on rocks."

This reports that Ms Shaw had revealed her marriage was on the rocks; Mr Ashworth was said to be unhappy with his wife's role in The Blue Room. Ms Shaw was tipped to take over a West End role and if she did get the part it "could be curtains for a 21-month marriage to 31-year old Robert, who is said to be distressed with their relationship." Ms Shaw is said to have denied reports that she was leaving Mr Ashworth and admitted "to a pal" that she really did not want a divorce. Her friend is reported (without any apparent irony) as saying: "Tracy is terribly upset. It's not very nice getting their personal problems all over the papers."

317. The article ends by purportedly quoting Ms Shaw as saying that the couple argued but it did not mean that they had to get a divorce.

318. **Article 7**

Date – 6th April 2003; Sunday Mirror; hard copy and online.

Headline − "Tracy glows every time she speaks to Ashley…he looks so like her husband; exclusive: Street Tracy turns to her dashing friend as marriage crumbles."

About half of this article is about a new relationship that Ms Shaw was said to be establishing with another man. The second half returns to the stormy marriage between Ms Shaw and Mr Ashworth. It reports him having been pictured "just last week" minus his wedding ring; that the marriage had always run hot and cold; and that there had been "a series of public bust-ups since they married". A source was said to have said:

> "You always get the impression that she wants Robert to work around her career. She calls him all the time, wanting to know

> what he is doing, who he is with, and what he is working on. There has always been a strong sense of mistrust. When they are out socially together Tracy can appear very controlling. It must be very self-destructive.
>
> They would have rows about anything and everything. One minute they would be fine and the next an argument would blow up."

There are then references to some apparent public disputes and the article goes on:

> "On another occasion she gave Robert a roasting after he had an accident in her new sports car."

Reconciliations which had taken place from time to time were said to have been taking longer, and there is a reference to Ms Shaw's admitting to taking cocaine and to her battling anorexia.

319. **Article 8**

Date – 6th April 2003; The People; hard copy and online

Headline − "Tracy's marriage hits rock over baby bid."

In this article it was said that the Ashworth/Shaw marriage "hit the rocks after she gave up trying to have a baby and decided to concentrate on her career instead". "A close friend" is said to have said that Ms Shaw's failure to conceive drove a huge wedge between them and that, since she could not have a baby, she decided to throw herself into her career. Mr Ashworth is said to have asked her to stay at home and look after her health and cut down on going out. He is said to have been keen for the couple to keep trying for a child, but Ms Shaw's patience had finally run out. The "pal" said that they were desperate to have children and even talked about "a test-tube baby or adopting" but Ms Shaw would not listen to Mr Ashworth and was putting work first.

320. **Article 9**

Date − 21st April 2003; Daily Mirror; hard copy and online.

Headline − "Tracy: I'm feeling so betrayed."

In this article Ms Shaw is reported as telling friends: "I'm being betrayed by everyone". Ms McGlinn is reported as having said that Ms Shaw had drunkenly attacked Mr Ashworth in the street. "A friend" is reported as saying that Ms Shaw was close to cracking up and is worried about what people were saying about her.

321. **Article 10**

Date – 20th May 2003; The Mirror; hard copy and online.

Headline − "Door shut on Tracy's love hope."

This article reports that Ms Shaw's hopes of a reunion with Mr Ashworth had been dashed "after he shut the door on their marriage". It reports that she asked him if he could put her up when she was touring with her play but was told he would not.

322. **Article 11**

Date – 29th May 2003; Daily Mirror; hard copy and online.

Headline − "Are you Shaw Tracy?; ex-Corrie star hits new low."

Much of this article is about Ms Shaw and her career. She is reported as possibly drifting back into her former problems with anorexia. A friend is quoted as saying: "She desperately wants to make a go of things but Robert has said he doesn't want her back."

323. **Article 12**

Date – 8th June 2003; Sunday Mirror; hard copy and online.

Headline − "It breaks my heart but he loves Tracy; husband dumps blonde after three-month romance."

This is a long article which refers to a new relationship said to have arisen between Mr Ashworth and another woman, but that that relationship was said to have "fizzled out" when Mr Ashworth indicated he wished to try to patch up his marriage. Much of the information purports to have come from the other woman. There is a reference to Ms Shaw having been reported as having moved her belongings out of the marital home and that it seemed the marriage was over. However, a "close friend" of the couple was said to have reported that there was still "dialogue" going on between them and that the two spouses were trying to work through their problems. Ms Shaw is reported as having complained that Mr Ashworth had not worked for some time and was sitting around at home. "I want him to be the man I married". Ms McGlinn is reported as having said that Ms Shaw was drinking too much and was constantly worried that Mr Ashworth had been unfaithful to her when they were apart. Mr Ashworth complained that, in connection with these events, he was doorstepped by the newspaper and followed by reporters or photographers. This story was given front-page prominence by a headline there.

324. **Article 13**

Date – 1st July 2003; Daily Mirror; hard copy and online.

Headline − "Tracy "too sick" to act; "exhausted" ex-Corrie star quits acting tour."

Most of this article is about Ms Shaw withdrawing from an acting role and contains references to her personal difficulties giving rise to her inability to cope with her rehearsal and acting commitments. There are quotes, or purported quotes, from the producer and then a reference to what is described as "a series of setbacks in recent months" – Ms Shaw's drinking and anorexia and "her marriage to TV producer Robert Ashworth, 31, is said to be in difficulties. Yesterday the couple were staying at a London hotel." Her agent is reported as saying "She is nowhere near a rehab clinic."

325. **Article 14**

Date – 6th July 2003; The People; hard copy and online.

Headline - "Tracy drinks mini bar dry."

This article has a headline on the front page: "TV Tracy on a 3-day bender – hubby reunion is £1,000 booze-up." There is a subsidiary headline inside the newspaper: "What a second honeymoon…they spend THREE days in room guzzling over £1,000 of booze. Hotel staff couldn't refill the fridge fast enough." There are a number of photographs including one of an open mini bar fridge. The article reports a 3-day stay at a specified

hotel. It reports on how much they spent, how much they drank per day from the room's mini bar (a lot) and what the total mini bar bill was. A summary of the hotel bill, to the pound (£3,507) appeared amongst the photographs published. Those photographs include pictures of the "reunited couple". (An email of 16th July 2003 from Mr Thomas to a Mr Budd makes it clear that they were able to get this photo only because they knew when Ms Shaw was leaving wherever it was taken, "thanks to all our work" - that is likely to be a reference to phone hacking). It is plain that the newspaper was able to send photographers to the hotel. "A pal" is quoted as saying that the hotel stay was "a determined effort to rebuild their lives together". There are references to Ms Shaw's drinking from the minibar and her anorexia. It is said that staff were told not to put calls through to their room and that they took room service rather than dining in the restaurant. Ms Shaw's dress and appearance is described. The article ends with a reference back to the history that had previously been reported – the trouble in the marriage, Mr Ashworth blaming Ms Shaw's heavy workload and Ms Shaw's drinking problems which were said to have undermined the relationship. Ms McGlinn is quoted as describing how Ms Shaw once hit Mr Ashworth in the street and towards the end it is said:

> "Tracy had already revealed plans to see an £80-an-hour psychiatrist to help her overcome depression."

Beneath that there is a short further article describing how the couple then drove from that hotel to a health farm to recover.

326. **Article 15**

Date – 6th July 2003; Sunday Mirror; hard copy and online.

Headline − "Tracy's retreat; star's with husband at health farm."

This article describes how Mr Ashworth and Ms Shaw went to the health farm Champney's "in a last-ditch attempt to save their rocky marriage". It describes how Mr Ashworth had returned from a business trip to the States two weeks before "to phone calls from a desperate Tracy. She told him she forgave him for his affair with pretty Samantha Crothers – exclusively revealed in the Sunday Mirror – and pleaded with him to take her back." Mr Ashworth is said to have agreed to give the marriage another go. There are then references to the attitudes of Mr Ashworth's mother and Ms Shaw's mother and father. There is reference to a cancelled visit to a friend because the couple wished to stay in London, and a reference to Ms Shaw having seen a doctor. This story follows an email from Mr Buckley to Mr Evans, dated 3rd July 2003, stating that they

needed to know where Ms Shaw and Mr Ashworth were. The article says that they wished to stay in London to avoid any interference from anyone.

327. **Article 16**

Date – 24th August 2003; Sunday Mirror; hard copy and online.

Headline – "Tracy checks into booze clinic; depressed star treated for drink & food disorder."

This article reports that Ms Shaw had checked into a US rehabilitation clinic after being treated for depression and drink and eating disorders. Mr Ashworth was reported as "standing by his wife" and as staying in a nearby hotel to be on hand for her. A friend is reported as saying that the actress was "on the mend" and having Mr Ashworth close by was a huge help. It reports that the couple had decided to try to patch up their marriage and that Ms Shaw had returned to the matrimonial home, but that after that reunion she started suffering fresh problems. Various quotations as to her feelings are attributed to Ms Shaw.

328. **Article 17**

Date – 16th October 2003; Daily Mirror; hard copy and online.

Headline – "Tracy "fit as fiddle" after clinic."

This article reports Ms Shaw's return from rehabilitation and her agent was said to have reported that she was fit. She travelled to Manchester to be with Mr Ashworth and they were working hard on patching up their marriage. She had also been flat-hunting in London – her agent is reported as saying that she and Mr Ashworth wanted a place there as they both do a lot of work in the capital. One of the allegations made about this article is that hacking was used in order to obtain a quote from the agent.

329. **Article 18**

Date – 11th January 2004; The People; hard copy and online.

Headline -"TV Tracy's marriage on rocks; date with mystery man while hubby stays at home."

This article reveals that Ms Shaw's marriage seemed to be over again and she was no longer living with Mr Ashworth. There are extensive references to another man, with a suggestion that she had some sort of relationship with him, and a statement from her agent saying that the couple were happy together and there were no problems with their marriage. Friends are said to have revealed that they spent the past two months apart and one friend has said that the sad truth is that Ms Shaw did not wish to be married to Mr Ashworth any more.

330. **Article 19**

Date – 2nd May 2004; Sunday Mirror; hard copy and online.

Headline − "Rob's back….gingerly."

This article reports that Mr Ashworth, having given up work to assist Ms Shaw, and having been "dragged to hell and back" with her, had returned to work and was producing a documentary about one of the Spice Girls (Ms Halliwell). It reports that she and Mr Ashworth had struck up a close friendship (without "romance"). Mr Ashworth was said by a "mole" to be keen to get his career back on track. The reporter had been told that Mr Ashworth and Ms Shaw had contacted their lawyers about finally getting a divorce.

Private investigator invoices

331. There are 14 of these, spanning a period from 15th October 2002 to 20th October 2004. Some have Mr Ashworth as the subject; others have Ms Shaw. All are admitted as being for the provision of unlawfully provided material (unspecified). Four of them are on the same day - 15th October 2002, but there was no apparent article (at least not an article complained about) until 9th March 2003. In aggregate they are over £1,000. If they did not result in material which went fairly promptly into an article, or which was used to found an article, then their existence demonstrates the extent to which Mr Ashworth and Ms Shaw were generally under surveillance for interesting stories notwithstanding the absence of call data or other positive evidence at the time. It is likely that these invoices were used to gather information of the kind identified above - call data, medical information, telephone numbers and the like.

The impact on Mr Ashworth

332. The impact of the invasive articles grew as the articles grew in number and their content broadened. Mr Ashworth became increasingly distressed and upset that his and his wife's personal affairs were being disclosed in the press. His marriage was in difficultly and the exposure of personal matters in the press exacerbated matters. So when Article 4 was published (which said that Mr Ashworth wanted a divorce) it was very harmful to any attempts at reconciliation. Mr Ashworth had consulted a solicitor but had not said he wanted a divorce. Ms Shaw accused Mr Ashworth of leaking the point to the press, which he had not done. Mr Ashworth described how seriously damaging to his relationship this was. It contributed to the distrust between Ms Shaw and himself.

333. Article 8 (Mr Ashworth's feelings that Ms Shaw had put her career before having a baby) was particularly distressing, against the background of the revelation of Ms Shaw's relationship with another man (which of itself is not something in respect of which Mr Ashworth can have a claim in this action). The attitude attributed to Mr Ashworth in Article 8 was indeed his attitude. The two disclosures together caused huge rows between the couple. Every disclosure about their relationship made reconciliation harder and invited unwelcome observations from others as to what they should do. He felt that minds were poisoned against them, and that in turn had an impact on the relationship.

334. Mr Ashworth considered that Articles 14 and 15 were particularly damaging. The couple were trying to save their marriage (Mr Ashworth explained that they had gone to the hotel to meet a therapist, not to have a second honeymoon). He said that when Ms Shaw started drinking it was recommended by the therapist that they go straight to the health farm. When they arrived there they found that journalists from the Mirror newspapers were already there, though Mr Ashworth had no idea at the time of how that can have been. It can now be seen that it was probably because they were accessing voicemails. This attention was unhelpful to someone like Ms Shaw trying to recover from alcohol addiction, and there was an argument because she accused Mr Ashworth of leaking information to the press. The intrusion made it impossible for Ms Shaw to focus on her treatment and recovery.

335. When Article 16 appeared Ms Shaw again accused Mr Ashworth of leaking to the press. No-one knew of her rehabilitation treatment other than the couple, Ms Shaw's agent and her mother. Mr Ashworth said that the information must have come from his voicemails, because Ms Shaw was leaving him voicemails at this time. I am satisfied that this was the case. This was, according to Mr Ashworth, the final straw for the trust in the marriage. Soon after she returned, Ms Shaw said she wanted a divorce.

336. This propelled Mr Ashworth into depression. He says he had lost his career because he his wife had demanded so much time and attention and also because what he described as the constant public arguments and articles made him "too hot to handle". No-one wanted to employ him. He had depression for which he was treated. The Mirror articles put a great strain on his relationship with Ms Shaw when that relationship had to cope with difficulties already. It led to them fighting each other, worrying about what each other was reading in the press and having to deal with members of their families who got involved. He considers that the articles made Ms Shaw's problems worse and made it impossible for her to recover. He complains that they "turned his private life upside down and finished my marriage and my career." The list of calls and the private investigator invoices made him think that the newspaper considered that he and Ms Shaw were just pieces of news to be played with, and that made him feel bad. The denials by Mirror group executives to the Leveson inquiry appalled him - he considered they tried to hide what had been happening and it made their behaviour worse.

337. So far as the apologies are concerned, he accepted that the apology addressed to him meant something, but considered it lacked comprehension of what had really happened and was generic in its tone. It was not sincere and was driven by share pricing. He would have liked an explanation of how it is that Ms Weaver thought it right to hack his phone and then lie about it and why it was decided to hack him. He thought the pubic apologies smacked of trying to control press coverage in advance of the trial.

338. Shortly before 3rd April 2005 Mr Ashworth gave an interview to The People in which he admitted and disclosed a lot of material about Ms Shaw's behaviour and its affect on him and his marriage. On that date The People published an article based on that information. Mr Ashworth expressed his disgust at his own behaviour in giving that interview. 2 days later he left of Azerbaijan, where he stayed for five years. He suggested that he went because of his disgust, or at least partly because of it.

339. I accept much of what Mr Ashworth says, as summarised above. I consider that the articles caused him increasing amounts of distress, and that they made the saving of his marriage more difficult and more traumatic. However, I think that Mr Ashworth overstates the position when he suggests that caused the breakup of his marriage, or of themselves made it impossible. The causes of his marriage breakup are likely to have been more deep-rooted than just the articles. It is unnecessary (and impossible) for me to go into that question in any depth, but the articles did no more than contribute (albeit significantly) to the difficulties. They did not cause them. Nor do I think it likely that the articles had a large effect on the loss of his career. What was

published was distressful, but it did not tend to reflect adversely on Mr Ashworth. I am sure that dealing with people in his life, knowing they may have read the articles, was made more difficult because of the discomfort that Mr Ashworth will have felt, but I do not consider it likely that the articles made a large contribution to the loss of his career.

Mr Ashworth – findings on damages

340. I shall start by attributing damages to the various articles, and then turn to any further damages to which Mr Ashworth may be entitled. In assessing sums for individual articles I have to bear in mind that in some cases the distress caused by a later article builds on the distress caused by earlier articles. I have taken care to make sure that there is no double counting, and that I view any distress and effect on marital difficulties as being cumulative and not arising de novo on every article. I also bear in mind, which is the case, that this was a stressful time for Mr Ashworth because of his marital difficulties. The newspapers did not cause those difficulties, and it is necessary to allow for distress and the like only insofar as it was increased over what it would otherwise have been.

341. **Article 1**

While this article contains private information about the wedding, it is relatively trivial compared with what was to follow. It, and its associated hacking, should be compensated by the award of £1,000.

342. **Article 2**

The relevant part of this article contains sensitive material about desires to have children, fertility and anorexia. Although this more directly affects Ms Shaw, it is still material whose publication is capable of affecting Mr Ashworth because it relates to his life as well. The matters in question are very private matters, and publishing them is likely to cause anxiety and concern, and Mr Ashworth regarded its publication as "horrible". Mr Ashworth should receive compensation of £15,000 for the publication of this article and its associated hacking.

343. **Article 3**

The reporting of a car crash its itself relatively trivial, and it is not suggested that this particular publication caused anything more than irritation. Nevertheless, it did derive from the private information and would not have been published without it, and Mr

Ashworth is entitled to have real compensation for that exploitation and such feelings of irritation as he doubtless felt. It cannot have helped his dealings with his wife over the incident. He should receive £1,000 in respect of this article.

344. **Articles 4 and 5**

These articles should be taken together. The information on which these articles (about divorce) was based was not only confidential, it was very arguably privileged. It is likely to have been derived from messages from the solicitor. He was entitled to control that information, and it was not even true that he was seeking a divorce - he was merely investigating it, and Ms Shaw did not know that. He says that the effect of their publication was that Ms Shaw went "ballistic", and that their effect was catastrophic. I accept that evidence. Not only will the publication itself have been distressing, its consequences on the relationship were serious. Taken together these articles should be compensated by an award of £20,000.

345. **Article 6**

These matters, about Mr Ashworth's concerns about his relationship and his wife's activities, are again intrusively reported. The report itself acknowledges Ms Shaw's concerns about publication of private matters, and there was no reason to suppose that Mr Ashworth would be any happier about it. I regard that as an aggravating matter. Compensation, including a sum for aggravation in that particular respect, should be paid in the sum of £7,500.

346. **Article 7**

Much of this article is about Ms Shaw, which would not of itself attract much compensation for Mr Ashworth. Part of the distress from this article would be likely to be the discovery by Mr Ashworth that his wife was apparently having an affair, but that is not a consequence of an invasion. However, there is information about the state of the marriage, and views which Ms Shaw is likely to have expressed to Mr Ashworth (some of it repeated from earlier articles), and that is likely to be the result of the exploitation of private information in which Mr Ashworth has an interest. I consider that an appropriate amount of compensation for it is £8,000, to allow for the building distress and damage to the relationship.

347. **Article 8**

This is highly intrusive material about a very private matter. Against the background of the previous article its effect was said to be "explosive" and to have led to massive rows. I accept that it will have been very damaging. Damages in the sum of £15,000 should be paid.

348. **Article 9**

This article was derived from confidential information in that it would not have been printed but for obtaining some (unspecified) information, but it is principally about Ms Shaw. Mr Sherborne submitted that it betrayed sensitive information about the relationship, which it did, but only to a limited degree. I award £1,000 for this article.

349. **Article 10**

Although the point of the likely messaging which will probably have led to this article might of itself be a small point (whether Mr Ashworth would put Ms Shaw up while she was touring) it is yet another significant invasion into their private lives, reflecting the state of their relationship, and which caused added distress and anger. It was not so small as not to merit publishing, apparently. I award £3,000 for this article.

350. **Article 11**

This article, like others, is really mainly about Ms Shaw and her life. It does not reflect much on Mr Ashworth and his life. There is a limited repetition of what had already been reported, namely that Mr Ashworth did not want her back. I award £1,000 for this article.

351. **Article 12**

This discloses Mr Ashworth's relationship with Samantha Crothers, although some of the more personal information about that relationship purports to have been provided by Miss Crothers herself. This was a relationship which Mr Ashworth was anxious to keep private, and it was conducted in a way intended to achieve that (by meeting privately or in places where he was not known). In his witness statement Mr Ashworth asserted that the information from Ms Crothers was not provided by her, and he knew this because a different article was given published a week later which, she told him, resulted from an interview, and she had not spoken to the press before then. That different article was not produced by either side. His case on this was not challenged in cross-examination by Mr Nicklin. He also says that the newspapers had discovered he was in a relationship and was anxious to know who it was with, to the extent that he was asked on his doorstep by

a journalist who it was and if he did not tell them they would stay outside until they found out. Eventually they did find out.

352. It is difficult to know how much of this article came from phone hacking or other unlawful activities. However, bearing in mind the newspapers' modus operandi some of the material, and in particular the existence of a relationship worth pursuing (in the eyes of the newspapers) is likely to have come from hacking, after which efforts were made to find out who Mr Ashworth's new girlfriend was. There is a private investigator invoice dated 10th June with Mr Ashworth as the subject, which could well relate to those inquiries. So whether or not it is right that the existence of a relationship is not itself private, the discovery and pursuit of this news story could not have been done without the private information. That is consistent with the admission made by the defendant that this article would not have been published but for the unlawful use of information. There are also references to the dialogue between Ms Shaw and Mr Ashworth, which are plainly private. One way or another, therefore, this article is attributable to an invasion of privacy and the wrongful use of information thus acquired. It therefore matters less whether any information in it came from Ms Crothers herself, though in the light of the unchallenged evidence of Mr Ashworth I can find that it did not. News of this relationship affected Ms Shaw and others around the couple. This is a serious invasion of privacy with, again, a serious effect on the management of the relationship between Mr Ashworth and Ms Shaw, at a time when (as the newspaper knew) Mr Ashworth wanted to try to patch up the marriage (the article says so). No justification for publishing the article has been put forward. Bearing in mind the invasions, and the consequential distress and difficulties caused, the damages £15,000.

353. **Article 13**

This article is principally about Ms Shaw's problems, and its contents, other than repeating previous material about difficulties in the marriage, are unlikely to have affected Mr Ashworth much. I award £1,000 for this article.

354. **Articles 14 and 15**

These two articles are the most intrusive of all of them. They were written at a time when the couple were trying to effect a reconciliation, whether one takes the events of the story or Mr Ashworth's evidence (which I accept) which is that they went to hotel so as to be able to meet a therapist (for Ms Shaw) more easily and not for a second honeymoon. Mr Ashworth's evidence (which again I accept) is that the therapist advised them to go straight to the health farm, in the interests of trying to help Ms Shaw's problems. Any couple would want privacy for that, and understandably so. An email of 3rd July records the need to know where the couple were, and an email from Mr Edmonson to Mr Thomas records that they knew that the couple were at Champneys until 14th July. That is likely to have come from phone hacking or from other illicit sources.

Listening to voicemails about it, obtaining information about the money spent and drinks consumed during the stay in the hotel (which is not said to have been obtained by lawful means, and is more likely to have been obtained by unlawful means), going to the health farm (and on Mr Ashworth' evidence he actually encountered journalists there) and then publishing the stories is, in the circumstances, a very serious invasion of privacy and very likely to have an adverse effect on reconciliation attempts. Mr Ashworth described the effect as devastating, and that he was very angry. He was not challenged on that. He also said that he argued with Ms Shaw because she said she suspected him of leaking information to the press. He considered that this level of intrusion made it impossible for Ms Shaw to focus on treatment and recovery. I accept that that is likely to be true to a substantial degree. That, of course, is an effect directly on her, but it must have had an effect on their relationship, and any upset experienced by her will have been reflected in him.

355. For this most serious intrusion I consider that Mr Ashworth should receive £40,000. Had it not taken place against a background in which he he had already been caused distress, and for which he has already been compensated, it would probably have been higher.

356. **Article 16**

This article was primarily about Ms Shaw undertaking rehabilitation treatment in the United States, though there are references to Mr Ashworth's presence there. It was, however, written as a result of unlawfully acquired information, and that was probably from Mr Ashworth's and perhaps Ms Shaw's phone. Mr Ashworth said that for the first two weeks of her treatment Ms Shaw left a lost of messages for him. Again, it is of a sensitive matter in respect of which Mr Ashworth was entitled to expect privacy. The effect of the article was that Ms Shaw wrongly accused Mr Ashworth of leaking information, and he said this was the final straw for their marriage. The trust had completely gone. Although the primary interest in the fact of undertaking treatment was in Ms Shaw, Mr Ashworth's privacy rights were also infringed, and as a result he suffered the distress and upset which arose from disclosure. It is, again, very significant. The appropriate level of compensation for this article is £12,000.

357. **Article 17**

This article is about Ms Shaw's return. There are limited references to Mr Ashworth and the marriage. It reports that they were working to patch it up. There is very limited intrusion in this article so far as Mr Ashworth is concerned,. I do not think that it caused him any additional stress, and do not allow him any additional compensation for this article. The fact that it came from unlawful activities will be picked up in the global sum I award for this below.

358. **Article 18**

Little of this article is about Mr Ashworth, and I do not consider that, in terms of disclosures, it will have added materially to the stress already caused by articles or the stress he was already under because of the collapse of his marriage. He does say that he can now see that he was under some sort of surveillance at the time from private detectives or phone hacking, and the fact that this was exposed to the newspaper makes him feel violated even now. He is entitled to £750 for this article and its associated hacking.

359. **Article 19**

This article revives the question of the distresses of the collapsing marriage, and reveals what is likely to have been private information about consulting lawyers about a divorce. The business information is unlikely to be private and its disclosure does not attract any compensation. Bearing in mind the admission that this article would not have been published without unlawful information gathering, and bearing in mind the distress already suffered and nature of the private information disclosed, Mr Ashworth will receive £1,500 for this article.

360. So far as the activities of private investigators is concerned, I think it likely that some of these activities will have resulted in, or contributed towards, articles that were written, and I must not count them twice. Of course, the extent to which that is the case is not known because of the careful efforts of the journalists to cover their tracks, and it would be appropriate to allow an extra figure to compensate for activities which did not contribute to articles. I consider that an appropriate figure would be £5,000.

361. I turn next to damages for the infringements themselves (general hacking), bearing in mind the likely scope and level of the infringements. Some of the compensation attributable to this has, to a very significant degree, been reflected in the compensation for the articles and private investigator activities. However, there is a significant residue which has not. I have found that, for much of the period, there was frequent daily hacking. Because of the nature of the messages left on the phones, it will indeed have opened a window into what Mr Ashworth called the darkest period of his life, viewed through messages left by, and for, Ms Shaw, friends, family, a therapist and others. I consider that an appropriate figure for this element of the damages would be £30,000.

362. Mr Sherborne's submissions invited me to take long term effects into account in assessing aggravated damages. For example, Mr Ashworth's loss of trust is such that he now lives in a secure house protected by CCTV; he was never able to disabuse his father of the latter's belief that Mr Ashworth leaked information to the press; friends have been lost; Mr Ashworth will never know if his marriage could have been saved had it not been for the articles; he sustained depression. I am not convinced that these factors fall within the description of aggravated damages, but that does not matter because he is, in any event, entitled to be compensated for them. But care is necessary. Some of these factors have been built into the assessements of damage that I have already provided for in relation to particular articles, and I must not double count. Nonetheless, there is an element which I have not reflected in those figures, and doing the best I can I consider that general distress, and longer term effect of the hacking caused by the articles attracts an additional sum of £20,000.

363. Mr Ashworth is, however, entitled to some figure for loss properly to be compensated as aggravated damages - compensation for the extra distress caused by the manner of the breaches and subsequent conduct, both of which have effected him once he knew the truth. I do not, of course, take into account at this stage aggravating factors which I have already taken into account. I consider that he should receive an extra £3,500 by way of aggravated damages.

364. All that means that Mr Ashworth should receive damages in the sum of £201,250,

Lucy Taggart

Mrs Taggart's claim (before aggravated damages): £326,000

Defendant's proposals: c £25,000 (lowest *Vento* band)

365. Mrs Taggart is an actress (stage name Lucy Benjamin), most famous for her role as Lisa Fowler in EastEnders, a role she played between 1998 and 2002. She has also appeared in other television series and reality programmes. She would often leave long, detailed messages for partners, family and friends when they were difficult to reach, and receive messages when she was filming, because she could not answer or use phones on the set. These messages included details as to her relationships, family matters, health, work and finances. She would receive professional calls about her work on Eastenders and other shows. Medical calls would include calls in relation to gynaecological problems that she had in 2001 and 2002 (an abnormal smear). She received financial messages from her accountant. She did not delete messages, believing that they were wiped off automatically over time.

366. Not only was Mrs Taggart involved in several of EastEnders' most newsworthy stories, but she between 2000 and late 2003, she was also in a relationship with her on-screen partner, played by Mr Steve McFadden. The beginning of this relationship,

which would have been of particular interest to tabloid journalists, coincides with the date on which the hacking of Mrs Taggart's phone seems to have begun. During the relationship Mr McFadden left a lot of messages on her phone about their activities, plans and relationship.

367. She was a credible and conscientious witness, who did not exaggerate any of the evidence of the effect that phone hacking and publications had on her.

368. In addition to her evidence (on which she was cross-examined) she adduced evidence from 3 other witnesses. Mr McFadden gave evidence of their relationship, confirming their frequent use of voicemail messaging, which had to be used for messaging when the recipient was on set. He gave evidence of the effect that the publication of articles had on their relationship, on Mrs Taggart and on him. His strength of feeling (antipathy) towards the newspapers was apparent in his evidence, but he was a reliable witness.

369. Josephine Baker is Mrs Taggart's mother. She provided a witness statement on which she was not cross-examined. She gave evidence of the effect of the publication of articles on her daughter, essentially corroborating what Mrs Taggart has said herself, and of the effect on the family.

370. Mr Bobby Holland Hanton is a man with whom Mrs Taggart had a relationship for just over a year during the period of the phone hacking in this case. He, too, gave evidence of the effect of the articles on Mrs Taggart, not only generally but the effect of particular articles. His own phone was hacked - he has been told by the police that there is evidence he was targeted, and phone records disclosed by the defendant show calls to his mobile phone between 31st January 2004 and 16th May 2006 which can only be attributable to hacking or hacking attempts. His phone would have contained, inter alia, messages from Mrs Taggart - they left voicemails for each other every day about matters affecting their relationship.

Duration and extent of hacking

371. Mrs Taggart was on Mr Evans' back pocket list, so that means that she must have been hacked at least twice a day during his period of hacking at the Mirror. The defendant has admitted intercepting her phone messages and carrying out other intrusions into her privacy for a longer period than that - from 2000 to 2007. Mrs Taggart was on the Orange network. She did not think that she had set a PIN, and Mr Nicklin raised the question (considered above) of how she can have been hacked on that network if she did not set one. Whatever the answer to that question is, it is plain on admissions and data that she was hacked, so the question is academic.

372. The defendant's landline records show about 115 phone calls to Mrs Taggart's mobile phone between 19th June 2002 and 27th April 2007, though only 2 calls were shown in 2007 and 5 in 2006. All these calls are attributable to hacking or hacking attempts. There is no suggestion that any of them were a journalist wishing to speak to Mrs Taggart. This pattern shows some hacking even after the arrest of Mr Mulcaire, which tends to demonstrate the value which the papers put on Mrs Taggart's phone. As always, this pattern is the landline pattern only, and does not capture hacking from mobile phones, which is likely to have been more prevalent. There are the same number of calls to those identified as being "associates" of Mrs Taggart - people who are likely to have communicated with her a significant amount - Mr McFadden, Mr Holland Hanton and Ms Tamsin Outhwaite. Those calls are likely to have been hacking as well. Mr Nicklin made the point that two of those people are celebrities in their own right, so one cannot be sure that hacking them was intended to, or would have, revealed information private to Mrs Taggart. He is right that one cannot be sure, but bearing in mind her relationship to those people a significant number of the calls are likely to be Taggart-related, and I so find. In any event, precise numbers are not the point. The question is what this evidence shows about the scale of the hacking.

373. Across the period there are 23 private investigator invoices. The telephone calls shown on the landline come from 51 different extensions. Although this does not mean 51 different journalists, it is likely that a very considerable number of journalists were having a go.

374. Emails demonstrate the interest and fruit of phone hacking. They include the following.

375. An email from Polly Graham to Mr Thomas dated 21st March 2002 says:

"Also looks like Lucy Benjamin and Steve McFadden are still together - but might be something interesting on their phones."

And it gives their two numbers, with an "I think" after Mrs Taggart's. This is a clear indication of what was going on. Other emails provide titbits of information that, on the facts, are likely to have come from listening to phone calls, including a reference to Mrs Taggart having started a relationship with Mr Holland Hanton (then unidentified). An email of 6th February 2004 gives the amount spent on drink by them in their room the previous weekend. It is not easy to see how that information can have been obtained lawfully, and it is noteworthy that there is private investigator invoice of the same date which may well reflect the source. An email of 4th May 2005 reveals Mr Saville asking a Mr Sharp to "have a look at Lucy B because Bobby could be coming back into her life". In the circumstances "having a look" must be a euphemism for listen to her voicemails.

An email two weeks later on 18th May 2005 from Mr Saville to Mr Scott identifies her boyfriend as being a Peter Holland. He was a different gentleman from "Bobby".

376. There are not many emails, but they demonstrate the interest shown in Mrs Taggart and those with whom she had a relationship, and so far as they contain information they tend to reflect information obtained illicitly.

377. Most of the recorded hacking and private investigator activity, and the articles, involve the Sunday Mirror and The People, with less involvement of the Daily Mirror.

378. When one adds to this information the fact that more hacking will have been done on mobile phones, and the number and content of the articles, one arrives at a picture of large scale hacking across an extended period. This was not a lone journalist, or a couple of journalists, occasionally deciding to listen to phones. I find there was a consistent pattern in which she was hacked daily, sometimes several times a day (the landline records instances of that), and her associates were seriously hacked at relevant periods, so that those areas of her private life which were reflected in phone messages will have been comprehensively made available and, no doubt, studied. Many calls will not have resulted in stories, or contained really private material, but many will have been private.

The articles

379. 19 articles were the subject of these proceedings. 17 were admitted as resulting from wrongful information gathering; two (added by late amendment) were not. Their brief contents were as follows.

380. **Article 1**

Date – 31st August 2000; Daily Mirror; hard copy and online

Headline -"Why was poor Lucy red-eyed on the Red Eye?"

This article describes how Mrs Taggart flew home from a holiday, which she had apparently been having with Mr McFadden, alone and was observed crying on the plane

and in baggage reclaim. It also refers to an earlier row. "Sources close to the pair" reported that they had calmed down and were trying to get matters sorted out.

381. **Article 2 (not admitted)**

Date − 24th April 2002; Daily Mirror; hard copy and online

Headline − "Steve's lost it (EastEnder goes ballistic over our Bafta bash revelations)."

This article picks up from an earlier one (to which it makes a brief cross-reference at the beginning) about Mrs Taggart being upset at a party after the Baftas awards. She is said to have spent the party "sobbing into her champagne", professing that Mr McFadden did not love her. A quote was attributed to her. The vast bulk of the article, however, is verbatim account of a telephone call which took place between Mr McFadden and the journalists who wrote the 3 am column in which the first story appeared. Mr McFadden is recorded as having rung to complain about the newspaper's treatment of Mrs Taggart. He accused the journalists of being bullies and made various threats against them. At the end of the account he referred to the fact that Mrs Taggart had recently had a gynaecological operation and was very emotional.

382. Since this article is not admitted I need to make a finding about whether it was published as a result of a wrongful act. The bulk of it is an account of a conversation which took place between Mr McFadden (who initiated the telephone call) and the journalists. Mr McFadden explained in his evidence why he made the call. He was angry at the press coverage and wished to complain forcefully to the journalists, which he certainly did. That part of the article which contained an account of the conversation does not contain any information which the newspaper obtained by hacking or other unlawful means. It contains material provided by Mr McFadden. He was not disclosing private information under some cloak of confidentiality. He was having a frank discussion with a journalist. There was no agreement to treat the conversation as private. Particular complaint was made about the publication of the reference to the gynaecological operation, and while reference to it could certainly be criticised on the grounds of bad taste, I do not consider that its publication amounted to any infringement of her privacy rights, in the circumstances. It was a disclosure made by Mr McFadden, and he had no reasonable expectation that it would be kept private. Nor will the newspaper have understood from the manner of the disclosure that they were receiving private information which would not be published. That means that the bulk of the article was not published as a result of unlawful information-gathering.

383. There remains the short reference at the beginning of the article to Mrs Taggart complaining that Mr McFadden did not love her and would not marry her. Her witness statement in relation to this article does not complain about that point, but in her oral evidence-in-chief she said she recognised it as coming from a message that she left for Tamsin Outhwaite on the latter's phone. She claimed to have remembered that. Although the point emerged rather late, I accept her evidence about that. I accept it is more likely to have come from that source than anything else, and I accept her recollection. To that extent, therefore, the article contained the fruit of the private information-gathering exercise. This is despite the fact that it was repeating material from an earlier article about which complaint was not made in this action. I shall have to bear that in mind when I come to consider any damages payable in respect of this article.

384. **Article 3**

Date − 17th October 2002; Daily Mirror; hard copy and online

Headline − "Lucy gets Tom & Dick"

This article described Mrs Taggart's attendance at an after-show party and then at a bar, which she attended with Mr McFadden. The part which gives offence is one which describes Mrs Benjamin being sick in the lavatories and resisting a suggestion that she should go home.

385. **Article 4**

Date − 9th April 2003; Daily Mirror; hard copy and online

Headline − "Episode of "Friends"? Lucy and Steve get it together days after split."

This article reports that, although Mrs Taggart and Mr McFadden had announced that they had broken up two weeks before, it seemed that they were resuming their relationship. It was reported they arrived arm in arm at a café on Sunday morning and an onlooker reported on their closeness. Mrs Taggart was photographed coming out of Mr McFadden's home the next day and "for some reason the actress….wasn't keen on being seen." There is then a repetition of a previous article (referred to above) about a post-Baftas party and Mr McFadden's ill-advised telephone call to the journalists. The article contains what is said to be a photograph of Mrs Taggart leaving Mr McFadden's house (although she is not recognisable from it).

386. **Article 5**

Date − 13th April 2003; Sunday Mirror: hard copy and online

Headline − "Running scared."

This is an extremely short article reporting that Mrs Taggart had fears about not finishing the London Marathon. She is said to have been hit by training injuries and a bout of flu and to have had personal problems since splitting with Mr McFadden. That is about half the article. The other half reports a couple of other well-known entrants for the marathon.

387. **Article 6**

Date − 27th April 2003; The People; hard copy and online

Headline − "A-Boy there, Lucy! Hunk consoles East Ender beauty over her lost love."

This article reports that Mrs Taggart, after her split from Mr McFadden, was "finding comfort" with another man (described by her in her evidence as a gay friend) on a boat in the Mediterranean. There are three obviously covert photographs of the two of them together and comments on how close they seem to be. The photographs purport to emanate from an agency known as Tillen and Dove, an agency whom Mr Evans said were used by Mr Thomas.

388. **Article 7**

Date − 14th September 2003; Sunday Mirror; hard copy and online

Headline − "Angela says the baby is Steve's…he's sure it's not." (there is also a headline on the front page – "I am having TV Phil's love child" with a picture of Mr McFadden and Mrs Taggart.)

This story reports that a recent ex-girlfriend of Mr McFadden was expecting a baby and had claimed that he was the father. The article explains that she and Mr McFadden had a relationship during a break in Mr McFadden's relationship with Mrs Taggart, and had had "an angry showdown" on his doorstep about it. By this time Mr McFadden and Mrs Taggart had resumed their relationship and a purported report from "a friend of the

couple" was to the effect that Mr McFadden was having to explain to Mrs Taggart, who wanted to have children with him, why an ex-girlfriend claims he is the father of her unborn child. The source is said to say: "It is a total and utter quagmire. We are talking domestic meltdown." The article then goes on to draw parallels with the then plotline of EastEnders and then goes into a little bit of history about the relationship with the former girlfriend.

389. In the case of this particular story Mr Evans was able to give express confirmation that it resulted from phone-hacking. He described how he heard a message with details in it during his "daily trawl" of emails, and reported it to Mr Buckley. The message had been left by the girlfriend for Mrs Taggart, and was to the effect that Mrs Taggart might think Mr McFadden loved her but in fact loved her (the girlfriend) and had been sleeping with him for years, and she was pregnant with his child. This came as a complete surprise to the newspaper, which obviously decided to run with it, investigate it and, ultimately, publish.

390. **Article 8**

Date − 5th October 2003; The People; hard copy and online

Headline − "TV Phil raged about lover's baby" (preceded by a front-page headline saying "East End Steve cheats on Lucy)."

The first half of this article is about Mr McFadden's relationship with the former girlfriend and its break-up. Its content relates more to them than to Mrs Taggart. While saying that the girlfriend refused to talk about her private life, it contains a lot of material about it. Mr McFadden is reported as having flown into a rage when he knew of the girlfriend's claims about paternity. It then moves on to refer to Mrs Taggart saying that she was staggered to hear of the relationship but was standing by Mr McFadden, and wanted a child of her own by him (according to friends). "A pal" is said to have promised her that Mr McFadden would have nothing to do with the girlfriend or the new baby and that they would try for their own child as soon as possible. It reports on the upset that Mrs Taggart felt. It goes on to recite a bit of the previous history of the McFadden/Taggart relationship and then reverts to Mr McFadden and his girlfriend.

391. **Article 9**

Date -8th February 2004; Sunday Mirror; hard copy and online

Headline − "Lucy falls into arms of acrobat – dates after Steve split."

This reports on the start of the relationship between Mrs Taggart and Mr Holland Hanton, and their "late-night dates". It reports how much alcohol was ordered by Mrs Taggart "as they partied through the night". It ends by refering to strains in the relationship between Mrs Taggart and Mr McFadden and that police had been called to the flat by a neighbour who heard screaming. Mr McFadden is reported as saying he had merely been trying to help his girlfriend who had been locked out.

392. **Article 10**

Date – 8th February 2004; Sunday Mirror; hard copy and online

Headline – "Lucy's teeny lover."

This article reports that it was Mrs Taggart's relationship with Mr Holland Hanton that led to the final breakup of her relationship with Mr McFadden. It says that Mr Holland Hanton was told all about "Lucy's love life" and her unhappiness at finding out about Mr McFadden's previous girlfriend. It describes how Mrs Taggart reacted badly when a member of the public tried to take her picture in a pub and it ends with a report from a "spy" saying that Mr Holland Hanton was caught in the middle of it all – he was a sympathetic shoulder for Mrs Taggart to cry on.

393. **Article 11**

Date – 8th February 2004; The People; hard copy and online

Headline – "East Ender Lucy gets jiggy with a gymnast."

This again reports on Mrs Taggart's relationship with Mr Holland Hanton and reports that he was "bombarding her with text messages and calls". It reports on her reinvigoration since the relationship started and that she and Mr McFadden had finally announced the end of the relationship the previous week. It makes comments on the carefree nature of the relationship that she was now in, and how Mr Holland Hanton did a good job cheering her up and how he was a shoulder to cry on. It remarks on how attractive she found him. The article is accompanied by a large photograph of Mr Holland Hanton and a photograph of Mrs Taggart in a bikini.

394. **Article 12**

Date - 22nd February 2004; Sunday Mirror; Hard copy and online

Headline – "St Lucy – ahh"

This article describes Mrs Taggart as being on holiday with Mr Holland Hanton and has several photographs of them together. It describes public displays of affection and some mundane holiday activities. Mr Holland Hanton is described as a "toy boy".

395. **Article 13**

Date − 18th April 2004; Sunday Mirror; hard copy and online

Headline − "I love ya ma petal – Steve hopes flowers will win Lucy back."

This article reports on attempts apparently being made by Mr McFadden to win back Mrs Taggart. He was sending her flowers, but Mrs Taggart was said to have said that she was more committed to Mr Holland Hanton. "A friend" is reported as saying that despite contact with his previous girlfriend, Mr McFadden was desperate to make amends with Mrs Taggart. His sending flowers led to an argument between Mrs Taggart and Mr Holland Hanton – Mr Holland Hanton is said to have said he did not want to get hurt.

396. **Article 14**

Date − 23rd May 2004; Sunday Mirror; hard copy and online

Headline − "Lucy does the split – star drops her acrobat toyboy."

As the headline suggests, this reports the end of the relationship between Mrs Taggart and Mr Holland Hanton. This is said to have happened after weeks of arguments and a friend is reported as saying that the relationship had always been explosive but recently the rows had become much worse. Mrs Taggart is said to have accused Mr Holland Hanton of not paying his way and he is reported as saying that she was just jealous and didn't trust him. Mr Holland Hanton had moved out of Mrs Taggart's flat.

397. **Article 15**

Date − 28th November 2004; Sunday Mirror; hard copy and online

Headline − "Lucy lovenest with toyboy."

It seems that by this time Mrs Taggart and Mr Holland Hanton had renewed their relationship. The article reports that they were buying a house together, and the article reported a source as saying that Mrs Taggart could not wait to move into the new house; the couple had agreed to wait for a couple of years before having children although having a larger family was very much on the agenda.

398. **Article 16**

Date − 6th February 2005; Sunday Mirror; hard copy and online

Headline − "Toyboy dumped by Lucy."

This reports, shortly, that Mrs Taggart and Mr Holland Hanton had broken up again. Mrs Taggart is said to have "dumped" Mr Holland Hanton when he said he wanted to delay their wedding for a year or two.

399. **Article 17**

Date − 4th September 2005; Sunday Mirror; hard copy and online

Headline − "TV Lucy to wed Oilman."

Under a picture of Mrs Taggart with the heading "Lucy gets £8k ring" this reports shortly that Mrs Taggart was to marry an oil trader (Mr Taggart) after a whirlwind romance. A friend is reported as saying that Mrs Taggart could not be happier and had finally met Mr Right. She is said to have been keeping a low profile with Mr Taggart.

400. **Article 18 (not admitted)**

Date -31st March 2006; Sunday Mirror; hard copy and online

Headline − "Lucy Banns-Jamin."

This article is predominantly a large photograph of Mrs Taggart and her new husband at their wedding. The text reports that Mrs Taggart wore a diamond tiara and sipped champagne at a £20,000 ceremony at Babbington House, Somerset. The band was Chas and Dave.

401. Since this is a not-admitted article (that is to say it is not admitted that it was the result of unlawful information-gathering or that it contains private information), I have once again to make findings about its source.

402. Mrs Taggart's case on this is that the wedding was a private occasion and had not been publicised. She says that it is likely that information about the wedding and its venue would have been obtained from voicemails because a lot of people were leaving her voicemails about her wedding plans (including organisers of the various aspects of the wedding). The defendant has chosen not to give any evidence as to how the newspaper found out about the wedding or such detail as it published. It has, however, disclosed a document relating to payments dated 31st March 2006, showing that £500 was paid to a confidential source for some unspecified information, and there is a "contributions request" of the same date seeking (and authorising) £350, again payable to an unidentified contributor. It may be that this second document related to the photograph, because it seems that the request originated from Pictures. Looking at this material, it is apparent that the information had to be paid for. In cross-examination Mr Nicklin suggested various people who might have leaked the information, but there was no acceptance of that from Mrs Taggart. Bearing in mind the pattern of the defendant's conduct towards Mrs Taggart, and its propensity to hack her telephone, and taking into account the newspaper's unwillingness to try to prove an alternative and legitimate source (while making due allowance for the fact that a newspaper is normally entitled to withhold identity of the actual source), I find that this article came about only because of the unlawful acquisition of private information, either by phone hacking or by other unlawful means. The information contained within it was capable of being private for these purposes.

403. **Article 19**

Date − 18th June 2006; The People; hard copy and online

Headline − "X-Factor Lucy's New Lisa Life – EastEnders comeback after her Celebs win."

This article reveals that Mrs Taggart had been approached by the BBC over a return to her EastEnders role from which she had departed almost 4 years before. There are quotes from a friend about what the reason for that may have been and the greater solidity of this prospect than that which attended previous rumours. The article then relives various other parts of Mrs Taggart's history, and another friend reports on her delight at returning to EastEnders but that she was giving priority to giving birth to a child later in the year. She is said to be ambitious and believes that she can juggle being a mother and a soap star.

Private investigator invoices

404. There are 23 of these, running from 14th July 2000 to 3rd May 2005. The subjects are variously Mrs Taggart, Mr Holland Hanton, Mr McFadden and the last's girlfiend. The services provided cannot be identified with clarity, though the matters to which they relate can sometimes be assessed by reference to the proximity to stories. It is unnecessary to do more. They provide a consistent pattern of unlawful information gathering - all are admitted to relate to such a purpose.

The impact on Mrs Taggart

405. Mrs Taggart's evidence was that during the period in question Mrs Taggart was the subject of much press scrutiny. She had identified 300 articles written about her during the period of the hacking. It was not clear whether or not they were all Mirror group title articles, but in any event it shows how much she was placed in the public eye. She said she felt that journalists followed her everywhere and could not understand how they could know so much about her life and where she was going to be at certain points of time. Every mistake she made was seized upon, and she felt persecuted. She felt hunted. It was embarrassing to her to find her private life constantly the subject of press attention, and the reporting created the impression that she was a liability professionally. She feared getting sacked. Her relationships with those close to her were affected by what she considered as negative and one-sided stories about matters that she would not necessarily choose to disclose to anyone and

led to unwanted advice being tendered by those close to her. She became nervous about expressing herself in public places, to the puzzlement of her friends. Although other newspapers were involved she considered the Mirror group titles to be the worst and the most intrusive. She considered the articles nasty and vitriolic, and that the articles amounted to a personal attack on her.

406. Her experience of the press interfering with her private life has left her less trusting and more suspicious. She was the victim of suspicion in the eyes of Mr McFadden and Mr Holland Hanton, both of whom expressed the view that they thought she had leaked material to the press, and she has wondered whether it was the press stories which destroyed her relationship with Mr McFadden. She herself got paranoid about leaks, and her mother observed the effect of this paranoia on the family. On at least one occasion (Article 18) she suspected members of her family as having leaked details of what was supposed to have been a private wedding. Mr McFadden admitted to having suspected that she was leaking stories about them to the press and accused her of betraying him. He spoke of a permanent state of doubt and distrust in both of them.

407. Having discovered that the source of so many articles was private information that was wrongfully obtained, and in particular that so many phone calls about so many private matters were listened to, Mrs Taggart has suffered more distress, knowing that so much invasion of her privacy took place. She felt sickened, and feels violated. She was particularly annoyed to hear Ms Sly Bailey deny knowledge of phone hacking and say (as she did) that they did not intend an investigation. She was further annoyed by a remark she says was made to her by Mr Piers Morgan on a chance encounter when she complained to him about her treatment in his press; he said it served her right for being recorded. She did not understand it at the time, but understands it now. The apologies did not mean anything to her. It was too little too late, and not personal. What she really now wants is as full an understanding as possible of what happened - she said victims like her needed that.

408. I accept all this evidence though with an important qualification about her general levels of distress at the time of phone hacking. It is plain from the evidence that she was the subject of press attention in other newspapers as well, and it is also plain that in the main this attention was generally unwelcome to her. She considered the Mirror group titles to be the worst, and that they published more personal, maliciously motivated articles, but they were not the only newspaper covering aspects of her life. Some of her general distress will no doubt be attributable to coverage which is not complained about in this action, and which was either by the Mirror group or other newspapers, and the totality should not attributed to the activities of the defendant. What I do find, however, is that the defendant group's coverage led to the levels of

distrust and damage to relationships that she attributes to them. I do not find that any of her relationships would have been permanent without the articles, but I do find that they were very adversely affected by them, and that is a serious consequence.

Mrs Taggart - findings on damages

409. Taking first the articles, my findings are as follows.

410. **Article 1**

It is not suggested the descriptions of Mrs Taggart as upset were themselves obtained from private information. It is admitted that this article would not have been published but for the acquisition of private information, and it is more likely that journalists were alerted to the flights and the row by listening to messages, and that messages were the source of the remarks about the couple trying to resolve matters. The journalists obtained the opportunity to portray Mrs Taggart in a less than flattering light, even though the information in the article does not contain material which is of the highest order of privacy. Mr Nicklin said that the information about the flight was not private, which is true, but not entirely the point. He also submitted that the information about a row probably would not reach the threshhold of seriousness were it the subject of a standalone complaint. That is probably not accurate, but again misses the point. This article marries up private information with a description of a semi-public event, and as a matter of pleading Mr Nicklin is not entitled to say that there is no standalone privacy claim (see above). Where an invasion of privacy enables a newspaper to publish a story about partially non-private events (appearing upset in public) and put a gloss on, or offer an explanation for, them, then the whole process should be treated, for present purposes (assessement of compensation), as an invasion of privacy, at least on the facts of the present case. Its tone is demeaning (”snivelling … blubbing”). Mrs Taggart did not depose as to specific upset caused by this article but I am satisfied that some will have been caused. An appropriate level of compensation is £2,000.

411. **Article 2**

The privacy aspects of this article are limited. The only significant element is the quote which was taken from a voicemail. Against the background of a previous article which was not sued on, that attracts only limited compensation. I award £750.

412. **Article 3**

Mr Nicklin takes the point that the information about the party is not private. That is not a point open to him (see above - this is a recurring theme in the case of Mrs Taggart), though I do take into account the limited private nature of disclosures in the article in

assessing damages. The obtaining of private information again gave the newspaper the opportunity to present Mrs Taggart in an unflattering light. Mrs Taggart in fact suggested that most or all of the offending part was made up. Information about her not feeling well and not having lined her stomach are said to have come from a voice message. Be all that as it may, it is accepted that this article would not have been printed but for unlawful activities, and Mrs Taggart is entitled to compensation. She regarded this article as bullying, and I accept that that is how she perceived it. I assess the compensation at £4,500.

413. **Article 4**

This article refers to the possible resumption of the relationship with Mr McFadden. Mr Nicklin questions whether any of its contents were private, but as in all cases this point is strictly not open to him on his pleading. The article acknowledges that Mrs Taggart was keen on not being seen. Whatever degree of privacy this article attracts (which is at least some) it was something that Mrs Taggart wished to keep private and was only published because of an infringement of privacy rights (hacking). It attracts compensation of £5,000.

414. **Article 5**

This article is trivial. It attracts compensation of £750 to reflect the fact that it resulted from an invasion of privacy.

415. **Article 6**

The main vice of this article is that it would not have been published without misuse of private information. That is likely to have been information which enabled the newspaper to know she was going on holiday and where and when she would be there so that details could be given and photographs taken. Mrs Taggart was particularly concerned about being pursued on holiday and about intrusive photographs. Whether or not the article would have been an infringement of privacy absent misuse of information, it was only published because of it and her holiday was not something that she chose to disclose. This is a more significant intrusion into Mrs Taggart's privacy and should attract compensation of £10,000.

416. **Article 7**

It is known that this story had its source in a message left by Mr McFadden's girlfriend on Mrs Taggart's phone. That call is then used as a vehicle for further statements about

the Taggart/McFadden relationship. Mrs Taggart said that she, Mr McFadden and the girlfriend wished to deal with the matter privately, but this article prevented that. They were all shocked to see it published and each thought that one of the others had leaked the story. The phone call was something in respect of which Mrs Taggart had a reasonable expectation of privacy because it represented part of what had suddenly become a tripartite relationship problem which needed sorting out. Because of its consequences on the relationships this article involves a serious infringement with serious consequences. It should attract compensation in the sum of £20,000.

417. **Article 8**

This article carried further the invasions arising out of Article 7. It reports on Mrs Taggart's feelings and (apparently) on what Mr McFadden said to Mrs Taggart. Those are private matters. Mr Nicklin submitted that this story, and Article 7, mentioned Mrs Taggart but were not about her. That is not accurate. They are in part about her, and would not have existed had she not been part of the triangle, even though parts of it are indeed not strictly about her. It, with the source (probably voicemail messages, some reflected in the quotes from "a pal") amounts to a further serious invasion of privacy which Mrs Taggart now thought marked the beginning of the end of her relationship with Mr McFadden. It was a very upsetting article. It attracts compensation of £10,000.

418. **Articles 9, 10 and 11**

These are the articles which disclosed her new relationship with Mr Holland Hanton. It is impossible to find that it would not have become apparent at some point without the unlawful means used to source the articles, but they do embark on a bit of detail about Mrs Taggart's attitude some of which is likely to have come from hacking and which would itself be private, and once again the story would not have been carried at all had it not been for the invasion of privacy in listening to voicemail messages. The fact that the same story was carried twice in the same edition of the Sunday Mirror shows the attention being paid to Mrs Taggart, and the fact that another newspaper also carried it on the same day testifies to the degree of phone hacking that went on, as well as increasing the readership who were able to read about the central matter (the new relationship). One of the consequences of this article was that friction was caused between Mrs Taggart and Mr Holland Hanton because he thought Mrs Taggart had been speaking to the press or to friends of his. That raises the level of seriousness.

419. There is a bit of documentation behind this story. On 29th January 2004 a Mr Todd sent an internal email to Mr Buckley, copied to Mr Saville who then forwarded it to Mr Evans on 6th February. It reads:

> "The basis is she's shagging this lad, aged around 20. Haven't got a name for him but believe he's either a stage hand on the show or the minder.
>
> She's staying at the Southampton Holiday Inn.
>
> They were upstairs together there on Saturday night. Ordering £108 worth of booze at around 12:30 am.
>
> It's said to be a regular thing. McFadden feels she's up to something while doing the panto but doesn't know what. It is because of his fears that he went mental at Jim Davidson for making the shagging joke. ..."

420. Mrs Taggart expressed her additional upset when she saw this email and where the private information had taken these journalists. Although the primary compensation for these articles arises from the misuse of information and the exposure of its fruits to the public, and the effect of that on Mrs Taggart, this element amplifies the effect a little.

421. There is a private investigator invoice for £65 with Mr Holland Hanton as it subject. That is likely to relate to these articles.

422. Taking all that into account, these articles together attract compensation of £12,500.

423. **Article 12**

This again demonstrates the pursuit of Mrs Taggart on holiday, with an element of derogation encapsulated in the expression "toy boy" and contributed to Mrs Taggart's feeling that she could never escape. It attracts compensation of £12,500.

424. **Article 13**

This article again intrudes on the relationship between Mr McFadden and Mrs Taggart. That is clearly private material, as is the row between Mrs Taggart and Mr Holland Hanton. Mrs Taggart remembers Mr Holland Hanton leaving a message for her on her phone about the flowers. On the day the story came out Mr Weatherup called Mrs Taggart's phone twice. Mrs Taggart surmises that this was to see if there was any fallout from the article, and I expect she is right about that. She says that she and Mr Holland Hanton were very upset when this article came out. The story about the flowers, and Mr Holland Hanton's upset, was true. She should receive compensation of £5,000.

425. **Article 14**

This article does not merely report the end of a relationship; it refers to some private matters relating to the reasons for it, or relating to the state of the relationship before it ended. As it happened the relationship did not end then, but that is irrelevant. As a result of this article Mrs Taggart accused Mr Holland Hanton's father of leaking to the press, an accusation that she can now see (to her embarrassment) was false. This article attracts compensation of £6,000.

426. **Article 15**

This article is not over a particularly private matter, but its source was an invasion. It attracts compensation of £3,000.

427. **Article 16**

Mrs Taggart should receive £2,500 in respect of this article.

428. **Article 17**

The substance of this article (the engagement) is not a particularly private matter (especially when an expensive ring is bought, presumably to be worn) and I take that into account. Mrs Taggart suspects that the cost of the ring is likely to have emerged from a message left by an insurance representative when the ring was insured, and she was shocked and dismayed when its cost was disclosed. The fact of the engagement is likely to have emerged from congratulatory messages left on her phone. This invasion of privacy attracts compensation of £750.

429. **Article 18**

Were it not for the fact that the information in this article proceeded from an unlawful acquisition of private information, I am not sure that this article would attract much real compensation. The wedding was to be kept private, and it remained private in the sense that there was no obvious intrusion at the time. There was no complication arising as a result of rights being promised to a rival publication. The identity of the band, and the fact of the wearing of a tiara, are hardly events which, after the event, attract any significant degree of privacy. It did, however, involve an intrusion into her private life achieved only by a wrongful acquisition of private information, and it led to mistrust within the family and guests, and should attract compensation of £1,500.

430. **Article 19**

The information about a return to Eastenders was apparently wrong. Mrs Taggart believed that the newspapers must have misinterpreted a voicemail message. In final submissions Mr Sherborne submitted that the information about a pregnancy was something that Mrs Taggart had not yet chosen to make public. Most of the rest of the article re-hashes history in a way which would revive, or keep going, any upset which had already been caused but which would otherwise not add much to it. Principally because it proceeded from unlawfully acquired information (albeit misunderstood), Mrs Taggart should receive £2,500.

431. That deals with the damages properly attributable to the various articles. It takes into account the distress caused by the individual articles, and allows (where appropriate) for levels of distress building on previous levels so as to avoid double counting. However, in Mrs Taggart's case those figures do not themselves fully reflect an overall level of distress arising from the cumulative effect of the articles and (at least to an extent) the rising paranoia, the corrosive effect on relationships and the unpleasant feeling of violation once she found out she had been hacked. I consider that she should receive a further £15,000 for this additional distress, to include an element of aggravation arising out of the public denials of phone hacking by Mirror group and its employees. In determining that figure I have taken into account the fact that her feelings of persecution did not flow exclusively from the articles, or even from coverage by the defendant's titles.

432. So far as compensation for the hacking itself is concerned, I remind myself of the level and persistence of the hacking as described above. It was daily, and significant, and exposed large areas of Mrs Taggart's private life to the view of journalists, whether or not articles were published. She was probably hacked more consistently and for longer than Mr Ashworth, and that should be reflected by an increased over the figure that I have found for him. Applying my starting point of £10,000 per year in bad years, and making relevant adjustment, she should receive £40,000 as

compensation for this (making due allowance for the specific invasions which led to articles, which has already been taken into account).

433. Mrs Taggart should receive £3,000 in respect of the activities of the private investigators which have not already been taken into account above.

434. All areas of aggravated damages which are capable of leading to an award have already been taken into account. It is unnecessary to add anything else for Mrs Taggart. I reject a claim based on the manner of her cross-examination. It is true, as submitted by Mr Sherborne, that she found some areas of her cross-examination upsetting, but that was not because of the manner of the cross-examination. It was from having to re-live things which she would rather not have had to have re-lived. That, I am afraid, is inevitable in this type of litigation, and it does not aggravate the damages provided it is handled properly. I accept that she was bounced in cross-examination with a further article (as Mr Sherborne submitted) which ought to have been disclosed as a disclosable document, but that does not attract aggravated damages either. Nor does it aggravate her damages that she was irritated by the fact that the Mirror group newspapers hardly covered the trial. That is a matter of editorial judgment. Mrs Taggart may take a view as to how this reflects on the sincerity of the apology, but that is not a matter for aggravated damages.

435. Mrs Taggart's aggregated damages are therefore £157,250.

Shobna Gulati

Ms Gulati's claim (before aggravated damages) - £260,000

Defendant's proposals - c£20,000 - Vento middle band

436. Ms Gulati is another soap star, having appeared on Coronation Street as Sunita Alahan between February 2001 and 2013 (with a break between February 2006 and December 2009). She has also had other roles. As with the other actors and individuals involved in the TV and film industries, Ms Gulati was unable to access her phone whilst filming, which meant she was a heavy user of voicemail messaging because many people left messages for her. She also relied on voicemail when experiencing difficult periods personally, preferring to let calls run through to voicemail rather than answering them. She would also leave voicemail messages for

family members, close friends and boyfriends. All this led to the creation of a lot of voicemails containing very personal, and sometimes, emotional material.

437. As a soap actress, Ms Gulati's off-screen life would have been of interest to tabloid journalists. Of particular interest would have been Ms Gulati's relationships and relationship break-ups and speculation as to her plans once she had left Coronation Street. She gave oral evidence, and was a convincing and reliable witness.

438. Her case was supported by evidence from a friend and colleague, Kate Ford. Ms Ford is an actress, starring in Coronation Street since 2002. She became friends with Ms Gulati whilst they were working together on the show, and they have remained close friends. Ms Ford was in regular, perhaps daily, voicemail contact with Ms Gulati during the period of hacking. They would discuss matters which would have been of interest to tabloid journalists, such as their relationships, social plans with each other and fellow actors and actresses and their co-stars on Coronation Street. Ms Ford was also a victim of hacking, and saw first-hand the effect hacking had on Ms Gulati. She was with Ms Gulati on holiday when they were intruded upon by photographers, which led to one of the articles. Ms Ford's evidence was not challenged by cross-examination.

439. She was also supported by evidence from her sister Sushma Klausen who spoke of the effect the hacking had on her sister and on the family. Again, her evidence was not challenged by cross-examination.

Duration and extent of hacking

440. It is likely that Ms Gulati will have been of interest to these newspapers when she started her role at Coronation Street. However, the earliest of the articles complained about is in May 2003. Ms Gulati says that there may have been other articles which she has not been able to track down, but I shall confine myself to the articles which are pleaded.

441. The first appearance of Ms Gulati in the documents is in a private investigator invoice dated 7th May 2003, for £205. There are then three calls to her mobile phone (none of which are said to be, or could be said to be, because a journalist wished to contact her) from the group's landline on 25th May 2003. There are then very few calls from that landline to her in the rest of the period up to the end of 2006. None are shown in 2004. There are, however, a few, grouped together in time, to Ms Ford and to a boyfriend of Ms Gulati's (a Mr Nelson). The calls to Ms Ford are equivocal in their

status, because she has herself been the victim of hacking, and the calls may not have been targeted at, or obtained information about, Ms Gulati.

442. However, as with the other claimants, this pattern of usage from the landline is not determinative of the amount of hacking. She was on Mr Evans' back pocket list, so she was hacked at least twice a day until he left. It is unlikely that the hacking stopped then and in fact the defendant has admitted unlawful information gathering until 2006 (from 2003), though it has not admitted in terms that phone hacking went on during that whole period. I find that it did. Journalists are likely to have used their "burners", and there are 4 mobile calls shown on the contract phones of journalists. If any hacking went on after 2006 it was at a very much lower level, and I find that its intensity probably dropped off from twice a day during 2005, though it is likely still to have occurred to a very significant extent until 2006. Two calls are shown in 2011. If they were an attempt to hack they were very bold.

443. Private investigator invoices span the period from May 2003 to October 2005 and are 14 in number. Their "Subjects" are mainly Ms Gulati, but they also include Mr Nelson (a boyfriend) and a couple of other individuals.

444. There are limited references to Ms Gulati in internal emails. One from Mr Buckley to Ms Weaver dated 28th May 2003 says:

> "Beadle has invited Shobna to a wedding in Cardiff a week on Saturday - don't know if she is accepting yet."

Against the background of this case it is likely that that came from a phone message.

445. An email dated 6th August 2003 from Mr Evans to Mr Buckley reads:

> "… by the way, if Andrew and Shobna have not split amicably, then they are very close to that and have probably decided to "cool things down". It is her birthday today. He is being very "polite". Nowhere near former bunny boiler status. Sounds like he has been told to back off."

446. Mr Evans' evidence contained references to an event in which a message revealed that a relationship with a new boyfriend, who must have been the boyfriend referred to in Article 2 below, had apparently come to an end and that the boyfriend was "distraught". This must be a reference to the email of 6th August, or that email must reflect that event, which demonstrates the level and nature of the intrusion which arose as a result of phone hacking.

447. There is one more email, dated 28th of September 2005, which comments on a "new love" and identifies him and provides his mobile telephone number. Once again, this indicates the level and nature of the intrusion.

Articles published

448. It is admitted that all but one of these articles would not have been published but for the misuse of unlawful activities - voicemail interception and/or blagging of data.

449. **Article 1**

Date - 25th May 2003; Sunday Mirror - hard copy and online

Headline - Police Probe Race Attack Terror of Corrie Beauty Shobna

This story centres around a very nasty piece of racial abuse sustained by Ms Gulati while driving. She reported it to the police. It was accompanied by a photograph which Mr Sherborne described as “provocative”, but which in my view was not. There was also a photograph of her with a co-actor, probably taken on-set, and one of a BNP member. It reported that Ms Gulati was too shaken to discuss the ordeal, and there are quotes from a “friend”. Mr Evans has admitted that this article was obtained from a hacked voicemail message left by a police liaison officer. The references to a friend were to disguise the source. Mr Evans also said that some of information in the article came from material other than the voicemail message, and Mr Buckley, who knew of the hacking source, assisted in filling out the story by facilitating calls to Ms Gulati’s public relations represenative.

450. **Article 2**

Date - 29th June 2003; Sunday Mirror - hard copy and online

Headline - Revealed: Shobna's non-existent lover

This article reveals that Ms Gulati had a new boyfriend (Mr Andrew French) and reported that she had met him off a train in Manchester. There are three small photographs of their meeting, taken without consent, and a fourth which seems to have been taken shortly afterwards. The article seeks to contrast this state of affairs with recent protestations by Ms Gulati that she liked the single life (though no attempt was made to plead a public interest defence, or any other form of defence based on any equivocal stance taken by Ms Gulati). As usual, quotes are attributed to a friend (this time a "close friend") and also an "onlooker".

451. **Article 3**

Date - 23rd November; Sunday Mirror - Hard copy and online

Headline - She was just 24 when she wed in a Hindu temple… It's part of her life she wants to forget about. (A front page headline refers to her "Secret Marriage".)

This article give details about a previous marriage of Ms Gulati which she had never spoken about or publicised and which she herself preferred to be private. There are also references to her son, which it is accepted relate to private matters. It goes on to develop other themes about her life. Mr Nicklin submitted that its tone was not unsympathetic or flattering. If it matters, I disagree. It portrays Ms Gulati as wishing to hide a secret, in an unflattering way, and it contains a photograph which, this time, is provocative.

452. **Article 4**

Date - 14th March 2004; Sunday Mirror - Hard copy and online

Headline - Shob's love - let's hope he lasts longer than the rest.

This article reports on an apparent new relationship with Mr Chris Nelson, and gives an account of their having a meal, shopping and then his driving her away from the set. There is an account from an onlooker as to how close they appeared to be. Remarks about the relationship are attributed to "a pal". At the top of the article is a photograph,

probably covert, of them shopping, and a posed photograph of Ms Gulati in an evening gown. There are comments on the number of her previous boyfriends.

453. **Article 5**

Date - 28th August 2005; The People - hard copy and online.

Headline - "Corrie's birds of paradise"

This article reports that Ms Gulati was taking a holiday on a "luxury yacht" in the Caribbean with Ms Ford, makes favourable comments on their appearances and makes a remark about their drink (champagne). There are 7 photographs of them on the yacht (and two relating to their roles in Coronation Street). The photographs appear to be posed, or photographs of which the couple are aware, which indeed they were. The couple were actually paid for the article, but not in circumstances which reflect well on The People. Mr Nicklin sought to present this article as one published consensually, but that is a distortion of reality. The facts are important.

454. Ms Gulati and Ms Ford had agreed with the Daily Mail that they would take this holiday, at the expense of that newspaper, and report back on it in due course as (in effect) holiday reporters to someone who would write up the story. They were not accompanied by photographers from the Daily Mail. When they arrived they found themselves pursued by paparazzi who had been sent by the Mirror group to photograph them. The two had not publicised where they were going, but the paparazzi were waiting for them. They were actually found hiding in the bushes. The photographers showed them photographs that they had already taken, some of which were unflattering and some of which had red circles round some unflattering parts. They told the ladies that if they did not agree to pose for them then they would publish the unflattering photographs. That was a serious threat for an actor in Ms Gulati's position. Money was offered, and extra money was offered if they would pose topless. The latter was declined, but in the end, after considerable discussion and a row (Ms Gulati did not want to do the photoshoot, but Ms Ford thought they had no choice) Ms Gulati and Ms Ford agreed to posed photographs. It is those photographs (or some of them) that were eventually published. The photographers purchased bikinis for the session - Ms Gulati had not taken one with her. The photographers boasted that they had all the telephone numbers of the cast and crew of Coronation Street, which they could get hold of at the touch of a button.

455. Mr Nicklin sought to present this event, in both cross-examination and in his final submissions, as an article published consensually about which Ms Gulati had no real

ground of complaint (as an article). That is not the correct analysis. It was technically published by consent (and Ms Gulati received a payment) but Ms Gulati considered they had been "blackmailed" (her word) into co-operating. That is not an unfair description. It is actually admitted by the defendant that the article would not have been published but for the use of private information, which I find to be listening to messages which enabled the newspaper to know where and when they were going, and despatching photographers and the the nature of the photographers' threats make it a serious consequence of that misuse. It is a little surprising that the defendant's expressions of contrition did not prevent its taking the line that it did take at the trial about this article.

456. **Article 6**

Date - 25th September 2005; Sunday Mirror - hard copy and online

Headline - Jungle's up my street

This article reports that, after splitting up with Mr Nelson, and after losing her role in Coronation Street (which she was about to do) Ms Gulati was pleased to have been offered participation in the TV show "I'm a Celebrity, Get Me Out of Here (said to be a secret at the time). As part of its comments on the end of her relationship with Mr Nelson it reports that Mr Nelson "dumped" her because she was "too clingy".

457. **Article 7 - not admitted**

Date - 16th October 2005; Sunday Mirror - hard copy and online

Headline - Shobna Gulati

This not admitted article contains two lines - one reporting that she has arachnophobia, and the other surmising that that would rule her out of wildlife shows or "I'm a Celebrity", which takes place in the jungle.

458. Ms Gulati believes that this article will have come from a phone interception during which it was said that her fear of spiders would prevent her going into the jungle. In support of the likelihood of phone hacking Mr Sherborne relies on entries described as multiple phone hacking events on 5th October. It is true that there are entries which are likely to be hacks, but they are against Ms Ford, not Ms Gulati. That does

not, of course, rule out hacking, because she may have been hacked via PAYGM phone (as most of her hacking will have been), or she may have left a message for Ms Ford. However, the likelihood is that this information came from an email from Alison Sinclair, the Senior Coronation Street Publicist, to Mr Ben Todd at the Sunday Mirror and dated 7th October 2005. In this email she reports that Ms Gulati is still furious about the previous article (Article 6), and wonders whether he could run a jokey piece about Ms Gulati's not being offered I'm a Celebrity and would not consider it because of a "massive spider phobia". I consider that that is a much more likely source of the story. I therefore find that this article is not attributable the a misuse of private information.

459. **Article 8**

Date - 15th January 2006; Sunday Mirror, hard copy and online.

Headline - Corrie Sunita hot for Toyboy D Unc

This article reports that Ms Gulati had started a new relationship with Mr Duncan James. It reports where they met, and that they had a "hush-hush date" set up for later that week, despite their 13 year age gap. Comments are made about the "chemistry" and various respects in which they get on (attributed to a "spy"). It ends with references to their respective previous relationships.

Private investigator invoices

460. Details of these have been given above. There are 14 in all. A few are positioned sufficiently closely to one or other of the articles allow one to conclude that they may well have been associated with the articles, but many (most) are not. As always, it is not possible to ascertain what they were indeed for.

The impact on Ms Gulati

461. Ms Gulati was familiar with press interest. Before 2003 she had given two consensual articles about her relationship with her then boyfriend and a holiday she took with him. She undertook those exercises in order to prevent being hounded by the press, and they were a more controlled environment. She broke up with that boyfriend in circumstances which were particularly traumatic, and that was her psychological state in 2003. She felt vulnerable at the time, and the articles published

by the Mirror group newspapers made this worse. Knowing that journalists were listening to her voicemail during this, and the following, period, and becoming privy to all sorts of private information appearing there, makes her feel sick when she thinks about it. Between 2003 and 2005 she was on anti-depressants, and the articles made it difficult for her to trust men. She is now also the victim of the regurgitation of some of the articles, even after this period in time. She, like so many victims, suspected that those close to her (boyfriends) were in fact selling stories because she could not understand how otherwise the newspapers were in a position to know what they knew and print what they printed. She actually accused Mr French of leaking to the press, and that (understandably) damaged their relationship. When the articles referred to statements from "friends", she took the word at face value and suspected friends were leaking or selling information as well. Her levels of distrust, the feelings she was left with after the publicity she received, her perception that she could not sustain a relationship, left her wondering if she was "mad" (again, her word), and she was relieved to discover that she was not because the source of the mistrust and distress that she had been left with was explained by the revelations about hacking. Like many others, she is very unsettled and upset at not knowing what was listened to by the journalists listened to.

462. Ms Ford and Ms Klausen could see the effect on her. Ms Ford said that Ms Gulati was nervous and constantly worrying about what the newspapers would say next about her. Her trust in men was diminished because she suspected that her boyfriends were selling the stories.

Shobna Gulati - findings on damages

463. **Article 1**

Ms Gulati had been active in speaking and acting publicly against rascism in the area in which she lived (Oldham) and her name and address had been published by a far-right political group. She already felt exposed and this article increased her anxiety and perception of exposure. She was concerned about her elderly mother, and wrongly assumed the police had leaked the information.

464. This article does not suffer from the detriment of seeking to portray Ms Gulati in a poor or sensationalist light, but it is nonetheless the fruit of phone hacking and as such ought not to have been published. Mr Nicklin submitted that this was an article that could have attracted a public interest defence, but his final submissions are far

too late a point in time to take that point. It was not pleaded and not otherwise properly raised. The whole tenor of the way the defendant ran the case was that this was an article which would be compensated as others would be. Ms Gulati was entitled to have it kept private that she had reported a crime, at least until such time as any criminal process made disclosue inevitable, and even then it might be that privacy requirements would limit disclosure. She felt understandably exposed and concerned as a result, and should receive £12,500 in respect of this article.

465. **Article 2**

This article discloses the existence of the relationship between Mr French and Ms Gulati, and provides details and photographs of their meeting at the station. Mr Nicklin submitted that the article did no more than disclose the relationship, and the mere existence of the relationship did "usually" attract privacy. The first part of his submission misdescribes the article. It does rather more than disclose the relationship - it provides pictures taken covertly, and provides details of a particular aspect of it (the meeting). To that extent it is much more intrusive than merely reporting a relationship. One wonders if it would have been published at all had photographs not been available. The second part (the existence of a relationship it not usually private) is dealt with above. Ms Gulati has made out a case for privacy at this early stage in the relationship. In her community people were not as free with that sort of information as in other communities, and she sought to keep her relationships from her mother until they were sufficiently permanent. She therefore had an interest in privacy.

466. Mr Nicklin had another point about this aspect of privacy. He put to Ms Gulati an article in another newspaper the evening before which disclosed the relationship, and said that by the time Article 2 was published that particular fact was not private. Once again, this point was not pleaded, and the article was produced without prior disclosure. If it was an article going to that issue, and not merely a point going to credit, it ought to have been disclosed in advance. It was not - Ms Gulati was bounced with it in the witness box. On this occasion I do not consider that Mr Nicklin should be allowed to take a point raised in that way.

467. Be all that as it may, I think that the point is a bit of a red herring in this case. The fact is that whether or not the relationship was something in respect of which Ms Gulati was entitled to privacy, the fact that she was meeting Mr French was a detail within the relationship which attracted it. To that extent a very important part of the article turned on an invasion of privacy. Furthermore, the newspaper only found out about the relationship and the meeting by a serious invasion of her privacy. Mr Evans gave evidence that they were first alerted to existence of "Andrew" when they intercepted a message left for Ms Gulati. When it did so it took, and published,

intrusive photographs. The result, in practical concerns, was upset for Ms Gulati. She did not wish her mother to find out about her relationships in this way, and furthermore she suspected Mr French of leaking the event to the press in order to obtain coverage for himself. He angrily denied it. It cannot have been good for the relationship, which lasted only two more months. The composite acts of hacking and publication should result in compensation of £12,500. The result is the same whether or not the fact of the relationship would attract privacy in the circumstances.

468. **Article 3**

The consequence of this article for Ms Gulati is that she was upset and very concerned at the gossip it would cause in the Asian community and for her then sick mother. It affected her son who was bullied at school, and he eventually had to be moved. Although Ms Gulati cannot claim for infringements of the son's own privacy rights, the inevitable upset to her is a consequence of the invasion of her rights when her privacy was invaded (it is accepted that this article would not have been published but for phone hacking and/or unlawful blagging of information). I agree with Mr Nicklin that the existence of a prior marriage is not, of itself, information which would usually attract privacy, but the newspaper only found out about it by using unlawful means – see the admission. Ms Gulati wrongly thought, again, that Mr French had sold the story. The article that was published was not, as Mr Nicklin submitted, "not unflattering". It tended to portray Ms Gulati as someone having guilty secrets.

469. All this had a very significant adverse effect on Ms Gulati. She was sufficiently anxious at the time that she wrote a letter of complaint about the disclosures relating to her son (actually addressed to all Sunday newspaper editors). It will have undermined her relationship with Mr French. Even though the information about the marriage is probably not private, the material concerning the son is, and the appropriate compensation for misuse of compensation (including, for the avoidance of doubt, any acquisition of material by hacking and private investigator activities) is £10,000.

470. **Article 4**

This article was published early in the relationship. There are three private investigator invoices with dates in the 5 days before this publication, two of them with Mr Nelson as the subject. On the admissions, these are likely to have been for blagging exercises or other unlawful information exercises. The inference is that the newspaper wanted to make the story stand up, and the inference from the coverage in the article is that the couple were followed for their part of the day together and closely scrutinised (and photographed). I am satisfied that phone hacking and blagging played a very large part in

putting this story together and enabling the couple to be followed. This, overall, is a very significant invasion of Ms Gulati's privacy, whether or not the existence of the actual relationship was a private matter. As a result of its publication she "doubted" Mr Nelson, which presumably means that she thought he had told the press about it. This put a strain on the relationship (understandably). She should receive compensation of £10,000.

471. **Article 5**

This article reflects a serious infringement of privacy rights. What was supposed to be a private holiday (albeit one with a debrief afterwards for the newspaper employing the two friends) was found out above, as a result of unlawful hacking (almost certainly hacking, though there is a private investigator invoice some 6 weeks before which might be linked to it as well). The two were trying to get away from cameras. The result of the hacking was that the newspaper photographers were able to take covert photographs of them, and then to induce them to co-operate in a photo-shoot that they did not want under threat of publication of unflattering photographs. Ms Gulati said, and I accept, that the holiday was ruined. Mr Sherborne sought compensation of £20,000 for this infringement. I agree. I did consider awarding more, because of the blackmail element, which is not only objectionable in itself but it also enabled the newspaper, quite falsely, to present an article which looked as though it was genuinely consensual. But I will not order more than Mr Sherborne sought.

472. **Article 6**

This article contains confidential information about Ms Gulati leaving Coronation Street and erroneous information about her joining "I'm a Celebrity" - she in fact had no such plans, and no such offer, and thinks, probably correctly, that this information was obtained from a misunderstood remark in a phone message. In all events, this is an admitted article, so at least some of its important material was obtained from hacking or other unlawful means, and so far as it reports them it reports secrets. It also contains internal, albeit limited, details about her relationship with Mr Nelson, also probably obtained from listening to voicemails. Ms Gulati said there was a lot of voicemail traffic at the time between her and Mr Nelson, because she did not want the relationship to end. Ms Gulati was "furious" about this article, and still furious 2 weeks later (reflected in the email traffic in connection with Article 7).

473. This article had a serious practical consequence for Ms Gulati. As a result of reading, or hearing about, this article, her son ran away because he thought that his mother was going to leave him for the jungle, and she had to spend a number of anxious hours trying to find him and reassure him.

474. For these invasions of privacy Ms Gulati should receive £7,500.

475. **Article 8**

No specific evidence was given about the effect of this late-pleaded article. It is, however, admitted that it would not have been published but for unlawful activities. It actually acknowledges the privacy with which the couple were trying to conduct the initial phases of their relationship. This article attracts compensation of £3,000.

476. Those figures compensate for the invasions of privacy which led to the articles, and the consequences of the articles. They do not fully reflect the general upset caused by the pattern of intrusion and the effect the intrusions had on her relationships. She should receive a further £15,000 for that additional anxiety and distress.

477. As with the other claimants, Mr Gulati is entitled to compensation for the invasion from hacking generally, not reflected in the other awards above. She was hacked fairly frequently for over 3 years, though probably with not the same intensity throughout, and there is less suggestion of a significant body of associates being hacked. Carrying out the adjustments that I have referred to above I find that she should receive £22,000 for this.

478. It is likely that a significant number of the private investigator invoices related to activities which led to articles, and therefore compensation for those activities has already been provided for. For the rest I consider that Ms Gulati should receive £5,000.

479. In Ms Gulati's case I do not think that there are any aggravating factors that have not already been taken into account.

480. Ms Gulati's aggregate sum is therefore £117,500.

Mr Shane Roche

Mr Roche's claim (before aggravated damages) - £260,000

Defendant's proposals - c£20,000 - Vento middle band

481. Mr Roche (stage name Richie) is an entertainer, singer and actor, best known for his role as Alfie Moon in BBC's EastEnders, a role which he initially held from 2002-2005 and has held again since 2010. Like the other representative claimants who were or are soap actors and actresses, Mr Roche was unable to use his phone whilst filming and therefore relied on people leaving him voicemail messages. He would also leave messages for others, such as his wife, close friends, including co-stars on EastEnders and his agent, Mr Phil Dale. He used messaging frequently, received messages on all sorts of personal topics, relating both to his private life and to his commercial and acting life. He did not regularly delete his old messages. They were therefore there to be listened to by anyone who hacked his mailbox. His evidence made particular reference to his financial difficulties, about which he will have received (and left) messages.

482. As a popular soap actor, Mr Roche's life would have been of interest to tabloid journalists. His role was particularly prominent in the first couple of years, and he attracted a considerable amount of attention when he appeared publicly. He was particularly interesting to them during the period of hacking since he was experiencing financial difficulties, left EastEnders, turned 40, got married and had his first child with his new wife.

483. I considered him to be a reliable witness whose evidence I believed.

484. He had 4 supporting witnesses, none of whom were called for cross-examination, so their evidence stands unchallenged. They were as follows.

485. Mr Phil Dale is and was Mr Roche's agent, overseeing all his professional engagements. He also acted for Ms Jessie Wallace (another supporting witness). He explained that during the period relevant to this action he and Mr Roche communicated by voicemail rather than text messages because the information to be conveyed was too long for the latter. He gave as an example of that information Mr Roche's remuneration, his capital account with Mr Dale's company and any commercial opportunities that had become available. All that is obviously private and confidential material, some of it potentially very confidential. He also left personal messages. Mr Roche would pass similar types of messages back. There was particularly intense messaging in 2003 about Mr Roche's shortage of money, which he was trying to keep away from a new girlfriend who later became his wife. He explained how the articles that were published made Mr Roche paranoid and suspicious of friends and colleagues (including Mr Dale).

486. Ms Jessie Wallace is and was a co-star on Eastenders. She became a very close friend of Mr Roche almost as soon as he began his involvement in the show. She repeated how it was that they could not take their phones on to the set, so they made extensive use of voicemail messaging. She herself was a victim of phone hacking, and was rendered paranoid by articles about her whose source she could not identify. She and Mr Roche used to accuse each other of selling stories, which gave rise to tension in their relationship. They both thought their dressing rooms were bugged. There was an enormous strain on their relationship, and it almost broke irretrievably.

487. Mr Christopher Parker was a colleague on Eastenders. His witness statement did not materially add to the evidential picture other than to indicate, by inference, that he too was hacked.

488. His wife Christie provided a witness statement. She deposed to the private personal messages that she left for him, particularly between 2002 and 2008, and to the fact that she received messages from Mr Roche (and others). As the articles were published Mr Roche became increasingly paranoid that friends, colleagues and family were leaking stories because he could not understand where else they would be coming from. She recalls that he even got their house swept for bugs.

Duration and extent of hacking

489. The landline records contain relatively few calls to Mr Roche's various mobiles (he changed them sometimes), and virtually none until 2005. However, the defendant has admitted unlawful investigations from October 2002 to November 2008. There is a batch of calls in 2005 which the defendant accepts may well be consisted with interception or attempted interception. I find that not only are they consistent with it; they evidence it. There is no other sensible explanation for those calls. Since some of them are for durations which are consistent with listening and not merely attempting a hack, and they actually demonstrate hacking in relation to those calls. In addition, Mr Roche was on Mr Evans' back pocket list, and so was hacked at least twice a day by him. The Sunday Mirror, at least, was plainly interested in hacking him as early as November 2002, because an email of 27th November 2002 from Mr Weatherup to Mr Thomas gives a mobile number (and two others) while acknowledging that they were probably old numbers. Mr Thomas, it must be remembered, was the person whose activities Mr Evans replaced when he moved on. In an email of 4th June 2003 Mr Edmonson asks Mr Thomas whether a particular number was Mr Roche's to which Mr Thomas replied that it was old, but he was looking for the new one. On 17th July 2004 Mr Euan Stretch emailed himself a

"hitlist" (running to 3 pages, with all other entries redacted on disclosure) with the names of Mr Roche and Ms Wallace listed together (without telephone numbers); and on 6th October 2005 one journalist emailed another asking for Mr Roche's date of birth.

490. The defendant's titles' interest in Mr Roche did not suddenly start in 2005, or 2003 when it is likely that Mr Evans put Mr Roche on his back pocket list. The phone data strongly suggests that Mr Dale, Ms Wallace and Mr Parker were the objects of hacking, and it is highly unlikely that they did not try Mr Roche until late. I think it likely that Mr Roche was the victim of substantial phone hacking during the period of the unlawful investigations admitted by Mr Nicklin. It probably tailed off after 2006, but not necessarily completely. It is noteworthy that calls were being made to Mr Dale in very significant numbers in 2006 and even in 2007. While it is likely that the Mulcaire arrest made the papers more wary about hacking after the beginning of 2006, I think it unlikely that it ceased completely in his case. I am satisfied that the bulk of the hacking will have been carried out by using burner phones.

491. The landline data also shows a large number of calls to the telephones of Ms Wallace, Mr Dale, Mrs Roche and Mr Parker. They have their own claims, and while their cases are not the subject of the trial before me, it is difficult if not impossible to attribute those calls to anything other than hacking attempts. Claims that Ms Wallace, Mr Dale and Mrs Roche all brought against the defendant were settled some months ago. The details of the calls were given because Mr Roche's solicitors asked for them during the disclosure process as being calls to "associates" with whom Mr Roche was given to leaving messages (and who left messages for him). Mr Sherborne's count is that there were 242 calls to those associates, the bulk of which are to Mr Dale and Ms Wallace. Mr Nicklin correctly points out that they cannot all be taken to be calls reflecting attempts to acquire private information about Mr Roche, because Ms Wallace and Mr Dale (and particularly Mr Dale, who had other clients) might have been targeted in their own right because they were a source of material for themselves and others. That may be the significance of Mrs Wallace appearing on a hitlist (albeit bracketed with Mr Roche). However, since they were voice correspondents with Mr Roche, and since he was such a topic of interest for the newspapers, I am satisfied that a very material part of the motivation for hacking them was to get information about Mr Roche, so a large number of calls to them fall to be treated as part of that overall exercise. I also bear in mind that a much larger part of the hacking exercise is likely to have been done via burners, so these recorded calls are yet again only the tip of the iceberg.

492. There are 12 private investigator invoices spanning the period from December 2002 to October 2006, the "subjects" being Mr Roche or his now wife.

Articles published

493. Claims are made in respect of 13 articles. All except one are admitted.

494. **Article 1**

Date - 25th May 2003; The People; hard copy and online

Headline − "Shane Bitchy – EastEnder Alfie fumes after his Beeb bosses ban him from doing two other jobs."

As the headline suggests this story is one which reports that Mr Roche was cross when those in charge of EastEnders would not allow him time off to appear first in a musical called Our House and second in a special edition of Have I Got News For You. They report how annoyed Mr Roche was and contain extensive quotes from a "pal" and a "source", stating the steps that Mr Roche had taken to familiarise himself with the plot of the musical and saying that Mr Roche was annoyed because the second show would only have taken one day to record. It reports that Mr Roche's financial position meant that he could not afford to fight the BBC on the point – he had had to remortgage his house after putting money into a failed movie called Shoreditch.

495. **Article 2**

Date − 26th October 2003; The People; hard copy and online

Headline − "TV Shane on the skids."

This is an article which focuses on the financial difficulties faced by Mr Roche at the time. He is revealed as having debts of £1.6m and risked having his home repossessed after failing to pay a £1,000 a month repayments. He had remortgaged the property five times and interest was growing by £175 a day. He is reported as having told "pals" "I'm skint…". A close friend is reported as expressing incredulity at the mess Mr Roche was in and compared the position he was actually in to that shown in a recent autobiography which showed he had turned the corner. The article goes on to say:

> "Ritchie's concern was obvious yesterday as he left a building society and mortgage brokers near his home in Denham, Bucks."

It describes what he was wearing, and there are two photographs of him, taken covertly, studying some papers as he walked to his car. Further financial details are given and bits of his history are set out. The article ends with quotes from Mr Roche about restructuring, and from Mr Dale about future plans which would wipe out debts.

496. **Article 3**

Date – 28th December 2003; Sunday Mirror; hard copy and online

Headline – "Alfie Loon."

The main part of the space occupied by this article is a photograph of Mr Roche and his girlfriend Christie (whom he later married) arriving at Heathrow wearing very warm sheepskin coats. The text asks if they are mad because they were in fact flying out to Barbados.

497. **Article 4**

Date – 22nd February 2004; The People - hard copy and online

Headline – "Broke Shane faces losing his £2m mansion."

This article returns to the financial position of Mr Roche. Against a picture of him there appears the text:

> "Troubled: Shane is in an even bigger mess than when we first revealed his problems (below)."

The article describes how Mr Roche was on the verge of losing his house as his debts spiralled even further out of control. He had taken out two massive short-term loans

totalling £2m to repay the mortgage but had failed to meet the deadline to pay back those loans. He had taken out another loan just to meet the £30,000 a month interest charges on the first two loans. He is said to have admitted privately that he had little chance of holding on to his house. "A pal" is reported as saying his popularity was high but his money situation was a complete mess, and he had no hope of ever getting on top of his debts. The second half of the article rehashes previous reports about borrowings and the failed film, Shoreditch. More remarks about his difficulties are attributed to "a friend". Despite that he was said to be planning a party to celebrate his 40th birthday, costing £200,000 – the cost was being picked up by a magazine. Mr Dale is quoted as acknowledging debts but saying Mr Roche would not lose the house.

498. **Article 5**

Date − 15th March 2004; Daily Mirror; hard copy and online

Headline − "Ritchie's OK with his pals; why Shane told Mag to shove it."

The gist of this article is that Mr Roche had agreed a lucrative deal with OK! Magazine to cover his 40th birthday party, for £200,000, but Mr Roche had pulled out of the deal when the magazine insisted on controlling which guests could or should attend the party. Instead, Mr Roche gave the rights to cover the party to The Big Issue for £1.10. The second half of the article contains a brief description of certain aspects of the party and how Mr Roche went outside to meet fans.

499. **Article 6**

Date − 31st March 2004; Daily Mirror – hard copy and online

Headline – None; the article is under a column with a number of other items, all headed "The Scurra".

This is a very short article. It reports that stories that Mr Roche would be forced to sell "his beloved country mansion" to a fellow actor (Robert Lindsay) were "complete and utter cobblers", according to a "close friend". It refutes the idea that he would be moving out shortly.

500. **Article 7**

Date − 11th April 2004; The People – hard copy and online

Headline − "Shane party debt shame."

This article reports that a cheque in the sum of over £5,200, "written on the EastEnders star's credit card account" in favour of one of the organisers of his party, bounced. It reports that the party that he held was being held days before he was forced to sell to repay creditors, having missed six mortgage payments. "Pals" are quoted as saying that the party was a "last hurrah".

501. **Article 8**

Date − 11th May 2004; Daily Mirror – hard copy and online

Headline − "Moonlighting – Shane wants break for other star roles."

This article is about Mr Roche's desire for time off from his EastEnders contract so that he could further his acting career with other roles. "BBC bosses" are said to have said they cannot hold talks until the late summer. A friend is quoted as saying that Mr Roche has had several offers but cannot do anything without permission. One example of what he wants to do is given.

502. **Article 9 (not admitted)**

Date − 5th December 2004; Sunday Mirror; hard copy and online

Headline − "Doom and gloom from Albert Square."

This is a short report of a remark allegedly made by Mr Roche to a newcomer to the EastEnders show, apparently complaining of some sort of fall in status which has him "selling fish in the freezing cold".

503. Since this article is not admitted I need to make some findings about its source, even though it is prima facie such a trivial article as to be hardly worth considering for compensation.

504. Mr Roche said that he certainly did not say, on set, the remarks attributed to him. It is, however, the sort of thing that he would say in a voicemail and his witness

statement says he thinks that he did leave the remark on a friend's answering machine as a joke.

505. When this article was added to the action the defendant provided some additional disclosure. It took the form of an email from Mr Ben Todd to Mr Savile and others about an incident on-set in which Mr Roche is said to have stormed off in a huff after a spat with his co-star. Some further details of the dialogue between Mr Roche and his co-star are set out as if verbatim. The source of the story is not given, but it does not read as if it were extracted from anyone's voicemail. It looks much more as though it was some sort of interview with an individual. The email records that there were 30 extras on the set at the time. The defendant also disclosed a Contributions Request for something described as "Radar – Shane Ritchie short" ("Radar" is the column title in which the story was reported). It is in the sum of £75 and refers to a publication date of 5th December 2004. The originating department is the "Sunday Mirror (Features Words Freelance Commissions (Inc Life)). The contributor's name is redacted.

506. Looking at all this evidence, I find that this was not an article which resulted from phone-hacking or any other of the unlawful activities which are the subject of this action. If Mr Roche left a jokey message on a friend's machine then that friend would have had to have been the subject of hacking. He does not identify who that friend was, and of course it is known that targets were "farmed" so as to extend the reach of the hacking, but the friend would have to have been someone identified on a phone bill (if the defendant had one) or one of his more regular contacts who left him messages. If it were the latter then one might have expected Mr Roche to have remembered who the friend was if he remembered the incident at all (which is less than likely bearing in mind the remove in time). The email which has been produced makes it look much more as though the story came from someone on set, who was paid the £75 referred to in the contribution notice.

507. I therefore find that this article was not the product of any unlawful information-gathering.

508. **Article 10**

Date − 17th April 2005; The People; hard copy and online

Headline − "Moon walks – end of Alfie after Ritchie wrangle with his bosses" (foreshadowed by a small box on the front page saying "Exclusive – Shane quits EastEnders.")

The name of Mr Ritchie's EastEnders character is Alfie Moon – hence the title. The article reports that Mr Roche was leaving EastEnders for good. He had turned down a new deal to stay on after a disagreement with the BBC. It goes on to say that he had hoped that he would be able to return once he had finished other acting engagements which he had signed up for, or which he hoped to carry out, but he had been told that there was no guarantee his job would be kept open after his contract ended in November. It ends with quotes from Mr Dale and a spokesman for EastEnders. There is a quote from "one source" to the effect that Mr Roche was walking away from the show to carve out an acting career and the reality was he was not coming back. He was said to be very ambitious. Mr Roche is quoted as telling "pals" that this was a big chance for him to move into other areas; if he did not take it at that point it might never come again.

509. **Article 11**

Date − 8th May 2005; Sunday Mirror; hard copy and online

Headline − "Shane on you Ritchie."

This article reports a row between Ms Wallace and Mr Roche. She is reported as having "let rip" at Mr Roche. She accused him of leaving her in the lurch and said he was an idiot who should get his priorities right. She encouraged him to remind himself of the state he was in before he got the EastEnders job and also reminded him of his film flop. Mr Roche is said to have told her he was not being selfish and he managed to "weather the storm" while Ms Wallace was not there (presumably a reference to Ms Wallace's pregnancy, after which she returned to the show, a point which she is reported to have made to him). The quotes from Ms Wallace are attributed to "an insider".

510. **Article 12**

Date − 19th June 2005; The People; hard copy and online

Headline − "Shane richer (preceded by a front page headline "Shane £1.5m to stay in Enders").

This article reports that Mr Ritchie had been offered £1.5m in a three-year deal in order to get him to stay with EastEnders. The BBC was said to be desperate to keep him on the show, and as part of the deal he would be allowed to star in a series of BBC dramas. A "source" is reported as saying Mr Roche was a huge asset to the show and bosses were more than keen to keep him and to do whatever it took to make him stay. Another "insider" is quoted as saying that Mr Roche was keen to prove he could be a success away from the show but the deal was too good not to be considered. A "pal" is quoted as saying that Mr Roche saw Hollywood as his ultimate goal but his head had been turned by the offer; he needed the cash and it was a no-risk option for him. There was a reference to Mr Roche being in the US with his agent to meet a film company.

511. **Article 13**

Date − 26th June 2005; The People; hard copy and online

Headline − "Alfie's $1m deal with Spielberg."

This very short article reports that Mr Roche had managed to get a $1m deal with Mr Steven Spielberg in Hollywood. He would join other well-known actors in an animated film about a rat. It goes on to say:

> "Movie bosses, who held a secret meeting with Shane in Hollywood, said: "We are convinced he will be a massive hit with US audiences"".

The article concludes by referring back to the previous story about an offer to stay on EastEnders.

Private Investigator Invoices

512. There are 12 of these (or documents referring to invoices which have not been disclosed) spanning the period December 2002 to October 2006. Two have "C Goddard" as the subject - that is his now wife. The rest have Mr Roche as the subject. A couple are for rather greater amounts than usually seen in this action. A breakdown of 12th January 2004 shows two amounts of £475, and one for 22nd March 2004 shows two amounts of £400. That presumably reflects the significance of the information or the amount of work done to get it. Either way, they tend to demonstrate a greater intrusion in the case of these two invoices.

The impact on Mr Roche

513. Like all other victims, Mr Roche was suspicious about how details of his private life were appearing in the press. He blamed others for leaking stories, including Ms Wallace, and it appeared in cross-examination that they had a five year rift over their arguments about it, during which time they did not speak. He was constantly suspicious of everyone, including his best friend, and celebrity guests who visited him. He confirmed his wife's evidence that he had his house swept for bugs, and suspected his manager. All this had an obvious effect on his private life. When he discovered what had been happening, and the apparent scale of the interception of his voicemails and the apparent involvement of private investigators, he was shocked and horrified, especially when he reflected on the sort of private information which must have been listened to. He described it as sickening. However, at the end of his evidence he confirmed that the damage to relationships, caused by suspicion and accusation, has been remedied now that it is known that phone hacking, and not betrayal, was the source of stories.

514. His feelings were made all the worse by the realisation that the defendant tried to cover up what had been happening, and worse again by knowing that senior officials were involved. He was particularly upset that they were listening to messages about his financial details. At the height of his difficulties he says he was left messages by his bank manager about the possibility of enforcement, and the articles made dealings with his bank manager more difficult. He had sought to keep his financial difficulties from Christie (something which, in my view, he was entitled to do - the defendant has not mounted any sort of public interest or allied defence in relation to the disclosures), but could not do so when they were published in the press.

515. He regarded the letter of apology as "pretty pathetic", and was surprised to receive it so close to trial. (He made the comment that his wife and manager did not receive such apologies, but that overlooks the fact that their claims were settled in September 2014.) It was too little too late. The public apology struck him as self-serving and not sufficiently prominent.

Shane Roche - findings on damages

516. Before turning to the individual articles it will be convenient to make some reference to one aspect of the matter at this stage relating to all articles referring to financial difficulties. In cross-examination Mr Roche was taken to an article in the Daily Mirror of 28th March 2003, which contained the fruits of an interview that he apparently willingly gave to a journalist called Sue Carroll. In it, amongst other

things, he referred to financial difficulties that he had had. It said that Christie Goddard bailed him out of difficulties and other friends rallied round to cover other debts. The difficulties were caused by his failed film Shoreditch. The impression given by the article is that "a fabulous deal from the BBC" and another offer have remedied matters.

517. Mr Nicklin relied on this article as demonstrating that Mr Roche's financial difficulties had already been talked about by him, in public, and the information in the articles which referred to his difficulties did not really disclose that much more. He did not submit that it prevented the information being private information; nor did he say that the articles were justified as somehow exposing some sort of exposable inconsistency in Mr Roche's approach (which I suppose would be a form of public interest defence if it were a good point). He said that it meant that the information in the challenged articles did not come out of a clear blue sky and the point went to quantum. Mr Sherborne submitted that there was a difference between information such as that conveyed to Ms Carroll, given in a controlled environment with a journalist with whom he had friendly relations, and its disclosure is markedly different from the disclosure in the articles.

518. The article came out in a very unsatisfactory manner, not for the only time in these proceedings. It was plainly an article which went to an issue in the case, but it was not pleaded, as it probably ought to have been, and it was not disclosed until (I am told) about 3 minutes before Mr Roche gave evidence. It ought to have been disclosed properly pursuant to the obligations imposed by CPR 31. The print used in court demonstrated that the printout was obtained some 3 weeks before it was deployed. Mr Nicklin told me that he had asked for searches to be carried out the previous weekend for articles which might assist in cross-examination, and in that context he had been provided with the article. Whichever date one takes for its coming to the attention of the legal professionals, it ought to have been disclosed before it was. This was another example of an ambush of a witness which ought not to have happened.

519. I do not, however, disallow reliance on the document, and I do not ignore it for the purposes of this judgment either. Nonetheless, the assistance it gives Mr Nicklin is marginal, if there is any at all. The information given in the article is about financial difficulties which had passed. The information provided in the offending articles is about a different level of difficulties which were current. It may be that Mr Roche's financial position had, to a degree, been put in the public domain by Mr Roche, but what happened in the articles went seriously beyond that. The fact that he had referred to his financial difficulties publicly does not of itself open up that whole area of his life for disclosure of whatever information came to light subsequently .

520. Mr Nicklin also submitted that none of the articles, apart from the financial ones, contained any personal or sensitive information. Apart from the fact that that point is again not open to Mr Nicklin on his carefully pleaded case, it is plainly not right. There are different degrees of sensitivity in relation to the various articles, but it cannot be said that none of them contain private information, though the fact that they were all published as a result of an invasion of privacy in the first place still renders them actionable.

521. **Article 1**

This article published information that was sensitive commercial information. It is likely that this was picked up from voicemail messages left for and by Mr Roche. After one of the disclosures a director of Eastenders told people to be careful what was said to Mr Roche because he was "gobby". That remark was not allied to this particular article, but one can see that it would be part of the basis of the remark. It would be capable of damaging his relationship with his employer, and disclosed matters that Mr Roche was entitled to keep confidential. No particular degree of upset is attributed to his article, but I consider that he should receive £12,000 in respect of it.

522. **Article 2**

This article is one of the financial ones. The financial information in it is obviously private and confidential, and its publication is capable of having a significant effect on the subject (Mr Roche) and his creditors. It was information that he was seeking to keep away from his girlfriend, and in the absence of a case (not made) that he was not entitled to do that, or that the newspaper was entitled to penetrate the privacy for that reason, that is a legitimate objective. It was for Mr Roche to decide the time at which he would (if at all) disclose his difficulties. It was accompanied by photographs of Mr Roche leaving his building society, which compounds the invasion of privacy. It is unlikely that the attendance of the photographer was a happy accident, so the newspaper must have learned of the appointment from voicemail messages. The other information is also likely to have come from voicemail messages, perhaps bolstered by some blagging, though no invoices have been disclosed prior to or shortly after this article. This article had an effect even on his children, who said they thought he was going broke and their friend said he was poor and had no money. I consider that this article attracts compensation of £20,000.

523. **Article 3**

This story is a relatively trivial one about the Roches going on holiday apparently in inappropriate clothing. The newspaper believed they were going to the Caribbean. In fact, and as a surprise, Mr Roche told Christie at the last minute they were going to New York (for which their clothing was entirely suitable, if not required). The newspaper must have picked up from voicemails that they were going to the Caribbean (because that is what Mrs Roche believed), and arranged photographers to photograph them at the airport, and then published what was presumably (for them) a surprising angle to the story. Going away on holiday is a private matter, as is the destination, though in terms of importance it is not nearly as important matter as those disclosed in most of the other articles. Mr Roche does not refer to this story in his own witness statements other than a passing reference in his second one. The invasion by voicemail interception, followed by photographing (which would not have happened but for the interception) and the story, taken together, attract compensation of £1,000.

524. **Article 4**

This is another financial affairs article. It adds some changes of circumstance to the prior article. Its effect with the previous article should be regarded as cumulative; it does not merit the same level of compensation (nor did Mr Sherborne suggest that it did). I find it attracts compensation of £12,500.

525. **Article 5**

The level of privacy of the disclosure in this article is very much less. The hacking which doubtless preceded it, and the article itself, attract compensation of £,1000. Mr Sherborne relied on the fact that this was a stressful time because OK! magazine was trying to control the guest list and Mr Roche needed the money, and he had sleepless nights. But that stress was not caused by the disclosure - it was caused by OK! magazine's requirements and his financial state. I think it unlikely that the article itself will have caused him any stress other than the stress caused by the seemingly continual appearance of personal matters in the press.

526. **Article 6**

This article is almost trivial but its source again makes it significant. It attracts compensation of £1,000.

527. **Article 7**

This is another finance-related article, though not of the same seriousness as the previous article. Nonetheless, the bouncing cheque caused embarrassment (it is negative in tone) and the article attracts compensation of £3000.

528. **Article 8**

This article, about Mr Roche seeking to pursue other acting roles as well as Eastenders, was published at a time when he had not actually discussed the matter with the BBC. The only people who knew about his wishes or intentions were himself and Mr Dale. This was therefore a very private and confidential matter. The disclosure in the newspaper could have seriously damaged his relationship with the BBC (though he does not say that it actually did) and gave rise to anxieties (Mr Roche said he was "particularly annoyed") because of that. Mr Roche attributes his failure to get work at the BBC for 5 years after he left Eastenders as being because its executive producer, Mr Yorke, thought ill of him because of this. I make no finding as to that cause and effect - it is merely Mr Roche's view, and unprovable without calling evidence from the BBC - but there was plainly a risk of antagonism. Mr Roche was entitled to inform the BBC about this at a time and in a manner of his choosing, and this article pre-empted that. It attracts compensation of £15,000.

529. **Article 10**

This article leaked Mr Roche's departure from Eastenders before it was announced. Mr Roche was concerned that this sort of thing would reflect badly on him with a future employer as being someone who could not keep a confidence. He was, in my view, yet again entitled to control the timing of the release of the information. The article also discloses something about the attitude of the BBC which might not otherwise have been published. I consider it more likely that the newspaper got the information from voicemails and not directly from the BBC. At the same time I bear in mind that the factual underpinning of this article was always going to announced, or become apparent, at some point, so it is partly a matter of timing. Bearing all this in mind the article attracts compensation of £6,500.

530. **Article 11**

The row between Ms Wallace and Mr Roche was said in the article to have taken place on the set, but Mr Roche denied that and said he would always behave professionally on the set. He says the information must have come from voicemails. I find that he is correct. The defendant has made no attempt to attribute the information to anything else. Mr Nicklin submitted that the subject matter was trivial and not private. I disagree. The dispute between two close friends is plainly a private matter, and its disclosure to the public is likely only to make it worse. Were it not for that corrosive effect the mere reporting of a row would not attract much compensation, but in the circumstances of this

case, and taking into account the voicemail interception associated with it, I consider it attracts compensation of £5,000.

531. **Article 12**

Mr Roche is entitled to privacy for his negotiations with the BBC, both so that the details are kept private (he said that in fact the sum involved was very exaggerated) and so that the BBC should not get the impression that he is negotiating through the press. Once again he had a legitimate concern as to how this would appear to future employers. He should receive compensation in the sum of £6,000 which, once again, reflects the actual intrusion as well as the publication.

532. **Article 13**

The subject matter of this report is private, albeit that it is short. It was known only to Mr Dale, Mr Roche and his wife (at least on this side of the Atlantic). It led to anxiety because of the potential effect on his employer (the BBC) of hearing about such matters in that fashion and preventing a more orderly disclosure by Mr Roche (and also disclosing a figure). I consider it merits compensation of £2,000.

533. The sums referred to above, in the manner in which I have assessed them, do not adequately reflect the general and accumulating upset (distress), suspicion and undermining of relationships which the publication of private information gave rise to. It extends beyond the particular effects of the articles and further compensation is payable in respect of it. That compensation should be £25,000.

534. Mr Roche's figure to compensate for the invasions by hacking generally for 6 years, during which all sorts of private matters will have been heard, is £40,000. In this connection it is relevant to refer to a particular incident in which it appears that in April 2006 the Sunday Mirror had (according to emails) identified that Mrs Roche was about to give birth and further identified the hospital. In an email of 14th April 2006 a Picture Editor identifies the type of Mr Roche's car. This is presumably so that a photographer can attend to take photographs. No article resulted from this, but it is likely that information about the birth was obtained by hacking. There were serious problems with the birth, and two days later his wife's sister died. Mr Roche left a number of emotional voicemails for Mr Dale, and now feels particularly upset that such intimate voicemails would be listened to.

535. Mr Roche is entitled to a sum to compensate him for the invasion of his privacy by the private detectives. In his case it is not so easy to assess whether a given invoice is likely to be associated with an article (and thus taken into account in any of the compensation for the articles). He is entitled to receive compensation for the wrongful obtaining of private information by those investigators, and doing the best I can I assess the compensation at £5,000.

536. I do not consider that there are any aggravating features which aggravate Mr Roche's damages which have not been taken into account already.

537. Mr Roche's aggregate figure is therefore £155,000.

Paul Gascoigne

Mr Gascoigne's claim (before aggravated damages) - £433,000

Defendant's proposals - £40,000 (Vento top band)

538. Mr Gascoigne is a well-known English national and international football personality. Since retiring from his playing career he has remained in the media spotlight, having appeared on TV, co-authored books and received awards. Mr Gascoigne has also battled various health and psychological issues, including addiction and paranoia. He has frankly said that his mental problems also include OCD, depression, anxiety and suicide ideation. He is bipolar and has an addictive personality. He was frequently in therapy during the period relevant to this action. His mental state was of interest to the defendant's newspapers.

539. He also had marital problems. His marriage broke up, and that marriage appears to have been of interest to the newspapers. He has from time to time given agreed stories, or interviews, to the media, but explained that many of them were done in order to have some control over a story which journalists had acquired anyway. The price of stopping the journalist's version was to agree to provide an interview himself.

540. Mr Gascoigne provided a witness statement. Notice was given by the defendant that his cross-examination was required. He duly went into the witness box and answered a number of supplemental questions posed by Mr Sherborne. He did, however, appear very tense and anxious, though he appeared to give the impression that he wanted to have his say in cross-examination. Before he embarked on his cross-examination Mr Nicklin asked for a short period to consider his position. When I sat again Mr Nicklin explained that they had decided not to cross-examine Mr Gascoigne because it would not have been "appropriate". In his final written submissions Mr Nicklin said that his side had decided not to cross-examine Mr Gascoigne because

they had formed the view, having seen him, that the process of giving evidence might have been detrimental to his mental state. I took the view that Mr Nicklin's reason was a matter of evidence, and would need to be appropriately vouched if I was to be asked to rely on it. It was then confirmed in a witness statement from Mr Nicklin's instructing solicitor. In those circumstances I accept that that was the reason. The consequence of that course is that Mr Gascoigne's evidence stands entirely unchallenged and four of the articles which he sued on, which had been not admitted up to the time of his cross-examination were, Mr Nicklin accepted, to be taken as admitted.

541. Over the period with which this action is concerned Mr Gascoigne was a frequent user of voicemail messaging. He communicated with his family, his agent, his therapist, and his close friend Mr James Gardner (on whom he was often heavily dependent), in that way, and received messages from others as well. His messages (both those left for him and by him) would often contain private information, and in particular information about what frequently troubled him - his personal relationships and his mental state - and his commercial affairs. When he was abroad (particularly when he was undergoing therapy in the United States, which he did several occasions) he would often not pick up calls and would therefore receive a large number of messages.

542. He was also a frequent purchaser of mobile phones. He was convinced that his phone was being hacked - that people were listening to his calls. One of the great ironies of this case is that his therapist told him that he was being paranoid about that, yet it now turns out that in a real sense it was true. Not quite in the sense felt by Mr Gascoigne - he thought people were actively listening to his phone calls, not his messages - but largely true nonetheless. Because of his perception he frequently bought mobile phones, on one occasion going to Spain to buy a new one in the belief that that would make hacking into his phone calls more difficult. His evidence was that he changed his phones sometimes 4 or 5 times a month, and he estimated that he must have had 50-60 different phones from 2004 to 2006. Those two sets of figures do not match up, but the sense is clear - he bought vast numbers of different phones. It would appear that he cannot have changed his numbers that regularly, because the defendant admits voicemail interception from June 2002 or February 2003 (the written final submissions are equivocal about a start date) to September 2010, and acknowledges to 10 different numbers used by Mr Gascoigne in that period. That would not be enough numbers if Mr Gascoigne changed his phone number as often as he changed his phone, so I infer that he did not. If he changed his number that often it would make it very difficult for those who needed to call him to keep up, so that is a further supporting factor for the inference.

Duration and extent of hacking

543. As already pointed out, the defendants admit voicemail interception from either June 2002 or February to 2003 to (strikingly) 2010. February 2003 is the date when the first call to Mr Gascoigne is shown in the landline call logs. Mr Gascoigne appears in Mr Evans' Palm Pilot database (though that does not of itself demonstrate that he was successfully hacked) but, alone among all these claimants, he was not on his back pocket list. Email traffic demonstrates at least an interest in him, and an intention to hack, in 2002. An email from Mr Thomas to a Mr McKenley of 19th June 2002 asks if the latter has got Mr Gascoigne's mobile numbers, and on 5th October 2002 Mr Buckley asked a Mr Bridgett if he could resend him Mr Gascoigne's mobile numbers. I think it likely that this traffic, and particularly the latter, points to Mr Gascoigne having been successfully hacked by 2002, not 2003. This is reinforced by the fact that all the articles now pleaded by Mr Gascoigne are accepted to be the fruits of unlawful activity, and the first such article is dated 10th June 2001. This article in the main seems to contain information provided by an interviewee, but Mr Gascoigne suggested in his witness statement that elements came from phone hacking. In particular there is a reference to his going into rehabilitation, a favourite topic of the newspapers. He cannot know that, of course, but it is plausible in the circumstances, and no other source has been proposed. An article of 15th July 2001 is also now admitted, and that contains similar information plausibly similarly sourced. Looking at the evidence overall I think it likely that the hacking dated back to 2001.

544. The extent across that period is harder to judge. The call logs from the landline have been tabulated and they show what are admitted to be 10 numbers for Mr Gascoigne from 2003 to 2010, with over 350 calls shown. The claimant's case is that they are all Mr Gascoigne's numbers, and that does not seem to be challenged as such. However, calls to 6 of those numbers are "not admitted" by the defendant. Since it is admitted that all 350-odd calls are to Mr Gascoigne's numbers I do not understand what that non-admission means. Be that as it may, Mr Gascoigne's case that all the calls were to his number was not challenged in cross-examination, and I find that they were all calls to his various numbers. Since it is not suggested that journalists were calling him to speak to him, they all represent hacking attempts. When one bears in mind that a lot more activity is likely to have been done on burners, it is the case that across the period Mr Gascoigne was hacked on a very substantial number of occasions.

545. What does not appear in the tabulated information is any evidence of calls to "associates". There therefore appears to be no data evidence of attempts to hack friends, family or other contacts. This is odd bearing in mind the pattern of phone hacking. I think it likely that there were attempts, but the numbers have not been identified. There is one email from March 2005 in which his sister's mobile phone number is given, and that must have been for the purposes of intended hacking.

There is, however, no direct evidence of how successful those attempts were. Nonetheless, I find it likely that some associates were hacked. The Defence in this case admits that calls were made to Mr Gascoigne "and his associates". It is likely that some of them will have resulted in successful hacks.

546. The private investigator invoices run from June 2002 to 2006; there are 21 of them. They do not enable one to judge the degree of surveillance save that it 21 invoices across that period (some of them in small clusters) demonstrates that the activity was significant. For once there is a small amount of evidence of the sort of thing done. In his interview to the police Mr Evans explained how he asked an inquiry agent (name redacted) to find out where Mr Gascoigne was and within 10 minutes the contact was able to identify a particular hotel.

547. I therefore conclude that Mr Gascoigne, and some of his associates, were subjected to very significant hacking across the admitted period, and probably since 2001.

Articles published

548. In the circumstances identified above, all these articles are now admitted by the defendant as being articles that would not have been published but for unlawful activities.

549. **Article 1**

Date – 10th June 2001; The People; hard copy and online

Headline – "Gazza said he would kill himself after losing sex-mad Sheryl…after just one night with her I knew why…"

This article (as identified above) is a long article full of quotes from a new lover of Mr Gascoigne's ex-wife (Sheryl). The main point is how agreeable the relationship was for the interviewee (with details), and the article has nothing to do with any form of unlawful information gathering as against Mr Gascoigne. However, there are one or two references to the private side of Mr Gascoigne's life. The interview is said to have taken place "just days after the distraught soccer ace flew to America to check into a clinic in a last-ditch attempt to beat the booze." There are other references to Mr Gascoigne's difficulty with drink, some of which are as likely to have come from the interviewee (via Sheryl) as from any unlawful source, and one reference to the fact that his suicide attempts used to upset his former wife. The rehabilitation which Mr Gascoigne was sustaining was said to cost £4,000 a week and to be taking place in Arizona.

550. **Article 2**

Date -15th July 2001; The People; hard copy and online

Headline – "Gazza quits clinic for hol with Sheryl and their kid."

This article reports that "troubled soccer star" Mr Gascoigne had checked out of a "booze clinic" for a surprise family holiday. It refers to his pleasure when Sheryl invited him to join her and the three children. The observations of fellow holidaymakers are reported and "a friend" reports that he was low when he went to the clinic but has responded well and had a good time on holiday. The actual room that they occupied at Disney Florida was identified, as was the cost of extras. Some of their holiday activities are reported.

551. **Article 3**

Date – 28th July 2001; Daily Mirror; hard copy and online

Headline – "Gazza given a final shot."

The thrust of this article is that Mr Gascoigne was making his first appearance for his football club (Everton) since he emerged from rehabilitation. It reports that the club had ordered him to undertake rehabilitation treatment – it is reported that the Everton manager had warned Mr Gascoigne that he would lose his £20,000-a-week contract if he did not check into the specified clinic. It says that Mr Gascoigne paid £4,000 a week to stay at the clinic, moving in on 1st June. There is a reference to the holiday with his ex-wife and his return to England "promising to buy a new house". It ends with various quotes from third parties which cannot be the result of any phone hacking or surveillance.

552. **Article 4**

Date – 18th August 2002; Sunday Mirror; hard copy and online

Headline – "Where did it all go wrong for Gazza?"

This letter reports on Mr Gascoigne's apparently newly emerging financial problems. It reports that he had received a writ for £60,000 in unpaid accountancy fees and also has a £60,000 overdraft (the latter figure provided by "a friend"). It reports the end of his football career when he was "dumped" by Burnley and "shunned" in America when a proposed £6,000-a-week deal with a Washington club collapsed because he was so unfit. Limited details are given of the action against him and there is a reference to a letter signed by him some 18 months previously when he promised to pay what was owed. The second half of the article tends to regurgitate a lot of Mr Gascoigne's rather more glorious history. He is said to have a savings account which might offset the overdraft and there is a reference to "rumours of offshore accounts". Then the article returns to attempts to resume his relationship with his ex-wife, including a description of a Valentine's Day dinner.

553. **Article 5**

Date – 9th February 2003; The People; hard copy and online

Headline – "Gazza's ex sets bailiffs on him."

This article reports that Mr Gascoigne was "dodging private investigators" sent by his ex-wife who wished him to reveal all his money and investments before he flew off to play football in China. Sheryl is said to have been fearful that her maintenance payments might not be paid. Mr Gascoigne is reported as having spent the previous week refusing to meet private investigators and he then disappeared. It contains a denial by Mr Gascoigne that he had ever missed a payment followed by remarks attributed to "a source" close to Sheryl to the effect that she was concerned about his having a job in China and panicked over cash. There had recently been times when money was late arriving and she wanted to pin the money down so that payments come out of a secure lump sum. It ends by saying that the newspaper had learned that Mr Gascoigne had been sent "notification by Sheryl's solicitors that a court date has already been set for him to declare all his financial details unless he pays a massive sum into a safe account immediately."

554. **Article 6**

Date – 15th February 2003; The Mirror; hard copy and online

Headline – "Gazza in rehab – fallen soccer star drying out again."

The article reports that, while he had been due to fly out to China to join a new club side the previous week, instead he checked into The Priory Clinic. A source is reported as saying that he was drinking again and suffering from depression. The day before he was due to fly out he was said to have been photographed smoking a cigar, enjoying hospitality with a rugby club, and that a later meeting with his family at a hotel ended with a "disturbance" in a toilet before he was led to bed looking the worse for drink at around 2 am. There is then a repeated short reference to the financial dispute with his ex-wife and a reference to a previous stay at The Priory and the 2001 stay in the rehabilitation clinic in Arizona.

555. **Article 7**

Date – 16th April 2003; Daily Mirror; hard copy and online

Headline – "I'm a disgrace."

The synopsis at the top of the article reads:

> "From having the world at his incredibly gifted feet, Gazza must now battle alcoholism, depression, drug addiction, chain-smoking and eating disorders…can anything save him?"

The article then refers to a number of matters. First it reports that he has gone back to the Arizona rehab clinic, having been put on a plane, drunk, at Heathrow. He was looking unhealthy. He was said to have told ground staff he was off to China but in fact went on a flight to America, and there is a quotation from an airport policeman commenting on the fact that he appeared to be drunk. Next there are quotes from an airport worker as to his appearance and then quotes from Mr Gascoigne himself as to his intention to deal with his problems. His problems are then listed and there is a reference to his previous trip to the Arizona rehabilitation clinic (said this time to have been one on which he was accompanied by his ex-wife) and the subsequent holiday. It goes on to refer to the collapse of his marriage and provides stories about Mr Gascoigne's drinking activities. There are remarks from friends, this time one of them being identified. The article ends with a regurgitation of his financial difficulties.

556. **Article 8**

Date – 20th April 2003; The People; hard copy and online

Headline – "Sheryl: Gazza's suicidal."

This article reports that Mrs Gascoigne was said to fear that he was on the brink of suicide and had told friends that he was in a terrible state. It "revealed" how he bombarded her with drunken calls five times a night, pouring out his despair and threatening suicide, ignored their son, "guzzled" super-strong port and was hooked on antidepressants as well as having a chain-smoking habit. It refers to his recent booking into the Arizona rehabilitation clinic and quotes a family source as saying that it was hoped that they would put a suicide watch on him – they were worried about him and that he had reached the bottom of the barrel. Sheryl Gascoigne is said to have "confided in a pal" that he had been threatening to commit suicide but most of the time she could not understand what he was saying because he was so slurred. His calls sometimes turned to abuse as a ploy to get pity, but she could no longer put herself and the children through it. She is said to have told "friends" that even his fatherly instincts have been ruined by drink.

557. **Article 9**

Date – 18th May 2003; Sunday Mirror; hard copy and online

Headline – "Gazza: I love you."

This is a very short article reporting that Mr Gascoigne was desperate to remarry Sheryl Gascoigne but was too terrified of being rejected to ask. Mrs Gascoigne is reported as having told "friends" that Mr Gascoigne had all but proposed. "A source close to Sheryl" said that it was alcohol that tore the marriage apart; Mr Gascoigne was still in love with Sheryl but she did not know if she could feel the same way about him again.

558. **Article 10**

Date – 23rd May 2003; Daily Mirror; hard copy and online

Headline – "Gazza's drinks at airport – 35 days in rehab…then he's straight back on the booze."

This article reports that immediately after leaving the Arizona rehabilitation clinic Mr Gascoigne had appeared at Phoenix Airport as he waited for his plane. A fellow passenger described him in terms which suggested heavy beer drinking. He is photographed at Phoenix Airport. There is then a reference to his arriving at Heathrow and giving a quote and the article then descends into some previous history. It refers to his not playing in China at the moment because football had been put on hold because of the SARS virus.

559. **Article 11**

Date – 25th May 2003; Sunday Mirror; hard copy and online

Headline – "Gazza's booked."

While this article regurgitates a lot of history, it also reports that Mr Gascoigne has achieved a £400,000 deal to write an autobiography. It also reports that he had been approached over a lucrative coaching contract in Dubai.

560. **Article 12**

Date – 5th July 2003; Daily Mirror; hard copy and online

Headline: "Gazza is back with ex Sheryl."

This article reports, briefly, that Mr Gascoigne was back with Sheryl Gascoigne – they had been reunited for 6 weeks. There are three short quotes from Mr Gascoigne and a couple of lines from the previous break-up.

561. **Article 13**

Date – 21st July 2003; Daily Mirror; hard copy and online

Headline – "Dunphy £30k deal to write Gazza's life story; but soccer star fears an unofficial book will focus on booze…"

This article reports that Mr Eamon Dunphy had signed a £330,000 deal to write Mr Gascoigne's "explosive life story". This was said to be an unauthorised book which would reveal the dark side of Mr Gascoigne's life. Mr Gascoigne was said to be furious as he had refused to allow Mr Dunphy to ghost-write his autobiography and had instead chosen Mr Hunter Davies. Mr Gascoigne was said to be worried that Mr Dunphy would concentrate on his drinking and his sometimes violent relationship with his ex-wife. Some general history is repeated.

562. **Article 14**

Date – 20th August 2003; Daily Mirror; hard copy and online

Headline – "Gizza kiss; picture exclusive: star Gazza in love with his ex-wife Sheryl."

This article reports that the couple now "look more in love than ever". They are each pictured more than once at a hotel (the actual pictures were not available in the version of the article provided to me, but summaries of their contents were available). Comments are made on their demeanour and their activities. Mr Gascoigne is quoted as saying that he had changed. There are some remarks about history and some further remarks about how Mr Gascoigne appeared and how he was apparently enjoying himself.

563. **Article 15**

Date – 14th March 2004; Sunday Mirror; hard copy and online

Headline – "Sad Gazza is "hooked on Red Bull" – exclusive."

This short article reports an apparent new addiction of Mr Gascoigne, namely the energy drink Red Bull. He was said to be drinking five cans an hour, spending £40 a day on it. A "friend" is saying that he was hooked and could not get enough of it, but knew it was not doing him much good. It ends with some remarks about Red Bull and some brief remarks about Mr Gascoigne's problems as an alcoholic with obsessive compulsive disorder and his previous trip to the Arizona clinic. He had briefly rekindled his "romance" with his ex-wife, but since Christmas had been living with a friend.

564. **Article 16**

Date – 21st March 2004; Sunday Mirror; hard copy and online

Headline – "Gazza's hooked on bets."

The thrust of this article is that Mr Gascoigne had acquired a new addiction, namely gambling, and had gone to Arizona again for counselling. He is said to have been using Red Bull to keep him awake for gambling and spending up to £1500 a night playing blackjack. A "source" is quoted as commenting on the level of gambling and other matters. Mr Gascoigne is said to have been so desperate to kick the habit that he had "drafted legal papers banning him from the tables for his own good". The source is said to have said it was a drastic but necessary move. The article goes on to repeat briefly his marital history and to refer again to the previous trip to Arizona, to his collapsed footballing career and a car accident that he was involved in in January.

565. **Article 17**

Date – 2nd January 2005; The People; hard copy and online

Headline – "Pneumonia battle for ill legend Gazza."

This short article reports that Mr Gascoigne had been taken to hospital with pneumonia. There is quote from his agent about the seriousness of the situation.

566. **Article 18**

Date – 18th January 2005; Daily Mirror; hard copy and online

Headline – "Gazza in pay fight over son."

This article reports that Mr Gascoigne was in a dispute with his wife over maintenance for his son. He was seeking to get the maintenance sum (identified) reduced. His agent was quoted as declining to comment saying that Mr Gascoigne did not want to talk about it. The article goes on to report his recent stay in hospital, his previous divorce settlement and then various remarks from Mr Gascoigne about how he wished to start with a clean slate. He is also quoted as making various remarks about his health.

Private investigator invoices

567. I have already described these as covering the period 2002 to 2006. In the main it is not possible to associate any of them with particular articles, though as with all the claimants they are all admitted to be rendered in relation to unlawful activities. 13 have Mr Gascoigne as the subject, 6 have S Gascoigne (presumably Sheryl) and 2 have C Gascoigne.

The impact on Mr Gascoigne

568. Mr Gascoigne was frank about his psychological state at the time. He describes himself as paranoid, and obsessed that he was being monitored. In 2008 things got so bad that he was detained under the Mental Health Act (sectioned). On the occasions on which he went into clinics he was in bad state, and he did not seek to hide from the court his addiction problems.

569. These problems were not caused just by the Mirror Group newspapers, or the press as a whole. I accept Mr Nicklin's submissions to that effect. (I do not, however, accept his attempt to introduce into his final submissions the terms of a statement said to be have been made in open court when that statement had not been put in evidence at all). However, the thrust of Mr Gascoigne's evidence is that they were exacerbated by them, and will have caused him much greater anxiety. He was, so far as the Mirror group newspapers were concerned, the subject of surveillance in very important parts of his private life. He was dismayed that every time he went into a clinic, and often when he came out of one, the press were able to report it immediately and, in some cases, to photograph him on the way there or on the way back. His stays and his departures were usually arranged at short notice, and were known only to a small handful of those close to Mr Gascoigne. The press were able to find out about these arrangements and report them. He said that on one occasion when he went to Arizona, arranged at particularly short notice, the press were waiting for him at Heathrow, and then waiting for him at the other end of his flight as well.

570. Not only was this dismaying, it also gave rise to further unpleasant perceptions (accurate in these cases) that he was under surveillance. Furthermore, it led to the distrust of his close friends that other claimants spoke of, and was immensely damaging to relationships which ought to have been able to be more supportive. His feelings of being spied on meant that in group sessions in the clinics Mr Gascoigne did not feel able to be as open as he ought because he was worried that what he said would be reported to the press. The activities of the Mirror group newspapers

deprived him of a significant part of the privacy to which he was entitled for this part of his life. He also accused the press of being there whenever his ex-wife visited him in the Priory (which she did). He did not identify the Mirror titles as being amongst that press (the press was described generically) but bearing in mind their interest in his treatments it is likely that they were there for some of her visits (though no Mirror group articles resulted). The persistence of the Mirror titles' interest in his health is demonstrated by an email from a Mr Hodgson to Mr Buckley containing "Ideas", amongst which is:

> "Blank call in to Gazza's hospital to find out exactly what is wrong with him."

Their interest in his stay in Nevada is demonstrated by an email from Mr Mike Sharp (Picture Editor of the Sunday Mirror) dated 16th May 2003 in which he volunteers to stay on (presumably in Nevada) for a few days in order to cover an aspect of Mr Gascoingne's stay there (presumably with photographs - he says he has his "gear"). Mr Gascoigne said that each unauthorised story published about him caused him additional stress and "anguish". I accept that evidence.

571. Mr Gascoigne's concerns about being bugged led him to purchase £80,000 of counter-surveillance equipment. That seems an astonishingly large figure, and it was not particularised, but whatever the figure the fact that he felt he had to do that demonstrates the pressure he felt he was under and to which the Mirror titles contributed. Like other claimants, he said that when it became apparent he had indeed been under a real form of surveillance by the Mirror titles, and its apparent extent, he felt sick but not surprised.

Paul Gascoigne - findings on damages

572. Mr Gascoigne tended not to focus on the specific effects of individual articles in terms of the effect on him. His evidence concerned more a global effect. In order to reflect that I shall still deal with each article separately and attribute damages commensurate to the invasion of privacy which it constitutes (taking some articles together), but not build in particular amounts for distress or upset arising from the particular article. I shall take account of upset and distress in wider global assessments for that part of his damages.

573. The effect of the decision not to cross-examine Mr Gascoigne is that various matters which I can well imagine might have been canvassed with Mr Gascoigne in order to determine the real level of disclosures relating to certain parts of his life were not investigated with him. The defendant suffers the consequences of its decision. The

decision was its own, and in no way encouraged by Mr Gascoigne. He and his own team were apparently quite content (and Mr Gascoigne appeared anxious) that he should be cross-examined. I can only deal with the evidence as it is laid before me.

574. **Article 1**

Were it not for the admission made in relation to this article it might be difficult to find that it would not have been published but for unlawful activities. The bulk of the article apparently comes from a third party and does not involve Mr Gascoigne at all, and it is hard to see what parts of it had their genesis in unlawful activities. However, I cannot ignore the admission, and the article does refer to his stay at a clinic, which is capable of being private. Mr Sherborne sought to rely on the suicide threats as being private material. I received no argument on that. My view is that it probably is. Mr Gascoigne should receive £7,500 for this article, principally because it does refer to the private matter of treatment at a rehabilitation clinic.

575. **Article 2**

This was intrusive reporting of a holiday with references to his treatment before it. The holiday was not, as submitted by Mr Nicklin, a public matter. It is likely that the newspapers found out about it by intercepting voicemails. It attracts compensation of £7,500.

576. **Article 3**

This repeats private information about his treatment, though by now that is something that has been disclosed. Mr Gascoigne did not seem to complain about the other disclosures of what his club required. His complaint in his witness statement was that this was a repetition of the report about rehabilitation, which was initially a private matter discovered through unlawful means. I will take this article into account in assessing global sums at the end of this section.

577. **Article 4**

The financial detail that appeared here was something known only to Mr Gascoigne and his agent (and obviously the bank). It must have been acquired by unlawful means. The dinner was also a private event known only to his ex-wife, his close friend Jimmy and his family. He believes, and I find, that the press knew about it only by hacking and perhaps some surveillance. This was a double intrusion and attracts compensation of £10,000.

578. **Article 5**

Some of the material in this item is plainly capable of being private. A couple has a reasonable expectation of privacy in what passes between them, and their views, about their financial dealings after a divorce and the implementation of arrangements. Mr Gascoigne believes that the information in this article (he does not specify which information) was obtained from hacking. It is unlikely that all the material in that article was treated as public by Mr Gascoigne and his ex-wife. Viewing this matter realisitically, I consider that this article attracts compensation of £8,500.

579. **Article 6**

I shall deal with this article globally with other articles.

580. **Article 7**

I shall deal with this article globally with other articles.

581. **Article 8**

This intrusive article about Mr Gascoigne's state will again be dealt with with other articles. Mr Gascoigne specifically refers to this article as being both humiliating and deeply distressing.

582. **Article 9**

This article deals with an obviously private matter. It is admitted that it would not have been published were it not for the use of unlawful means. That has to mean hacking in this context. It attracts compensation of £4,000.

583. **Article 10**

This article will be dealt with with others.

584. **Article 11**

This reports potentially commercially sensitive material . Only he and his agent (and his publisher) knew about the terms of any proposed book deal. This is private material, but of itself that disclosure of the less serious kind. Since it covers the same sort of ground as Article 13 I shall take the two together.

585. **Article 12**

The information about the attempted reconciliation is likely to be something gleaned from voice hacking. It will be convenient to take this with Article 14.

586. **Article 13**

This is another article about a book. It is accurate to the extent that Mr Gascoigne was unhappy about the possible choice of Mr Dunphy as a ghost writer. Only a very limited number of people, close to Mr Gascoigne knew about that, but numerous voicemails passed about it. The information was, in the circumstances, attended by an appropriate degree of rights of privacy, and was in any event only acquired by a flagrant breach of privacy rights (phone hacking). Together articles 11 and 13 attract compensation of £8,500.

587. **Article 14**

This article, and Article 12, report an attempted reconciliation between Mr Gascoigne and his ex-wife. Although it contains a quote from Mr Gascoigne his case is that this article was obtained as a result of phone hacking and surveillance. It was not apparent from the evidence whether the photographs were covert or posed, but either way it was not suggested by the defendant that they, or the report, were the subject of any form of consent. This form of intrusion is serious, in my view. There is a legitimate expectation of privacy in reconciliation attempts (unless publicity is accepted, and no such case was made here). The two intrusions into that exercise, achieved by unlawful information gathering, merit compensation in the sum of £10,000.

588. **Article 15**

The new addiction is private material. The fact that his attempts to rekindle his marriage were over may, in the circumstances not have been. Mr Gascoigne commented specifically how seriously distressing it was to have his private obsessions and troubles reported “in real time”. I agree that this is a serious intrusion, and will deal with distress separately. As an intrusion absent that feature it attracts compensation of £7,500.

589. **Article 16**

More addiction is reported in this article, together with treatment. It merits the same compensation as Article 15, namely £7,500.

590. **Article 17**

This particular hospital stay of Mr Gascoigne attracts only a minimum amount of privacy. Mr Gascoigne evidence is that only limited numbers of people knew he had been in hospital so knowledge of it must have come from hacking. The admission made as to its genesis means that the information cannot have initially come from his agent, and the admission means that it has certain private characteristics, but the publication is not a serious intrusion as such. It attracts compensation of £750.

591. I add, in relation to this article, that the way in which it is described in Mr Gascoigne's witness statement leads me to think that he is referring to a different article other than the one in my bundles and in relation to which an admission is made. That, however, makes no different to my finding. I also add that Mr Sherborne submitted that there was blagging of hospital staff for information which was then published. There is no evidence that happened. There is a suggestion in an email that that might be done (see above) but that was made 2 days after the article was published.

592. **Article 18**

A dispute over maintenance for a child is likely to be an inherently private matter, and the article itself acknowledges that Mr Gascoigne did not want to talk about it. The repetition of other matters that were private makes the infringement worse. Mr Gascoigne should receive compensation of £6,500.

593. I turn next to gather up the articles which I said I would deal with globally. All these articles have the common theme of disclosing, or relating to, Mr Gascoigne's mental and addiction problems and his attempts to get treatment for them. On the evidence I find that the newspapers found out about his clinic sessions, whether in the Priory or in Arizona, as a result of phone hacking. That enabled them not only to report them, but also on occasions to have journalists waiting at airports, to report on the circumstances of his arrivals and departures and to take photographs, some of which were published. Mr Nicklin submitted that articles relating to alcoholism did not relate to private matters, because his alcohol problems were said to be well known by 2003. I do not see how Mr Nicklin can make that point on the evidence, because the

pattern of disclosure elsewhere is not apparent from Mr Gascoigne's own evidence, Mr Nicklin did not cross-examine him on it and he did not lead any evidence of his own. However, even so far as true, it is of limited relevance. The existence of public information in the general area of alcohol problems does not free up all aspects of those problems for future reporting. There can still be areas capable of attracting privacy, and treatment is one of them. Furthermore, Mr Nicklin's point ignores one of the central points in this case which is that there was an invasion of privacy by listening to voicemails. This may have enabled the papers to obtain further details about stays at the clinic by unlawful means, and certainly did enable them to send reporters to his points of departure and landing, photograph him and report the occasions. These occasions were of particular concern to Mr Gascoigne, and I accept that publicity of this nature is likely to hinder the therapeutic process, and creates its own anxieties or enhances anxieties which are already there. The incidents taken separately are quite serious. Taken together, and as a pattern, their serious is magnified. In respect of the articles which I have indicated will be taken globally I consider that Mr Gascoigne should receive £30,000. That may seem like a large figure, but there was a pattern of increasing disclosures of a number of different occasions which will have had a ramping effect of feared surveillance.

594. The above sums do not take into account any specific part of the activities of the private investigators. As usual, it is not known what they did. From time to time in his evidence Mr Gascoigne suggested that they were monitoring his mental health conditions. I think that that is unlikely. They may have been blagging details about treatment in the form of details about his length of stay, and whether he was staying somewhere or not, but I do not consider that they were doing anything which would have amounted to monitoring his condition. They were, however, conducting some sort of useful exercises which the newspapers thought would assist them in piecing together stories. In the light of the admissions as to the illegitimacy of their objectives it is appropriate to treat them all as reflecting invasions of privacy, and applying *Armory v Delamirie* to an appropriate extent, and bearing in mind that there were 21 of them, I find that an appropriate sum to award in respect of their activities is £10,000.

595. I turn next to the figure for elements of distress and anxiety which have not been taken into account in the figures above. I leave out of account for these purposes the particular distress from reporting his stays in clinics, and associated matters, which I have dealt with already. Mr Gascoigne, like the other claimants, had his relationships with his friends and family seriously affected by suspicions that they were leaking information. This was a serious effect. In Mr Gascoigne's case it might have been exaggerated by his pre-existing mental state, but it was significant nonetheless. For this factor, and for elements of upset and distress from articles that I have not already been taken into account, I award Mr Gascoigne a further £20,000.

596. Next there is his compensation for the fact that, in addition to the hacking which led to particular articles, he was hacked frequently over a considerable part of a 9 year period. As with other claimants all sorts of private material will have been listened to and, from time to time, doubtless discussed between journalists. The absence from Mr Evans' back pocket list means that I cannot so easily draw the conclusion that he was hacked twice a day, but the pattern of articles about his still suggests a continuing interest, and I consider that he, and hisassociates, were still hacked frequently. Making some sort of assessment as to the level of hacking over the years, bearing in mind his period of hacking was longer than that of the other claimants, and bearing in mind the levels of privacy of the information he should receive £50,000.

597. Last there is the question of aggravated damages. Mr Gascoigne does not seem to have been as troubled by Mirror group denials of phone hacking in the same manner as others were, and there are in my view no aggravating factors that have not already been taken into account. Mr Sherborne invited me to award aggravated damages for the fact that the defendants compelled him to attend court for cross-examination, and caused him stress, and then did not cross-examine him. I do not think that that is a source of aggravated damages. I have indicated what the defendant said about not cross-examining him, and its reason was not challenged as not being the real reason. In the circumstances I have to accept that there was no ploy, and no hidden strategy that has caused stress. In fact, Mr Gascoigne demonstrated his disappointment at not being cross-examined. He apparently relished the opportunity of locking horns with Mr Nicklin (at least according to one of his remarks tendered at the time). I do not think that having one's evidence accepted as it stands, and declining to engage in forensic battle, is something which aggravates damages in this case.

598. Mr Sherborne briefly urged on me a further aggravating matter, which was the publication of an online article on day 3 of this trial which reported, and contained photographs said to show, Mr Gascoigne returning from an off-licence with drink, and wondering if he was in alcohol-related difficulties again. This article was produced at the very end of Mr Sherborne's final speech, and with (as I understood it) no real notice given to the other side. He said it aggravated the damages and suggested that some of its terms suggested that the reason for not cross-examining him was not that which had been given by the defendant (but at that point not formerly proved by evidence). I do not think that that matter, thus introduced, can be relied on as an aggravating matter, and I shall not take it into account.

599. Mr Gascoigne's aggregated compensation is therefore £188,250.

Sadie Frost

600. Miss Frost's claim (before aggravated damages) - £529,500

Defendant's proposals - c £30,000 (middle of upper Vento band)

601. Miss Frost is an actress and a businesswoman. She was also formerly married to the well known actor Jude Law, with whom she had three children. Both she and Mr Law were of interest to the media because of their professions and their relationship, and they had a lot of actor or entertainment industry friends who were of similar interest to the press. Her evidence does not specifically explain how much use she made of voicemail, but it is plain (and not challenged) that she used it a lot, and it is explicit that she would leave messages for others ("associates") with whom she was close, especially her sister Holly Davidson. At the time with which this action is concerned she was going through the break up of her marriage and a divorce, and she had a breakdown, so her messages would have contained a lot of personal information relating to those areas. The thrust of her evidence suggests that in her particular case the messages that she left for others, which were also listened to, were as significant as the messages that others left for her.

602. Miss Frost was particularly friendly with Ms Kate Moss, a well-known model. They spoke, or messaged, very frequently, and Miss Frost explained that during this period, when she was nursing a new baby, she would call Miss Moss many times a day, and often leave voicemail messages on Ms Moss's mobile phone.

603. Miss Frost's case was supported by unchallenged evidence from her sister Holly Davidson and Mr Ben Jackson, who were not cross-examined on their witness statements. Miss Frost was cross-examined on her evidence. I make some remarks about the nature of the cross-examination when I come to deal with aggravated damages. She was clearly troubled at having to re-live some difficult and bruising aspects of her life, but she gave her evidence with moderation and care, and I find that she was a reliable witness who did not exaggerate or gloss her evidence.

604. Mr Ben Jackson was, and still is, Mr Law's personal assistant. His job involved liaising with Miss Frost, or her personal assistants. After the divorce he was Miss Frost's personal assistant as well for a time. At the time of this action he was also dating Holly Davidson. For a time Mr Law did not have a phone of his own, and when he did he could not take calls on set, so those wishing to talk to him, or leave messages, would often call Mr Jackson's phone. While he had two mobile phones

for part of the time relevant to this action (a personal one and a professional one) calls from the former were diverted to the latter, so he would usually pick up voicemail messages from Miss Frost and others who might have called him on his personal phone. His job did not involve dealing with the press, so there was no reason why the press should have been calling him about the affairs of Mr Law, Miss Frost, or anyone else. He did receive a lot of voicemail messages from Mr Law's friends and family, including Miss Frost, as well as from his own friends and family. Many of these will have been private, and some commercially confidential.

605. Ms Holly Davidson, herself an actress, spoke of the closeness between herself and her sister. Because she was often on set, where she could not use her phone, and because she turned her phone off at night, she received a lot of messages, including many from her sister. When troubled, Miss Frost would leave long messages which Ms Davidson would not get until the morning. She tended not to delete messages. Messages from Miss Frost would often share her feelings at the difficult time of her divorce and breakdown.

606. All in all, the phones of Miss Frost, Ms Davidson, Ms Moss and Mr Jackson, all of which appear to have been hacked, were a rich source of information about the lives of the individuals and others.

Duration and extent of hacking

607. The defendant has admitted voicemail interception and other breaches of privacy rights for the period from September 2002 to November 2006. It is not clear why it chose that date as the start date, though I note that the first article sued on in this case is dated 12th September 2002. This is an admitted article, so it is accepted it was the fruit of unlawful activity, but there is no documentary evidence of any activity before that time. On the facts of this case, and bearing in mind the incomplete nature of the phone records, and giving appropriate effect to *Armory v Delamirie*, I am not prepared to find that the start of the unlawful activity coincided with the first article which Miss Frost has claimed for. I am prepared to find, and do find, that the activity is likey to have started some months before then, so that the activity went on for at least 4½ years.

608. The intensity of the exercise has to be considered from two different angles - Miss Frost's phone, and the phones of associates. So far as her own phone is concerned, only 26 calls are shown in the existing landline records. Some of them are in clusters, with nil connection times, which might be thought to be evidence of failed attempts to hack (the first half of an unsuccessful double tap). However, it is impossible to

conclude that this low level of apparent activity means no successful hacking of Miss Frost's phone. The poverty of the landline records has been commented on elsewhere in this judgment. It is noteworthy that the first 10 articles sued on in this action all precede the first call shown in the landline records as having been made to Miss Frost or those associates whose numbers were searched for (not all were). They are admitted as being the fruit of unlawful activity. That admission itself demonstrates that the landline records do not tell all. The unchallenged evidence is that she was on Mr Evans' back pocket list, so he must have cracked her PIN, because she was one of the people he would call twice per day. I find that he and others hacked her phone very regularly, using burners. This level is likely to have operated for most of the 4½ years.

609. There are rather more calls to associates. Mr Nicklin has calculated that there were 201 landline calls to associates (friends and family), of which the vast majority were calls to Ms Moss. He submits, and I agree, that Ms Moss will have been of independent interest to the newspaper because of her position in the public eye, but bearing in mind the number and intensity of calls made by Miss Frost to her, and the number of messages likely to have been left, calls to Ms Moss will have been a very fruitful avenue into the private thoughts and life of Miss Frost. Whatever the numbers on the landline records, they are likely to have been only a small proportion of the overall calls made (because of the use of burners). The records do not show lots of calls to other associates (though there is a little cluster of calls to a Mr Barry Smith, a man with whom Miss Frost had a brief relationship), so it is not apparent from those records that other associates were the subject of successful hacking. Nonetheless it is plain that attempts to hack will have been made, both because the nature of the exercise required it, and because there is internal email traffic providing numbers of various friends. Ms Davidson was an Orange subscriber, so hacking via the generic number would have been the hacking technique that would be deployed against her. Her evidence, unchallenged, was that she had been told by the police that she was on Mr Evans' back pocket list, demonstrating that she had been hacked, and her messages would have been listened to by him at least twice a day for a significant period, and in all probability outside that period too. The newspaper would not give up such a valuable resource when Mr Evans left. The defendant declined to carry out number searches against some associates proposed by the claimant, so not all associates were searched.

610. Bearing in mind the pattern of calls shown in the limited landline records, the evidence about back pocket lists, the emails demonstrating interest in associates and the lasting interest in Miss Frost demonstrated by the published articles, I find that Miss Frost and a significant number of those whom she frequently called were successfully hacked over an extended period, and that there was a very large invasion of her privacy as a result.

611. In addition to evidence of the phone calls there are 35 private investigator invoices spanning the period from February 2003 to February 2006. Most have Miss Frost as the subject, but there are others including Ms Davidson and Mr Law, and there is even one with her mother as the subject. This represents a very significant amount of investigatory activity. All have been disclosed on the basis that they relate to Miss Frost, whether or not her name appears as the subject, and it is admitted that all relate to unlawful activities (unspecified) in relation to Miss Frost. These compound the persistent and frequent invasions from phone hacking.

Articles published and sued on

612. 31 articles are sued on as having come from and contained private information. All but 4 are admitted. I shall have to make findings in relation to those 4. The articles can be summarised as follows.

613. **Article 1**

Date – 12th September 2002; Daily Mirror ; hard copy and online

Headline – "Jude's a dashing daddy – star flies home for birth of son"

This article reports that Miss Frost went into labour prematurely and rushed to the hospital with Kate Moss to give birth. Mr Law was filming in the United States but rushed home to be there in time for the birth. There are quotes from a source about how surprising the labour was and Miss Frost's concern that Mr Law was not going to be able to make it back in time, but he did.

614. **Article 2**

Date – 27th November 2002; Daily Mirror; hard copy and online

Headline – "Jude shelves movie after drug scare"

This article reports that plans that Mr Law and Miss Frost had to produce a film about the London drug trade had been put on hold. The article suggests that there is a link with an incident the previous month when one of their children swallowed part of an Ecstasy tablet at premises known as Soho House. "Our source" reports that Mr Law was sensitive to the fact that producing the film might look as though they were cashing in on what happened to their child. Making a blockbuster film was not on Mr Law's and Miss Frost's list of priorities at the moment. The article ends by repeating the short story that the child had accidentally taken the tablet and had had to be rushed to hospital.

615. **Article 3**

Date – 2nd February 2003; Sunday Mirror; hard copy and online

Headline – "Nicole and Jude; friendship 'caused Sadie to crack up'"

This article reports that Mr Law and an actress named Nicole Kidman had formed a close friendship which was said to be the real reason behind Miss Frost's "plunging into depression and their marriage problems". It reports Miss Frost's refusal to comment and mentions postnatal depression, a confrontation between her and her husband and her slashing her wrists in a cry for help. She was reported to have phoned back to Britain from the United States and to have been treated for depression in a London clinic. The second half of the article is more about Ms Kidman.

616. **Article 4**

Date – 11th March 2003; Daily Mirror; hard copy and online

Headline – "Sad days, Sadie"

This article reports that Miss Frost had lost a lot of weight and was now below 7 stone. She was having treatment for food rejection from a psychologist. Remarks about her distress at this and how thin she looks are attributed to "a pal", who also is said to have reported that her mother Mary has moved in to cook for her. It goes on to refer to the fact that Mr Law had moved out of the marital home and "a source" has told another magazine that Miss Frost cannot sleep and is extremely pale and miserable. The article has a photograph of Miss Frost taken outside, probably using a mobile phone, with the caption: "So thin: Sadie taken last week".

617. **Article 5**

Date – 16th March 2003; Daily Mirror; hard copy and online

Headline – "A hol lotter love – Jude and Sadie jet off to save marriage"

This article reports that it seemed that Mr Law and Miss Frost were "getting back on track". It reports that "in a last-ditch attempt to save their marriage" they were going off for a "private family holiday" with their children later in the month. It had seemed that the marriage was over, with Miss Frost suffering from depression and they had even consulted divorce lawyers but things might be changing. "A source" is quoted as saying that the couple still loved each other and were trying to work through their problems. The quote goes on, without any apparent sense of irony: "But it's very hard when everything they do is being scrutinised. They feel like they are living in a goldfish bowl and just want some time out on their own."

618. Then the article goes on to report Miss Frost's keenness to keep the family together and on a "romantic weekend" earlier in the month with a comment about their love-making during that period.

619. **Article 6**

Date – 20th April 2003; Sunday Mirror; hard copy and online

Headline – "Jude and Sadie's family hol"

This article reports that the holiday referred to in the previous article does not seem to be working. The couple "appear to be drifting further apart". It is accompanied by a very large photograph of the couple with two of their children, commenting on their body language. One or two of their activities are also reported, suggesting that they were under surveillance on this holiday. "A friend" says they agreed to go away, but only for the sake of the children. It was said to be make or break time and Miss Frost was trying very hard. It ends by referring to some history about Mr Law's relationship with Ms Kidman and Miss Frost's "suicide scare". The couple were said to have been working on a new film together, but travelling separately to and from the studio.

620. **Article 7**

Date – 23rd April 2004; Daily Mirror; hard copy and online

Headline – "Sadie's French leave – Frost flees family reunion after row with Law"

This article follows from the previous article about the holiday, reporting that after only 5 days Miss Frost returned home leaving Mr Law on holiday with the three children. "We hear their trip was far from successful". A source is quoted as saying that Miss Frost had been crying to a friend the night before she went that she was trying to keep everything together but it just wasn't working. There was much pressure on them during the holiday and it was a "real make or break time". Unfortunately there were lots of rows. Mr Law is reported as not wanting to move back in and Miss Frost was heartbroken that they had not patched things up. Some history is then repeated, including the report of severe postnatal depression treatment.

621. **Article 8**

Date – 4th May 2003; Sunday Mirror; hard copy and online

Headline – "Jude's secret US trip…as decoy stays home; marriage-split actor sneaks off to New York"

This article reveals that Mr Law had gone off on a "secret visit" to New York, leaving a lookalike decoy (thought to be Mr Ben Jackson) in his place. Miss Frost is reported as being heartbroken by their marriage breakup and was left at home looking after the three children. The article reports "a friend of the couple" as saying that Mr Law wanted to get away secretly, and wanted to keep "his business" to himself. It says that the couple's last-ditch attempt to save the marriage had failed, and Miss Frost had ended up returning home from their holiday in tears. There is then yet another reference to "a suicide scare", the fact that the couple were living apart and the fact that they had consulted divorce lawyers.

622. **Article 9**

Date – 1st June 2003; Sunday Mirror; hard copy and online

Headline – "Sadie takes up smoking despite collapsed lung – exclusive: worried family begs star to kick habit"

This article, accompanied by a photograph of Miss Frost smoking on a holiday in Cyprus, reports that she has started smoking and that friends and family have begged her to give up because it could kill her. She had a history as an asthmatic who had a collapsed lung when she was 4, leaving her with a permanent weakness, and until then she had been vehemently anti-smoking. Her friends were reported as saying that she had been told she should be careful and that she never allowed smoking in the house. She was now not looking after herself while her marriage was in trouble. There is a quotation from her mother and some observations from a doctor, and the article ends by saying that on a recent holiday to Cyprus with a girlfriend, Miss Frost seemed to have dropped her anti-smoking stance, got through "pack after pack of cigarettes, and appeared pale, anxious and thin".

623. **Article 10**

Date – 15th June 2003; The People; hard copy and online

Headline – "Truth about Sadie rage"

This article reports on what was said to have been a row when Mr Law refused to talk about arrangements he had made to see Ms Kidman on a trip to New York. It is said that a frightened nanny dialled 999 and that Mr Law was questioned over allegations of assault. Afterwards Miss Frost left for a holiday in Cyprus while Mr Law flew to New York. He refused to talk about his plans with Miss Frost, who is said to have been unhappy about his continuing relationship with Ms Kidman. "A friend" is reported as saying that Miss Frost knew there was a good chance that Mr Law and Ms Kidman would meet in New York and it was not long before a full-blown row blew up; Mr Law thought it was none of Miss Frost's business and refused to discuss the matter, which enraged Miss Frost even more.

624. **Article 11**

Date – 20th July 2003; Sunday Mirror; hard copy and online

Headline – "Sadie sleep agony – sad actress is having her snoozing analysed at clinic"

This article, accompanied by a page-high photograph almost certainly taken without her consent, reports that Miss Frost had been having sleep therapy at a clinic. She is said to have admitted that the strains and demands of family life had sometimes left her completely shattered. A general indication is given of the nature of the studies and treatment at the clinic, and a friend is reported as having said that Miss Frost was having trouble sleeping and had decided to go for tests. There are then some actual purported quotes from Miss Frost about her taking on a nanny, and that she has found it difficult to come to terms with the end of her marriage. There was a repetition of rumours about Mr Law having an affair.

625. **Article 12**

Date – 13th August 2003; Sunday Mirror; hard copy and online

Headline – "Sadie in lust; the toy boy"

This article reports that Miss Frost had fallen for "a dashing Flamenco guitarist 15 years her junior", identified as Mr Jackson Scott. They are pictured together (Miss Frost said that this was done in Regent's Park, facilitated by hacking phone calls). He was said to have been introduced by Ms Moss, who was "playing cupid" at Mr Scott's parents' Spanish villa. There are quotes from Mr Scott's mother, followed by a reference to police having been called to Miss Frost's home when Mr Law arrived demanding to know if there was a man inside. Much of the rest of the article is taken up with the fruits of an apparent interview with Mr Scott's mother. Friends of Miss Frost are reported as saying that Mr Law was furious that she had a new man in her life and had been making numerous phone calls to her. There was a row between the parties a couple of weeks previously and he is said to have refused to bring their children home from America for a christening. There is then a reference to the Ecstasy tablet incident, which this time is said to have required the child having her stomach pumped and an emergency brain scan.

626. **Article 13**

Date – 21st August 2003; Sunday Mirror; hard copy and online

Headline – "Sadie set v Jude crew; how marriage disintegration split showbiz community"

This long article portrays the marriage breakup of Miss Frost and Ms Law as dividing their friends into two camps. Miss Frost, who is said to be "sick of the sight of the estranged husband again" is reported as being in the South of France with Ms Moss and describes the sort of friends that each of them have in the spouses' respective camps. A serious rift between Ms Moss and Mr Law is commented on and "a friend" reports Ms Moss as being determined to help Miss Frost through her "messy divorce". Other celebrities are mentioned as being on one side or the other and Mr Law's attitude is described, including his desire to get rid of a tattoo with Miss Frost's name. A friend is reported as saying that Miss Frost was pleased the divorce was now going ahead and it was a huge weight off her shoulders. She was having a good time with Mr Scott. References are made to the custody of the children. She expected half of Mr Law's "fortune" as a divorce settlement.

627. **Article 14**

Date – 21st September 2003; Sunday Mirror; hard copy and online

Headline – "Sadie gets £1,000 bill as lover goes overboard"

This article reports an incident which took place when Miss Frost was on holiday with Mr Scott. He is reported to have jumped overboard, in his suit, from a motorboat which was part of the equipment of a yacht which had been hired for two days, in order to visit "an ex-girlfriend". The delays involved led to Miss Frost having to pay a further £1,000 to the owners of the boat. "A source" reports Miss Frost as screaming at Mr Scott, demanding he return to the motorboat so that they could return to their yacht but he would not do so. Miss Frost is reported as having made favourable comments about her sex life with him, but also made it clear that the relationship was just a passing fling. The article also reveals that "last night" it was revealed that Miss Frost had sought medical advice about bruises and that she planned to see a nutritionist in an attempt to improve her skin condition. Her declining weight is commented on again, as are the incidents when police were called to their home, her daughter's taking an Ecstasy tablet found on the floor and Mr Law's anger at that incident. There are photographs taken of Miss Frost ("angry Sadie") separately and of her and Mr Scott together, apparently on this holiday.

628. **Article 15**

Date – 28th September 2003; Sunday Mirror; hard copy and online

Headline – "Jude boycotts son's party after row over Sadie's pal"

This article reports Mr Law's refusing to go to his son's first birthday party because it was to be attended by someone who hosted the event at which the daughter accidentally took part of an Ecstasy tablet (which incident is revisited in the article). It reports Miss Frost's anger at that and then relays one or two matters about the party. It ends by describing how Miss Frost is said to have broken down at a party and sobbed in front of stunned guests about the state of her life.

629. **Article 16**

Date – 14th December 2003; Sunday Mirror; hard copy and online

Headline – "Sadie in tears over car attack"

This article reports an incident in which the passenger windows of her two cars were smashed outside her house, but nothing was taken. A "family friend" makes some comments about the sinister quality of the attack. It ends by reporting that she was set to front the revival of a TV show.

630. **Article 17**

Date – 21st December 2003; Sunday Mirror; hard copy and online

Headline – "Sadie to fly knot – she wants Caribbean Wedding"

The article says that Miss Frost had been telling "pals" that a trip to the Caribbean, to celebrate Miss Frost's 30th birthday, could also be the occasion on which she married Mr Scott. She is said to have been given a ring by him, but the reporter says he/she can reveal that in fact she bought it while she was still married to Mr Law. "An insider" is said to have reported that Miss Frost told Mr Scott she would like to get married on the beach in Jamaica and return home as his bride, and "an insider" is also reported as saying that Miss Frost was talking about marriage – she was keen to marry Mr Scott but others were warning her to think carefully. Other comments are made on their relationship and the article reveals that they would be spending Christmas in different places.

631. **Article 18**

Date – 29th February 2004; Sunday Mirror; hard copy and online

Headline – "The Frost Report"

The thrust of this article is that Mr Law was preparing, if necessary, to use evidence from Miss Frost's former nanny about her lifestyle in any custody battle over the children in the divorce. It reports that Miss Frost's "advisers" have warned her that certain "public antics" might count against her in a custody battle.

632. **Article 19**

Date – 22nd May 2004; Daily Mirror; hard copy and online

Headline – "What's eating Sadie? – Jude's ex in hospital after bug bite"

The main thrust of this article is a report that Miss Frost had been admitted into a London clinic after being unable to shake off flu-like symptoms. The article suggests the symptoms were attributable to an insect bite whilst on holiday in Goa with Mr Scott and others and antibiotics had not worked. "A source close to the star" is said to have told the newspaper that she had been feeling run down, has flu-like symptoms but has been assured she did not have malaria. The article goes on to report "a series of troubles" that have afflicted her, including her dispute with Mr Law, the custody dispute and a dispute over the appropriate divorce settlement. A "close pal" is said to reveal that she did not want a messy battle and hoped for an offer. She wanted to move on with her life.

633. **Article 20**

Date – 18th July 2004; Sunday Mirror; hard copy and online

Headline – "Jude lays down law to Sienna"

This article describes what is said to have been a row in a restaurant between Mr Law and Ms Sienna Miller when the latter suggested that he should settle his divorce dispute with Miss Frost. It goes on to describe a meeting between Ms Miller and Miss Frost in which

the latter is said to have asked the former to talk to Mr Law to get him to settle so that everyone could move on. A short account of the meeting is attributed to "a friend".

634. **Article 21**

Date – 16th January 2005; Daily Mirror; hard copy and online

Headline – "Sadie Frost"

This is an extremely short article asking if there was "trouble in Paradise" for Miss Frost and Mr Scott. The author writes:

"I only asked because Sadie, 38, has been moaning to pals about him. My mole says: 'They've been arguing a lot. Sadie, left, has told pals she loves him, but is worried their romance won't last.'"

635. **Article 22**

Date – 28th January 2005; Daily Mirror; hard copy and online

Headline – "I can't help myself. Pete's everything! Like…really good-looking…and really dangerous – what Kate told friend"

This article is not about Miss Frost at all. It is an article about a new relationship formed by Ms Moss and the views of various of her friends and family (largely disapproving). The only reference to Miss Frost is a short reference to Miss Frost reportedly saying that the man was not the sort of man you would wish for your best friend, the idea of the two of them together would be terrible and the man was very wild. The material is put in quotation marks.

636. **Article 23**

Date – 5th February 2005; Daily Mirror; hard copy and online

Headline – "Sadie frosty – huge fall-out with pal over sex claims"

The article claims that Miss Frost had a "massive bust-up" with one of her best friends following claims about their sex lives. Apparently a story had appeared in newspapers the previous week and Miss Frost is said to have slammed the phone down on her friend and refused to take more calls. Miss Frost was desperate to find out where certain claims came from. The article develops that theme and then moves on to consider the relationships of the friend.

637. **Article 24**

Date – 6th February 2005; Daily Mirror; hard copy and online

Headline – "Frost's warm front. Antony comforts pal Sadie"

This article reports that Miss Frost's relationship with Mr Scott was in trouble. They had been rowing over activities involving allegations of wife swapping. The "Antony" in question had been offering her support. "A mole" is said to have reported that Miss Frost felt humiliated by the allegations and Mr Scott was finding the whole thing difficult to deal with. They were having blazing rows and were on the verge of splitting up. The article reports that Miss Frost and Mr Scott went out in order to sort things out over a drink at an identified pub, and who it was that they bumped into on the way out (Mr David Walliams).

638. **Article 25 – not admitted**

Date – 4th April 2005; Daily Mirror; hard copy and online

Headline – "Sadie's rent boy"

The thrust of this article is a report that Mr Scott had moved out of Miss Frost's house and taken his own flat. "A source" is reported as saying that during fights Miss Frost would tell Mr Scott to pack his bags and get out and now he has done that. He is reported as being still "madly in love" with her but hopes that not living in each other's pockets would improve things. There is a reference to Mr Scott's concerns over previous reports and how irritated he was by the fact that they could spend only a little time on their own. Miss Frost is reported as having been on holiday for more than a week with her sister and a friend.

639. This article is not admitted so I need to make some findings about its source.

640. Miss Frost's case on this is that the article probably came from phone hacking because its subject matter (Mr Scott moving out) was not something that she had discussed with friends but had merely discussed with him. His moving out was not public knowledge, and her view was that "it just doesn't make sense to me that this wasn't one done through hacking". The thrust of her evidence was that there was no other apparent source apart from phone hacking. She understood that Mr Evans had admitted to hacking Mr Scott, and that understanding was not challenged (although I could not trace any express admission in these proceedings that he had so admitted).

641. In cross-examination, though not in his final submissions, Mr Nicklin suggested to Miss Frost that there was another source. He produced an email dated 31st March 2005 addressed to Tina Weaver from some unidentified person – the name was redacted. The email started with the words: "Do you want this, let me know pls." It then goes on to refer to Mr Scott's leaving the house, and contains a lot of the elements referred to in the article. Mr Nicklin suggested to Miss Frost that that might be the source of the article.

642. There is a problem with this email. It stems from the fact that large parts of it are redacted. Not only is the sender's name redacted, significant part-sentences and the last four lines, are completely redacted. Mr Nicklin said that the redactions were done to conceal the source, but that was not proved in evidence. Not only can one not see what the source was, one cannot identify what information the source used in order to provide the email. The redactions that have been made are so significant that one cannot form a judgment about that. The email does not make Mr Nicklin's point. He cannot have it both ways. He cannot seek to demonstrate that this email demonstrates an alternative source whilst redacting material which would demonstrate that point. What he in effect invited Miss Frost to do was to take his word for it that all the redacted material concealed a source, and that that source was not phone hacking. That is not a satisfactory way of making an evidential case.

643. In the circumstances Mr Nicklin did not present any good evidence sufficient to counter the inference that this article came from phone hacking. I find that it did. I also observe that, whilst I acknowledge a newspaper's need and right to conceal sources, I consider that the amount and nature of redactions in this email were very unsatisfactory. It meant that proper sense could not actually be made of it. In the end, however, it is the defendant that pays the price of that because it has not managed to use the email to support its case.

644. **Article 26**

Date – 30th July 2005; Daily Mirror; hard copy and online

Headline – "I blame Sadie"

The thrust of this article is that Mr Law blamed Miss Frost for not putting in place a confidentiality agreement which would have prevented a nanny from disclosing an affair that she had with him. There was a confidentiality agreement with her but it did not cover Mr Law. Various comments said to have been made by Mr Law are attributed, as usual, to "a source". The article ends by reporting that both Miss Frost and Mr Law signed confidentiality agreements in relation to their divorce settlement. Miss Frost, like Mr Law, is recorded as refusing to comment on the matter.

645. **Article 27 (not admitted)**

Date – 20th August 2005; Daily Mirror; hard copy and online

Headline – "Frost bites back – family told to keep mum"

This article reports that Miss Frost was "so paranoid" about her private life becoming public that she wanted even members of her family (mother, sisters and brother) to sign a confidentiality agreement. "A source" is said to have reported that Miss Frost did not want to read another story about her and her family in the press. Several people are identified as being on the list of names whom she wished to sign an agreement, and her main concern was Mr Scott, even though it is said that he has so far shown no signs of wishing to "succumb" to "big money proposals". She is reported as having ended the relationship two weeks before and "friends" said she felt it had run its course but they needed space, though it was said that she was worried about what Mr Scott might say – she wanted their time together to remain private.

646. This is another "not admitted" article. In examination-in-chief Miss Frost explained that she considered that the article will have come from phone hacking because her desire for confidentiality agreements was not mentioned to anyone, other than those whom she was asking to sign. In other words, she was saying that she was not aware of any other plausible source. She believed that her assistant would have left messages for close family members inviting them to come and sign. She surmises that there would have been conversations between her mother and sister about it. To

counter that Mr Nicklin suggested that one of the people who were asked to sign might have betrayed her. She did not accept that suggestion.

647. It is, I suppose, possible that someone close to her who was asked to sign an agreement would have leaked that fact to the press, but that person would not necessarily know how widespread her anxiety for confidentiality agreements was. The closer the person then the more likely it is that she would have confided her reasoning to them, but the closer the person the less likely it is that the matter would have been leaked to the press. Bearing in mind that there has been no evidence that any person close to her was leaking any information, I think that Mr Nicklin's suggestion smacks more of speculation than Miss Frost's suggestion. On balance I find that this story had its roots in phone hacking. By this time Miss Frost had been hacked on a very considerable scale. That makes it more plausible, and in the present context more likely, that this story, too, came from phone hacking.

648. **Article 28**

Date – 6th October 2005; Daily Mirror; hard copy and online

Headline – "Sadie has been through a hell of a lot…it's hardly surprising she has had a few drinks"

The headline is attributed to "Sadie's close pal last night". The article in question reports that Miss Frost had started attending meetings of Alcoholics Anonymous. "A source close to" Miss Frost is said to have revealed that she did not have a serious drink problem but it would be a good idea to try and gain an understanding of what happens when you drink to excess. She was being responsible as a mother and businesswoman. The "friend" added that she had been through a lot in the past couple of years but was being strong and dignified in the way she had dealt with it. She realised that drink could be very destructive and was taking steps to ensure that she did not let anything get out of control. The article then refers back to the daughter's taking an Ecstasy tablet, her postnatal depression, her divorce, the attendance of police at rows and then makes a sexual allegation. The friend is reported as saying that most women would have crumpled but she was kept going by her love for her children. Going to the AA meetings was said to be an incredibly brave step. The article is accompanied by a very large photograph of Miss Frost describing her as being photographed "out and about in London yesterday". It also contains a smaller photograph of Miss Frost suffering a wardrobe malfunction which she will doubtless have found embarrassing.

649. **Article 29 -not admitted**

Date – 13th December 2005; Daily Mirror; hard copy and online

Headline – "Jude and Sadie safari gets Sienna in a…nanny state"

The thrust of this article is that Sienna Miller, Mr Law's girlfriend, was not enthusiastic about Mr Law going on a holiday with Miss Frost and the children because they might be accompanied by an attractive nanny. The article reports that the nanny had been told she was not going.

650. This is a "not admitted" article. On this occasion I do not think that Miss Frost has succeeded in making a case that this article was the product of phone hacking, or at least that it was the product of phone hacking in relation to any messages left for or by her. Although the article mentions her (a point which she wrongly thought was, by itself, significant) it is not really about her at all. Nor is it really about her private affairs. It relates to a family holiday, but that is the limit of it. Looking at the article, there is nothing within it which would support the inference that it came from the hacking of any phones or messages in respect of which she had a legitimate interest. I find that this is not an article in respect of which she can complain.

651. For the sake of completeness I should say that there was in evidence an email which might have been thought to relate to this holiday. It was even more heavily redacted than the last email to which I have referred, and as a result it was even less possible to work out what the source might have been. However, that does not matter, because there is no natural inference which Mr Nicklin has to meet in relation to this article.

652. **Article 30**

Date – 28th December 2005; Daily Mirror; hard copy and online

Headline – "What Dubai Sadie? – Frost's gift to herself and lover"

This article reports another holiday being taken by Miss Frost, two weeks after the holiday referred to in the previous article. It reports how she flew off to Dubai with a boyfriend, giving him a 10-day holiday as a result. She was to be accompanied by her daughter and sister. A "spy" said it was important to Miss Frost that her children should

get on with any man in her life and the holiday would be a good chance for the man to get to know her daughter. Quality time was also important to her – she missed her boyfriend while she was away. She is really keen on him and hoped that the relationship would work out. It was thought that the sister would do some babysitting.

653. **Article 31 - not admitted**

Date – 9th July 2006; Sunday Mirror; hard copy and online

Headline – "Nuclear moss pile; Kate & Sadie at war on Holisland"

This article centres around a holiday enjoyed by Miss Frost, Ms Moss and others. It is said that the holiday turned sour because Miss Frost wants to get up at the crack of dawn and indulge in health-related activities, whereas Ms Moss wanted to relax and "party non-stop and find herself a man". It portrays the holiday as being divided into two camps – those who preferred a more relaxed lifestyle and those who preferred a healthier lifestyle.

654. Once again I have to make findings about the genesis of this document. Miss Frost said that the story was not true. It was exaggerated. She thinks that information must have been misconstrued and embellished. She said that the description of Ms Moss's activities was not right and that that cannot have come from a voicemail – someone must have made it up. She suggested that she might have left a message for her assistant/nanny saying that there had been a bit of a row with Ms Moss and the story must have grown from that.

655. As with Article 29, I do not think that Miss Frost has made a sufficient case of plausibility that this came from phone hacking. It cannot have come from a message that she left for Ms Moss (her great confidante in the past) or her sister, because both were there. It is not easy to imagine for whom any phone message might have been left by Miss Frost which could have provided the genesis of this article. I find that it did not have its genesis in phone hacking or other unlawful activity, or at least none directed at her.

Private investigator invoices

I have commented on these already. They demonstrate a continuing and vigorous interest in Miss Frost's life, and the admission that they will have involved unlawful activities demonstrates the scale of the efforts of the newspapers to penetrate it. They have various people as targets, and I am satisfied that those other than Miss Frost would not have been targets but for their connection to her. In other words, the newspaper was looking for information about Miss Frost when it commissioned inquiries into those targets. They include one person who was briefly a boyfriend of hers.

The impact on Miss Frost

656. Over the years the impact on Mr Frost has been, I find, severe. I accept the following account, given by her (save where the contrary appears). She was a witness who was convincing in all aspects of the manner in which the results of phone hacking affected her, and in her account of her response to discovering the extent of what had gone on.

657. She had strange experiences with her phone - hang up calls, messages left for friends which were never received, or heard, by them, and "old" messages that she had never listened to. This last factor (which I accept to be true) demonstrates that her phone was being successfully hacked by someone, and if it was the Mirror group then the instruction not to listen to "new" messages until they had been listened to by the intended recipient was being ignored (or not appreciated). She became convinced that something very strange was going on because information kept appearing that only very few people knew about. She did not, however, know what it was. The press appeared at events that they should not have known about. She gave as an example of that her lunch in Regent's Park which photographers knew about and attended (see Article 12). Like so many others, she came to believe that people close to her were tipping off the press, which was a very unpleasant realisation. She felt she could not share things with anyone close to her because such things seemed to find their way into the press. Others wrongly thought that she had sought the publicity herself, and those close to her started to distrust her. That even applied to Ms Moss, who questioned whether she could trust Miss Frost. When making medical appointments she felt it necessary to use a pseudonym to protect her privacy.

658. One important indicator of the seriousness of the intrusion as far as Miss Frost is concerned is the fact that she sought to extract confidentiality agreements from friends and even from family. That shows how much she suspected those around her, and how much damage was being done to her relationships with others.

659. She became worn down by it all. Her relationships were more difficult than they needed to have been, and she and Mr Law have both wondered if their relationship problems would have been remedied if they had not had to cope with the press

intrusion which it received. Mr Law expressed that view to her once it became apparent that they had been the victims of hacking. In the witness box Miss Frost was plainly upset about that particular piece of evidence, and I consider that that sort of lingering doubt is a very material part of the upset that has been caused to her. I accept that the intrusion is likely to have hindered the repair of the relationship, but it is impossible to know if it would have survived anyway. In fact the animosity between her and Mr Law has disappeared since the revelations about phone hacking, which speaks as to some of the consequences of hacking at the time.

660. Miss Frost has had treatment for depression. The evidence is not such that I can or should make a finding that that depression was solely caused by the activities of the Mirror titles in invading her privacy, but the upset caused by the articles is likely to have contributed to her depressive state. She also described anxiety and panic attacks, finding it hard to be leave the house because she would be followed by the press. She felt she could not even take her children to the park because they became scared of photographers and, as they got older, got angry about the intrusion that photographers represented. Again, I cannot find that the following press were all Mirror group titles, or that all the press activity stemmed from the sort of invasions of privacy which are the subject of this action. The extent to which the press is entitled to camp outside an individual's house, and then follow them about their ordinary activities, is not the subject of this action. Miss Frost's upset at all this is entirely understandable, but it would not be right to visit the consequences of all this sort of activity on the Mirror titles as flowing from the wrongs which are the subject of this action. Having said that, it is likely to be the case that a significant amount of the photographer intrusion is likely to have stemmed from what the titles found out about her personal activities from hacking and other intrusions. That, after all, was part of the purpose of the hacking. I shall have to make a judgment about how much of that to reflect in damages.

661. When she was told that she had been hacked she was, in a sense, relieved, though she was then shocked to discover the extent of the hacking which was directed against her (and her associates). Like other claimants, she is very upset at the number of people in the newspaper who became privy to large, and sensitive, parts of her private life, particularly bearing in mind the marriage break-up which she was going through. Now she has realised the extent of the activities of the private investigators she says the thought of that level of intrusion by those people at such a difficult time in her life makes her feel sick. The emails that she has seen have revealed that she could not even enjoy a holiday with her children without a photographer being despatched to watch her. She was particularly concerned at an email that Mr Euan Stretch sent to himself which lists a number of apparent activities or targets, one of which was "Sadie Frost Medical Records" (though this particular email does not coincide with any periods during which she was reported by the Mirror titles as having hospital treatment). She had suspected hospitals of leaking medical details about her. Now

she is concerned about the level of intrusion into medical records that might have gone on. Generally, she feels angry that the defendant knew she was in a vulnerable state, and yet went ahead with the intrusions. She considers that the newspapers did not care whether or not they upset her children or damaged her family life. I think she is likely to be right about that.

662. The impression she got from the Mirror group articles is that the group was out to portray her in a bad light. Although her life has received coverage in other parts of the press she felt that the Mirror group in particular had it in for her in a way that others did not. I was not shown other press coverage in order to enable me to assess that point, but as a narrow point nothing in this litigation, as it is framed, turns on the comparison. What can be said is that a number of the articles complained of do tend to show Miss Frost in a bad light. That, of itself, is not a wrong, but I have to bear in mind that the opportunity to do so has come from hacking (or allied activities), and that the articles would, as has been admitted in relation to most of them, not have been published but for hacking. The hacking therefore provided an opportunity for the presentation, and that opportunity was taken.

663. In her first witness statement (dated 9th December 2014) Miss Frost commented on the fact that there had been no apology. She suggested that given what that the papers had put people through, she would have thought that somebody very senior at the newspaper group would have apologised to her and her family. Now that an apology has come she considers it to be too little too late. She says, with some justification, that it would have seemed more genuine if it had come earlier and not put the claimants through so much first, though this criticism is based on an assertion that the board ought to have found out the truth years earlier, which may or may not be true, but is not a finding that I can make.

Sadie Frost - findings on damages

664. As with others, I will attribute damages to articles before taking in other more global matters. I deal only with the articles that have been admitted as resulting from hacking and those which I have found to result from it.

665. **Article 1**

Of itself the information in this article does not attract a high level of privacy. However, Miss Frost says that she was followed to the hospital by photographers. However, it is to be inferred that the newspaper found out about the birth (which was premature) from hacking. She says that she left a message for Ms Moss to the effect that she was in labour,

and as a result she was pursued or met there by photographers, which was not a pleasant experience. If the photography was a result of phone hacking then presumably the message must have been picked up very promptly after it was left, but that is plausible and Ms Frost was not challenged about this in her evidence. Her evidence is that photographers were not camped outside her house so they did not follow her merely because she left the house. That consequence of the hacking is something that I should take into account. She received messages from friends and family, and it is likely that they were listened to. Confining myself at this stage of the judgment to the damages appropriate to the article and its associated hacking and photographic attendance, I find it attracts compensation of £6,000. Compensation for listening to subsequent private messages about the birth will be picked up under later global heads.

666. **Article 2**

There is no suggestion that the revelation about a film in this article caused any particular degree of upset. The information might be thought to have a degree of commercial sensitivity about it, but it is limited. Miss Frost did not claim a great amount of compensation for this article - she proposed £3,000. That is excessive. I consider it attracts compensation of £1,500.

667. **Article 3**

This article represents a serious intrusion into Miss Frost's personal relationships and mental health, including a reference to self-harm. No particular attempt was made to justify it. Some very private messages must have been listened to to obtain the information underlying it. It attracts compensation of £25,000.

668. **Article 4**

At one level a woman losing weight is not a matter whose revelation would be thought to attract a lot of, if any, compensation, if indeed it was private. However, this article is a reflection of Miss Frost's mental state at the time, which is a much bigger privacy area. It refers to treatment. It is therefore a much more serious matter. I treat it as a health related matter. Again, it must have been founded from listening to a number of private and personal messages. I consider it attracts compensation of £10,000.

669. **Article 5**

This article portrays aspects of Mr Frost's private life and her attempt to save her marriage by going on holiday. It contains limited details of her sex life and a previous holiday. It should be taken with Article 6.

670. **Article 6**

This follows on from Article 5 and contains a photograph. Together these made Miss Frost particularly angry - the quotes contain references to things that would pass privately between friends. This article contains a publicly expressed judgment on how the newspaper thought they were doing. The articles represent a combined intrusion of the same kind into the same area, and the area is one of considerable sensitivity. The passage quoted from Article 5 shows that the newspaper was aware of the difficulties caused by reporting this sort of material. This intrusion is serious and together these articles merit compensation of £25,000.

671. **Article 7**

This follows on from the two previous articles, but it is appropriate to take it separately. The newspaper was not entitled to listen into private messages about how well the reconciliation attempt went, and Miss Frost's views on it were obviously private. Miss Frost complains with justification that the defendant was publishing a running commentary. This article attracts compensation of £8,000. I have assessed a figure which takes into account the previous publications and does not contain any double counting.

672. **Article 8**

While it is admitted that this article is the fruit of phone hacking (or other unlawful information gathering) its impact on Miss Frost as an article, other than its being yet another article about her marriage, is not likely to have been great. It is mainly about Mr Law, not her, and the material about her is material that had already been published. The reference to divorce lawyers appears to be new, however. The hacking involved in this article, and the article itself, attract compensation of £2,000.

673. **Article 9**

This article contains medical information, and the fact that Miss Frost has started smoking. This latter point is not, of itself, private. The medical background, however, is. Miss Frost said that it could have come from hacking the phones of her sister or mother (it is clear at least her sister was hacked) and that mention could have been made of it when those two expressed concerns to each other. Mr Nicklin suggested in cross-

examination that the information might have come directly from the mother, but Miss Frost said that was very unlikely, and I accept that evidence. It is also likely that the newspaper learned of the holiday through hacking, which gave it the opportunity to photograph her there. This article not only comes from an invasion of privacy, it contains private information which was found out through that route. The medical information, however, is not information in the most private category. The article attracts compensation of £5,000.

674. **Article 10**

This article reports private arguments between two spouses whose marriage is collapsing. That is a serious invasion, in its context. Miss Frost said that it felt like a betrayal when private arguments were exposed, and each of Miss Frost and Mr Law thought the other was to blame. Allowing for that factor in the case of this article, it attracts compensation of £7,500. I have taken into account that earlier disclosures about the marriage had already been made.

675. **Article 11**

Miss Frost justifiably regarded her sleep treatment as "deeply private". She is entitled so to regard it. She told me, and I accept, that the only people who knew about it (other than the clinic) were her mother and sister. Mr Sherborne submitted that the article goes on to suggest that she was having difficulty coping at the end of her marriage, but I do not accept that gloss. Disclosure of the treatment is akin to disclosure of medical treatment in terms of privacy, though on the scale of things it is not the most serious. This article attracts compensation of £14,000.

676. **Article 12**

The disclosure of the relationship with Mr Scott was only disclosure of something that would become public in due course anyway, though the newspaper probably found out about it only through phone hacking. Miss Frost's evidence was that the photographers were obviously tipped off to attend her lunch with Mr Scott and that they got the tip from listening to voicemail messages. I think that is overwhelmingly likely against the background of the other facts of this case. Their presence will have caused understandable dismay and anger to Miss Frost because, as she said, they made it look as though she had set up a photoshoot. The article then delves into Miss Frost's marital relationship again. The mere disclosure of this relationship would not attract much compensation, but the other factors, with their associated hacking, mean that this article attracts substantial compensation in the sum of £6,000.

677. **Article 13**

It is not clear how much of this article comes from phone hacking, but like all other admitted articles it is admitted by the defendant that it would not have been published without it. So far as it deals with private matters, it revisits matters internal to the marriage and to personal relationships with friends. In the main, however, although Miss Frost found it distasteful (and inaccurate) I find that the properly private elements in it are rather fewer than non-private elements (or at least elements in respect of which Miss Frost cannot claim privacy rights). It attracts compensation of £6,000.

678. **Article 14**

Miss Frost said that this article was based on truth (though there was no £1,000). The paper is likely to have found out about the incident involving Mr Scott from a report she left for her sister, so its source is an infringement of privacy even if the incident itself, having taken place in public, would not be treated as private. The medical information, on the other hand is private, and Ms Frost is entitled to proper compensation for its discovery and disclosure. I find that the newspaper was put on to that by phone hacking or other unlawful information gathering. I note that there is a private investigator invoice whose due date (14th September) was shortly before the report, so blagging may have played a part. The article attracts compensation of £8,500.

679. **Article 15**

This article refers to limited aspects of Miss Frost's family life and to an indication of her upset. It is not nearly as significant as other articles. It attracts compensation of £2,000.

680. **Article 16**

By itself, this article would attract no compensation. Miss Frost points out that it is the sort of article that led her to distrust those around her. I shall not treat it separately - any contribution to Miss Frost's claim comes from wrapping it up with the global items below.

681. **Article 17**

This article has the demerit of being untrue. Remarks made about marriage were said to have been made in jest, and the article must have come from misunderstood messages. Ms Frost did, however pretend that a swivel ring, which she had purchased herself, was an engagement ring. This article only attracts compensation because it was published as

a result of phone hacking. Miss Frost sought £3,500 in respect of this article. I consider that she should receive £1,000, principally to reflect the hacking that went on in order to get it.

682. **Article 18**

Although this is an admitted article, it is not clear to me what private information of Miss Frost's is actually reproduced in this article. Although it centres around the custody battle, it deals with Mr Law's possible tactics, not hers. Miss Frost's witness statement does not indicate why she thinks this article demonstrates hacking. In the light of the admission I cannot ignore the article, but I do not think that it adds much to the overall picture. I shall not make any separate award in respect of it but shall include its source and consequences in the global items below.

683. **Article 19**

This article intrudes on Miss Frost's medical conditions again, and repeats generally some previous private troubles. It attracts compensation of £5,000.

684. **Article 20**

It is not apparent from the fact of the article what the intercepted messaging was (at least on the phones of Miss Frost and her associates) that was likely to have led to this article, because most of it is written from the perspective of Ms Miller. However, it is an admitted article. Miss Frost says that she was nervous about meeting Ms Miller (at Glastonbury) and would have been leaving messages about it with her sister both before and after the event. That may have been the trigger. But even allowing for that, the article is not particularly damaging to Miss Frost in terms of her privacy, and she does not claim that it was. I will not award a separate amount for this item.

685. **Article 21**

This short article is likely to have come from something that passed, by messages, between Miss Frost and her sister. It is likely to be undermining of a relationship to have this obviously private matter exposed in public. Miss Frost's claim for this article is £2,000, demonstrating her view of the level of seriousness (at least by comparison with, and in the context of, the other articles). I think that that is a little excessive; I award £1,000.

686. **Article 22**

The significance of this article for Miss Frost is that it contains an alleged quote from her. Miss Frost said that this was indeed the sort of thing that she was saying privately to her sister or other close friends, but never to the press. To have it published was important, because it led Ms Moss to think that Miss Frost had indeed spoken to the press about Ms Moss's relationship, and increased tension between them. This tension and distrust is, generally, the subject of a general award at the end of this section of this judgment, but to reflect the fact that this article played a detectable role in that effect I shall award separate damages in the sum of £3,500.

687. **Article 23**

Miss Frost says that the only way that the newspaper can have known about the row referred to in this article is by listening to messages left by the friend after she had refused to take any more calls (which she did). This article is more significant as a manifestation of the sort of things that could be prompted, obtained or confirmed by phone hacking. It is an admitted article, but its impact on privacy, and the additional impact on general distress and upset, is limited. It attracts compensation of £2,500.

688. **Article 24**

This article contains information about Miss Frost's private life and relationships which is significant. It also demonstrates, as she said, that the newspaper was able to know where and when she was meeting Mr Scott, and probably to have someone there to observe them. It attracts compensation of £3,000.

689. **Article 25**

The fact of Mr Scott having moved out is not attended by much privacy, but details of disputes leading up to it, and Mr Scott's views about the relationship, are. This is therefore the disclosure of private material which was (on my finding) identified by another invasion of privacy. The degree of privacy is, however, not great, and the effect of this article on Miss Frost, bearing in mind what she had already been through, will not, of itself, have added a lot, though it will have added to the levels of distrust that made repairing relationships difficult. I consider the appropriate amount of compensation for this article to be £2,500.

690. **Article 26**

Miss Frost thinks it likely that Mr Law left messages about the absence of a confidentiality agreement on her phone, but seems to have no direct recollection of that (not surprisingly). Although listening to those messages was an infringement of Miss Frost's right to privacy, the information itself was more of Mr Law's than hers. However, they still constituted part of the private dealings between Mr Law and her. Miss Frost said she was "amazed" at the publication of the article, but does not say why. It does not seem to have been unduly upsetting. I consider it attracts compensation for Miss Frost of £2,000.

691. **Article 27**

This is the article about Miss Frost asking her family to sign confidentiality agreements. She agrees that she did this. She found it sickening that her attempts to keep her private life confidential were themselves found out by the press, and exposed in breach of her privacy rights. In my view the attempts to get widespread confidentiality agreements was itself, in the circumstances, an act which attracts some privacy (her evidence was that she wanted it done discreetly), and yet again the newspaper had found out about it, in some apparent detail, from messages. Miss Frost felt angry and betrayed. Her anger will have been greater because attempts to maintain confidentiality were betrayed. I find this article attracts compensation £10,000, to include an element of aggravation arising from the compounding of infringements of privacy rights in relation to an attempt to protect from infringements of privacy rights.

692. **Article 28**

This article is particularly serious, and Miss Frost said she was particularly horrified by it. It is plain enough now that attendance at Alcoholics Anonymous ought to be treated as private information, as the *Campbell* decision in the previous year had established. It is particularly surprising that, in the light of that decision, an editor should have allowed this article to be published. Miss Frost gave some clear and compelling evidence about how upsetting this article was, together with its attendant circumstances of photographers, as she put it, waiting in the bushes for her to come out of the meeting. Her belief, uncontradicted by the defendant, was that the photograph which accompanied the article was taken as she came out of the meeting (contrast the caption on the article). She was tracked down somewhere where she thought she would clearly have some protection from exposure. This incident led her to believe that everywhere she turned there was a nightmare.

693. Mr Sherborne invites me to award £60,000 for this article. Mr Nicklin made no particular attempt to defend it, but even allowing for that I think that Mr Sherborne's sum is way over the top. Nonetheless, a combination of the privacy infringements arising out of the relevant hacking, the pursuit of Miss Frost to the meeting, her

awareness and upset at the time that she had been tracked down there and the subsequent upset when the article was published (with "quotes" which are likely to be disguised versions of what she said in private messages to others), together with the fact that a photograph was taken of the occasion, means that a much more substantial sum in compensation is merited for this breach than for many others. This is a serious health-related privacy infringement and I consider it merits compensation in the sum of £25,000.

694. I would observe that that is, of course, much more than the sum awarded to Ms Campbell - £2,500 and £1,000 aggravated damages. That is for a number of reasons. First, inflation would have increased Ms Campbell's sums were the equivalent to have been awarded now (though not, of course, to £25,000). Second, it was an early case in the privacy jurisdiction, and the authorities above have strongly suggested that the sum can now be considered to be low. Third, in this case there is the additional separate element of the infringement of privacy rights in the act of hacking. Fourth, this infringement took place against a background which meant that Miss Frost was already vulnerable, and her upset would have been all the greater. I have no hesitation in awarding the much greater sum.

695. **Article 30**

This invasion of privacy is relatively trivial. It merits compensation of £750.

696. I turn next to the global sums. I have identified the levels of upset and distress caused to Miss Frost overall by the pattern of disclosures, and the extent to which they caused distrust in, and damage to, relationships. I have sought to reflect particular distress from particular articles in the sums awarded for them. However, there is an overall effect which is not adequately compensated in that way. This was a sustained period of distress and upset which has continued after the hacking stopped, and the effects still exist. I consider that, in addition to the substantial sums awarded in respect of particular articles, she should receive £30,000. This is more than other claimants have received under this head, but that is because I consider that the period and level of upset caused is that much greater.

697. She is also entitled to a sum to compensate her for the fact that her phone and those of associates were hacked a lot over a considerable period (4½ years) and a lot more of her private life, thoughts and activities were exposed to the journalists than has appeared in the articles. She should receive £37,500 for this, making an allowance for some limited variation in hacking and the fact that some hacking bore fruit in the articles above.

698. The activities of the private investigators was more intensive in Ms Frost's case than in the case of others, judging from the number of invoices. Some of it, realistically, may have been reflected in articles for which I have awarded compensation, but it is not particularly obvious that there were many in that category. I consider that Ms Frost should receive £10,000 for these invasions of her privacy.

699. So far as aggravated damages are concerned, I do not consider that there are any, or at least none that have not already been reflected in the damages awarded. Miss Frost did not claim to be affected by the denials of the defendant over the years. The late apology does not, in my view, merit aggravated damages.

700. Mr Sherborne invited me to make an award in respect of what he called aggressive cross-examination. I agree that there is a point to be considered here. After his cross-examination had been progressing for a while Mr Nicklin adopted a tone and content in cross-examination of Miss Frost which contrasted with the tone and content adopted with most of the others, and seemed to revert to the sort of cross-examination which I have ruled to justify some aggravated damages for Mr Yentob. I intervened (in the absence of the witness) and invited Mr Nicklin to consider what he was doing in the light of his client's frequent expressions of contrition and apology, and its expressed desire to get to the bottom of things and achieve fair compensation. He took instructions and his cross-examination style changed and reverted to the style and tone of most of his previous cross-examination. At the end of the evidence he expressed his regret at any hostility shown, which he said was not his intention. I think that he stopped his more hostile cross-examination short of the point at which it would have attracted aggravated damages, and I do not award any for that.

701. It follows that Miss Frost should receive £260,250 by way of compensation.

GENERAL AND OTHER MATTERS

Compensation generally

702. It will be apparent that my awards of damages in this case are very substantial - far more substantial than in any hitherto reported privacy case. They are more substantial than in many libel cases. I have, however, reviewed each of the awards at the end, with an eye to the total awarded, so ensure that, as a total, it is not excessive (or indeed an under-award). I consider that none of them is. The fact that they are greater than any other publicly available award results from the fact that the invasions of privacy involved were so serious and so prolonged. None of the articles in respect

of which I have awarded compensation would (on the admitted case) have been published had it not been for the underlying prolonged phone hacking that went on, which was known to be wrongful. That hacking existed in all cases whether or not an article resulted. The length, degree and frequency of all this conduct explains why the sums I have awarded are so much greater than historical awards. People whose private voicemail messages were hacked so often and for so long, and had very significant parts of their private lives exposed, and then reported on, are entitled to significant compensation.

703. In the course of the hearing Mr Nicklin pointed out that the sums awarded exceeded the indications as to the maximum size of the claim shown on each claim form. It was not said by him that that had any consequence in terms of limiting the amount of damages that any claimant should be entitled to, and it is in fact explicable, at least in part, by the fact that the full scope of the hacking against the claimants only emerged in the course of the actions themselves.

The "disclosure" relief

704. Under this head I shall deal with the particular claims of all the claimants that there should be some sort of inquiry as to what the information was that the defendants acquired about them, whether by way of phone hacking, blagging activities conducted by journalists or the activities of the private investigators. It was a common theme that they would never know what was listened to or discovered by unlawful means unless there was such an inquiry, and this caused them significant disquiet. They therefore wished to know, and wanted an order that the defendants should go away and find out. The form of order that they sought was an order that the defendant should provide information as to the full extent of its wrongdoing, namely:

(i) The defendant should identify each and every MGN employee or agent who obtained and used the claimant's information.
(ii) The number of occasions on which voicemail messages to or from the claimant were accessed.
(iii) Identification of all of the claimant's information obtained by MGN's journalists, and the extent to which this information was circulated to and used by those journalists.

705. Their view is entirely understandable, and it is one with which I have considerable sympathy. In litigation involving less extraordinary facts the point would be less likely to arise because it would have come out in the process of disclosure. Since the damages would be affected by the extent of the invasion of privacy, disclosure going to that point would be ordered unless the defendant itself adduced evidence which dealt with it sufficiently without that disclosure. In the present case that has not

happened for a number of reasons. First, the defendant has adduced no evidence at all going to the point. No journalist, other than Mr Evans and Mr Hipwell has given evidence in this case, and they could give no real detail along the lines required by the claimants. Second, the disclosure process has revealed virtually no documents going to the point in sufficient detail either. There are documents suggesting odd instances of what was listened to (though never in terms of actually demonstrating listening) but the sort of detail required by the claimants is missing. In order to keep the disclosure process within bounds it was limited by reference to specified activities, usually word searches on specified email accounts, and searches against specific phone numbers in the phone records. The defendant did not accede to all (indeed, many) requests for searches, and the claimants say there is a considerable shortfall in what should have been done, although applications for specific disclosure were not pursued. At one point the defendant took the point that the admissions that it made made more widespread disclosure unnecessary.

706. By the end of final submissions the point had been reached at which I indicated that I would deal with this point as a matter of principle before deciding, if it became appropriate, what steps should be taken. Whether any, and if so what, steps were appropriate would probably involve going into the disclosure history in considerable detail to see what has and what has not been disclosed, what statements have been made about the availability or non-availability of material, and what further evidence exists about the availability of material. None of that was done at the trial so all I could usefully do was to rule on the principle first before considering the practicalities with the benefit of further submissions.

707. There were no detailed submissions on the existence or otherwise of the jurisdiction, so I have to decide the point without reference to them. I have come to the conclusion that I would, if appropriate, have jurisdiction to make the orders sought, or some of them. The claim to privacy has its roots in equity, and equity will allow the sort of inquiry sought where matters have not been completely determined in the course of the action. It will make findings of breach of trust, and order inquiries as to the consequences. Mr Nicklin has accepted that there are analogies with relief given in intellectual property actions. I consider that, as a matter of jurisdiction, there is no reason why I should not make the orders. The court does not lose its powers to order disclosure just because a judgment has been given, though of course in the normal case there would be no reason to order disclosure going to the cause of action after judgment has been given on it. I do not consider that the sort of inquiries and disclosure that the court is invited to order in this case are limited to cases in which propriety rights are in issue, though again they may be the typical case where they are ordered – there is no reason in principle why there should be that limitation. I consider that, if justice and the facts required it and justified it, I would have jurisdiction to make orders to try to achieve the ends sought by the claimants.

708. That is as far as I said in the course of argument that I would go. I said I would consider the actual relief if I decided the point of principle in favour of the claimants, and I shall do that if the claimants pursue the point. However, having said that, and in case it is of assistance to the parties, I tender my preliminary views of whether I should exercise the jurisdiction on the facts.

709. So far as the application has its roots in what is said to be an unsatisfactory and incomplete disclosure process, I would, as I have observed, have to consider the detailed history of disclosure. At my request the defendant put together the documents which charted that process. They occupied two substantial bundles. A tabulated summary of the course of the disclosure and the disputes relating to it ran to 14 pages. The history is therefore detailed and complex, and it is not an easy task to form an assessment of whether the defendant has been less than forthcoming on disclosure (assuming for present purposes that that is relevant) and, more appropriately, whether much would have been achieved by a wider process. But during the course of the trial, and particularly as a result of the evidence of Mr Hipwell and Mr Evans, it has, to my eyes, and prima facie, become apparent that the hunt for the information, and documents, will be very difficult and very arguably impossible to achieve to any reasonable degree. Mr Evans described a process which was designed not to leave any documentary trace. The attempts at hiding were not always successful, as the disclosed documents reveal, but it would have had to have been unsuccessful on a grand scale for there to exist the sort of information that the claimants now require in order to provide the full picture they need. It can hardly be expected that journalists would be able to remember, unaided, all the calls they listened to over the extended period, much of which is now more than 10 years ago, even if they were prepared to co-operate or can be compelled to co-operate (as to which there must be significant doubt). There are reasons to suppose that there may be some documents which might shed light on how some articles were put together - for example, there is evidence that draft articles might be available in digital form - but that would not answer the questions which the claimants want answered. Furthermore, it seems to me at first blush to be likely that even if the exercise threw up some information, it would be disproportionately expensive. It would involve a lot of very expensive searching of digital records, and some physical searching for things such as journalists' notebooks, the continued existence of which is rather speculative at the moment.

710. It would be contrary to the indications that I gave during final submissions for me to give a final ruling on the remedy, so I will not do so. But I hope that my remarks will assist the claimants in deciding their way forward on the point.

711. There is, however, one possible knock-on consequence on damages. If it is to be the case that the claimants are to be kept in perpetual ignorance as to the detail of the information that the journalists heard then I would wish to consider whether the

damages attributable to the general hacking that went on should be increased to cover that additional factor. There is a possibility, therefore, that I will wish to make a further award in that respect if there is to be no further investigative relief, though I have not made up my mind about that and there may be no further award. The parties should not assume that it will be great if it is awarded at all.

Other relief

712. There is no material dispute over other relief. The defendant has offered undertakings not to repeat the invasions of privacy. They can be incorporated in an order as appropriate. If any further relief is sought I will hear further argument on it after the handing down of this judgment.