



Neutral Citation Number: [2021] EWHC 1737 (Ch)

Case No: HC-2000-000004

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
IN THE MATTER OF THE MOBILE TELEPHONE VOICEMAIL INTERCEPTION
LITIGATION

Rolls Building
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Fetter Lane, London, EC4A 1NL

Date: 16 June 2021

Before :

The Hon. Mr Justice Fancourt

Between :

Various Claimants
- and -
News Group Newspapers Ltd

Claimant

Defendant

Anthony Hudson QC and Ben Silverstone (instructed by Clifford Chance LLP) for the
Claimant

David Sherborne, Sara Mansoori and Ben Hamer (instructed by Hamlins LLP) for the
Defendant

Hearing date: 16th June 2021

Approved Judgment

MR JUSTICE FANCOURT:

1. This is an application by the Claimants for disclosure of various documents relating to the generic claim allegations of unlawful information gathering at the News of the World and Sun newspapers between about 1998 and 2011, and alleged concealment and destruction of relevant evidence by NGN relating to that unlawful information gathering.
2. There are three generic Statements of Case by the Claimants against NGN, originating from 2012, 2016 and 2020. There are individual Statements of Claim by each Claimant who issued a claim in this fourth tranche of the litigation. Each individual claimant effectively adopts the generic claims as part of their case. There has been a long history of disclosure in these proceedings, though somewhat remarkably, in my view, Claimant specific disclosure remains outstanding in respect of some of the claims that are due to be tried in November this year, and the Claimants, I am told, have recently issued further applications in that regard.
3. The many applications for disclosure previously heard by the managing judge have been for generic disclosure of documents relating to unlawful information gathering, in particular the use of private investigators and payment of private investigators to garner private information about the Claimants. It is unnecessary to rehearse in any detail what has gone before, save to make three broad points at this stage.
4. First, as I have said, there has been a long process of generic disclosure applications, the results of which often lead to further disclosure applications, and the volume of generic disclosure already given is huge. That is not to say that it is complete and, indeed, it is part of the Claimant's case that it never will be complete, owing to the destruction of data, but a great deal of material on the basis of which the Claimants will, at trial, invite the drawing of conclusions is already available. Many claims in this and previous tranches of this litigation have settled on the basis of what has been disclosed so far.
5. The second point is that against the background of a generic case that has been evolving since at least 2012, a six-week trial of the 32 or so remaining individual claims is due to start at the beginning of November this year. A considerable amount of work remains to be done to prepare for a trial if the claims do not settle in the meantime. Trial witness statements have not, for the most part, been exchanged. Claimant's specific statements are due by the end of July, and generic witness statements by mid-September. There is also some Claimant-specific disclosure outstanding, as I have said.
6. The factual background and the facts relating to the allegations of unlawful information gathering and concealment and destruction are complex. There is very much more than enough detail in the case already to fill a very busy six weeks. Indeed, if no further claims were to be settled by November, it is most unlikely that all the claims could be tried at that time. The time remaining, both between now and November and the time available at trial, simply cannot accommodate much more in the way of applications for generic disclosure and the lengthy processes of downloading, searching and assessment of results, and volumes of

further documents that arise as a consequence, if both sides are going to be able to prepare for trial and the trial will be a manageable and fair process.

7. The third point, which mitigates the second point to some extent, is that no claim in these proceedings has yet come to trial. All claims in the previous three tranches eventually settled, and many claims in this fourth tranche have already settled, as well as other claims where it has not been necessary for a claimant to issue a claim form. There is therefore a proper sense in which these proceedings are being managed for settlement, and considerations of what is likely to promote or facilitate settlement are, therefore, material considerations.
8. However, the proceedings are not *only* being managed to settlement. Some of the remaining Claimants may not wish to settle. It is my responsibility, and the parties' lawyers' responsibility, to ensure that, if necessary, these claims are ready to be tried fairly and efficiently in November.
9. Against that background, it is, therefore, my view that further generic disclosure should generally, and in principle, only be given at this stage if it is either 1) necessary to ensure that a fair trial will take place; 2) necessary to save costs; or 3) likely to make a real difference to the prospect of settlement of claims.
10. Points 1) and 2) have traditionally been the appropriate test for a specific disclosure application, though under Rule 31.12 of a Civil Procedure Rules a more holistic approach is sometimes taken. Point 3) arises from the particular settlement considerations in these claims that I have just explained. There may, however, be exceptional cases where further generic disclosure is justified, for example to complete a sequence of documentation where it might be unsatisfactory to have a missing part of the sequence, but that does not mean that every loose end needs to be tied.
11. Mr Sherbourne, for the Claimants, has pressed upon me Mann, J's ruling on 3 March 2020 in relation to private investigator ("PI") disclosure, to the effect that the Claimants should not have to show more than that a person was acting as a PI 'in Fleet Street', as it were, in order to obtain certain searches of databases relating to that person. He held that the initial test was the potential relevance of information about someone who was known to have operated as a PI and who may have acted on behalf of the Defendant.
12. I accept that that has been the approach hitherto in relation to PIs or possible PIs themselves, and I will try to respect the reasons for that in the rulings that I make. However, that relatively benign approach cannot continue unmitigated after more than 320 PI searches over a period of four years with a trial now only four-and-a-half months away. I consider that I must also consider at this stage whether there is evidence to support an inference that the name to be searched is likely to give rise to material evidence in this trial. If it will not, the parties should not, at this stage, be spending effort and time and further costs in pursuing it.
13. Turning then to the categories of disclosure that remain in issue after the parties have very commendably managed to agree a certain amount of the disclosure that was sought, the first of the categories are described in the following terms in the draft order prepared by the Claimants:

"The Defendant shall (a) within 14 days disclose ZA and ZC SAP payments, vendor names where different, and vendor address details for 1) Cruise Pictures and Lee Brookes and 2) the aliases listed in schedule A and B relating to alleged PIs for whom disclosure searches have previously been ordered".

14. ZA and ZC SAP payments are database records of payments made by the Defendant to suppliers and contributors. These records show what payments were made to various people and when, and may have some information about the nature of the supply and who authorised the payment, though on existing searches that is shown to be so only in relation to some of the entries. The database does not include invoices themselves. These are kept, where still available, on a separate database.
15. The first category sought is, therefore, effectively information rather than documents about all payments made by the Defendant, during the period for which the database is kept, to Cruise Pictures Ltd or Lee Brookes. It is common ground that Cruise Pictures Ltd was a photographic agency used by the Defendant and that Lee Brookes is probably the principal of that firm. If supplied, the information sought will show that certain payments were made to Cruise or to Brookes upon certain dates, and may well show what those payments were in respect of or who authorised them.
16. There are really two bases for the Claimant's application, as I see it. The first is the email from Rebecca Brooks to Mr Webster and Mr Taylor dated 20 September 2012. This is a key part of the evidence on which the Claimants rely to support their case that senior executives of the Defendant were aware of, or instructed unlawful information gathering activities. The subject of the email is suggested to be Michael Barrymore, previously sued the Defendant. The email states:

"Maybe Cruise can tell us which flight he got on? Or we try blag it out of BA and Air Mauritius".
17. The Claimants assert that their solicitors only understood in January this year that Cruise, as there referred to, was a reference to Cruise Pictures Ltd, and so the potential connection between Cruise Pictures and its owner and the case against senior executives of the Defendant, in particular Rebecca Brooks, was only realised in January 2021. Searches in that name could not have been made before then.
18. The second basis of the application is that Mr Webster, the addressee of the email, a former picture desk editor of the Defendant, is now alleged, in a witness statement of a Mr Burrows dated 13 May 2021, to have been at the centre of a web of instruction and payment of PIs, sometimes through picture agencies and sometimes by cash payments, to obtain information.
19. In a 2018 witness statement, Mr Webster had said that he had a very good working relationship with the head of Cruise. In a witness statement in reply to the Burrows witness statement, Mr Webster has denied any knowledge or involvement of such matters, and says that he cannot remember Mr Burrows or the events described, or explain why his signature is on a number of payment orders which appear to relate to PIs.

20. Putting those two strands together, the Claimants say that there is a credible basis for saying that Cruise Pictures and/or Mr Brookes were PIs, not just a picture agency, who were paid money by the Defendant for unlawful information gathering, that there may well be evidence of payments to Cruise in connection with unlawful activity, commissioned by Mr Webster or other senior management.
21. I accept that the factual dispute between Mr Webster and Mr Burrows about the former's involvement in unlawful information gathering activities is likely to be an issue of central importance in the trial. There is an issue about which particular persons were PIs, but that is secondary, and there is no pleaded case as such that Cruise Pictures or Mr Brookes were PIs. The issue about Mr Webster's knowledge and activities is not an issue that can be resolved today by trying to pick holes in the witness statement of Mr Burrows, though the Defendants did make some cogent criticisms of it. What Mr Burrows says does appear to have some documentary support, however, which Mr Webster has not been able, entirely, to explain away.
22. The Claimants say that Rebecca Brooks' email shows that Cruise, through Lee Brookes, was involved in obtaining unlawful information by deception. They say it cannot realistically refer to Cruise (which is thought to be a small agency, with an establishment in Barbados, perhaps among other places) being stationed at all airports around the world, taking photographs of arriving celebrities, and therefore must be a reference to Cruise in the context of unlawful information gathering.
23. The email can be read in different ways, and it would clearly be wrong to attempt to construe it as if it were a statute. It is clearly hurriedly written. There is possibly a disjunct between the first and the second clauses of the email, but, on the other hand, they may well be thematically connected. Ms Brooks must have had some reason to think that Mr Webster might obtain the desired information from Cruise. In the event, it appears to have been Mr Mulcaire who was commissioned later by Mr Miskiw to find the travel information that was then used in the article in the News of the World, two days later, but Mr Sherbourne has shown me that there were in fact different strands of investigation into the Barrymore story going on at the same time, and he submits that Mr Webster using Cruise was probably one of those strands.
24. There is, however, nothing, apart from the email and the allegations against Mr Webster to suggest that Cruise acted as a PI rather than as a photographic agency. The email is ambiguous as to the role played by Cruise, and, in my judgment, it cannot, on its own, amount to any evidence that Cruise acted unlawfully as a PI. The fact that Mr Webster, who was a picture desk editor, knew Cruise well is also ambiguous. The allegation against Mr Webster by Mr Burrows cannot be assumed to be true, it must be investigated at trial.
25. The case against Cruise is, really, speculation based on the allegations against Mr Webster and Ms Brooks, and is not credible simply because there are other picture agencies that have been involved in unlawful information gathering. The application in relation to Cruise and Mr Brookes is really an aspect of the case now advanced against Mr Webster. In my judgment, if there is a case for disclosure of Mr Webster's activities involving Cruise and others, it ought to be pursued, as the Claimants also do, by seeking disclosure in relation to Mr Webster directly, not in the name of "Cruise Pictures Ltd" on the assumption that that

might throw up information that relates to what Mr Webster was doing. I am concerned that an estimated £14,000 of work doing a search in the names of "Cruise Pictures Ltd", and, "Lee Brookes" may throw up a lot of payments relating to the provision of photographs for a long period of time.

26. I am also concerned that this application was not foreshadowed until early 2021. The Claimants have had the Rebecca Brooks email referring to Cruise since 2016. Mr Webster's first witness statement dated 5 December 2017 stated that Cruise in that email referred to Cruise picture agency. That reference was then, in turn, referred to in two witness statements served on behalf of the Claimants in January 2018. Mr Sherborne said that the Claimants could do nothing about Cruise until they knew the correct name of Cruise Pictures Ltd in which to request disclosure. I don't accept that. If Cruise was previously suspected, searches of the databases in the name of "Cruise" could have been sought, or other enquiries made at an earlier stage. Instead, over 320 other PI searches were made.
27. Hamlin's letter dated 7 January 2021 says only that "[f]ollowing further investigations ..." the Claimants think that the "Cruise" referred to is Cruise Pictures Ltd. The only clue identified in the letter was that documents disclosed in the Elton John claim were said to confirm that payment relating to Cruise Pictures Ltd was made to Lee Brookes, and that Cruise was paid for photos relating to David Beckham and Elton John. There is no evidence as such that the corporate identity of Cruise has only belatedly been identified.
28. I consider that Cruise has assumed greater prominence recently as the focus on Mr Webster and cash payments has increased. This supports my conclusion that the disclosure sought in relation to Cruise is really disclosure in relation to Mr Webster's activities. I therefore do not consider that a sufficient case has been made at this stage for a search against Cruise or Mr Brookes as a possible PI acting for the Defendant, and in any event do not consider that disclosure of the kind sought is necessary for a fair disposal of the issues to which Cruise may be relevant. I therefore refuse paragraph 1(a)(i) of the order sought.
29. The second category of documents sought is searches of the SAP database for PI aliases or persons associated with the PI, to whom payments might have been diverted, where the PI has already been searched in a different name.
30. The Schedule A names are persons or companies believed to be connected with the PI. The Schedule B names are firms or corporations to which Mr Burrows stated in his witness statement that he directed payments for his services to be made, apart from two companies on Schedule B that are said to be associated with Steve Hampton, which properly should be considered as being names on Schedule A.
31. There has previously been an indication by the managing judge that aliases should be included in searches. That is obviously sensible in the case of true aliases. Failing to do so would tend to undermine the reliability and completeness of the results given. One can easily see that corporate or business vehicles owned and controlled by the PI should be in the same category since they may well operate as an alter ego of the individual, but the names here, in Schedule A at least, are not aliases or alter egos: they are other persons who are, to some degree, connected with the PI.

32. In my view, if the name in Schedule A is genuinely a different person and not just simply another manifestation of the PI, there needs to be some factual basis for supposing that payments have been made to them as a reason to include them in the search. Thus, a spouse of a PI may be included if there is some reason to believe that payments were diverted to the spouse, but will not automatically be included. Proximity of relationship is one factor. It is not sufficient in itself.
33. There are six names or groups of names in Schedule A. Taking each in turn:
- a. First, Regent Associates. Martin Young is shown to be not just a director but also a beneficial owner of that company, alongside Paul Hawkes, and there have been searches in the names of Regent Associates and Paul Hawkes. There is therefore close proximity and a reason to think that some of the company's earnings may well have been diverted to its beneficial owner. I approve the searches sought in relation to the names of Martin Young and Martin Tomlins Young.
 - b. Second, Paul Samrai. Both Mr and Mrs Samrai have been searched and have been identified in relation to over 100 payments in total. They are the only directors of Top Stories Ltd, though there is no evidence of beneficial ownership of that company. However, given the substantial number of payments to Mrs Samuui and the effective day-to-day control of the company and its money by the Samrais, I consider that there is sufficient reason shown, and I direct a search in the name of Top Stories Ltd.
 - c. Third, Andy Gadd. Mr Gadd and his company, Trackers Ltd, have been searched, and Info Rep Services Limited and Surf Web Ltd are said in evidence to be companies Mr Gadd used before he used Trackers. Info Rep is a successor company to Surf Web, or vice versa. There is no evidence that Trackers is a true successor company of either. Nevertheless, given the use clearly made by Mr Gadd of corporate vehicles, I consider that it is likely that these companies performed a similar function to Trackers at an earlier stage, and so I will order a search in their names. However, although Olivia Wheaton is a director and Mr Gadd's wife, there is nothing to suggest that payments would have been directed to her, given the use of corporate bodies by Mr Gadd. I therefore refuse a search in relation to Olivia Margaret Wheaton.
 - d. Fourth, Scott Tillon. The Claimants seek a search against the name Andy Tindall, on the basis that he is shown to have worked alongside Mr Tillon on one assignment and on the basis that Mr Thurlbeck regarded both of them as the best in the business for getting a photograph. That evidence is not sufficient to create a reason to suppose Mr Tillon's payments might have been diverted to Mr Tindall, or that Mr Tindall himself engaged in unlawful information gathering. I refuse that search application.
 - e. Fifth, Gerard Couzens. The Claimants seek searches against his Spanish company, Tag News Media; against a co-director of that company, Tom Warden; and against Mr Couzens' wife, Natalia Pensa, also a co-director of Tag News Media. This is all on the basis of a Spanish company search which provides very little information, other than the presence of those names as being connected with the company and also identifying Gerard Couzens Media Ltd as a related company. In my view, Gerard Couzens Media Ltd may well be expected to be an alter ego, so I will order a search against it and against Tag News Media as its likely successor, but the degree of connection is otherwise insufficient in the case of the two individuals.
 - f. Sixth, Steve Hampton. Given his centrality to some of the generic issues, any company controlled by him or another person acting for him is properly the subject of a search, but the two companies in issue here, Visage Investigation and Metropolitan

Associates, are not shown to have any connection with Hampton, only with Peter Lyons, who is one of several directors of each of the companies, who was a business partner of Hampton at a different company, Starbase. But there is nothing to suggest that either company would be receiving payments otherwise due to Mr Hampton, and I refuse an order in their cases.

34. So far as the Schedule B names are concerned, these are all names of substitute payees identified by Mr Burrows. Although the Defendant challenges the veracity and credibility of Mr Burrows' statement, that is a matter for trial, as is the reliability and accuracy of Mr Webster's recent statement. There is clearly an issue to be investigated and resolved at trial, and on the basis of Mr Burrows' evidence and Mr Webster's denial, it seems to me to be appropriate to order disclosure of SAP records that will be likely, at least in part, either to support Mr Burrows' account, or undermine it. The material sought is, therefore, necessary for a fair resolution of the issues between Mr Burrows and Mr Webster. There will, therefore, be disclosure of SAP searches for the Schedule B companies other than Metropolitan Associates and Visage Investigations.
35. One of the names in Schedule B is "Woodford". In view of what has been agreed in relation to another head of disclosure sought, that search should be limited to the names of Angela or Angie Woodford.
36. I turn finally to the next head of disclosure sought, which is in relation to cash payments authorised by Mr Webster. The disclosure sought was SAP records of all cash payments where Mr Webster was listed in any field on the database, or at least that is how it was originally put. As a result of protests from the Defendant that the scope was excessively wide, without prejudice to their argument that no such disclosure should be ordered, the Claimants have reduced the breadth of the search sought in various ways. The order sought is now as follows:

"The Defendant shall (a) search the SAP extract and within 35 days disclose the relevant SAP records of all News of the World cash payments with document dates between 1 June 2000 and 28 February 2003 where <Webster> is listed in the fields of the SAP record listed on page 2 of the letter of 29 November 2018 from Clifford Chance to Hamlins; (b) search the indices or tables underpinning *Sun* tabs 87 and 6470, and within 35 days disclose the relevant spreadsheet entries containing the word <Webster> which have document dates for the earliest date given falling within the periods 1 January 2000 to 30 June 2000 and 1 February 2003 to 31 December 2007.

If there are more than 100 SAP rows which fall to be reviewed for confidential sources as a result of the searches carried out pursuant to either paragraph 3(a) or 3(b) which have an identifiable payee, then the entries after the first 100 may be disclosed redacted as if they are confidential sources, save that known journalists, freelancers, photographers, agencies and those entities on the MTVIL non-redaction list shall not be redacted".

37. The latter part of the order sought is intended to limit the potentially burdensome effect of any order to carry out a review of positive results for permitted redactions.
38. I have previously mentioned the important position that Mr Webster is alleged to have had in terms of commissioning and paying for PIs. The Claimants accept that this request for further disclosure is based on Mr Burrows' recent evidence about Mr Webster's role, but Mr Webster has been part of the focus of the generic claim for years. Part of the Defendant's objection is that adequate disclosure relating to him has already been given to the Claimants. The Claimants accept that they have a small number of cash payment records involving Mr Webster as a result of previous disclosure, and assert that they support their case, but that they only relate to a limited period of time about October 2009. There are four references in total to payments involving Mr Webster in spreadsheets of suspicious cash payments that were produced by or on behalf of the Defendant in 2011.
39. The Claimants accept that it may well be that there are few results thrown up, because the name of the commissioning journalist or editor is often not included, and in the SAP entries disclosed to date Mr Webster only appears in a very small percentage. That being so, there is, perhaps, a risk that not much more will emerge from further searches. On that basis, the Defendant submits that the searches proposed are disproportionate and unnecessary. It is said, not on the basis of any evidence or detailed breakdown, that the more limited exercise now sought by the Claimants will cost between £29,000 and £35,000. I am a little sceptical about that, given that what is proposed is the search of three existing databases, but in the absence of a proper breakdown of the cost I do not consider that I can rely on that estimate.
40. The Defendants also submit that the documents sought can only relate to a narrow issue, but I do not accept that. They potentially relate directly to the important issue whether the senior executives of the Defendant, including Mr Webster, knew and approved payments in cash for unlawful information gathering.
41. The Defendant points out that Mr Webster is already a generic custodian, so his data, certain emails and, indeed, certain payment approval forms, namely those deployed in Mr Webster's criminal trial, have already been disclosed. However, the parts of the databases now proposed to be searched have not previously been searched for Mr Webster's name, and if Mr Burrows is right in his evidence there is reason to think that there will be much more. The results of the search will be likely to play a significant part in supporting or undermining what Mr Burrows alleges against Mr Webster, which is an important aspect of the trial. It will also be likely to identify any cases of cash payments authorised by Mr Webster to be paid to Cruise Pictures, or Mr Brookes.
42. In my judgment, the disclosure sought in this category is therefore necessary for a fair trial of the important issue that I have identified and I therefore order that those searches should take place.