



Case No's.: HC-2000-000004/  
Various (listed in Register of Claims)

Neutral Citation Number: [2021] EWHC 3083 (Ch)

**IN THE HIGH COURT OF JUSTICE**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**BUSINESS LIST (ChD)**

Rolls Building  
7 Rolls Buildings  
Fetter Lane, London  
EC4A 1NL

Date: 7 October 2021

Before :

**Mr. Justice Fancourt**

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**IN THE MATTER OF THE MOBILE TELEPHONE VOICEMAIL INTERCEPTION**  
**LITIGATION**

Between :

<b>Various Claimants</b>	<b><u>Claimants</u></b>
<b>- and -</b>	
<b>News Group Newspapers Ltd</b>	<b><u>Defendant</u></b>

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**Anthony Hudson QC and Ben Silverstone** (instructed by **Clifford Chance LLP**) for the  
**Claimants**  
**David Sherborne, Sara Mansoori and Ben Hamer** (instructed by **Hamllins LLP**) for the  
**Defendant**

Hearing date: 7<sup>th</sup> October 2021  
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**Approved Judgment**

**Mr. Justice Fancourt :**

**RULING 1 (2.37 pm)**

1. On the questions of which of the claims should be heard at the trial in November, and in what order the claims should be tried, I have already indicated that I consider that all three eligible claims that are ready for trial, that is to say those of Mr Drummond, Mr Gascoigne and Mr Shannon, should be directed now to be tried. It is agreed between the parties that the claim of the Duke of Sussex cannot be made ready for trial, and I will say no more about that.
2. I am working on the basis that, in the context of this litigation, in view of everything that has happened in the past and that way it is being managed, it is, in my view, highly likely that at least one of those claims will have settled by the beginning of November, maybe more than one, and maybe all of them. If that is not the case and no claim has settled by, I think it is Monday, 25 October, a week before the start of the trial, then counsel and I can review at that stage whether it remains feasible for all three claims to be tried and/or whether all of the 50 selected articles relating to Mr Gascoigne's claim can and should be tried in that trial.
3. It is important, in my view, to identify the claims to be tried now as a first step in seeking carefully to manage the whole trial and the generic claim within the trial. The material in the generic claim is now vast. There can be no more than four weeks in any event, and possibly only three weeks or a little more than that, that will be available at the trial for those generic claims. It is, therefore, abundantly clear that not every issue, sub-issue and factual, or even legal dispute in them, can be tried; nor can every potentially relevant witness be called by the parties.
4. It is clear that only those generic issues that are relevant to the claimant-specific claims should be tried, and within that category, only the main and most important issues can be tried within a period of three to four weeks. I will not embark at this stage on any analysis of what are the relevant and important issues, but the parties, and then ultimately the court, will do further work on that in due course.
5. It is clear that the claimants will have to cut their cloth to fit the time that is available, both in respect of the witnesses that they wish to call on the generic claim and the claimant-specific claims for that matter, and the length of their cross-examination of the defendant's witnesses. Equally, I will be astute to ensure that the defendant is given only a proportionate time to cross-examine the claimant's witnesses, not an unlimited and disproportionate time, particularly bearing in mind the extent of non-admissions rather than denials of the claimants' generic claims.
6. It is, in my judgment, essential that a list of the main issues to be tried in the generic claims, which are relevant to the claimant-specific claims, is prepared and discussed between counsel and then provided with the skeleton arguments for trial.

7. The defendant submitted that, as part of the exercise of controlling the scope of the generic claims, the claimant-specific claims and witnesses should be heard first, so that it is then clear what generic issues need to be resolved.
8. I formed the view, having listened carefully to the submissions of both sides -- and there is something to be said about it on both sides -- that it will be most convenient (and that is to say really, I think, most helpful for me, in trying the claim, to understand the evidence and the shape of the case) if the generic claim appropriately circumscribed, as I have described, is heard first, provided that the claimant-specific skeleton arguments are exchanged at the same time as the generic skeleton arguments.
9. The claimants had sought an order that the claimant-specific skeleton arguments could be provided around one to two weeks into the trial, but I do not agree with that proposal. It will assist me greatly in managing the trial as a whole to know exactly what the claimant-specific cases of each side are when we embark upon the generic evidence and, if necessary, in resolving any issue that needs to be resolved about what issues are live in the generic trial, and what cannot or should not be tried.
10. The view I formed was that Mr Sherborne was probably right, that it will be more meaningful for me to hear any claimant-specific cross-examination of any of the generic witnesses during the course of the generic evidence, since each witness will, of course, only be called once to give evidence in this trial, than it would be to start hearing detailed cross-examination about generic matters during the otherwise more limited evidence of the claimant-specific witnesses, and that is one of the principal reasons why I have reached the conclusion that I have about the order of the trials.
11. I therefore direct that the claims of Mr Shannon, Mr Gascoigne and Mr Drummond will be tried in the trial listed to begin in the week of 1 November, and that the generic claim of those claimants will be heard before claimant-specific elements of the claims.
12. As I have said, if there remain three claimants whose cases fall to be tried, the generic claim will have to be managed so that it is dealt with in not more, really, than three and a half weeks at most. There may well be some degree of latitude available, if in the event there were only one or two claimants, depending upon who those claimants turn out to be.

## RULING 2 (4.03 pm)

1. What I am going to decide today is the following: I will not list a follow-on date for the rest of the Gascoigne claim at this stage. It seems to me that there should be a strong presumption that, after a trial of the first part of that claim, what remains ought to be capable of being resolved by negotiation or at a mediation and without the need to come back to be tried. If negotiations and mediations or other ADR fail and it does have to be brought back to the court, it can be joined in at a later stage.

2. The Duke of Sussex's claim, it seems to me, must inevitably wait now to be dealt with, with other cases in the next wave. I am not going to direct a separate trial of his claim, given the failure to prepare his case in time for the trial date of 1 November that was available to him and to the other claimants in the current wave.
3. As to fixing a trial date for the next wave, what I am going to do is wait and see whether there is an effective trial on 1 November. My understanding is it will make a significant difference to the listing of the trial, whether it is a three to four-week trial following a first trial or a six-plus-week trial, and the matter can, therefore, be reviewed within a few weeks when it is known whether or not there will be a trial in November.
4. In terms of my own availability, I will not bore you with the reasons, but that short delay will not make any difference to my availability. The likelihood is that any trial in front of me would have to be either in the Michaelmas term next year, or March or April 2023 because of other commitments I already have, and that position will not change before Christmas. If it is not to be before me for any reason, then the current availability in any event is, as I have said, March/April 2023 for a six-week trial. It may be Michaelmas next year for a three to four-week trial.
5. So for those reasons I will not make an order today fixing a future trial date, but I will wish to review it early in November if the November trial settles.