IN THE HIGH COURT OF JUSTICE **Claim Nos: Various**

BUSINESS AND PROPERTY COURTS

BUSINESS LIST (ChD)

IN THE MOBILE TELEPHONE VOICEMAIL INTERCEPTION LITIGATION

BEFORE THE HONOURABLE MR JUSTICE FANCOURT

B E T W E E N :

VARIOUS CLAIMANTS

Claimants

- and -

NEWS GROUP NEWSPAPERS LIMITED

Defendant

CLAIMANTS' SKELETON ARGUMENT

for the Claimants' Application to Amend, listed for 1 day,
in window of 20-22 March 2024

The shorthand used in this Skeleton Argument for the Hearing Bundles references is: **[Bundle/Page].** *References in the format* **{X/Y/Z}** *are to the Opus2 bundle.*

Pre-reading:	Parties' Skeleton Arguments
(Time est: 3 hrs)	Draft Re-Re-Amended Generic Particulars of Concealment and Destruction ("**RRAGPCD**") and PI Annex [**A/9-197**]
	39th Witness Statement of Callum Galbraith ("**Galbraith 39**") [**B1-B102**]
	Fourth Witness Statement of Claire Freeman ("**Freeman 4**") [**B/1251-1374**]
	40th Witness Statement of Callum Galbraith ("**Galbraith 40**") [**B/1581-1607**]

INTRODUCTION

1. This is the hearing of the Claimants' application to amend their Generic Particulars of Concealment and Destruction in the Fourth Tranche ("**T4**") of the Mobile Telephone Voicemail Interception Litigation ("**MTVIL**"), listed pursuant to the Order of 25 January 2024 [**C/15-16**].

2. The Application Notice dated 23.01.24 is at [**A/1-5**]. The draft Re-Re-Amended Generic Particulars of Concealment and Destruction ("**RRAGPCD**") are at **[A/9-176]**. They incorporate an Annex [**A/177-197**] which brings together the Claimants' case on Private Investigators, identifying, expressly, the terminology used for the various categories of people who fall within the compendious term "PI", as it is employed in this litigation, and for the types of UIG: see Galbraith 39 at 41-52 [**B/14-16**]. The Annex lists PIs who form part of the Claimants' generic case; it replaces, and to some extent adds to, the list of PIs previously pleaded in RAGPCD at §9.3 [**A/22**] and, by virtue of a cross-reference in that plea, also to the list in Schedule C to the Order of 1 November 2019[1]: see paras 24-25 of that Order {**B/105/10-11**} and its Schedule of PIs {**B/105/20-21**}.

3. Other than typographical matters, biographical clarifications and minor corrections, NGN opposes all the proposed amendments: Clifford Chance to Hamlins, 14.02.24 [**B/1543-1548**]. The limited amendments consented to are shown in highlighted text in Appendix 1 to that letter [**B/1549-1561**].

4. This statement of case is a critical component of the litigation. Although the name refers only to concealment and destruction, these generic particulars are where the Claimants set out their case in relation to the scale of unlawful information gathering ("**UIG**"), including NGN's extensive use of PIs, expenditure on PIs, the time period during which NGN used PIs and the extent of their use throughout NGN (including by desk/department and job title), as well as the knowledge of such activities by executives.

5. The concealment and destruction allegations are relied upon by the Claimants for a number of purposes, as set out at paragraph 6 of the RAGPCD [**A/16**], namely:

[1] As reproduced in Schedule A to the Order of 5 December 2023 [**C/6-7**].

(a) proof of NGN's wrongdoing;

(b) supporting inferences as to the scale and extent of those unlawful activities and, in accordance with the principles in Armory v Delamirie (1721) 93 ER 664, the correct approach to drawing inferences where inferences need to be drawn;

(c) vitiating any reliance on a limitation defence; and

(d) matters which have greatly aggravated injury suffered by the Claimants.

6. The length of the RRAGPCD is a reflection of the extent and complexity of NGN's activities in relation to UIG, NGN's concealment of UIG, the destruction of evidence and the cover-up of the concealment and destruction. Further, bearing in mind the nature of the allegations of wrongdoing being advanced, the RRAGPCD plead the Claimants' case with particularity as is appropriate. Taking that into account, together with (a) NGN's extensive non-admissions; (b) limited denials; and (c) its resistance to disclosure, NGN's complaint about the extent of the pleading is unattractive.

PRINCIPLES GOVERNING AMENDMENTS

7. The power to grant amendments pursuant to CPR 17.1(2)(b) and 17.3 is a broad discretionary power.

8. The approach to the exercise of discretion under CPR 17.1 and 17.3 and relevant factors are addressed in The White Book Vol. 1 at 17.3.5 - 17.3.5. The following principles are relevant to the Claimants' application and NGN's opposition.

9. The Court should have regard to the overriding objective (CPR 1.1(2)) so as to deal with the case justly and at proportionate cost: The White Book at 17.3.5.

a. In the absence of prejudice, an amendment ought generally to be allowed for the real dispute between the parties to be adjudicated upon: Hewson v TNL [2019] EWHC 1000 (QB) cited in The White Book at 17.3.8.

b. However, the grant or refusal of an application to amend generally involves some degree of prejudice to the applicant or respondent party. "*Applications always involve the court striking a balance between injustice to the applicant if the amendment is refused, and injustice to the opposing party and other litigants in general, if the amendment is permitted."* The White Book at 17.3.5.

10. An amendment which seeks to introduce a new claim must have a 'real prospect of success', importing the test for summary judgment. A new claim "*will not be permitted if the new allegation carries no reasonable prospect of success*": The White Book at 17.3.6.

11. The assessment of whether a proposed amendment satisfies the real prospect of success threshold should be made principally by reference to the pleaded case and without conducting a mini-trial: Okpabi v Royal Dutch Shell plc [2021] 1 WLR 1294 at 103-107, cited in CNM Estates (Tolworth Tower Ltd) v Carvill-Biggs [2023] 1 WLR at [48] and [66].

12. The correct approach is different where the proposed amendment does not seek to introduce a new claim or new basis for the claim, but instead is giving further particulars in support of an existing case. Having considered the real prospects for success test, Roth J held in Phones 4U v EE & oths [2021] EWHC 2816 (Ch) (at [11]) that:

> "*It would be pointless to allow the amendment if the other party could then obtain summary judgment against that (proposed) head of claim or that ground of defence or that issue. All that is very different from an application to amend by giving further particulars based on factual material in support of an existing plea. In my judgment, the court should not, on such an application, conduct an assessment of whether each of the various particulars which it is sought to introduce have a real prospect of supporting that plea. Those are matters for trial."*

13. A proposed amendment must be properly formulated and be coherent and, where advancing a new claim, set out the elements of the cause of action (CNM Estates at [48] citing Elite Property Holdings v Barclays Bank [2019] EWCA Civ 204). An amendment may be refused where "*not expressed sufficiently clearly … or* [is] *prolix*: The White Book at 17.3.5 citing Hague Plant Ltd v Hague [2014] EWCA Civ 1609.

14. In relation to pleas giving further particulars, Roth J in Phones 4U v EE (at [12]) continued: "*That said, I accept that the court should refuse permission to amend if the amendment is vague, incoherent or incomprehensible, embarrassing or vexatious.*"

15. The timing of the amendment may be relevant to the exercise of discretion, particularly where it is very late. In Quah Su-Ling v Goldman Sachs International [2015] EWHC 759 (Comm), the claimant sought to amend 3 weeks before trial, changing the nature of her case. Carr J considered the timing of amendments (at [38])[2].

    a. Lateness is a relative, not absolute concept. "*It depends on the review of the nature of the proposed amendment, the quality of the explanation for its timing, and a fair appreciation of the consequences in terms of work wasted and consequential work to be done*".

    b. A "*very late*" amendment is one "*which would cause the trial date to be lost*".

16. Where the application is made "very late", it is appropriate to consider the strength of the new case and the claimant bears the burden of showing why justice should permit him to advance his new case and providing good reason for delay in raising a late claim. In other words, the strength of the proposed amendments fall to be considered even where it is not contended that they fall short of the 'real prospect of success' threshold ordinarily applied: Quah Su-Ling at [57]*ff*.

17. When an amendment is late or very late, the Court should take account of the extent to which the proposed amendment concerns something which the parties have already been addressing by other pleas or in evidence. In Hawksworth v Chief Constable of Staffordshire [2012] EWCA Civ 293 (CA) the Court of Appeal stated, *obiter*, that it might be appropriate to allow an amendment at trial which had been raised in witness statements and experts' reports. In Ahmed v Ahmed [2016] EWCA Civ 686, the Court of Appeal dismissed an appeal against granting an amendment at the start of the trial, where the amendment brought the pleaded cases in line with

[2] Principles set out by Carr J at [26]-[38] were cited with approval by in CNM Estates (Tolworth Tower) Ltd v Carvill-Biggs [2023] EWCA Civ 480; [2023] 1 WLR 4335.

what the parties had been arguing for 6 months and the other party had not been taken by surprise by the amendment. Both decisions are cited in The White Book at 17.3.8.

18. Where the parties have already focused on the matters contained in draft amendments, the degree of prejudice suffered by a respondent is, necessarily far more limited than when the amendment raises a new case or relies on wholly new matters. The degree of prejudice is likely to turn most on the extent to which matters captured by proposed amendments are already subject of dispute.

19. The nature of the MTVIL managed litigation is also relevant to considering lateness. In his Judgment of 04 June 2020 (neutral citation [2020] EWHC 1437 (Ch)) (at [8]) on a previous application for permission to amend, the then Managing Judge, Mann J, observed:

> "[Leading Counsel for NGN] *did say* [the amendment] *was late, in the sense that it could have been done before, and that was a reason not to allow it. To an extent the comment on the lateness is accurate, but much of the application is based on relatively recent disclosure, and Mr Sherborne said that his side did not want to make several piecemeal applications. I understand that sentiment. In the circumstances of this case I do not consider that that sort of lateness carries a lot of weight*."
>
> {**B/119/4**}

Limitation and CPR 17.4

20. S.35 of the Limitation Act 1980 and CPR 17.4 limit the power of a court to permit an amendment when "a *period of limitation has expired under (i) the Limitation Act 1980;* …" (CPR 17.4(1)(b)) to the circumstances set out in CPR 17.4(2).

21. But where s.32 of the 1980 Act applies, the period of limitation does not start to run until the circumstances in s.32(1) are satisfied.

22. NGN's objection to one proposed plea, namely extending the Relevant Period, on grounds of limitation is misconceived. While its assertion is that the primary limitation period – or analogous period for equitable remedies claims – would have expired, the Court is not in a position to find – on the generic case – that claims are time-barred. In any event, the individual claims are pleaded compendiously, and the nature of the wrongs means the Claimants cannot identify precise start and end

points of conduct, and individual claims often extend outside the Generic Relevant Period. This is ultimately a matter for evidence in individual claims after findings have been made as regards the Claimants' allegations in the generic pleading.

CLAIMANTS' APPLICATION

23. The proposed amendments fall into one or more of three main categories: Galbraith 39 at 6 [**B/3**]:

    a. they advance a case in the light of information obtained from NGN's disclosure since the last occasion on which the Particulars of Concealment and Destruction were amended (while permission was granted in June 2020, it was based on the draft served on 19 February 2020);

    b. they ensure that allegations of wrongdoing about third parties, on which the Claimants intend to seek findings at trial (obviously subject to their coming within the scope of the list of generic issues which fall to be determined), are pleaded with greater particularity; and

    c. they plead matters which will be relied upon, largely in support of the Claimants' inferential case of concealment and destruction, which have become clear to the Claimants through the process of assessing and re-assessing documents (existing disclosure and/or public domain material) and evidence (including the evidence of new witnesses who have come forward) – in short, they reflect the necessarily jigsaw nature of the Claimants' case.

24. As the Court will see, other than Schedule 2 to Freeman 4 (which sets out NGN's objections only on the grounds of delay), NGN does not respond to the vast majority of the proposed amendments with specific objections as to the substance of the amendments; that is apparent from comparing the specific matters addressed in Galbraith 39 at 62-307 [**B/19-102**] with the far more limited matters addressed in Freeman 4 at 25-58 [**B/1260-1283**].

25. Instead, NGN's objections are largely framed at a high level of generality. Therefore, before turning to issues more widely, one proposed amendment is addressed in detail below to illustrate why NGN's general objections are misplaced.

26. In the Claimants' reply evidence, Mr Galbraith gives four examples of how more recently acquired information has prompted an amendment: Galbraith 40 at 6(c) [**B/1584-5**].

27. One of them is RRAGPCD §§17.1A.1 - 17.1A.2 [**A/101-102**]. This proposed plea adds to the already pleaded case that Rebekah Brooks' Wapping computer hard drive was sequestered and/or destroyed deliberately in order to conceal her (and others') knowledge of wrongdoing at NGN: see RAGPCD §17.1A [**A/100**].

    a. This particular of concealment and destruction, namely of one device, is highly material to the Claimants' generic case because it goes to knowledge and subsequent conduct of Senior Executives.

    b. The basis for the proposed amendment is largely the witness statement of Darren Elmes dated 2 March 2021 {**D/102/1-4**}, in which Mr Elmes, who previously worked as an IT engineer at News International, provided evidence that the hard drive of Ms Brooks' computer was intact when he carried out an audit on 28 January 2011 and that he believed, on the basis of subsequent inspections, that it remained intact until around May 2011, when he noticed that the hard drive was missing on a routine inspection of the secure storage area, and reported this to his manager.

    c. Mr Elmes's 2021 statement is also basis of the plea that NGN gave false evidence to the MPS to explain away Ms Brooks' missing hard drive.

    d. The proposed plea is a further particular of an existing case (see Phones 4U v EE cited above), and there is no proper ground for NGN to resist it.

    e. The proposed plea puts the Claimants' case in terms which sets out all material facts. It does so in a clear and properly particularised manner, bearing in mind the seriousness of the wrong alleged.

    f. Further, it identifies the third parties, in respect of whom the Claimants will seek adverse findings at trial, doing so in a way that NGN and those individuals know the case they have to meet at trial. This can hardly be objectionable. The

proposed plea identifies those individuals whom the Claimants allege gave false or misleading evidence to the MPS and, distinctly, those individuals whom the Claimants allege refused to allow the MPS to search specific email accounts thereby frustrating the MPS's inquiries.

g. Further, this plea is not a surprise to NGN. It is something which the parties have already addressed in evidence. For NGN, Paul Cheesbrough gave detailed evidence about (a) Ms Brooks' Wapping hard drive; (b) Mr Elmes' evidence; and (c) the Claimants' case (now set out in the proposed amendments) about NGN's reliance on a fake security threat: see paras 6-26 of Paul Cheesbrough 7th WS of 24 September 2021 {**E/107/3-10**}. It is a paradigm case for adopting the approach in Hawksworth v Chief Constable of Staffordshire and Ahmed v Ahmed (cited above).

28. Considering the proposed plea against NGN's objections, it cannot be criticised on grounds of (a) irrelevance; or (b) being unnecessary. If established, it would be a central plank of the Claimants' case that Senior Executives were involved in concealment and destruction.

29. As Mr Elmes' statement has been served previously, it also cannot (a) cause NGN "wasted costs"; (b) be disproportionate; (c) unfairly prejudice NGN; or (d) risk the 2025 Trial date. It is a particular of a case that NGN knows it has to meet, has known that it will form part of Claimants' case since Mr Elmes statement was served, and has already responded to in evidence (as set out above).

30. Like the above proposed amendment concerning Ms Brooks' hard drive, the Claimants consider that almost all of the matters contained in the proposed amendments have been considered in this litigation. For example, continued payments/activity of PIs during the Leveson Inquiry was addressed in evidence served in Hugh Grant's claim and the CSPOCs served on behalf of Sir Vince Cable **[E/234/§42(g)]**.

No relevant dispute on prospects of success / merits

31. The evidential underpinning for the proposed amendments is fully set out in Galbraith 39. NGN does not (generally) seek to contest that there is a proper evidential basis for the proposed amendments.

32. Other than in relation to the proposed extension of the Relevant Period (addressed below), NGN (rightly) does not contend that the proposed amendments have no real prospect of success. The proposed amendments do not advance new claims or rely upon a different basis for advancing the causes of action relied upon. They are largely giving further particulars and, while the Claimants contend all of them are well-founded, the Court's role is not to descend into assessing the prospects of each plea (cf. Phones 4U v EE at [11]).

33. Save for limited passing observations in the context of its objections based on "delay", NGN (rightly) does not seek to contest the proposed pleas on their merits. None of NGN's observations on the merits or cogency of a plea provides a proper basis to refuse that proposed amendment (if that is why NGN adduced the following evidence).

34. NGN seeks to downplay the importance of call data generally (Freeman 4 at 7(a) [**B/1252-3**] and 31(e)-(f) [**B/1270**]), by contending that it only shows contact and (in respect to calls to PIs) does not evidence payment or otherwise demonstrate UIG. If that is an objection to the amendments, then it is flawed in principle. The proposed pleas relying on call data do so as part of a bigger picture; the call data (which was disclosed in November-December 2023 pursuant to the Order of 10 October 2023 {**B/165/1**}) is one part of the platform of matters relied upon to support the inference of UIG carried out by NGN. In fact, the Claimants' case is, and will be, that telephone contact with PIs by NGN's journalists is evidence from which to infer the use of PIs for the activities pleaded in detail in the PI Annex, and that its evidential weight is to be understood in the context of (a) contemporaneous concealment of PI activity by making payments in cash/expenses or to aliases; (b) mass destruction of documents including emails and computers/hard drives; and (c) the deliberate failure to provide PI payment material to the Leveson Inquiry as required pursuant to a s.21 Notice issued under the Inquiries Act 2005.

35. Similarly, the inference drawn by the Claimants of the nature of the contact between Ms Brooks and Mr Coulson (RRAGPCD at §11.60H1-2 [**A/54-56**]) is not based solely on the fact of their phone contact, as NGN seeks to suggest in Freeman 4 at 31(f)(i) [**B/1270**]. The proposed plea focuses on specific dates of contact, the length of specific calls on those dates, and the surrounding circumstances, namely the significant events that took place concerning the discovery or investigation of VMI (and the concealment thereof) at NGN at the date of those contacts.

36. The proposed pleaded case in relation to January 2011 (a highly significant month for NGN) illustrates the above and why NGN's assertion that phone records show nothing more than contact is not a viable objection to the proposed amendments:

    a) On 6 January 2011, NGN located highly incriminating emails between Ian Edmondson and Glenn Mulcaire, as well as emails between Neville Thurlbeck and James Weatherup and Mr Mulcaire; Jon Chapman notified Ms Brooks that afternoon of the discovery and sought an urgent meeting the next day with Ms Brooks. There is a lengthy (20 min) call from Ms Brooks to Mr Coulson at 19:07 that day (RRAGPCD §11.60H2, the first (e));

    b) On 7 January 2011, Ms Brooks had a lengthy meeting with Mr Chapman, Tom Crone, Colin Myler and Will Lewis; after that meeting there was a hub call to Mr Coulson at 18:41 followed by 5 calls from Ms Brooks' mobile to Mr Coulson;

    c) On 10 January there was an "executive lunch" where the matter was discussed; prior to that there was a 16-minute call from Ms Brooks to Mr Coulson on the evening of 9 January 2011 and an 8-minute hub call to Mr Coulson on 10 January 2011, just before the lunch (RRAGPCD §11.60.H2, second (e));

    (d) On the day that Mr Coulson resigned as the Prime Minister's Director of Communications (21 January 2011), there is a 4-minute call from Ms Brooks' mobile to him one hour before the announcement and a series of text messages that afternoon from Ms Brooks to the then Prime Minister, David Cameron (RRAGPCD §11.60.H2(g)).

37. Looked at in their proper context, the inferences which the Claimants seek to draw are clearly sustainable.

38. NGN appears to express doubt about the Claimants' averment that the email address *kishan189@yahoo.co.uk* on PI invoices was that of the "(Mazher) Mahmood Associate" Kishan Athulathmudali (Freeman 4 at 31(a)(iii) [**B/1266**]), and thus provides a basis for including him in RRAGPCD §9.4 [**A/23**] and as a Mahmood Associate in the PI Annex. This is responded to in detail in Galbraith 40 at 16-21 [**B/1587-1589**]) and it is evident the Claimants have a proper evidential basis for this plea.

39. NGN also expresses doubt that the PI call data recently disclosed supports the plea that James Clothier[3] was in frequent contact with Jonathan Stafford and TDI/ELI (Freeman 4 at 31(b) [**B/1268**]) and thus is a proper basis for RRAGPCD at §11.74A [**A/61**] & §11.80-81 [**A/62-63**]. The plea concerning Mr Clothier, however, is based on a number of elements, including his role in obtaining landline billing data in the pleaded instance of Simon Hughes MP: see emails between Mr Clothier and others [**B/374**] and the table, collating content of his emails, which evidence his involvement in and knowledge of UIG and the PIs that he used [**B/494-498**].

40. There is one *sui generis* objection buried in NGN's objections on the ground that the amendments are "late". NGN objects to RRAGPCD §11.33B(i) [**A/38**] and its reference to the "Fowler Report". The document was disclosed in the MTVIL on 24 September 2020 by the MPS pursuant to Mann J's Order of 20 May 2020. NGN seeks to claim privilege over the document, but, despite repeated requests by the Claimants for NGN to identify the privileged parts and explain its claim to privilege, NGN has failed to do so. The Claimants' position is that NGN has no basis to claim privilege over the document in whole or part.

41. In summary, where NGN has raised an objection on what is said to be a lack of evidential underpinning (albeit expressed in the context of supposed "delay"), its arguments do not provide a basis for refusing the proposed amendments. The pleas are plainly fit to go to trial.

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[3] Mr Clothier was identified in §9.5 of the Re-Amended Particulars of Concealment and Destruction as being involved in UIG. In the Re-Re-Re- Amended Defence to GPCD, NGN denied that he was involved in VMI: see §9.5 [**A/23**].

Alleged "*poor/inappropriate*" pleading

42. NGN objects to the proposed amendments because it claims they "*contain extensive inappropriate pleas of evidence, are repetitive and are either unhelpfully vague or excessively detailed…*" Freeman 4 at §25(8) & §52 [**B/1261**] and [**B/1280**][4].

43. That objection is groundless. None of the proposed amendments fall to be refused on basis they are vague or embarrassing.

44. It is notable (and ironic) that NGN's objection is itself put in such vague terms. NGN has not identified which amendments it contends are "*unhelpfully vague*" and which it contends are "*excessively detailed*". Clearly a proposed amendment cannot be both.

45. Despite NGN apparently opposing all substantive amendments on the ground that they suffer from one of these two alleged vices, so as "*to make the pleading confusing and impenetrable*", it has not identified a single plea which suffers from this alleged defect or what it is confused about. As such it appears to be purely tactical.

46. This impression is further enhanced by the statement in Freeman 4 (at §25(8) and §52) that this apparent objection will supposedly be expanded upon in submissions. Such an approach is clearly inappropriate and unsatisfactory. It is particularly objectionable where, as NGN knows, there is only one day to consider this Application and there is likely to be relatively little time for the Claimants to address NGN's oral submissions in their reply.

47. NGN's failure to identify *any* specific amendment to which it objects on pleading grounds, despite having had approximately 8 weeks to consider the draft amendments, shows this objection for what it is, namely an unfocused and ill-founded one, and one which is unsupported by evidence.

[4] Freeman 4 simply repeats what NGN said in correspondence on 14.2.24: see para 8 of Clifford Chance to Hamlins at [**B/1547**]

Timing of application: Not "very late"

48. NGN asserts that if the proposed amendments are permitted it will imperil the 2025 trial date, in other words, it is said to be "*very late*" (cf Quah Su-Ling): Freeman 4 at 53-58 [**B/1280-1283**].

49. This argument is simply not sustainable. NGN's suggested timetable for what would follow were the amendments permitted is unrealistic. Instead, it appears to be reverse engineered to support the submission that the amendment application is "very late". The Court is invited to treat this highly tactical suggestion with considerable scepticism.

50. In fact, there are almost 10 months left until the start of the trial; the Claimants are not putting forward a new case; much of the material which has given rise to the proposed amendments will have already been considered by NGN at previous stages of this litigation, because it is founded upon its own disclosure or arises from evidence previously served.

51. A much more reliable indication of the consequences of permitting the amendments, in terms of future work which may be required, can be seen in the Appended PI Table attached to Galbraith 39 [**B/103-139**]. It addresses the proposed pleas concerning PIs and identifies, in the 4th column headed "*Disclosure: **YES** – has been given… **94-95** – only sought in relation to 1994-1995 … **NO** – pleaded only for disclosure*", where an amendment, if permitted, would ordinarily trigger consequential disclosure. The notable feature of that analysis, undertaken by reference to specific PIs, is that there are a substantial number of PIs where the answer is "YES" i.e. disclosure has already been given or the answer is "94-95" i.e. disclosure would follow if the Relevant Period is extended back in time.

52. Further, in respect of the proposed amendment to extend the Relevant Period back to 1994-1995, disclosure and inspection of PI Payments in those years will not be onerous. NGN indicated in the 28th Witness Statement of Maxine Mossman that it retained searchable payment records for contributors from 1993 {**F/348/3**}. At paragraphs 72-75 of the 27th Witness Statement of Ms Mossman {**F/346/27**}, NGN confirms that the data from the "Journal Uploads" is electronically searchable to the extent it has been retained by NGN). Indeed, in a letter to Edwards Duthie Shamash

of 12 February 2024 in the extant claim of Alex Smith (who pleads an article from 1994), NGN confirms that the Journal Uploads for the period 1994 to 1995 are on the SAP system, therefore they are *already* available for searching for the purposes of standard disclosure[5]. A copy of this letter (which is not in the hearing bundle as it only recently came to the attention of the Lead Solicitors) is attached to this skeleton.

53. The Appended PI Table is explained more fully in Galbraith 39 at 53-60 [**B/17-18**].

54. The above gives a proper, and evidence-based, assessment of consequential work likely to arise from the proposed amendments – in contrast to NGN's highly speculative timetable.

55. NGN has had the Draft RRAGPCD since 17 January 2024. It is appropriate to assume that it has considered them carefully in order to respond to this Application. If it has chosen to take no steps at all to consider the substance of the proposed pleas, then that was a strategic and informed choice. It does not follow that, because NGN decided not to "investigate" (to the extent any fresh enquires are necessary), it should be given "at least 12 weeks" to serve an amended Defence (Freeman 4 at 54 [**B/1281**])[6]. While it is, of course, a theoretical possibility that NGN may admit some of the proposed pleas or deny them and give particulars of a positive case in response, its Defence to date has comprised near blanket non-admissions. It does not take 12 weeks to not admit a plea.

56. The Claimants strongly refute the suggestion that permitting the amendments would disrupt the timetable to the January 2025 trial as NGN contend. See Galbraith 40 at 76 [**B/1601**].

57. The amended case (if permission is granted) can be accommodated alongside the current trial directions and if necessary, its impact can be controlled by management of the disclosure exercise[7].

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[5] Paragraph 14 of Clifford Chance's letter of 12.02.24 to Edwards Duthie Shamash states: "*The SAP includes the Journal Uploads data and so NGN's searches of the SAP includes any Journal Uploads for the period from 1994 to 1995 inclusive*".

[6] To put it in context, Cs provided Draft RRAGPCD 6 weeks after the hearing on 4 December 2023, during which time there was a holiday season.

[7] While in the face of different proposed amendments, in the parallel MNHL, Mann J observed in response to a similar submission by MGN:

> "*There is a lot in what Mr Spearman says about the work that has to be done between now and the trial date. There is undoubtedly a lot to do. But as Mr Sherborne for the*

Timing of application: 'lateness'

58. Of course, as the Court will appreciate, this amendment application, coming after disclosure and years of litigation, is, by definition, always going to be 'late' as that term is used in the context of Part 17 applications. However, that has to be understood in the context of MTVIL and the inherent nature of the Claimants' concealment and destruction case. NGN's objection also does not take account of the fact that an amended generic case will be relevant to pipeline claims and to future claims (given that the Managing Judge did not rule that the last Cut-Off date was the final one for the Managed Litigation, and that further claims are anticipated).

59. As Mann J observed (see paragraph 19 above) in 2020, the mere fact that an amendment could have been advanced earlier does not "*carry much weight*" in the context of the managed litigation.

60. NGN's objection that pleas could have been advanced earlier, because the Claimants may have had access to some documents which are relevant (or now seen by the Claimants to be relevant) since before the last amendments, is simplistic. It fails to take account of the necessarily jigsaw nature of the Claimants' case and the process of how the Claimants need to analyse documents and work out how, in the wider picture, they can be deployed together with other material.

61. The Claimants' case on concealment and destruction has developed in response to disclosure, evidence and assessment of pieces of the jigsaw. The jigsaw itself is one whose true nature has been concealed, making the Claimants' task even more challenging. The developing landscape of the Claimants' case is inherent in a case where:

    (a) because of the nature of the wrongs alleged, NGN's actions were inherently covert;

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claimant rightly submitted, that is partially or largely controllable through controlling the disclosure exercise. There is essentially something like three months to do the disclosure and witness statement exercise. That ought to be enough, in my view, if the disclosure is properly controlled." *Various v MGN* [2017] EWHC 3142 (Ch).

(b) there is alleged to have been an extensive exercise of concealment of the wrongdoing, during the Relevant Period (including from the police, the civil courts and the Leveson Inquiry);

(c) there is alleged to have been destruction of a substantial quantity of evidence during the civil litigation and the police investigation; and

(d) there is alleged concealment of the concealment during this litigation, including in evidence served by NGN's witnesses as already pleaded (see for example §§5.7 of the RAGPCD [**A/14**]).

62. The periodic need to amend is therefore unsurprising in this type of case, in response to a clearer picture and more specific information emerging via disclosure.

63. NGN's objection that only around 21% of documents relied upon in the draft amendments have been disclosed since June 2020 is wholly misconceived, or just plain wrong. For a start, NGN categorises all of the PI call data disclosed during November and December 2023 as "one category" (Freeman 4 at 29, fn. 4 [**B/1262**]) when it provided extensive evidence of NGN's use of multiple PIs including the substantial use of BDI by The Sun Journalist Nick Parker until 2011. It is also not clear how many other documents have been grouped into a single "category" to be reduced to a single value for NGN's so-called calculation.

64. In any event, even if this approach has any value in principle (which is doubtful), it uses the wrong measure. A more principled approach would be to consider what proportion of amendments, for which the only basis is documents, include documents disclosed since 2020[8]. The Claimants have highlighted in green (on the annotated version of Schedule 2 to Freeman 4 which is attached to the Skeleton Argument – and addressed in more detail below), those documents relied upon by NGN in Schedule 2 to Freeman 4 which were disclosed after February 2020. From that, the Court can be satisfied that far more than 21% of the proposed amendments are supported by documents disclosed since 2020 – in fact the vast majority.

65. Further, in 2020, the Claimants did not seek to continually amend the RAGPCD between provision of the draft in February and the hearing of their application in

[8] In other words, the correct denominator is the number of substantive amendments which rely solely on documents, and the correct numerator is the proportion of the number of those amendments which rely on documents disclosed since February 2020.

June. That means that the statement of case did not capture specific elements of the Claimants' case which are based upon disclosure between February and June 2020, when permission to amend was granted. This included substantial disclosure in relation to the MPS, the Leveson Inquiry and some PIs: Galbraith 40 at 10 [**B/1585-6**]. For this reason, the calculation in paragraph 64 above is based on disclosure provided by NGN since February 2020, rather than June 2020.

66. Many of the proposed amendments concern matters which the parties have already been addressing in this litigation (cf. Hawksworth v Chief Constable of Staffordshire and Ahmed v Ahmed). Any prejudice caused by such an amendment which is otherwise 'late' is clearly very limited.

67. An example of the above points is RRAGPCD §§5.8-5.11 [**A/14-15**]. The Claimants' proposed amendments plead one specific way in which they allege that NGN misled the Leveson Inquiry, namely in NGN's response to a Notice issued pursuant to s.21 of the Inquiries Act 2005, which, inter alia, required the disclosure of *The Sun*'s use of PIs.

    a. The Claimants already plead that NGN/NI lied or misled the Leveson Inquiry. This plea has been made since the GPCD were first filed: see §5.1 [**A/12**] and §§13.13-13.15 [**A/79-82**]. The Claimants gave further particulars in their Re-Amended GPCD at §5.7 [**A/14**].

    b. As explained in Galbraith 39 at 20-21 [**B/10-11**], after NGN provided disclosure of call data between journalists at *The Sun* and various PIs in November-December 2023, the Claimants then re-considered NGN's previous disclosure of the information which it had provided to the Leveson Inquiry in response to the s.21 Notice. From a proper consideration of all the documents, the Claimants could then see that NGN (a) had failed to identify to the Leveson Inquiry some PIs which it had used to a material extent (and in some cases was using even during the Inquiry); and (b) had given a sum for total expenditure on PIs which was, in fact, only a small fraction of the expenditure on those PIs whose use had been (wrongly) withheld from the Leveson Inquiry.

    c. NGN's objection that this plea is late because the disclosure in relation to the PIs was given on various dates between 2017 and 2021 (Schedule 2 to

Freeman 4 at 5.10 [**B/1294**]) misses the point, as already explained. The Claimants were unable to put that disclosure in the context of NGN's non-disclosure to the Leveson Inquiry until the Claimants learnt about the latter; and they only did so following the disclosure on 23 March 2020 pursuant to the Order of Mann J of 4 March 2020. That was after the Claimants had provided their last draft amendment and before much of the PI invoice disclosure to which Freeman 4 refers in Sch. 2 in support of NGN's contention this amendment is late.

d. Further, bearing in mind that NGN/NI's response to the above s.21 Notice from the Leveson Inquiry was the responsibility of/dealt with by specific executives, it is appropriate for NGN and the named individuals (including Richard Caseby and Tom Mockridge) to be on notice of the Claimants' case because they will seek adverse findings against those individuals.

e. Bearing in mind the Claimants' current case on misleading the Leveson Inquiry, the Claimants contend that they would be able to cross-examine a relevant witness at trial as to this specific example of how NGN/NI did so.

f. Taking account of the public nature of the Leveson Inquiry and its status, NGN's conduct is highly relevant for the Claimants seeking to meet limitation defences.

68. In all the circumstances, the proposed amendment, even if 'late' does not, because of lateness, give rise to unfair prejudice to NGN.

69. NGN seeks to downplay the significance of the PI call data disclosed pursuant to the Order of 10 October 2023 {**B/165/1-5**}, both quantitatively, by ascribing to it a value of "1" in its calculation of the percentage of documents which it says were disclosed since June 2020 (addressed above), and qualitatively, by failing to recognise its role in the Claimants' largely 'jigsaw' case on concealment and destruction. It is generally not a particular document which underpins the proposed amendments. Instead, it is the Claimants' ability to see the documents/information in context, with the benefit of what has been learnt subsequently, and see how it supports their pleaded inferential case: see paragraphs 10-12 of Galbraith 39 **[B/1585-7]**.

70. NGN's objections, based on delay, are listed in Schedule 2 to Freeman 4. These are NGN's only objections based on specific proposed pleas. For convenience, attached to this Skeleton Argument is an annotated and highlighted version of that Schedule ("**Annotated Schedule 2**"). In light of the volume of contested pleas which the Court needs to determine in limited time, this Annotated Schedule 2 sets out, by use of an added fourth column, which of the proposed pleas:

    a. arise from disclosure since service of draft RAGPCD on 19 February 2020 where the documents listed by Ms Freeman which were disclosed after that date or from witness evidence after that date;

    b. are particularisation of allegations against third parties

    c. are the result only of insights obtained since service of draft RAGPCD, from assessment or re-appraisal of multiple sources of material in light of information obtained during the litigation; and

    d. are, properly understood, consequential on other substantive amendments and therefore do not need to be considered separately (these are shaded in grey).

71. While in some cases, the proposed pleas are a tidying up exercise following previous disclosure, what the Annotated Schedule 2 shows is that NGN's response to this application is misdirected, by simply pointing to the fact that some of the pleas rely (in part) on documents disclosed before 2020. At other times NGN just ignore the reliance on the call data disclosed in late 2023. What Annotated Schedule 2 does not capture is that the vast majority of proposed amendments concern matters which the parties have already raised in this litigation, including because they have been addressed by the parties in correspondence, disclosure applications/ interim witness statements.

72. By way of example, the pleaded case against Nick Parker is objected to. The Claimants plea is, however, partly advanced as a consequence of the call data disclosed in late 2023 which showed Mr Parker had called Christine Hart of Warner, whom the Claimants contend specialised in blagging medical information, at least 1,763 times between August 2005 and November 2010 (Galbraith 39 at 139 [**B/47**]).

This far exceeds the number of payments by *The Sun* to Ms Hart in that period and supports the Claimants' case that NGN must have used cash payments (or other means) to pay for PI's work.

73. The call data disclosed in late 2023 is, in fact, the basis for the plea (RRAGPCD at §11.77 [**A/62**]) that Mr Parker continued to use BDI (ELI's successor) until September 2011, even though the last disclosed payment to BDI by *The Sun* in London was March 2007. This is something to which NGN does not respond, despite (a) the obvious significance and extent of the unlawful activities of TDI, ELI and BDI in this litigation; and (b) the way PIs (especially after 2007) were paid through cash/expenses and/or through aliases undiscovered by the Claimants and undisclosed by NGN.

74. The pleaded case against Nick Parker – and considerations of any suggested prejudice associated with alleged lateness – must be considered in context. The proposed plea against Mr Parker is a further particular of the Claimants' case that those in senior roles at NGN were fully aware of UIG (GPCD at §11 [**A/24**]). The Claimants rely on the sheer scale of Nick Parker's use of PIs, including as evidenced partly by the recently disclosed call data, and that his payments were approved by Graham Dudman (the Managing Editor).

75. As Mr Parker has previously given evidence in MTVIL and allegations relating to him have been pleaded in almost every Claimant-specific claim, NGN's generalised objections, such as that proposed amendments are unnecessary or irrelevant do not bite[9].

76. Further, NGN's specific objections on the basis of delay do not stand-up. The following are examples of the different types of objections advanced in Freeman 4 at 31(a)(ii)(C):

    a. At (viii) [**B/1267**], Freeman 4 considers Jane Atkinson. It is correct that allegations about her are long-standing in relation to her time at the *NOTW*, but that is not an answer to the proposed amendment which concerns her

[9] NGN non-admit allegations in relation to Nick Parker, despite the fact that he is currently Chief Foreign Correspondent at *The Sun* and despite his interlocutory witness statement dated 9 March 2016 {paragraph 18 of **F/78**} stating "*I have no knowledge of "phone hacking", if any, at The Sun".*

time at *The Sun*. The activities at the two newspapers are considered separately in MTVIL claims – a distinction which NGN keenly maintains in all aspects of its Defences and which is plainly relevant to limitation.

b. At (xi) [**B/1267]**, Freeman 4 considers John Edwards, but the relevant disclosure (as noted in Freeman 4) only occurred on 20 December 2021, which was quite some time after the generic case was last amended.

77. The Claimants have responded, fully, to NGN's objections in respect of the individuals identified in Freeman 4 in Galbraith 40.

Relevant Period

78. Other than some limited criticisms of the merits of the Claimants' case (addressed above), NGN's only objection on the basis of what is said to be a lack of substantive merit is the proposed amendment to extend the Relevant Period: see RRAGPCD at [**A/11**]; Freeman 4 at 25(1) [**B/1260]**.

79. The Claimants dispute that this is an amendment to which CPR 17.4 applies, while it is for individual claimants to raise a case based on s.32 of the Limitation Act 1980.

Extension of the Relevant Period to 1994 from 1996

80. The Court considered the scope of the Relevant Period in the course of the Claimants' previous application to amend the Amended Generic Particulars of Concealment and Destruction. The Managing Judge in his ruling dated 4 June 2020 found that while there was sufficient evidence to back up the amendment of the period to 1994, he did not consider those extra years were, at that point of time, justified based on the claims issued in the context to the closeness of the forthcoming trial date (being only four months away – much closer than the current trial date {**B/119/3/§6**}).[10] Since that decision, there have been substantial changes as set out

[10] The Order dated 19 June 2020 (made following the determination of the 2020 amendment application) refers to the "Relevant Period" {**B/123/2/§1**} from which Relativity disclosure arose as a result per {**B/122**} and {**B/126**} and SAP searches for 1996 and 1997 {**T/1268**}. The criteria for entering a claim on the Register has consistently required that conduct complained of must include an element prior to 1 August 2011, since 20 April 2012, although the wording does not suggest claims cannot be

below, particularly in relation to (a) PI Payments; and (b) more claims now extending back to 1994 and 1995 than was the case in June 2020.

81. The Claimants' evidence on the Relevant Period is to be found in Galbraith 39 at 8 to 15 [**B/3-8**].

82. Journal Uploads PI Payment records apparently exist from some point in 1993 per Mossman 28 {**F/348/3**} and are searchable for vendors, despite NGN previously denying this [**B/4/§10(a)**], and it appears likely that it will contain vendor names. As set out above (in paragraph 52), data from the Journal Uploads is already included in the SAP which is searched by NGN. Such records allow for payments to be linked to named individuals and articles, as is the case for where Generic disclosure has been given (from 1996, following the 2020 amendment) [**B/4/§10(c)**]. There is extensive evidence available that identifies UIG from at least 1994, as summarised at paragraph 13 of Galbraith 39 [**B/5-8]**, such as:

    a. Journal Upload material disclosed in 2021 which shows that a number of PIs, such as Southern Investigations, Steve Clarke, John Ross, Steve Whittamore, Severnside and Christine Hart were used regularly from 1 January 1996, indicating use prior to the current Relevant Period.

    b. Jonathan Rees and Sid Fillery (of Southern Investigations) were even given a Christmas gift case by NGN in December 1994 {**R/45/2**}.

    c. The first surviving blue book of Steve Whittamore starts in August 1995 and refers to journalists who were also present in 1994 [**B/7/13(i)**].

    d. Evidence from many NGN employees and PIs indicate unlawful activities took place from 1994 [**B/5-6/§13(a)-(f)**].

    e. 1994 is also a natural starting date for the Relevant Period; both NGN titles had new editors (Piers Morgan and Stuart Higgins) from January 1994.

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added if such conduct occurs both before and after 1 August 2011: see the Orders dated 20 April 2012 {**B/23/6/§17**} and 3 April 2019 {**B/101/5/§5**}.

f. The only additional generic disclosure that may be required is for PI Payments from the Journal Uploads from 1994-1995, and the Claimants are unaware of any other sources of documents that would need to be searched, as NGN acknowledge. As set out above, the Claimants understand this to be available and in a searchable format.

83. There are presently a number of claims in the existing pool which extend back to 1994 and 1995: 7 in total [**B/5/§12**]. Further, there are a number of further pipeline claims that include articles from the 1994/1995 period. This is in contrast to the position in 2020. As stated above, there are likely to be further claims issued when the stay is lifted and there is no reason to suppose that those claims will not continue to show the same pattern of allegations extending back the 1990s as the current tranche of claims.

Extension of the Relevant Period from 2011 to 2012

84. The extension from 2011 to 2012 arises from recent disclosure. The Claimants' evidence on this point is set out in Galbraith 39 at 15-16 [**B/8-9**].

85. The recently disclosed material underpinning this proposed plea includes:

a. PI call data disclosure received showing calls to John Ross and System Searches in 2012 [**B/213-230**];

b. PI call data (corrected in Galbraith 40 at 47 [**B/1593**] from the typo "Payments" in Galbraith 39) to Tillen & Dove in 2012 [**B/232**];

c. call data in the extant claim of Ciara Parkes which shows suspicious calls to Jude Law's phone regularly until the end of 2011 (where it can be inferred that this continued after) [**B/241**]; and

d. the fact that PI Dan Hanks was used by NGN until 2016 (as set out in the parallel *Sussex* application);

e. PI payments to certain alleged PIs continued until at least the end of 2011;

f. A number of extant Claimants[11] plead call data from the NGN all the way up to the end of 2011.

86. In total a substantial number of the 45 extant claims rely on allegations in the extended Relevant Period of 1994 to 2012 (including articles), as is accepted by NGN [**B/1273**][12]:

87. This does not include the many further claims pleaded where the relevant period is set out as "*until 2011 and beyond*", for example Lord Watson [**E/81/§2**] or "*at least as early as 1996 until at least early 2011*" in the Duke of Sussex's claim. Indeed, the Duke of Sussex's draft amended Particulars of Claim complains of conduct up to 2016.

Balance of prejudice

88. The ultimate consideration for the Court is the balance of prejudice to the parties of allowing or refusing the amendments.

89. In considering this, it seems appropriate to address NGN's broadbrush objections that pleas are irrelevant, unnecessary, and disproportionate.

90. As many of the proposed pleas arise from NGN's own disclosure it is wholly unclear how they could be "irrelevant" or the amendments "disproportionate". In the face of NGN's non-admission of wrongdoing, save to a very limited extent, and confined to a very limited time period, at *NOTW*, and the inevitable partly inferential case which the Claimants have built, faced with activities which are necessarily conducted covertly, further particulars of the Claimants' case cannot be unnecessary. For that reason, the fact that the Claimants raised a concealment and destruction case much earlier in MTVIL and have previously amended it (Freeman 4 at 9-18 [**B/1255-1257**]) is not a reason, let alone a good reason, to refuse the proposed amendments.

[11] Including Sir Norman Lamb, Paul Farrelly, Tim Farron MP, Lord Tom Watson, Andy Burnham, and Sir Vince Cable.
[12] Alex Smith (1994-1999); Baroness Lawrence (1993-2012); Paul Farrelly (2001-2012) [**E/144/§2**]; Diane-Louise Jordan (1995-2011); Guy Ritchie (1994-2011); Hugh Grant (1995-2011); Joanna Birch-Jones (1995-2011); John Duigan (1995-2011); Marshalla Salaman (1995-2011).

91. The question of what is necessary or not will be determined subsequently by the requirement that the parties consider ahead of the trial what generic issues are required to be determined at the trial: para 3 of the Order of 20 February 2024 {**B/167**}, and will be further narrowed by virtue of the issues raised in the cases selected for trial.

92. NGN's unevidenced and entirely speculative claim that it will suffer prejudice if the amendments are allowed should be considered against two substantial factors. The first is that many of the proposed pleas are founded on previous disclosure (as NGN asserts) and evidence. The degree of prejudice from permitting such pleas is necessarily limited, in respect of both the timing of the pleas and the need for NGN to investigate them or devote resources to investigating them. But it cannot be contended that NGN has been taken by surprise by the matters advanced in the proposed amendments.

93. Against that, it would be unfairly prejudicial to the Claimants to prevent them from advancing their case based on disclosure extracted (in face largely of NGN's opposition) and which, on stepping back and assessing it, the Claimants were able to piece together with other information and see how the picture on the jigsaw emerged.

94. Further, it would be seriously prejudicial to the Claimants if, at trial, they were constrained in seeking to prove their case, because it was inherent in NGN's wrongdoing that the Claimants needed to have findings made against individuals responsible (including third parties), and the Claimants, despite seeking by these proposed amendments to ensure that they had set out their case against individuals and PIs fully, were obstructed from doing so.

CONCLUSION

95. The proposed amendments should be permitted. The prejudice to NGN (if any) from permitting them is very limited and the RRAGPCD will assist the Court and the parties by the additional particularity which they give to the Claimants' generic case.

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18 March 2024