

Claim Nos: BL-2019-001459 and BL-2019-0011654

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
BUSINESS LIST (ChD)

IN THE MOBILE TELEPHONE VOICEMAIL INTERCEPTION LITIGATION

BEFORE THE HONOURABLE MR JUSTICE FAN COURT

B E T W E E N :

**(1) THOMAS WATSON
(LORD WATSON OF WYRE FOREST)**

(2) SIR JOHN VINCE CABLE

Claimants

- and -

NEWS GROUP NEWSPAPERS LIMITED

Defendant

CLAIMANTS' SKELETON ARGUMENT

for their applications for disclosure on 29 July 2024

The shorthand in this Skeleton for the Hearing Bundles references is: [Claimant Surname/Tab/Page] and to the confidential bundle: [Conf/Page]. For the supplementary bundles, the shorthand is: [Supp/Claimant Surname/Tab/Page]. References in the format {X/Y/Z} are to the Opus2 bundle.

Pre-reading:
(Time est: 3-4 hrs)

Parties' Skeleton Arguments

The Watson Disclosure Application

Application Notice of Lord Watson dated 1 July 2024 [Watson/1/A1-6]

Revised Draft Order (Exhibited to Gallagher 2)

1st Witness Statement of Ellen Gallagher [Watson/3/B1-23] ("Gallagher 1")

1st Witness Statement of Maxine Mossman [Watson/5/B379-417] ("Mossman W1")

2nd Witness Statement of Ellen Gallagher [Watson/7/B732-759]

The Cable Disclosure Application

Application Notice of Sir Vince Cable dated 3 July 2024 [Cable/1/1-6]

Revised Draft Order (Exhibited to Chisolm Batten 2)

1st Witness Statement of Roderick Chisolm Batten [Cable/3/11-55] ("Chisolm Batten 1")

1st Witness Statement of Maxine Mossman [Cable/35/540-573] ("Mossman C1")

2nd Witness Statement of Roderick Chisolm Batten [Supp/Cable/2/1-14] ("Chisolm Batten 2")

1st Witness Statement of Lord Chris Rennard

INTRODUCTION

1. This is the hearing of the Claimants' applications for disclosure (collectively "**the Disclosure Applications**" and individually, the "**Watson Disclosure Application**" and the "**Cable Disclosure Application**") in relation to two claims brought in the Fourth Tranche ("**T4**") of the Mobile Telephone Voicemail Interception Litigation ("**MTVIL**").
2. The first claim is brought by (Lord) Tom Watson, who was a senior Labour MP during the relevant period, and a target for NGN's unlawful activities especially because of his role on the Parliamentary Culture, Media and Sport Select Committee which was investigating amongst other things media malpractice, and took evidence from senior NGN executives, including James and Rupert Murdoch, as referred to in his Claimant Specific Particulars of Claim. Lord Watson was also (falsely) cited by senior NGN executives, such as Rebekah Brooks and Will Lewis as part of the 'fake security threat' used to 'justify' the wiping of the crucial back-up tapes of NGN's email system, that led to the deletion of millions of incriminating emails, as the Claimants allege.
3. The second claim is brought by (Sir) Vince Cable, who was a senior Liberal Democrat Politician during the relevant period, and a target for NGN's unlawful activities especially because of his role as Secretary of State for Business which required his assessment of the controversial bid by News Corp to take over the ownership of the media company, BSkyB, as referred to in his Claimant Specific Particulars of Claim.

SUMMARY OF THE PARTIES' POSITIONS

4. The position in relation to the Watson Application is as follows:
 - 4.1. **Paragraphs 1 to 3.** There is a dispute over call data searches (both mobile numbers and landline). Lord Watson seeks for 50 of his Associates to be searched from Schedule 1 of the draft Order, alternatively the first 30 on the Schedule. NGN opposes the application; its current position is unclear.

- 4.2. **Paragraphs 4 to 5.** NGN has agreed to searches over additional custodians for Schedule 1 searches and Schedule 1 Associate search terms. As such, paragraphs 4 and 5 no longer need to be pursued.
 - 4.3. **Paragraph 6.** There is a dispute over additional Claimant-specific searches in relation to the CMS Select Committee allegations.
 - 4.4. **Paragraph 7.** NGN has disclosed a copy of relevant correspondence from Linklaters to Lord Watson and the CMS Select Committee to Lord Watson. As such, paragraph 7 no longer needs to be pursued.
 - 4.5. **Paragraphs 8 and 9.** There is a dispute over additional Claimant-specific searches in relation to the fake security threat pleaded in Lord Watson's Particulars of Claim.
5. The position in relation to the Cable Application is as follows:
- 5.1. **Paragraph 1.** NGN have agreed to searches over the mobile telephone call data sought. As such, paragraph 1 need not be pursued.
 - 5.2. **Paragraphs 2 to 3.** There is a dispute still over landline call data searches.
 - 5.3. **Paragraph 4.** There is a dispute over searches of additional custodians.
 - 5.4. **Paragraphs 5.** NGN has agreed to searches over additional custodians for Schedule 1 searches and Schedule 1 Associate search terms. As such, paragraphs 5 no longer needs to be pursued.
 - 5.5. **Paragraph 6-7.** There is a dispute over additional Claimant-specific searches in relation to the BSkyB bid allegations.

- 5.6. **Paragraphs 8 and 9.** There is a dispute over additional Claimant-specific searches in relation to obtaining the covert recording of his private conversations in constituency surgery appointments, including by Will Lewis.

PRINCIPLES GOVERNING SPECIFIC DISCLOSURE

6. CPR 31.5(8) provides that the Court may at any point give directions as to how disclosure should be given. In particular, the Court may direct what searches are to be undertaken, of where, for what, in respect of which time periods and by whom and the extent of any search for electronically stored documents: CPR 31.5(8)(a).
7. CPR 31.12 also provides that the Court may make an order for specific disclosure, which is an order where a party must (a) disclose documents or classes of documents specified in the order; and/or (b) carry out a search to the extent stated in the order; and (c) disclose any documents located as a result of that search. The relevant legal principles are set out in the White Book at paras 31.12.1 to 31.12.2 (pp. 978-979).
8. As Coulson LJ said in *Lisle-Mainwaring v Associated Newspapers Ltd* [2018] EWCA Civ 1470; [2018] 1 WLR 4766 at [34c]:
- “The application for specific disclosure will usually arise because the applicant believes that the other party has not given adequate disclosure first time round. But that is not inevitable: sometimes, there may be documents (or a particular class of documents) which the applicant seeks by way of specific disclosure, regardless of whether or not they should have been disclosed by way of standard disclosure.”*
9. Paragraph 5 of PD 31A provides that if the Court concludes the party from whom specific disclosure is sought has failed “adequately to comply with the obligations imposed by an order for disclosure (whether by failing to make a sufficient search for documents or otherwise) the court will usually make such an order as is necessary to ensure those obligations are properly complied with”.
10. The Managing Judge has also provided guidance in relation to searches of custodian data in *Jefferies & Anor v NGN* [2021] EWHC 2187 (Ch), in particular at [29] to [37].

THE PROPOSED DRAFT ORDERS

11. The paragraphs of the revised draft Orders are dealt with below in turn.

The Watson Disclosure Application

12. As set out above, paragraphs 4, 5 and 7 of the draft Order no longer need to be determined in light of NGN's concessions.

Paragraphs 1 (and 3) (Mobile Call Data Searches)

13. Lord Watson's evidence on this paragraph is at §§4 to 16 of Gallagher 1 **[Watson/3/B2-5]**. NGN's evidence in reply is at §§27 to 43 of Mossman W1 **[Watson/5/B388-393]**. Lord Watson's evidence in response is at §§3 to 19 of Gallagher 2 **[Watson/7/B733-737]**.

14. Lord Watson seeks for 50 Associates of his choosing (out of a total of 111 pleaded) to be searched by NGN, alternatively the first 30 listed in Schedule 1 to the draft Order. In each case Lord Watson has conceded that the searches need only cover the period of Association in each claim (which is a departure from the precedent MTVIL Orders) Lord Watson was in contact with each of his Associates during the periods set out in Confidential Schedule B to his CSPOC, therefore call data (indicating as it does unlawful information gathering) would be highly relevant to his claim.

15. NGN's objection is that of proportionality. NGN does not dispute that the searches would result in relevant documents.

16. NGN had suggested on 26 June 2024 **[Watson/6/B678]**, as a 'compromise', to search 30 of Lord Watson's Associates selected by NGN. NGN sought to resile from this 'compromise' in its letter dated 17 July 2024 on the basis, it is said, that the cost of their own proposed compromise would also be disproportionate **[Watson/6/B721-722]**.

17. The default position in MTVIL is that there should be searches for all Associates:

- 17.1. Paragraph 19(a) of the Order dated 10 May 2018 requires NGN to carry out Call Data Searches in relation to telephone number of all individuals pleaded as each Claimant's Associates in the Claimant-Specific Particulars of Claim, providing that Associates' mobile telephone numbers are to be given at a later date **{B/85/7}**.
- 17.2. Mossman 1 accepts the relevance of this Order by adopting it in relation to a totally different point, however, namely as a basis for (wrongly) arguing that standard disclosure relates to mobile telephone numbers but not landline numbers at §54.
18. The default position in MTVIL is that call data searches on Associates should run from the start of the call data records (and not the start of the Period of Association) until one year after the end of the Period of Association. See as follows:
- (a) the Order of Mr Justice Mann dated 03.04.19 (the "**April 2019 Order**") relates to initial disclosure but it is NGN's position that it applies to Standard Disclosure as well); and
- (b) Paragraph 2(c) of the April 2019 Order states:
- "no start date shall be applied to Call Data Searches and the end date shall be 1 year from the last date on which the Claimant and Associate had dealings/communications within the period in sub-paragraph 2(a)(iv) above"*
19. It was only in a letter from PwC's written directly to the Court dated 18 July 2024 that NGN first provided information suggesting that excessive results will be produced and it will take 7 to 9 weeks **[Watson/6/B725-B731]**. It should be noted that it appears that (for the second time in the last year) NGN has instructed PwC to contact the Court unilaterally without copying in the Claimants. This appears to be a breach of CPR 39.8. This letter was only disclosed to Lord Watson in Mossman 1. This is wholly inappropriate and something which the Claimants would no doubt be seriously criticised for if they had done this.

20. PwC now estimates the cost of searching 50 associates would be up to £395,000 **[Watson/6/B/729]**. This figure has been significantly revised down from a previous estimate of £700,000 in earlier correspondence, but is still inexplicably high given that the costs estimate for searching call data for 42 of Sir Vince Cable's Associates was estimated as costing up to £65,000 (**[Watson/8/B761-767]**). There are possible reasons why PwC's letter suggests the costs may be so high, for example it includes a number of unnecessary tasks, such as deduplication of disclosure (which is not necessary, was disallowed in the April 2019 at paragraph 2(c)¹ and could in fact obscure evidence of double tapping) and identification of overseas numbers even though Lord Watson has not put forward any (**[Watson/7/B737]**). PwC's figures are simply not reliable.
21. It appears that NGN has already undertaken a scoping exercise to identify the call data produced by Lord Watson's Associates, referring to "4,800" responsive records in the PwC letter. Conspicuously, no break down of which Associates produce high responses has been provided. Exclusionary search terms could reduce results, as was done, very effectively, in Paul Gascoigne's case against NGN (**[Watson/7/B736/§15]**), but this is only possible if the necessary information is provided. To date, NGN has tactically not done so.
22. Further mechanisms could also be put in place to ensure the exercise is proportionate (notwithstanding it is NGN's failure to properly engage in whether there are anomalous returns or Associates with very high entries that are skewing the figures):
- 22.1. Disclosure could be ordered on a rolling basis for the 50 Associates. This would allow NGN to proceed with selected Associates who have 300 entries of call data or less, and disclose the data (including all hub data) from the electronic call data searches first (as was done in the PI call data disclosure ordered in October 2023). Importantly, the exercise of undertaking the searches falls to PwC who are not involved in the preparation of witness evidence;

¹ "The Defendant will not de-duplicate data obtained through Call Data Searches" **{B100/2-3}**.

- 22.2. while PwC is engaging in those searches, the parties could seek to agree exclusions to the searches where there are 300 entries of call data or more (as was done in the case of Paul Gascoigne) to reduce the entries to a manageable figure; and
- 22.3. further, or alternatively, the number of Associates selected by the Claimant could be reduced from 50. Lord Watson's position is that he should be entitled to select the Associates to be searched, otherwise NGN can simply manipulate the process by providing limited call data, not least by including Associates whose call data Lord Watson has already obtained.

Paragraph 2 (and 3) (Landline Call Data Searches)

23. Lord Watson's evidence on this paragraph is at §§17 to 19 of Gallagher 1 **[Watson/3/B5]**. NGN's evidence in reply is at §44 to 58 of Mossman W1 **[Watson/5/B393-397]**. Lord Watson's evidence in response is at §§20 to 34 of Gallagher 2 **[Watson/7/737-741]**.
24. Lord Watson pleads landline voicemail interception, as distinct from and in addition to mobile voicemail interception. The nature of the activity is covert, and he has not been provided disclosure in relation to landline numbers. Accordingly, he is not in a position to plead with precision the specific causes of action and has simply provided the best particulars he can. Lord Watson has confirmed that messages left on landline answering machines, including his own, included "*information about internal Labour Party matters, his family and his private life*" (Gallagher 2 at §24 **[Watson/7/B738]**).
25. Notably, NGN has not sought to strike out this part of the claim, but non-admits the particulars relating to landline interception in the Particulars of Claim, largely on the basis of "*lacking in proper particulars*" (see, for example, §18.3). However, as acknowledged by the Managing Judge in *Sussex v NGN* [2024] EWHC 1208 (Ch) at [141]:

"[These] are claims based on the underlying UIG, where the claimants are generally unaware of the detailed facts relating to the circumstances in which the confidential information was obtained. That is because of concealment and

destruction of evidence, as pleaded in the GENPOC, or simply because those facts are known to NGN's employees but not to the claimants. The Duke and other claimants are therefore not well placed to plead the facts relating to the obtaining of the information by NGN that gave rise to an obligation of confidence. That point was well made in argument by Nicklin J in hearing an application in the parallel litigation, Lawrence and others v Associated Newspapers, which Mr Sherborne was able to show me in a transcript of the hearing, and I accept that the Duke and other claimants in the MTVIL are often unable to plead details of this kind."

26. Lord Watson is not in a position to provide specific detail, as NGN suggests. It is neither necessary nor feasible. The form of the pleading in relation to landline VMI is in this respect very similar to that in relation to mobile VMI. In the 12 years over which this litigation has been running, NGN have not opposed the disclosure of mobile call data on the basis of pleading, as they do now for landline call data.
27. A distinction should also be drawn with the Claimants' October 2023 application for landline call data, which was refused by the Managing Judge. That was an application made 3 months before trial (compared to 6 months), after standard disclosure had taken place, shortly before the deadline for witness evidence, in relation to 55 Claimants and not then pleaded in the generic case (as it is now).
28. Landline interception (and voicemail interception) forms part of the generic case and has arisen previously in MTVIL and MNHL. It is now pleaded in the PI Annex to the Re-Re-Amended Generic Particulars of Claim. Further, Gavin Burrows offered many unlawful information gathering services (for example as set out on his website). He describes his work for NGN as including "*voicemail hacking i.e. voicemail interception (both mobiles and landline answering services), landline phone tapping, accessing medical records and other forms of blagging private information*" {D/104/2/§4}. There are also for example a number of payment records which evidence the commissioning of PIs by NGN journalists to obtain (landline) ex-directory phone numbers, which would have been used to access their messaging facilities in the same way.
29. Similarly, Dan Evans confirms that he carried out the same practice of voicemail interception on landlines "*as I carried out on mobile phones*" {D/105/2}. As with VMI on mobile phones, it can be safely inferred that the practice was widespread. If a PI engaged in VMI on mobile phones and the same or similar techniques worked on landline answering machines, then it would be fanciful for a PI to limit himself or herself

to targeting mobile phones alone, even if the quantity of landline interception was not as enormous as that of VMI.

30. However, Lord Watson has had no disclosure on his own claim in relation to this issue. Without it, it will simply not be possible for Lord Watson to have a fair trial on his claim for landline interception. This is the critical factor in the application. Put simply, if there is call data, it will allow him to build an inferential case in support. If there is not, it will likely dispose of the issue and the costs of the exercise will be very limited.
31. NGN has not previously disclosed landline call data in any claim and vigorously opposed the Claimants' application in October 2023. The fact that previous orders focus on the disclosure of mobile call data does not limit the Court (or the parties). NGN's attempts to argue (incorrectly) that earlier orders mean it should not search landline call data is an unnecessary distraction.
32. Instructively, the issue of whether searches for landline call data should be undertaken was addressed in the Mirror Newspapers Hacking Litigation in the judgment with the neutral citation [2022] EWHC 1610 (Ch). In accordance with the judgment at [22] it was ordered that call data relating to landline telephone numbers should be disclosed where pleaded by a claimant [19]. There is no principled basis not to make the same order in this parallel litigation.
33. In terms of proportionality, as noted in Gallagher 2 at §34 **[Watson/7/B741]**, NGN previously stated that searches of 55 claims for landline call data would cost £75,000 and 400 hours. Only Lord Watson and Sir Vince Cable seek landline call data at this hearing, and scaling down costs proportionally would result in costs being, at most, in the low thousands. Any searches ordered would plainly be proportionate. NGN have no proper factual basis to argue otherwise. NGN did not make any point in relation to costs of searching for and disclosing landline call data when carrying out the PI call data searches ordered in October 2023 (when over 45 landline numbers were searched).

Paragraph 6

34. Lord Watson's evidence on this paragraph is at §§33 to 38 of Gallagher 1 **[Watson/3/B9-12]**. NGN's evidence in reply is at §§76 to 97 of Mossman W1 **[Watson/5/B401-407]**. Lord Watson's evidence in response is at §§37 to 74 of Gallagher 2 **[Watson/7/B742-753]**.
35. These paragraphs relate to the fact that on the Claimant's case he was the target of surveillance by NGN in 2009 as a result of his work on the Culture, Media and Sport Select Committee ("**CMSC**") which was investigating News International and took evidence from a number of senior executives including James and Rupert Murdoch. These allegations are not admitted by NGN.
36. As set out in Gallagher 1 at §36 **[Watson/3/B10-12]**, documents have emerged in generic disclosure showing that CMSC members and key witnesses called by the CMSC were targeted by NGN to obtain damaging information (or kompromat). For example, Ian Edmondson claimed through his lawyers that the Editor, Colin Myler, instructed him (and James Mellor) to mount an attack on MPs who were seen to be "*stirring up the phone hacking story*" **[Watson/3/B10-11/§36(a)]**. Individuals identified in paragraph 36 of Gallagher 1 as being involved or potentially privy to such activities, are sought for searches.
37. In addition:
- 37.1. Will Lewis (from July 2010), Group General Manager of News International, and Simon Greenberg (from December 2010), Director of Corporate Affairs of News International who both took an active role in News International activities in relation to the Select Committee, as explained at §37 **[Watson/3/B12]**. Both Mr Lewis and Mr Greenberg were on the Management and Standards Committee and both are pleaded in the Re-Re-Amended Generic Particulars of Concealment and Destruction. (See also paragraphs 8 and 9 below and Mr Lewis's role as a principal player in the fake security threat: Gallagher 2 at §§80 to 83 **[Watson/7/B754-758]**); and

- 37.2. Cheryl Carter and Deborah Keegan were executive assistants to Rebekah Brooks. Ms Brooks was never on the Email Archive System and other sources of her emails were destroyed by NGN in 2010-2011 (as explained in the Re-Re-Amended Generic Particulars of Concealment and Destruction), with only a limited number of emails from her remaining. It is likely that Ms Carter and Ms Keegan will have retained further of Ms Brooks' emails that have otherwise been lost by virtue of their positions.
38. The revised draft Order reflects the fact that as NGN have agreed to search Kishan Athulathmudali and Keith Perry as Schedule 1 Custodians, Group A searches no longer need to be run (as they are covered by Schedule 1 searches) and so they have been removed from paragraph 6(a). They have been moved to paragraph 6(b) as they still have a nexus to the Select Committee Search (as explained at §38 onwards of Gallagher 2 **[Watson/7/B742]**) and require Group B search terms to be applied. Lord Watson has agreed NGN's alternative search term to be used in searches of Mr Pascoe-Watson's custodian (to deal with the need to exclude "Pascoe-Watson" while searching for "Watson" alone) as explained at §43 of Gallagher 2 **[Watson/7/B744]**.
39. Each of the custodians under 6(a) are highly likely to hold documents relevant to Lord Watson's claim. §§62 to 73 of Gallagher 2 **[Watson/7/B749-753]** explains the relevance of each to select committee matters and the targeting for unlawful information gathering on him by virtue of his membership of the committee.
40. An explanation for why the inclusion of the 13 custodians in paragraph 6(b) opposed by NGN should be allowed is set out in Gallagher 2 at §44 and §§56 to 60 **[Watson/7/B744-748]** in relation to each and their relevance to Lord Watson's claim.
41. Five of the six proposed search strings under Schedule 3 have been agreed. Currently string 6 has 61,500 hits, and so Lord Watson agreed to refine the search strings into the form set out at paragraphs 52(A) and (B) of Gallagher 2 **[Watson/7/B746-747]**. The parties can work together to ensure the number of unique documents to be searched as a result of the search string is below 5,000. It should also be noted that Paul Farrelly has sought the same search as Lord Watson (see the appendices to the

letter at **[Watson/7/B781-802]** and **[Conf/B121]**). Accordingly, any such disclosure would benefit both Lord Watson and Mr Farrelly's claims.

Paragraphs 8 and 9

42. Lord Watson's evidence on this paragraph is at §§25 to 35 of Gallagher 1 **[Watson/3/B15-22]**. NGN's evidence in reply is at §111 to 121 of Mossman W1 **[Watson/5/B410-414]**. Lord Watson's evidence in response is at §§76 to 88 of Gallagher 2 **[Watson/7/B754-759]**.
43. Lord Watson seeks narrow searches using highly focussed search terms to obtain relevant documents in relation to NGN's false narrative (as set out at §30(g) of his Particulars of Claim **[Watson/15/D17-20]**) that (a) there had been a suspected theft of Rebekah Brooks' emails, (b) these were offered or provided to the Claimant, (c) he had been handling stolen data, and (d) was working in a conspiracy with Gordon Brown to obtain such data. This was then used as a façade to engage in the destruction of emails on an enormous scale, on Lord Watson's case (and the Claimants' case in MTVIL). This is further explained in the Claimant's generic witness evidence **[Watson/9/C1-4]** and **[Watson/22/C-11-24]** (see a summary at Gallagher 1 at §27 **[Watson/3/B5]**).
44. All search terms, save one, have been agreed **[Watson/4/B162]**, but the custodians have not been, with NGN refusing to search the 10 custodians who are not Schedule 1 custodians. NGN have refused these searches on the basis they were duplicative of the generic case and sufficient disclosure had been provided **[Watson/3/B20/§29]**. However, this is simply not the case: the date range for the searches do not include the period from (at least) 24 January 2011 when Paul Cheesbrough notified Rebekah Brooks and Will Lewis of the so-called conspiracy (see Gallagher 2 at §78 **[Watson/7/B754]**). The generic searches relied on by NGN were very limited in terms of search terms and custodians, as well as date range. This is not surprising as they were sought by the Claimants, and ordered by the Court, and carried out by NGN even before the disclosure of the 24 January 2011 email setting out the allegation at issue. The Claimants and the Court were not aware of the email at the time of the

application, and the searches were so narrow that the January email itself was not even disclosed as a result of the searches.

45. The weight of the allegations, and the prospect of it establishing both Lord Watson's claim and significantly aggravating the damage caused to him is clear. It is difficult to think of a more serious aggravating factor than a claimant being deliberately scapegoated by a defendant as engaging in a conspiracy to illegally obtain data while using it as a fake excuse to unlawfully destroy potentially incriminating evidence relating to the same defendant's acts of illegally obtaining information. This is particularly so where one of the scapegoats is a senior politician tasked by Parliament with investigating media standards (and the other is a former Prime Minister)
46. This is plainly a highly relevant pleaded issue for Lord Watson's claim. The nexus of each relevant custodian is set out in Gallagher 1 at §28 **[Watson/3/B18-19]**. Further justification is at §§80 to 87 of Gallagher 2 **[Watson/7/B754-759]**. Given his closest 'lieutenants' are the subject of searches, Rupert Murdoch is no longer pursued personally as a custodian.

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47. As set out above, paragraphs 1, 4 and 5 of the draft Order no longer need to be determined in light of NGN's concessions.

Paragraphs 2 to 3

48. Sir Vince's evidence on this paragraph is at §§24 to 28 of Chisholm-Batten 1 **[Cable/3/18]**. NGN's evidence in reply is at §§27 to 34 of Mossman C1 **[Cable/5/547-550]**. Sir Vince's evidence in response is at §§5 to 10 of Chisholm Batten 2 **[Supp/Cable/1/2-3]**.
49. As with the application of Lord Watson, NGN's primary argument appears to be that searches for landline call data are not justified as there is a lack of evidential basis and/or it is insufficiently pleaded. As set out above in relation to Lord Watson's claim, this is incorrect and Sir Vince relies on the same arguments made above.

50. NGN raises further objections in relation to Sir Vince's application, none of which bear any real scrutiny or weight:

50.1. 'the landline numbers provided by the Claimant were not supplied in the Particulars of Claim': this has never been a requirement in MTVIL. Phone numbers are usually provided prior to searches: see, for example, paragraph 19(a) of the Order dated 10 May 2018 **{B/85/7}**;

50.2. 'the Claimant only seeks call data searches on landline numbers held in his contact book during the Relevant Period': this objection is simply not understood. The fact that the Claimant had landline numbers of Associates in his contact book positively suggests he called his Associates on those numbers; and

50.3. 'there is no evidence of private information left on landlines': this is addressed in the witness statement of Lord Rennard, which confirms such information was left.

51. Importantly, Sir Vince seeks call data searches of 25 landline numbers and NGN makes no complaint about costs **[Supp/Cable/1/3/§10]**. Searches for landline call data would likely take minimal time and related to a pleaded issue. Without this disclosure Sir Vince will not have a fair trial of this part of his claim.

Paragraph 4

52. Sir Vince's evidence on this paragraph is at §§29 to 49 of Chisholm-Batten 1 **[Cable/3/19-25]**. NGN's evidence in reply is at §§43 to 58 of Mossman C1 **[Cable/5/552-559]**. Sir Vince's evidence in response is at §§11 to 34 of Chisholm Batten 2 **[Supp/Cable/1/3-10]**.

53. NGN's approach to this paragraph has been remarkable. It insists on searching 40 irrelevant custodians – despite the fact that Sir Vince has made clear they are irrelevant to him **[Supp/Cable/4/§§15-17]** – and refuses to search the relevant

custodians identified. This is despite the advice given to the parties at [30] of *Jefferies*.² Sir Vince and his Associates were not targeted by the likes of *Bizzare* at *The Sun* or the Features Desk of the *News of the World*. The interest in the Claimant was from a news or political perspective. In Lord Watson's claim, NGN agreed not to search the 22 Standard Custodians that he had identified as irrelevant and reached agreement to search an additional dozen custodians. Clearly NGN have no *principled* objection to removing custodians that a Claimant deems irrelevant and searching a smaller number that a Claimant does deem relevant. The nature of the objection here is tactical.

54. Each of those identified is relevant:

54.1. Sophie Ridge. Ms Ridge commissioned a payment to a PI in relation to Lord Rennard, one of Sir Vince's Associates. In accordance with the guidance in *Jefferies*, it would be appropriate to allow a search. The Claimants' case is that Ms Ridge commissioned unlawful credit checks on Lord Rennard which were then used to obtain Lord Rennard's telecoms records and other details which allowed NGN to establish who he was calling and, by inference, listen to messages. In the course of this as set out in the witness statement of Lord Rennard, NGN would have obtained private information about Sir Vince. Given the political interest in Sir Vince, Ms Ridge is the only additional Political Desk journalist who he seeks searches of (and did not pursue his earlier request for searches on Eben Black).

54.2. Colin Robertson. Mr Robertson still works for NGN in a senior role and has given three trial witness statements for NGN [**Supp/Cable/1/6-7**]. He was listed as a generic custodian in the Order dated 16 November 2018 **{B/94/27}**. As explained in Chisholm Batten 1, Mr Robertson was a regular user of UIG, commissioning, for example, ELI on 14 occasions between June and September 2006 [**Cable/3/21**]. He even sought to engage in UIG while he was TV editor, asking Steve Kennedy "*Can we blag?*" on 28 October 2010 **{Y/468}**

² "Of course, until a review of the list of standard custodians is made, it is beneficial that the claimants indicate which of the standard custodians should not be searched and claimants should continue to do so" **{B/146/6}**.

(see also {Y/263, 264}). The nexus to Sir Vince is that he was TV editor of *The Sun* when an article, pleaded in the Claimant's claim about his appearance on *Strictly Come Dancing*, was published on 24 December 2010 which involved the TV desk and co-bylined Mr Robertson's deputy (the other byline was a political correspondent).

- 54.3. James Morgan, Frances Carman, Bev Stokes, Charlotte Hull, Alan Johnson, Emma Leslie (née McCracken), Sarah Roberts and Vicky Waite. As explained in Chisholm Batten 1, there is a high level of PI activity known to have been carried out against the Claimant's Associates. The main means of email communication between PIs and contributors about PI payments (and emails may cast light on the nature of the inquiry and any UIG) was with desk administrators and payment clerks of the relevant desk (and the Managing Editors' Office in the case of Bev Stokes). A detailed explanation for why these individuals are likely to hold relevant documents is set out in Appendix B to Chisholm Batten 1 [**Cable/3/40-55**]. Further evidence is set out in Chisholm Batten 2 at [**Supp/Cable/1/9-10**]. Chisholm Batten 1 [**Cable/3/40-55**] also sets out how the *Jefferies* judgment on determining whether such payment clerks and desk administrators have a sufficient nexus, assists in the case of these eight custodians. The judgment in *Jefferies* only applies to these staff and NGN have sought (incorrectly) to apply its terms to Ms Ridge and Mr Robertson.

Paragraphs 6 to 7

55. Sir Vince's evidence on this paragraph is at §§54 to 67 of Chisholm-Batten 1 [**Cable/3/26-30**]. NGN's evidence in reply is at §§61 to 71 of Mossman C1 [**Cable/5/560-562**]. Sir Vince's evidence in response is at §§35 to 43 of Chisholm Batten 2 [**Supp/Cable/1/10-13**].
56. Sir Vince seeks searches in relation to the BSkyB allegations. The Claimant's case is that NGN targeted him and his colleagues in the Government with UIG when there was a bid by News Corp to buy the remaining shares in BSkyB; News Corp was desperate to avoid intervention by the Government or the official regulator. As pleaded, were suspicious calls, consistent with VMI, at key times during the purchase

process and when Sir Vince was Business Secretary with responsibility for decision making about whether the bid for BSkyB would be approved without a detailed investigation [**Cable/3/27**]. The targeting of influential MPs (such as Lord Watson, Sir Vince and Chris Huhne – see pages 27 – 28 of EG2) is a common feature of NGN's *modus operandi* in terms of its UIG, as well as a matter of serious public concern.

57. The custodians identified in the draft Order are those who were involved in discussions relating to BSkyB, as explained in Chisholm-Batten 1 at [**Cable/3/28/§§61-66**] (see also [**Supp/Cable/1/11-13**]). In the case of Ms Carter and Ms Keegan, executive assistants of Ms Brooks, the same justification applies as in the case of Lord Watson, above. It is highly likely that each individual identified has relevant documents relating to the Claimant's pleaded case.
58. NGN objects on the basis such searches would be disproportionate as the searches would be covered by Schedule 2 searches relating to articles covering the BSkyB bid. These are too limited however, as they are only searches of journalists involved not the executives (who are the subject of the pleaded case).

Paragraphs 8 and 9

59. Sir Vince's evidence on this paragraph is at §§68 to 86 of Chisholm-Batten 1 [**Cable/3/30-37**]. NGN's evidence in reply is at §§73 to 80 of Mossman C1 [**Cable/5/563-565**]. Sir Vince's evidence in response is at §§44 to 46 of Chisholm Batten 2 [**Supp/Cable/1/13-14**].
60. Sir Vince seeks a specific search in relation to covert recordings of his constituency surgery, which was unlawfully obtained by NGN including by Will Lewis, then General Manager of News International and later member of the MSC (as pleaded at paragraph 37 of his Particulars of Claim). An explanation in relation to each of the custodians sought is set out at [**Cable/3/35-36/§§79-84**] and in response to two factual issues in Chisholm Batten 2 [**Supp/Cable/1/13**].
61. NGN objects to these searches primarily on the basis of proportionality and that the four search strings at paragraph 8 of the draft produce over 14,000 hits. It is

impossible to say, without further information from NGN breaking down that figure, how many each string produces. The Claimant would be content to work with NGN to further particularise the searches to ensure the number of unique documents for review is reduced to around 5,000.

Conclusion

62. For the reasons set out above, the Claimants respectfully ask that the Court grant the Disclosure Applications and makes orders in the form of the revised draft Orders appended to Gallagher 2 and Chisholm Batten 2.

DAVID SHERBORNE

BEN HAMER

5RB

25 July 2024