

1. This Witness Statement is filed on behalf of the Claimant
2. Ellen Gallagher
3. 1st Witness Statement
4. Signed: 1<sup>st</sup> July 2024
5. Exhibit "EG1" and "CONF-EG1A"

**Claim No: BL-2022-001459**

**IN THE HIGH COURT OF JUSTICE**

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

**BUSINESS LIST**

**IN THE MOBILE TELEPHONE VOICEMAIL INTERCEPTION LITIGATION**

**B E T W E E N:**

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

**Claimant**

**-and-**

**NEWS GROUP NEWSPAPERS LIMITED**

**Defendant**

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**FIRST WITNESS STATEMENT OF ELLEN GALLAGER**

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I, **ELLEN GALLAGHER**, of Hamlins LLP, 1 Kingsway, London WC2B 6AN **WILL SAY** as follows:

1. I am a Partner at Hamlins LLP and have conduct of the Claimant's case. I make this Witness Statement from matters within my own knowledge or belief, save where the

contrary appears, in which case those matters are true to the best of my knowledge and the source of information appears. There is now produced and shown to me marked Exhibit “EG1” and “CONF-EG1A” a paginated bundle of true copy documents. All references to documents in this statement are to Exhibit “EG1” unless otherwise stated.

2. I make this witness statement on behalf of the Claimant in support of the Application Notice dated 1 July 2024 seeking an Order that certain keyword search terms and the relevant custodians to be searched in respect of standard disclosure, be determined in the Claimant’s claim. A copy of the correspondence relevant to this application is exhibited hereto.
3. The parties have agreed search terms save in respect of the following discreet but important matters, in respect of which the Claimant seeks the Court’s determination.

### **Paragraphs 1-3 of Claimant’s Draft Order: Call data searches**

#### Associates

4. NGN has declined to run call data searches on the full list of the Claimant’s 111 Associates on the basis that such a large number was disproportionate. In its first letter on search terms [EG1/1-5], NGN requested that the Claimant provide a list of up to 30 of his nominated Associates for the purposes of Call data searches (and all other Associate searches including Relativity name searches, Relativity phone number searches and non-Relativity searches). The basis for the artificial cap of 30 was said to be justified on the basis that “*Claimants plead fewer than 30 Associates on average*”.
5. This proposal, and its justification, failed to consider the nature of the Claimant’s claim. As a senior politician in the Labour Party, a significant aspect of his claim is that his voicemail messages were intercepted on the voicemail systems of his Associates. Further, the Claimant has pleaded that there was widespread interception of the voicemails of multiple politicians during the relevant period in his claim. This is demonstrated by the high volume of calls made from the Wapping Hub and the high proportion of ‘Hub calls’ relative to non-Hub calls to those politicians. The Claimant’s pleaded case is based on previously disclosed call data, PI payments and emails, as

set out in the Schedule to the Claimant's Particulars of Claim **[CONF-EG1A/1-46]**. The Claimant was, during the relevant period, heavily reliant on his phone's voicemail facility, due to his spending much of the working day in situation where he could not answer his phone, such as in the House of Commons, Select Committee meetings, Standing Committee meetings, ministerial meetings, surgeries and other constituency events.

6. Despite multiple attempts by the Claimant to reach a compromise, NGN has never departed from its arbitrary and unilaterally imposed cap of 30 Call Data Associates in this claim, despite agreeing to search call data for more Associates in other "politician claims".
7. As a compromise, by my firm's letter of 16 February 2024 **[EG1/20-29]**, the Claimant proposed a reduction in the number of Associates to be searched to 55, representing half of his pleaded Associates. This is despite the fact that there is no Order or ruling from the Managing Judge in this litigation which caps the number of Associates in respect of which the Defendant is required to search for the purpose of Standard Disclosure.
8. In my firm's letter of 16 February 2024, the Claimant also sought, by way of compromise, to accede to NGN's requests (a) not to have to re-disclose PI payments that had already been disclosed generically (paragraph 10); and (b) to limit the number of Associates in other (non-call data) searches to 40 (paragraph 9).
9. On 27 March 2024 **[EG1/37-47]**, NGN rejected this proposal, insisting again on its cap of 30 Associates.
10. In response to the 27 March 2024 letter, our firm replied on 1 May 2024, stating (at paragraph 3) **[EG1/58-62]**:

*It is noted that your client has chosen not to create a single searchable database for the purposes of searching call data; by so doing, your client is seeking to rely on its failure to create an easily searchable database, thereby increasing its own costs, to refuse to engage with plainly proportionate searches. This is not acceptable. Further, the (unilateral) PwC letter of 31 October 2023 is not in evidence.*

11. In its letter of 4 June 2024 [EG1/78-88], NGN refused to compromise on its original position (of imposing a cap of 30 Associates) and continued to extend this arbitrary cap to search parameters (Relativity Associate name searches, Relativity Associate phone number searches and non-Relativity Associate searches) where it had not sought to reply on any cost justification.
12. In its letter of 4 June 2024, NGN also asserted that the cost of the searching 55 Associates would be in the region of £600,000 - £700,000 but did not set out the basis on which those costs had been calculated and did not specify whether the costs of carrying out call data searches for the reduced list of 30 Associates would result in a significant reduction of those costs. My firm's letter of 19 June 2024 [EG1/102-111] (at paragraph 19) drew attention to this, but it remained unaddressed in NGN's response of 26 June 2024.
13. By my firm's letter of 19 June 2024, in a final attempt to reach compromise, the Claimant proposed that NGN search for call data of 50 Associates (rather than 55). In the alternative, the Claimant proposed that, should NGN continue in its refusal and pending determination from the Court, the first 30 Associates listed by the Claimant should be searched without delay. On 26 June 2024 [EG1/123-13], NGN did not agree to this proposal but instead stated that it would:

*'...run call data searches for 30 of your client's Associates, made up of: (i) the 25 Associates in your list of 50 for whom NGN has already agreed to carry out Relativity and Other Pools searches; and (ii) five further Associates from the Relativity custodians.*

*Subject to receiving an alternative proposal from you for these five further Associates by 2 July 2024, NGN will select Adam Price, Adrian Sanders, Alan Keen, Amy Watson and Chris Bryant as the additional custodians, being the first five on the list'.*

14. This is despite the fact that the Claimant had adequately set out his proposed list of 30 Associates, in the absence of NGN's agreement to search the full list of 50. Further, it is noted that NGN do not seek to identify the 25 Associates in the Claimant's list of 50 for whom it has already agreed to carry out Relativity and other searches.

15. The Claimant's primary position is that there is no reasonable basis for NGN to refuse to search 50 Associates in this claim. I am informed that in comparable claims with politician claimants that NGN agreed to and searched over 50 Associates. By way of example, I understand that 74 Associates were searched in the claim of Dr Evan Harris and 50 Associates were searched in the claim of Chris Huhne (both of which are settled claims). It is illogical and inconsistent for NGN to now seek to argue that the searching of 50 Associates in the Claimant's claim is disproportionate.
16. In the alternative, the Claimant has proposed that the first 30 in the list of his Associates should be searched for the purposes of call data.

#### Landline call data

17. NGN has declined to undertake call data searches in relation to landline numbers, and repeatedly seeks to rely upon the definition of 'Call Data Disclosure' in paragraph 2(b) the Order of Mr Justice Mann of 3 April 2019 **{B/100}**.
18. However, on the face of the Order, the definition of 'Call Data Disclosure' is set out within the section relating to 'Early Disclosure Provisions' in T4 claims. The definition of 'Call Data Disclosure' upon which NGN is seeking to rely therefore only relates to Initial Disclosure. It does not relate to Standard Disclosure, as NGN continues to assert. In fact, in the MTVIL, as far as I am aware, the court has never sought, by Order or otherwise, to set limits on what would otherwise be the usual disclosure obligations on the Parties.
19. Further, landline voicemail interception is pleaded at paragraphs 4, 6, 17 and 18 of the Claimant's Particulars of Claim and has been pleaded on a generic basis in the MTVIL as part of the Re-Re-Amended Generic Particulars of Concealment and Destruction and Private Investigator Annex, as served on 31 May 2024. As a pleaded issue in dispute between the parties, the Claimant is entitled to seek disclosure in relation to landline call data. The Claimant therefore sees no reasonable basis for NGN to refuse to search the call data of the landline telephone numbers put forward by the Claimant.

#### **Paragraphs 4-5 of Claimant's Draft Order: Additional Custodians and Search Terms**

## for Schedule 1 Searches

### Kishan Athulathmudali

20. The Claimant has sought to include Mr Athulathmudali as a nexus custodian in his claim. This is on the basis that Mr Athulathmudali's custodian is likely to hold documents that are relevant to the Claimant's claim.
21. As set out in the Claimant's Particulars of Claim (paragraphs 30(i) and (j)), the Claimant was put under surveillance by Mazher Mahmood and the News Desk at the *News of the World* while attending a Party Conference in 2009. The relevant emails, of 26 September 2009, demonstrating this were published by the Independent on 22 May 2012 [EG1/140-144].
22. As is apparent from generic disclosure, Mr Athulathmudali was a very close associate of Mr Mahmood, including for the following reasons:
- (a) Mr Athulathmudali started working with Mr Mahmood on the sting of Sophie, Countess of Wessex in 2001, and disclosure in the claim of *Murray Harkin v NGN* demonstrates how closely Mr Athulathmudali was working with Mr Mahmood as an integral part of his activities.
  - (b) In Mr Mahmood's memoirs "*Confessions of Fake Sheikh*", there are multiple references to Mr Mahmood's closest Associate being Mr Athulathmudali, under his alias Alex D'Souza. In the acknowledgements on page ix of the book, Mr Mahmood states "*My own life has been in the safe hands of my team including, Alex D'Souza, Mahmood 'Jaws' Qureshi, Alan Smith, Naresh 'Harry' Kumar and Conrad Brown, who I have dragged into drug dens, bondage parties and near death experiences with the Albanian mafia and the Taliban*" [EG1/145].
  - (c) In the call data disclosure given in the claim of *Murray Harkin v NGN*, the number attributed to Mr Athulathmudali was called more than 100 times by a number described as "Maz lap-top" [CONF-EG1A/47-97].

(d) In generic disclosure, multiple emails and other documents pertaining to Mr Athulathmudali show his association with Mr Mahmood. By way of example only, I refer to the documents exhibited at **[EG1/186-354]**.

23. Given that Mr Mahmood was engaged in carrying out intrusive surveillance on the Claimant, I consider it highly likely he would have used Mr Athulathmudali to assist in this endeavour. This provides substantial evidence as to the nexus of Mr Athulathmudali to the Claimant's claim. On this basis, there can be no sustainable objection by NGN to the extraction and searching of Mr Athulathmudali as a nexus custodian, on the grounds of proportionality or otherwise.

#### Keith Perry

24. The Claimant has sought to include Mr Perry as a nexus custodian in his claim. NGN has refused to search the custodian of Mr Perry on the basis that it is said that his data has not been extracted. Further, NGN asserts (in its letter of 26 June 2024) that it would be disproportionate to include him as a custodian when there is "*no sufficient nexus in the Claimant's claim*".

25. However, disclosure obtained generically in the MTVIL has shown that Mr Perry has a very strong nexus to this claim. Mr Perry was the journalist who commissioned unlawful PI investigations on 26 September 2009 into a woman with whom the Claimant was falsely suspected of having an affair by NGN who were chasing a story about this. The unlawful investigations were carried out by Paul Hardaker (**ZC70462845** with a Document Date of 27 September 2009, approved by James Mellor, **{Z/1384.3.7/1-2}**) and by System Searches (**ZA01424431** and **{L/303/16}**). This activity was commissioned at the same time as Mr Mellor, Mr Edmondson and Mr Mahmood, exchanged emails on 26 September 2009, planning the surveillance of Mr Watson by Derek Webb and others. It is highly likely that there will be emails from the News Desk to Mr Perry and vice versa discussing these instructions and their product. The Claimant was not aware of the material relating to Mr Perry until he issued his claim.

26. Further, Mr Perry commissioned PIs on three of the Claimant's pleaded Associates,

namely, Sally Bercow, John Bercow and Alan Johnson.

27. This provides substantial evidence as to the nexus of Mr Perry to the Claimant's claim. On this basis, there can be no sustainable objection by NGN to the extraction and searching of Mr Perry as a nexus custodian, on the grounds of proportionality or otherwise.
28. At the time Mr Perry was Night News Editor at the *News of the World*. Between December 2012 and July 2011, Mr Perry instructed System Searches 47 times. There are invoices to Keith Parry from Danno Hanks in 2010 (**ZA01524006**) and 2011 (**ZA01561976**).
29. Emails to or from James Morgan show that Mr Perry instructed the PI Paul Hardaker on a regular basis and describe the targets of the inquiries:
  - (a) **{Z/1370.1.3}** 6 July 2009
  - (b) **{Z/1384.3.7}** 21-26 September 2009 (4 jobs)
  - (c) **{Z1413.02}** 30 Dec 2009
  - (d) **{Z/1422.2.4}** 18 January 2010 (2 jobs)
  - (e) **{Z/1438.01}** 8 Feb 2010
  - (f) **{Z/1446.05}** 29 March 2010
  - (g) **{Z/1488.04.1}** 14 June 2010
  - (h) **{Z/1526.1.1}** 19 July 2010
  - (i) **{Z/1623.1.1}** 2 Nov 2010
  - (j) **{Z/1649.7}** 13 Dec 2010
  - (k) **{Z/1656.1}** 3 Jan 2011
  - (l) **{Z/1737.1.03}** 18 Jan 2011
  - (m) **{Z/1769.2.1}** 20 Jan 2011
  - (n) **{Z/1830.3}** 28 March 2011
  - (o) **{Z/1832.1.1}** 4 April 2011 (2 jobs)
  - (p) **{Z/1840.01}** 25 April 2011
  - (q) **{Z/1845.10.1.2}** 9 May 2011.

Schedule 1 Search Terms



30. As regards the proposed search terms for the Claimant's Associates, NGN has sought to include a qualifier to "tie" any Associate name search to the Claimant by the Claimant's surname as follows:

<AND (Watson OR Twatson OR Wats\*n OR Watso)>

31. In doing so, NGN has failed to consider the likelihood of instances where documents exist in the Defendant's possession that are relevant to the Claimant's claim but do not expressly name him, and instead, for example, refer only to a close relative or dependent of the Claimant who was otherwise of no interest to the press (such as his ex-wife, who might be named without expressly mentioning Tom Watson too). These individuals are likely to have been mentioned in relation to, or in circumstances relevant to, the Claimant. Such documents are likely to be highly significant to the Claimant's claim but would be automatically excluded from any searches run by NGN, should the above-mentioned search term qualifier be instated.

32. In the interests of compromise, the Claimant has proposed that, only in respect of his Associates Siobhan Corby and Paul Corby (the Claimant's former wife and his former father-in-law respectively), and not for the other Associates for which he was seeking the unlimited search string, that searches be conducted using the following search terms (respectively):

- (a) Paul w/2 Corby; and
- (b) [Siobhan OR Siobhain] w/2 [Watson OR Corby].

**Paragraphs 6-7 of Claimant's Draft Order: Claimant specific searches – CMS Select Committee**

33. At paragraphs 30(i), (j) and (k) of his Claimant-Specific Particulars of Claim, the Claimant pleads that he was the target of surveillance by NGN in 2009 as a result of his work on the Culture, Media and Sport Select Committee ("the **CMSC**") which was carrying out an investigation of News International. None of the allegations contained therein are admitted by NGN and therefore disclosure falls to be given.

34. Accordingly, the Claimant has sought disclosure of material, relating to surveillance by Derek Webb and 'Phil the Biker' i.e. Phil Cook, which were provided to the CMSC in 2011 and 2012.
35. Whilst the parties have agreed the search terms in respect of this search, NGN has continued to refuse to search most of the custodians who it is alleged were involved in commissioning the inquiries into the Claimant's activities in relation to the Select Committee.
36. A number of documents have emerged in generic disclosure showing that this sort of activity took place both in terms of the Claimant, other CMSC members and key witnesses called by the CMSC to give evidence. These documents include the following:
- (a) A letter {**Z/2255/19**} of 15 July 2013 from the legal representatives of Ian Edmondson (Bark & Co) to NI's legal representatives (Arnold & Porter), seeking disclosure to aid Mr Edmondson's defence, included the following, which is further evidence of a concerted effort by NGN, led by Colin Myler, Mr Edmondson and James Mellor, but - our client alleges - instigated by others in more senior positions, to obtain "kompromat" on those like our client who were seen by NGN as "*stirring up the phone hacking story*".

*52. Request: Mr Myler instructed Mr Edmondson and/or James Mellor mount an attack on any MPs who were seen to be stirring up the phone hacking story. Full details of any emails/ discussions/ attendance notes from any employee of NI to Mr Myler in which such a policy was discussed or sanctioned. In particular this request should include all emails for any NI employee in which the following words appear –*

*This search should be conducted using the same methods described within an 'Information in support of Application for Special Procedure Production Order, within the statement of DC 202151 Paul Mathewson, and should include search results for 'Directly Responsive Documents' and 'Directly Responsive Documents with Family'.*

- (i) Tom
- (ii) Watson
- (iii) Chris
- (iv) Bryant

*Reason: This evidence will demonstrate the way in which NI senior executives attempted to manipulate the investigation into phone hacking*

- (b) the email (“the Brooks – Whittingdale briefing email”) of 22 July 2009 from Rebekah Brooks to Alice Macandrew, James MacManus, James Murdoch and Fred Michel [EG1/146]. This email identifies the Claimant and other MPs as “out for blood”; and appears to show that NGN was obtaining information from John Whittingdale MP;
  
- (c) the undated memo (understood to date from July 2009) from James Mellor to unknown executives (the “Nick Davies Research memo” disclosed by NGN as part of the 28 Lever Arch Files on 18 December 2020 [EG1/147]), about the “research” being carried out into Nick Davies (who was a Select Committee witness in July 2009), demonstrating the high level of interest by NGN in those it perceived as a threat to its commercial, reputational and/or political interests. This memo shows that a significant proportion of the News of the World senior team was put on to the project (including the News Editor, Mr Mellor, three of his most experienced journalists, the paper’s Assistant Editor, Features (Gary Thompson), the Features and Deputy Features Editors (Matt Nixson and Guy Basnett), and the Assistant Editor (Politics) (Ian Kirby). The memo was apparently written by James Mellor but not sent to the Editor, Colin Myler (as the Editor is referred to in the third person) but to other(s) who commissioned the extensive work referred to in the memo, namely:
  - i. those engaged in briefing NI executives for their own Select Committee evidence, approving News International’s written submissions and approving the public responses to the Nick Davies allegations published in the Guardian (News Corp/NI’s Public Affairs team - Fred Michel, Matthew Anderson, Alice Macandrew and Daisy

Dunlop);

- ii. the editors' line managers who would have the authority (not held by Public Affairs) to commandeer members of the News Desk for several days' research (Rebekah Brooks, James Murdoch and Jon Chapman).

37. In addition to those identified above, the Claimant also seeks searches on the custodians of Will Lewis (from July 2010 only) and Simon Greenberg (from December 2010), who from their arrival took an active role in News International's activities in relation to the Select Committee inquiries (see for example the email exchange between Rebekah Brooks to Will Lewis **{I/31}** dated 4 February 2011, discussing Select Committee matters, including a reference to the Claimant, and also an email of 1 August 2011 from Simon Greenberg to Will Lewis and Paul Cheesebrough discussing evidence to the Home Affairs Select Committee **{Z/2056}**).
38. It is well established in this litigation that (a) Rebekah Brooks was never on the Email Archive System ("EAS"); and (b) other sources of her emails were sequestered and/or destroyed by NGN in 2010-11; and that therefore emails of her Executive Assistants, Cheryl Carter and Deborah Keegan should be searched as an additional, and most likely, source of Ms Brooks' emails.

NGN's correspondence with the CMS Select Committee

39. The Claimant has also sought disclosure of material relating to correspondence between Linklaters (representing News International) and the CMSC in 2009 – 2012 (being the period during which he was on the committee). I understand from the Claimant that these emails were provided to the CMSC by News International prior to being published by the Independent on 22 May 2012 **[EG1/140-144]**.
40. In its letter of 4 June 2024 **[EG1/78-88]**, NGN stated:

23. *At paragraph 41 of your 16 February 2024 letter, your client requested disclosure of certain emails allegedly "provided to the CMS Select Committee in 2011-12" and proposed further searches "for reply or*

forwarding emails of these emails". In our March Letter, we explained that we were not in a position to agree to the disclosure of such emails, because we were "not aware of these specific emails from the published correspondence with the CMS Select Committee, nor have we found references in the published correspondence to any named individual(s) at NGN who were allegedly surveiling Mr Watson". Your May Letter now indicates that our client's response "is not understood".

24. As explained in our March Letter, our firm did not act for NGN at the time. However:

(a) The relevant exchanges between the CMS Committee (the "**Committee**") and Linklaters (on behalf of the Management and Standards Committee) relating to the alleged disclosure which your client refers to are recorded in the Culture, Media and Sport Committee, News International and Phone-hacking, Eleventh Report of Session 2010-12, Volume II, Oral and written evidence (the "**Report**").

(b) The Report reproduces written evidence submitted by Linklaters on 6 February 2012, stating that:

"The only information which has come to the Management and Standards Committee's attention concerning the alleged surveillance of Committee members relates to surveillance [...] **as set out in our letter dated 1 December 2011**. For the reasons set out in our 1 December 2011 letter we do not think it is appropriate to name the individuals involved".

"We have carried out electronic searches of hundreds of thousands of emails. [...] This exercise produced a small number of emails which enabled us to make the disclosure to you **in our letter of 1 December 2011**" (emphasis added).

(c) In turn, Linklaters' 1 December 2011 letter stated that:

"the MSC can confirm that there is information that Mr Watson was under surveillance by Mr Derek Webb between 28 September 2009 and 2 October 2009. The MSC's present understanding is that three employees were involved in commissioning this surveillance. We do not think it appropriate to name the individuals involved

*given the ongoing police investigations. We have discussed this with the Metropolitan Police Service who share this view".*

- (d) *It therefore appears that the "disclosure" referred to in Linklaters' evidence dated 6 February 2012 was not the disclosure of emails, but rather the disclosure of information. This is clear from the fact that Linklaters' evidence refers to the disclosure being made "in" their letter of 1 December 2011.*
- (e) *Your 16 February 2024 letter therefore appears to proceed on an erroneous basis, namely that certain emails between "James Mellor, Ian Edmondson and Mazher Mahmood relating to the surveillance by Derek Webb and 'Phil the Biker'... of [y]our client were provided to the CMS Select Committee in 2011-12". For the reasons set out above, our understanding is that no such emails were provided.*

- 41. NGN's position is predicated on the mistaken assertion that all correspondence between News International and the CMSC would have been published in the CMSC Report. This is not correct. The Claimant informs me that (a) it is not the practice of Parliamentary Select Committees to publish all their correspondence; (b) that the Committee would not have published correspondence of this nature, consisting (as the Claimant believes it did) of the Claimant's private information; and (c) that this correspondence was not published by the Committee.
- 42. NGN appears to claim that the Linklaters' file relating to the evidence provided to the Select Committee in 2011 -2012 is not 'within its possession or control' (or that if it is, NGN does not intend to search them). This is despite the fact that these documents are NGN's documents, created whilst litigation against it was ongoing, with the consequential obligation on it to preserve documents. This is absurd. Linklaters are NGN's previous solicitors and they hold these documents on behalf of and to the order of NGN, who are perfectly entitled to ask for them to be handed over (if they have not done so already). The Claimant therefore sees no reasonable basis for NGN's continued refusal to search for and disclose the relevant documents as part of the standard disclosure process. Paragraph 7 of the draft Order requires NGN to obtain possession of these documents from its former legal advisers.

## **Paragraphs 8-9 of Claimant's Draft Order: Claimant specific searches – Fake Security Threat**

25. As set out at paragraphs 30(g) of his Claimant-Specific Particulars of Claim, the Claimant relies upon the fact that NGN falsely scapegoated the Claimant, and his Associate the Rt Hon Gordon Brown, by creating a false narrative and using the Claimant's interest in the phone-hacking scandal at the News of the World to secretly delete millions of emails with the aim of concealing the wrong-doing and subverting the police investigations into this matter.
26. NGN has refused to undertake these searches on the basis, it is said, that the allegations referred to are largely duplicative of allegations pleaded in the generic case on concealment and destruction and that sufficient disclosure has already been provided on a generic basis. As such, NGN asserts that any further searches on the issue are unnecessary, unreasonable and disproportionate.
27. Documents disclosed generically in the MTVIL relating to the Fake Security Threat are the subject of the Claimant's second generic witness statement of 27 September 2021 (see {D/120} and {D/121}) and are pleaded in the Re-Re-Amended Generic Particulars of Concealment and Destruction. In summary:
  - a. Paul Cheesbrough (Chief Information Officer of News International) sent an email to Martin Baldock on 11 February 2011 stating that there was a "potential theft of data from News International" and that an employee was offering the stolen data to "an MP due to political allegiances (Labour Party)" [EG1/148-159];
  - b. On 8 July 2011, there was a meeting between officers in the Metropolitan Police Service, Mr Cheesbrough and Will Lewis of News International. The minutes of that meeting record that Mr Cheesbrough told the MPS that News International had a tip that someone "*from the inside was trying to sell [NGN's] corporate email data to Tom Watson of the Labour Party*" [EG1/150-157];

- c. On page 3 of the MPS minutes **[EG1/152]**, Will Lewis (who at the time was a senior executive and was the General Manager of News International between September 2010 and July 2011, and subsequently was an executive member of the News International Management and Standards Committee) told the police:

*“We got a warning from a source that a current member of staff had got access to Rebekah’s emails and had passed them to Tom WATSON MP. This came to Rebekah. I was asked to meet the source. I will consult with BCL as to whether I can tell you the identity of the source. The source repeated the threat. Then the source came [sic] back and said it was a former member of staff and the emails had definitely been passed and that it was controlled by Gordon BROWN. This added to our anxieties. We took steps to try and be more specific around her emails.”* **[EG1/152]**;

- d. By an email from Mr Cheesbrough to Rebekah Brooks dated 24 January 2011, Mr Cheesbrough tells Ms Brooks that *“an outside source”* shared a conversation that the alleged source *“claims”* took place *“between Gordon Brown and another person regarding [Ms Brooks’] personal data”* and that someone *“sympathetic to the Labour Party”* within News International’s IT department had been leaking Ms Brooks’ data going back to the 1990s *“to the person who met with Gordon Brown”* **[EG1/158]**. As set out in the Claimant’s witness statement dated 27 September 2021, it is assumed that the reference to the *“person who met with Gordon Brown”* is a reference to the Claimant;
- e. In an email exchange between Mr Cheesbrough and Byron Lloyd-Jones of Stroz Friedberg (*“Stroz”*) dated 15-17 February 2011 **[EG1/159-166]**. Stroz is a digital forensics company, and Mr Lloyd-Jones’ electronic signature describes him as a *“Digital Forensic Examiner”*. Mr Baldock from Stroz was copied on some of the emails, as was Gareth Wright. Mr Baldock of Stroz is the recipient of the email referred to at paragraph 27(a) above;



- f. It is clear from the emails that Mr Lloyd-Jones was asked to carry out an investigation into the alleged leaking of Rebekah Brooks' emails by a News International employee.
  
- g. In the email from Mr Cheesbrough to Mr Lloyd-Jones of 16 February 2011 at (17:04), Mr Cheesbrough tells Mr Lloyd Jones that "Gareth" (I assume he means Gareth Wright, who is copied into an earlier email) had a list of technology staff that had administration rights for the previous two years and that Mr Cheesbrough suggested carrying out "*personal background checks*" on those staff and "*correlate[ing] it with the membership list for the Labour Party*" **[EG1/161]**. Mr Lloyd-Jones' reply states "*Once we have a focused list we can run covert background checks for you with one of our investigation company clients; note we cannot do credit checks without agreement from the suspects*" **[EG1/160]**;
  
- h. An email thread of 11 February 2011 where Mr Cheesbrough emails Mr Baldock commissioning him to "*perform an investigation for me regarding a potential theft of data from News International*", which is the same email I refer to at paragraph **[EG1/167-168]** above. Mr Cheesbrough then forwards it to Simon Greenberg, who was then News International's Director of Corporate Affairs. Mr Greenberg responded "*Ta, let the game begin*" **[EG1/167]**;
  
- i. Another email dated 11 February 2011 shows that Jon Chapman, News International's Director of Legal Affairs, was involved. Mr Cheesbrough sends an email to Mr Baldock and Mr Chapman at 17:53 stating "*Jon Chapman has offered to help with this on the legal front so could you route things through him for now please*" **[EG1/169]**. Mr Baldock responds by sending Stroz's standard engagement letter (which is dated 3 February), which sets an "initial budget" for the investigation of £10,000. Also attached is Stroz's standard terms and conditions **[EG1/173-182]**;

- j. The email of 11 February 2011 at 13:48 from Mr Cheesbrough to Mr Baldock and copied to Mr Lewis is also forwarded by Mr Lewis to Mr Chapman. Mr Chapman's response has been redacted by NGN as "privileged". Mr Lewis's response to the (redacted) message is "*Gently*" and Mr Chapman further replies "*Message received and understood!*" [EG1/183-185].
28. As such, the nexus of each of the relevant custodians to the Claimant's claim is as follows:
- a. **Paul Cheesbrough:** Mr Cheesbrough sent the email reporting the fake security threat to Ms Brooks and Mr Lewis of 24 January 2011 {G/386}. He was also in contact with Stroz Freidberg, who carried out the investigation, such as it was, into the allegations, as can be seen from the letter of engagement from Stroz of 3 February 2011 {Z/1779} and email exchanges with Byron Lloyd Jones of Stroz {Z/1805.1}. He was also present at the meeting with the MPS on 8 July 2011 where NGN first told the MPS of the security threat which had led to deletion of emails {Z/1965}.
  - b. **Xen Lategan:** Mr Lategan was the Chief Technology Officer at News International, and as such was Mr Cheesbrough's 2nd in command. It can be inferred that he must have been informed about the possible theft of data from systems which it was his job to oversee.
  - c. **Gareth Wright:** Mr Wright was the senior IT employee who was asked by Mr Cheesbrough to carry out a check of who had administrative access to the Exchange Server and emailed his report to Mr Cheesbrough on 24 January 2011 {Z/1814}, little more than 20 minutes after Mr Cheesbrough's email to Ms Brooks and Mr Lewis. Mr Wright was also designated by Mr Cheesbrough to co-operate with Mr Lloyd Jones of Stroz in their investigation into the security threat {Z/1805.1}.
  - d. **Will Lewis:** Mr Lewis was a recipient of the email reporting the fake security threat to from Mr Cheesbrough of 24 January 2011 {G/386}, which states that he and Mr Cheesbrough met with an "outside source". He was also present at the

meeting with the MPS on 8 July 2011 where NGN first told the MPS of the security threat which had led to deletion of emails {Z/1965}.

- e. **James Murdoch:** Mr Murdoch was the former Chief Executive Officer of News International and Executive Chairman at the time of the fake security threat. It is to be inferred that in that role he must have been informed of the alleged theft of data from NI's systems, and the reported involvement of a former Prime Minister in that theft.
- f. **Rupert Murdoch:** It was reported publicly that Mr Murdoch was in London by 24 January 2011 {Z/1738.5}. He is known to have attended meetings with senior executives at News International, including Rebekah Brooks, on 24 January 2011. An email from Ms Brooks to Matthew Freud sent at 08.15 on 24 January 2011 {Z/1738.1} states "*Will and Simon will present a plan to the boss this week on our strategy - once KRM [meaning Rupert Murdoch] has the full facts from day one - ie 2005 from me*". Given the seriousness of the allegations, it is to be inferred that he was informed about the threat and would have been involved in agreeing the strategy. It was that evening that Mr Cheesbrough and Mr Lewis sent the email reporting the alleged security threat to Ms Brooks.
- g. **Cheryl Carter;** and
- h. **Deborah Keegan:** Ms Brooks was not on the EAS system, but Ms Carter and Ms Keegan, as her executive PAs, were. It is to be inferred those emails sent to Ms Brooks, into which both were copied, are more likely to have survived than Ms Brooks', whose emails were not archived.
- i. **Jon Chapman:** Mr Chapman was copied into relevant emails between Mr Cheesbrough and Stroz re the investigation, see by way of example {Z/1785}. Mr Chapman is described by Mr Cheesbrough as helping "on the legal front" with the investigation, in an email exchange of 11 February 2011 with Martin Baldock of Stroz {Z/1789}.
- j. **Simon Greenberg:** Mr Greenberg was emailed by Mr Cheesbrough about the security threat and investigation on 14 February 2011, to which he replied "Ta, let the game begin" {Z/1792}.

29. While search terms have been agreed for this search, NGN refuse to carry out these searches under the necessary custodians, on the basis that disclosure has already been given generically. However, in the letter of 27 March 2024 (paragraph 34) NGN merely refers to disclosure generally given in relation to email deletion: “*NGN has already undertaken sufficient searches and given disclosure in relation to the Claimants' allegations relating to the deletion of emails, details of which are listed in Schedule 1 to the 4<sup>th</sup> Witness Statement of Claire Freeman*”.

30. NGN's reason changed in its letter of 4 June 2024 [EG1/78-88], (paragraph 30) stating that no justification had been given for the custodians listed:

*However, NGN does not agree to your client's proposed custodians. As explained in our March Letter, NGN does not agree to the inclusion of custodians beyond the agreed Standard Custodians, unless your client can demonstrate a nexus between such individuals and his claim. Neither your 16 February 2024 letter nor your May Letter provide any justification for the inclusion of these proposed custodians. NGN therefore proposes that your client's proposed searches should be carried out in relation to those of the custodians proposed by your client that have otherwise been agreed between the parties for the Schedule 1 searches, namely Bill Akass, Tom Crone and Rebekah Brooks.*

31. My firm's letter of 19 June 2024 [EG1/102-111] stated:

*35. Documents disclosed generically in the MTVIL relating to the Fake Security Threat (which were the subject of our client's generic witness statement of 27 September 2021 and pleaded in the Re-Re-Amended Generic Particulars of Concealment and Destruction) show a clear nexus with (at least) the following individuals since they feature heavily in those documents:*

- (a) Paul Cheesebrough;*
- (b) Xen Lategan;*
- (c) Gareth Wright;*
- (d) Will Lewis;*
- (e) James Murdoch;*
- (f) Rupert Murdoch;*

- (g) Cheryl Carter;
- (h) Deborah Keegan;
- (i) Jon Chapman; and
- (j) Simon Greenberg.

36. *In this regard, we refer to our client's Second Witness Statement made in support of the Claimants in the MTVIL dated 27 September 2021 and Appendix of Documents referred to therein, together with Exhibit TW2. Those documents include email exchanges on the subject of the fake security threat and subsequent deletion of documents, which, as your client is aware, is pleaded in our client's claim. They also include the minutes of the meeting between with the MPS of 8 July 2011 where Will Lewis and Paul Cheesbrough informed the MPS that your client deleted millions of emails on the purported basis that our client was seeking to obtain Rebekah Brooks' emails, in conjunction with the former Prime Minister Gordon Brown.*

32. NGN in its letter of 26 June 2024 **[EG1/123-130]**, reverted to its previous objection:

33. *As explained in our letter dated 27 March 2024, your client seeks disclosure in relation to issues which "are largely duplicative of allegations pleaded by the Claimants in their generic case on concealment and destruction", in respect of which "NGN has already undertaken sufficient searches and given disclosure".*

34. *By your Letter, your client now seeks to justify the relevance of his proposed custodians by reference to "[d]ocuments disclosed generically in the MTVIL [...] (which were the subject of [y]our client's generic witness statement of 27 September 2021 and pleaded in the Re-Re-Amended Generic Particulars of Concealment and Destruction)". Generic disclosure has already been provided in respect of these allegations: a matter which should be obvious to your client given his reliance on those documents in support of his request.*

35. *It is improper for your client to now seek disclosure in relation to such issues via another route. NGN therefore does not consider there to be any proper basis on which to justify the inclusion of the 11 custodians proposed by your client as paragraph 35 of your Letter.*

32. NGN has not specified what previous generic searches would be duplicated by these

searches, other than an unhelpful reference to Schedule 1 of the Fourth Witness Statement of Claire Freeman, which consists of a list of generic disclosure relating to alleged email deletion. NGN's reference to this is entirely unclear.

33. I understand that the only generic search that has been carried out relating to the alleged "fake security threat" email is paragraph 2(b) of the Order of 13 December 2017 **{B/79.01/2}** which was only a search of the "email data of Rebekah Brooks, Will Lewis and Paul Cheesbrough" for the period of 1 Feb 2011 to 14 Feb 2011) for the search terms "data w/3 theft", "security breach", "sell w/3 theft" and "Tom Watson".
34. Significantly, the search was carried out prior to the alleged "fake security threat" email **{G/386/1}** being disclosed by the MPS to the Claimants pursuant to the Order of 27 September 2018 **{B/88}**.
35. Further, (a) the period searched in 2017 was a small part of the period that has been agreed for the proposed search in this claim and (since it started in 1 February 2011) the period did not even cover the date on which the alleged "fake security threat" email was sent; and (b) the search terms were much narrower than those which have been agreed for this search.

### Summary

36. In the circumstances, I respectfully request that the court make the order sought in the terms set out in the draft order, in other words that NGN carries out proper searches for documents relevant to the Claimant's claim. For the avoidance of doubt, the Claimant is willing to consider further proposals from NGN to narrow the scope of the issues in dispute in advance of the hearing of this application.

### **STATEMENT OF TRUTH**

I believe the facts stated in this Witness Statement to be true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



.....  
**ELLEN GALLAGHER**

Dated this 1<sup>st</sup> day of July 2024