Neutral Citation Number: [2016] EWHC 2214 (QB)

Case No: HQ15X05136

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/09/2016

Before :

MRS JUSTICE SLADE DBE

- -

Between :

THE RIGHT HONOURABLE THE COUNTESS OF CALEDON	**Applicant**
- and -	
THE COMMISSIONER OF POLICE FOR THE METROPOLIS	**Respondent**
- and -	
MRS ANNE CRAIG	**Interested Party**

- -
- -

Mr Mark Simeon Jones (instructed by Kirby & Co) for the **Applicant**
Ms Beatrice Collier (instructed by Weightmans LLP) for the **Respondent**
Ms Sara Mansoori (instructed by Jacobs Allen Hammond) for Mrs Craig for the **Interested Party**

Hearing dates: 29 June 2016

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MRS JUSTICE SLADE DBE

MRS JUSTICE SLADE DBE :

1. The Rt Hon the Countess of Caledon ("the Applicant") seeks disclosure from the Commissioner of Police for the Metropolis ("the MPS") of documents within certain categories and of recordings acquired and retained by officers of the MPS in the course of a criminal investigation into the activities of an alleged healer/ therapist, Mrs Anne Craig. Disclosure of the following material is sought (references to 'I' being to the Applicant):

> "35.1 Copies of statements made, whether documentary or on video, in the police investigation of Mrs Craig.
>
> 35.2 Copies of all Crime Reports made in connection with the police investigation of Mrs Craig.
>
> 35.3 A copy transcript, or if none is available a copy of the recording(s), of the interviews of Mrs Craig under caution following her arrest.
>
> 35.4 Copies of all statements made, whether documentary or on video, in the police investigation of Lady Caledon which led to her own arrest.
>
> 35.5 Copies of other crime reports that purport to record evidence of complaints regarding the behaviour of our client or other members of her family, to include copies of the various Notices of Harassment issued by the Police which I understand were prompted by Mrs Craig."

The MPS resists the application.

2. The Applicant anticipates issuing proceedings against Mrs Craig based on her alleged conduct in counselling the Applicant's daughter. At the outset of the hearing an anonymity order was made in relation to the daughter and other vulnerable young ladies counselled by Mrs Craig. The daughter will be referred to as A. Mrs Craig, represented by Ms Mansoori, applied to be and was permitted to appear and make representations at the hearing before me. Mrs Craig has a clear interest in the application which she resists. The material sought relates to police investigations into her conduct. I was asked by Ms Mansoori to record in this judgment that Mrs Craig disputes all the allegations made against her by the Applicant.

3. The Applicant and her adult daughter, A, have become estranged. The daughter has for some time been refusing to have anything to do with her mother and her entire family. The Applicant suspects that Mrs Craig, who is not professionally qualified but offers support and personal development sessions, "has poisoned A's mind against her family". For convenience in the context of this judgment her dealings with A and other young ladies will be described as 'counselling'. Mrs Craig began seeing A in about 2010 when A was 20 years old. In her statement of 29 April 2016 made for the purposes of this application Mrs Craig asserts that any allegations made against A's mother and her family in these sessions emanated from A. In her statement of the

same date A explains that sessions with Mrs Craig gave her the strength to distance herself from her family. There may be sad and difficult circumstances underlying this application. However it is not the function of this court in determining the application before me to reach a decision on the causes of the rift.

4. The police became involved in August 2014 when the Applicant posted a letter and a book through A's letter box relating to the potential for emotional psychological abuse through therapy. On 5th August, on a complaint by A the Applicant was arrested on suspicion of harassment. She was briefly taken into custody but on the custody sergeant not authorising her detention she was released. The Applicant informed the police about her concerns about Mrs Craig who, in late October 2014, was arrested on suspicion of fraud. Mrs Craig was interviewed under caution. The material was referred to the Crown Prosecution Service who decided that the threshold criteria for a successful prosecution were not met. The criminal investigation into the allegation of fraud was discontinued in April 2015. During and after the criminal investigation the officer in charge of the case, Detective Inspector Milton, had communications with the Applicant and her solicitor on which reliance is placed in support of this application.

5. By letter dated 7 July 2015 the solicitor for the Applicant sought voluntary disclosure of documents now the subject of the application before the court. Four potential heads of claim against Mrs Craig were identified in that letter and which were relied upon in the application before me. First, defamation, second indirect harassment, the basis of the claim in **Plavelil v DPP** [2014] EWHC 736 (Admin), third, liability for psychiatric harm to the Applicant caused by professional malpractice and fourth wilful infringement of a right to personal safety, including mental safety as explained in **O (A Child) v Rhodes** [2015] 2 WLR 1373. The MPS objected and objects to the disclosure of the information sought as does Mrs Craig.

6. The application for disclosure was issued on 11 December 2015. It was supported by a witness statement dated 8 December 2015 made by the Applicant's solicitor, Clare Kirby. The statement exhibited a report by a private investigator, Stuart Price, engaged by the Applicant. Mr Price interviewed young ladies who were friends or acquaintances of A and who had been counselled by Mrs Craig. The report contains summaries of those interviews together with related documents. Mr Price recorded that all but one were very fearful of Mrs Craig.

7. Ms Kirby exhibited emails of 26 February 2015 and 16 April 2015 from Detective Inspector Milton to the Applicant and others in which he updated her on the progress of the police investigation into Mrs Craig. Ms Kirby also exhibited attendance notes she made of conversations she had with DI Milton on 15 and 19 May 2015. Ms Kirby made a second statement on 21 April 2016.

8. John Potts, the Deputy Data Protection Officer of the MPS made a statement on 31 March 2016. Amongst other matters Mr Potts explained the policy reasons for declining to disclose of material obtained during the course of a criminal investigation.

9. Mrs Craig made a statement on 29 April 2016 in which she denies the allegations made against her. She said that she had been subjected to a campaign of harassment over two years by the Applicant. Mrs Craig stated that for many years she had

developed a practice giving support and personal development sessions to adults who needed assistance in dealing with emotional issues. She has never held herself out as a therapist. Mrs Craig stated that she has never suggested wrongdoing by A's family to A. Any such allegation came from A herself. Mrs Craig expressed herself shocked and distressed by the conversation between DI Milton and Ms Kirby. She says that it shows he is biased and prejudiced against her.

10. Mrs Craig concluded by saying that there is no basis for the Applicant to seek disclosure from the MPS. She stated that the Applicant already has a wealth of documents including the report of the private investigator.

11. A and another young lady who has been counselled by Mrs Craig made statements dated 29 April 2016. A stated that sessions with Mrs Craig enabled her to express deeply held and private matters about her childhood. These included bad treatment by both her parents. She wrote that the sessions did not change her feelings towards her parents. All that changed was that she was given the strength to recognise that she had the right to distance herself from them. A stated that attempts by the Applicant to contact her led her to make complaints of harassment to the police.

The Basis of the Application

12. Mr Simeon Jones, counsel for the Applicant, rightly recognised that CPR 31.16 and 31.17 could not apply to the application. The former could only apply to pre-action disclosure from Mrs Craig. Disclosure is sought against the MPS. CPR 31.17 could only apply to third party disclosure from them after the commencement of proceedings against Mrs Craig. No such proceedings had been commenced. Accordingly disclosure is sought on **Norwich Pharmacal** principles **(Norwich Pharmacal Co v Customs & Excise Commissioners** [1974] AC 133). Counsel for the Applicant contended that Mann J in **Various Claimants v News Group Newspapers Ltd and another (No 2)** [2014] Ch 400 arguably broadened the scope of application of **Norwich Pharmaceutical** principles recognising the need for those principles to be applied flexibly. It was said that the Application fell within those principles.

13. Both Ms Beatrice Collier for the MPS and Ms Sara Mansoori for Mrs Craig contended that there is no legal basis for disclosure under **Norwich Pharmaccal** principles.

14. The foundation for disclosure under **Norwich Pharmacal** principles is set out in the classic statement of Lord Reid at p 175B. He concluded that:

> "… if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrong-doing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers. I do not think that it matters whether he became so mixed up by voluntary action on his part or because it was his duty to do what he did."

The principles are not restricted to the disclosure of the identity of the wrongdoer but also extend to the disclosure of material related to the tortious acts.

15. Two elements have to be satisfied by an applicant before **Norwich Pharmacal** disclosure can be ordered. 'The purpose of such disclosure is to enable the applicant to or to assess whether to pursue a claim against the alleged wrongdoer. Accordingly the first element to be satisfied is that the applicant has a cause of action on the basis of which the disclosure is sought. In **Norwich Pharmacal** the applicants knew that their patent had been infringed. A tort had been committed but they did not know who had committed it. Customs and Excise had that information. In **NGN** the applicants had been informed by the MPS that their phones had been hacked and by whom. However most or all of the information which the applicants required in order to assess the strength of any claim they might have, or fully to plead a claim already commenced was in the possession of the MPS against whom the disclosure order was sought.

16. In the current application it was submitted that the Applicant has failed to show that she has any cause of action against Mrs Craig.

17. The second element to be satisfied is that the person or body from whom disclosure is sought is more than a "mere witness" (**NGN** [54]). Mann J decided at paragraph 55 that in the case before him the MPS was more than a "mere witness". He held:

> "The MPS is not like someone who happens to witness an offending act and who thereby acquires relevant information. It is someone whose duty it is to acquire information about the offending act, albeit not for the benefit of victims. That may not by itself be sufficient – I do not have to decide that. What needs to be added is the fact that the MPS has actually provided information which, if a mere witness (bystander) it would not have had to have volunteered."

18. Even if the two threshold conditions are satisfied the court has a discretion whether to order disclosure. Public policy considerations may come into play. In **NGN** the MPS agreed in principle that it would not resist a formal claim for the information, a limited part of which it had indicated it had communicated to the applicants as a result of some unspecified obligation.

Has the Applicant shown that she has a cause of action against Mrs Craig?

19. Mr Jones relied upon four potential causes of action which he submitted may be brought by the Applicant against Mrs Craig. These were set out in the letter of 7 July 2015 from Ms Clare Kirby, her solicitor, to the MPS. In outline these are defamation, indirect harassment as explained in **Plavelil v DPP** [2014] EWHC 736 (Admin), liability for psychiatric harm caused by professional malpractice as in **Farrell v Avon HA** [2001] Lloyd's Rep Med 458 and **Froggatt v Chesterfield & North Derbyshire Royal Hospital NHS Trust** [2002] AERD 218 and wilful infringement of mental health by unjustifiable but deliberate conduct as in *obiter dicta* in **O v Rhodes** [2015] 2 WLR 1373.

Defamation

20. Mr Jones frankly acknowledged that a claim in defamation would be statute barred by reason of the expiry of the limitation period. Ms Collier and Ms Mansoori both submitted that such proceedings could not be commenced for that reason.

21. Section 4A of the Limitation Act 1980 as amended provides:

> "The time limit under section 2 of this Act shall not apply to an action for –
>
> (a) libel or slander,
>
> …
>
> but no such action shall be brought after the expiration of one year from the date on which the cause of action accrued."

Recognising the difficulty caused by the limitation period for defamation claims Mr Jones submitted, but with no great conviction, that such a claim by the Applicant may be in time if time runs from discovery of the defamation. That contention does not assist the Applicant as no later than 10 January 2013 when she instructed Mr Price, a private investigator, she alleged that Mrs Craig had poisoned her daughter's mind against her by implanting false memories of her conduct. That is the defamation the Applicant seeks to rely upon.

22. Any claim in defamation based on the allegations which the Applicant makes would be statute barred.

Indirect Harassment

23. Mr Jones relied upon **Plavelil v Director of Public Prosecutions** [2014] EWHC 736 (Admin) to contend that the Applicant could pursue a claim against Mrs Craig for harassment under the Protection from Harassment Act 1997. The Divisional Court in **Plavelil** considered whether on the stated facts the reporting of untrue allegations about the defendant's son-in-law, a doctor, to the General Medical Council could fall within that Act.[19]. Mr Jones relied upon paragraph 22 in which Moses LJ held:

> "To my mind, the notion that repeated untrue malicious allegations cannot be oppressive because they can be easily rebutted is not a proposition which, for one moment can be accepted. Intended as they were to cause distress, calculated as they were to have that effect, it seems to me no excuse to advance that they can be easily be rebutted."

24. Mr Jones recognised that the court in **Plavelil** was concerned with complaints to the GMC the purpose of which was to harm the son-in-law. Counsel submitted that a series of untruths told by Mrs Craig to the Applicant's daughter was intended to cause distress to the Applicant. The ultimate intention of such untruths was to bring about a severing of ties between the daughter and her family. Mr Jones submitted that the obvious intended or foreseeable result of such untruths was to cause distress to the

Applicant. Accordingly Mr Jones contended that the Applicant can bring a claim in harassment against Mrs Craig.

25. Ms Collier submitted that **Plavelil** does not assist the Applicant. It is clear that in that case the father-in-law intended to cause distress to his son-in-law. That was the purpose of the untrue report to the GMC. In this case there is no evidence that Mrs Craig intended to cause distress to the Applicant. It was submitted that reasonable foreseeability of distress is not sufficient to constitute the tort of harassment.

26. Ms Mansoori contended that the facts of this application do not fall within the cause of action of harassment. In **Plavelil** the offending actions were targeted against the defendant's son-in-law. It was made clear in paragraph 22 of the judgment that the offending actions were intended to cause distress and were calculated to have that effect. That cannot be said on the facts of this case.

27. Mr Jones agreed that in order to pursue a claim of harassment the allegations must fall within the Protection from Harassment Act 1997. The Act provides:

> "1. A person must not pursue a course of conduct –
>
> (a) which amounts to harassment of another, and
>
> (b) which he knows or ought to know amounts to harassment of the other
>
> 3. (1) An actual or apprehended breach of Section 1(1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.
>
> 7. (2) References to harassing a person include alarming the person or causing the person distress."

28. In my judgment the allegations made by the Applicant (which are denied) even if established do not support a contention that false memories implanted in A's mind by Mrs Craig were targeted at the Applicant or were intended to cause her distress. Mr Jones contended that the tort of harassment is made out if a perpetrator ought to have known in the sense that it was reasonably foreseeable that the action they carried out would cause a claimant alarm or distress.

29. Mr Jones relies on **Plavelil**. The Divisional Court at paragraph 18 held that in giving directions on the offence of harassment the Crown Court was correct to follow the guidance of the Court of Appeal in **R v Haque**. Moses LJ held of **R v Haque**:

> "The three requirements identified include as a second requirement the conduct must be calculated to produce the consequences described in section 7 and thus the defendant must have intended to alarm the complainant or cause him distress (see paragraph 72)."

Whilst Hooper LJ added in paragraph 72 to the passage quoted from **Haque** '(or, perhaps, was reckless as to the consequences)', the comment was made parenthetically and did not form part of the decision. Hooper LJ cited at paragraph 55

Curtis in which the court agreed with the approach of Lord Phillips MR in **Thomas v News Group Newspapers Ltd** [2001] EWCA Civ 1233 in which he held of "harassment":

> "[30] It describes conduct targeted at an individual which is calculated to produce the consequences described in s7 and which is oppressive and unreasonable."

30. In my judgment the parenthetic comment made by Hooper LJ "perhaps was reckless as to the consequences" is to be understood as recklessness of the consequence to the person to whom the course of conduct is directed. The observation is to be understood as reckless as to whether that conduct would cause alarm or distress to that person not to a third party. It was made as a parenthetic addition to conduct targeted at an individual which is calculated to produce the consequences described in Section 7 of the Protection from Harassment Act. It modifies "calculated" but does not affect the requirement that the effect of the conduct must be on the same person against whom the course of conduct is targeted. Even if the Applicant were able to rely on the parenthetic observation of Hooper LJ in **Plavelil** the allegations made by the Applicant do not support a contention that Mrs Craig pursued a course of conduct which was targeted at her.

31. The Applicant does not have a claim against Mrs Craig in indirect harassment or harassment.

Professional Malpractice causing Psychiatric Harm

32. Mr Jones relied on **Farrell v Avon Health Authority** [2001] Lloyds Rep Med 458 as supporting a cause of action against Mrs Craig. Counsel summarised the case as that of a father's claim for psychiatric injury as a primary victim of being falsely told that his baby had died and being given a dead infant to cuddle. Counsel also relied upon **Froggatt v Chesterfield & North Derbyshire Royal Hospital NHS Trust** [2002] AER D 218 (Dec). He summarised the outcome of that case as a husband recovering damages for psychiatric injury consequent upon an unnecessary mastectomy carried out on his wife.

33. Mr Jones contended that usual tortious principles apply to impose liability on a professional who causes harm to a subject. Counsel sought to argue that in this case Mrs Craig's activities were geared to the psychological wellbeing of the Applicant's daughter. Her activities were so distorted that they caused considerable harm.

34. Ms Collier and Ms Mansoori pointed out that Mrs Craig did not hold herself out as having any professional qualifications as a therapist. This is undoubtedly correct. Further, Mr Jones frankly acknowledged that there was no evidence before the court that the Applicant had suffered psychological harm as a result of Mrs Craig's activities. If there was such evidence the Applicant could have produced it. The two necessary ingredients of the tort are absent.

35. Mr Jones was right to acknowledge that the assertion that the Applicant could bring a claim against Mrs Craig for professional malpractice causing psychiatric or psychological harm would be difficult to sustain. On the material before the court no such claim could be pursued.

Intentional Infliction of Harm

36. Albeit recognising the difficulties such an argument faced, Mr Jones sought to contend that the Applicant could bring a claim against Mrs Craig for wilful infringement of her mental health by unjustifiable deliberate conduct. In this regard he relied upon obiter dicta in the Supreme Court in **O v Rhodes** [2015] 2 WLR 1373. The Supreme Court considered the tort of intentional infliction of harm set out in **Wilkinson v Downton** [1879] 2 QB 57. The Court in **O v Rhodes** observed at paragraph 88 that the tort required words or conduct directed at the claimant for which there is no justification or excuse with an intention to cause at least severe mental or emotional distress and this resulted in physical harm or psychiatric illness.

37. Mr Jones acknowledged that there was no evidence of psychological harm caused to the Applicant by Mrs Craig's actions. He acknowledged that a claim under the principles considered in **O v Rhodes** and **Wilkinson v Downton** would be difficult to sustain.

38. Ms Collier and Ms Mansoori submitted that the allegations made by the Applicant could not sustain a claim under the principles of the authorities relied upon by Mr Jones.

39. There is no evidence that the Applicant suffered psychiatric or psychological harm as the result of the actions of Mrs Craig. This evidence if it existed would be within the power of the Applicant to produce. She has not done so. On that basis alone a claim under the principles considered in **O v Rhodes** is unsustainable.

Conclusion on whether the Applicant has established that she has a potential cause of action against Mrs Craig

40. In my judgment the Applicant has not satisfied the first element to be established before disclosure can be ordered under **Norwich Pharmacal** principles. It has not been shown that the Applicant has a cause of action giving rise to a potential claim on the basis of which disclosure by the MPS is sought. Accordingly the application fails at the first hurdle. However since submissions were made on the second element in **Norwich Pharmacal**, that the MPS was more than a "mere witness" to the offending conduct in respect of which disclosure is sought and on whether if these elements were satisfied discretion should be exercised to grant disclosure these will be considered.

Is the MPS sufficiently engaged with the wrongdoing in respect of which discovery is sought to render it liable to give disclosure?

41. Mr Jones contended that the MPS has in its possession documentary material which reveals facts which relate to whether "therapies" and words used by Mrs Craig to the Applicant's daughter and other girls did or were likely to have defamed the Applicant or otherwise misrepresented, exaggerated or distorted her activities and that of her family. It was said that the Applicant has no knowledge other than inference of such matters and that without information available to the MPS the Applicant cannot be expected to make her claim and pursue it to trial. It was submitted that the MPS acquired the information in the exercise of its public duties and appears to have

perceived itself to be under some obligation to disclose to the Applicant some limited information concerning the investigations.

42. The MPS has objected to disclosing more information.

43. Mr Jones relied upon the decision of Mann J in **Various Claimants v News Group Newspapers Ltd and another (No 2)** [2014] Ch 400 to illustrate the flexible application of the second precondition for **Norwich Pharmacal** disclosure. Counsel submitted that just as in **NGN** the information sought from the MPS in this Application goes to the existence and extent of the wrong and its proof which is not available elsewhere. Mr Jones contended that by investigating Mrs Craig's activities and by disclosing to the Applicant, under a perceived obligation, some material relating to the investigation the MPS came within the disclosure principles applied in **NGN**.

44. Mr Jones contended that material gathered by the MPS was necessary for the Applicant to be able to plead her claim. She would have to set out what was said by Mrs Craig to her daughter. Further she needed such material to be in a position to assess the strength of her claim.

45. Mr Jones recognised that the focus of the police investigation was the potential risk of activities of Mrs Craig to the Applicant's daughter and to other young ladies counselled by her. Counsel acknowledged that the police may not have been overly concerned for the Applicant. Mr Jones recognised that there was no precedent for the current application. An application by A for disclosure from the MPS could fall within **Norwich Pharmacal** principles if she wished to bring a claim against Mrs Craig. Counsel submitted that the Applicant was also a victim of Mrs Craig's actions and has the standing to bring this application. He contended that Mann J recognised that **Norwich Pharmacal** principles should be applied flexibly to adapt to new and changing circumstances. Counsel referred to paragraph 43 of **NGN** in which Mann J cited from paragraph 17 of **Norwich Pharmacal** in which Lord Reid said:

> "17. The essential purpose of the remedy is to do justice. This involves the exercise of discretion by a careful and fair weighing of all relevant factors."

46. Mr Jones relied upon the following material to contend that the MPS had disclosed relevant information to the Applicant apparently under a perceived obligation, a term used in **NGN**. Detective Inspector Milton emailed the Applicant and others on 26 February and 16 April 2016. Further, counsel relied upon an attendance note prepared by the Applicant's solicitor of a telephone conversation she had with DI Milton on 15 May 2015.

47. Mr Jones drew attention to the following passages in the emails and in the attendance note. By email of 26 February DI Milton wrote that 'As a headline the CPS have stated that there is a case to answer however the investigation is not evidentially strong enough to charge at this time'. By email 16 April 2015 DI Milton informed the Applicant that the CPS had concluded that there was not enough material to charge Mrs Craig with any criminal offence. The officer wrote that the reviewing lawyer had stated that while the evidential threshold to make a criminal charge was not met, the

lower standard of proof required in the civil courts could be considered by those affected to take a civil claim. DI Milton wrote:

> "The focus of the investigation has always been to explore options to understand and minimise the risk Anne may pose to her clients and the wider public."

DI Milton wrote that the police investigation was concluded. The MPS would not be able to play a part in other measures or to advise in anything other than criminal matters.

48. Mr Jones then referred to the attendance note of 15 May 2015. It observed that this was a note of a long conversation between DI Milton and the Applicant's solicitor which took place after the request for disclosure. The note recorded:

> "He wanted to talk me through the information we were requesting so that I would know what they have. He said that if we wanted any of it we would have to go through the normal channels i.e. either by way of completing the Data Protection form or through an order of the court."

DI Milton informed the solicitor that A did not want to talk to him about Mrs Craig or her family. The solicitor noted that DI Milton told her that psychologists had spoken to the Applicant's daughter and others.

> "They all came away with the same viewpoint that the girls had a dependency on Anne Craig. They think they are getting help but what is happening is not healthy and could result in them not being able to function in society. However from the police perspective they are obliged only to intervene if there is a significant risk of harm to themselves and that risk was not present."

The investigation was carried out not for the Applicant but

> "because they thought there was a massive safeguarding issue."

Mr Jones further drew attention to a passage in the attendance note in which DI Milton is recorded as saying that if A changed her mind and wanted the police to take action regarding Mrs Craig, depending on what she said this might be looking at an offence of fraud. However the attendance records that DI Milton said that as

> "there are no immediate welfare and safety issues and this is the reason they have concluded their investigations."

49. Mr Jones contended that if it was a deliberate policy of Mrs Craig to sever girls from their families or that this was an inevitable product of her actions the Applicant is a victim of those acts. Accordingly it was submitted that whilst not on all fours with that case, the present application falls within the application of **Norwich Pharmacal** as explained in NGN in which victims of phone hacking applied for disclosure from the MPS.

50. Ms Collier submitted that **Norwich Pharmacal** is not engaged. The MPS cannot be said to be "mixed up" in the wrongful activities of Mrs Craig. For disclosure to be ordered a wrong must have occurred. In this case that has not been shown. Further, as exemplified in **NGN,** for the **Norwich Pharmacal** principle to apply the police investigation must be into wrongdoing against the applicant for disclosure as a victim. In this case the focus of the police investigation was on the Applicant's daughter and other girls as victims, not on the Applicant. The obligation or perceived obligation on the MPS to disclose material was, as is clear from **NGN** paragraph 50(f) and (g), to apparent victims of criminal wrongdoing, in that case, of phone hacking. Any conveying of information by the police in this case was not made to an apparent victim nor as a result of an actual perceived obligation.

51. Ms Mansoori drew attention to the content of the emails and attendance note relied upon by Mr Jones. The police were merely informing the Applicant of the decision as a result of their enquiries not to charge Mrs Craig. DI Milton said clearly that the MPS would not be able to play any part in any civil matter. Further it was said that the conversation recorded in the solicitor's attendance note of 15 May was clearly no more than an informal chat. None of the material was the provision of information by the MPS to a victim under an actual or perceived obligation so as to fall within **Norwich Pharmacal** principles.

52. The classic statement of involvement which may give rise to an obligation to disclose material is that in **Norwich Pharmacal** in which Lord Reid said at p175:

> "… if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrong-doing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoer."

The question Mann J determined in **NGN** was:

> "… whether the only thing which can the turn a mere witness into a discovery giver is participation or facilitation […] or whether something else will work as well."

Mann J held:

> "54. I therefore turn to consider the relevant question which is not whether the MPS have participated in, or facilitated, or been involved in the actual wrongdoing in this case. It is whether the MPS is a mere witness (or metaphorical bystander) or whether its engagement with the wrong is such as to make it more than a mere witness and therefore susceptible to the court's jurisdiction to order *Norwich Pharmacal* disclosure.
>
> 55. The answer to that question is, in my view, Yes. The MPS is not like someone who happens to witness an offending act and who thereby acquires relevant information. It is someone whose duty it is to acquire information about the offending act, albeit not for the benefit of victims. That may not

> by itself be sufficient – I do not have to decide that. What needs to be added is the fact that the MPS has actually provided information which, if a mere witness (bystander) it would not have had to have volunteered. It did so by informing victims that they were victims, and then disclosing a limited amount of information whilst informing them that there was more. It has also indicated that it did so as a result of some sort of unspecified obligation (or feeling that it ought to) and then agreeing, in principle, that it would not resist a formal claim for the information to a greater extent and in a more durable (and reliable) form. All those factors, when combined, mean that the MPS is not a mere witness."

53. In my judgment the facts relied upon to support this application do not bring it within the **Norwich Pharmacal** principle explained by Mann J in **NGN**. The MPS were not acting under a duty to acquire information about the offending act or acts relied upon by the Applicant. They were acting under a duty to enquire into whether the safety of the Applicant's daughter and other girls was being put at risk by the activities of Mrs Craig. It is apparent from the emails from DI Milton and the attendance notes of 15 and 19 May relied upon by Mr Jones that it was potential criminal conduct against the girls which was being investigated not any actions against the Applicant.

54. Further it is clear from their content that the information given in the emails and in the attendance notes was not as a result of an actual or perceived obligation to provide information about wrongdoing. The email of 26 February 2015 was headed

> "Case update in relation to Anne Craig investigation"

At paragraph two DI Milton wrote:

> "As a headline the CPS have stated that there is a case to answer however the investigation is not evidentially strong enough to charge at this time."

The email of 16 April 2015 was to convey the conclusion of the CPS that there was not enough evidence on which to charge Mrs Craig with any criminal offences.

55. The conversation of 15 May 2015 took place after the solicitor had made a request for information. The attendance note shows the position of the MPS. The information would not be given voluntarily. The parts of the history of events set out in the attendance note of 15 May 2015 did not deal with any offence relating to the Applicant. The information cannot be said to have been given as a result of an actual or perceived obligation to her so as to engage **Norwich Pharmacal** principles.

56. In my judgment the second precondition of disclosure under **Norwich Pharmacal** is not satisfied.

Should discretion be exercised to order disclosure if the two preconditions had been satisfied?

57. If the preconditions for the application of **Norwich Pharmacal** principles for disclosure are satisfied the decision whether to order such disclosure is fact specific.

58. In this case material about the activities of Mrs Craig is available from the Report of Stuart Price, the private investigator engaged by the Applicant. He interviewed a number of girls who had been counselled by Mrs Craig. Disclosure of documents by the police would be most unlikely to provide material to support the Applicant's case. The police told her that her daughter would not cooperate with them. The police also informed the Applicant that the CPS had decided that there was insufficient basis for any criminal charge against Mrs Craig.

59. Mr Jones contended that disclosure is necessary to enable the Applicant to pursue a claim against Mrs Craig or at least to enable her to assess whether she can pursue a claim. Even if there were a legal basis for a claim, which in my judgment there is not, for the reasons explained above it is most unlikely that disclosure would provide material for a claim or for assessment of its prospects of success.

60. Ms Collier submitted that there is nothing in the facts of this case which take it outside the ordinary run of a police investigation into an allegation of criminal activity. Further, there are powerful policy reasons why disclosure should not be ordered.

61. In outline Ms Collier submitted that insofar as information was provided to the MPS by others than Mrs Craig it was so provided in the expectation that it would be kept in confidence and only used for the purpose for which it was gathered, the criminal investigation. In support of this contention reference was made to **Taylor v Serious Fraud Office** [1999] 2 AC 177. The rights of third parties are to be respected. The Court of Appeal in **Frankson v Home Office** [2003] 1 WLR made it clear that persons who made statements to the police did so in the expectation that their confidence would be maintained unless either they waived it or it was outweighed by some greater public interest.

62. In my judgment even if the preconditions for disclosure under **Norwich Pharmacal** principles had been satisfied this is not a case in which discretion should be exercised to grant disclosure. Much information relevant to her proposed although ill founded claims has been obtained by the Applicant. Little perceptible benefit would be likely to be gained from disclosure and public policy considerations in maintaining confidentiality in statements and material obtained in the police investigation overwhelmingly outweigh the arguments in favour of disclosure.

Disposal

63. The application for disclosure is dismissed.