Neutral Citation Number: **[2022] EWHC 891 (Ch)**

Case No: **HC-2000-000004**

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

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

Date: **25 March 2022**

**Before** :

**Mr Justice Fancourt**

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**Between :**

| | |
|---|---|
| **Various Claimants** | **Claimants** |
| **- and -** | |
| **News Group Newspapers Ltd** | **Defendant** |

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**David Sherborne, Kate Wilson and Ben Hamer** (instructed by **Hamlins LLP**) for the **Claimants**
**Anthony Hudson QC and Ben Silverstone** (instructed by **Clifford Chance LLP**) for the **Defendant**

Hearing dates: 24 and 25 March 2022

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# Approved Judgment

**MR JUSTICE FANCOURT:**

1. This is an application by the defendant, News Group Newspapers Limited, issued on 12 November 2021 for an order that any claim form issued or served after 29 July 2022 relating to the subject matter of this litigation will no longer come within the managed litigation scheme.

2. I shall refer to the management scheme, as the parties do, as MTVIL.

3. MTVIL is currently proceeding towards a third trial in the fourth tranche of claims in the litigation, though no trial date has yet been set. The second trial in the fourth tranche was due to be heard starting on 1 November 2021 but all the claims within it were settled before that date, and the trial window was vacated.

4. The effect of the order that the defendant seeks, if granted, would be that a relatively large number of new claims and the existing claims in the fourth tranche would be case managed towards a trial, probably in 2024, and that any new claims issued or served after 29 July 2022 would have to proceed as individual claims outside MTVIL and without the benefit of being part of the managed litigation.

5. That would be likely to be disadvantageous to any claimant who served a claim after the cut-off date, but the defendant does not shrink from that because it says it will provide the necessary incentive for any remaining claimants to get on and issue and serve their claims, if they are going to do so, without any further delay.

6. I heard submissions from Mr Anthony Hudson QC on behalf of the defendant and from Mr David Sherborne on behalf of the claimants and I am grateful for the quality of their arguments and the assistance that they both gave me.

7. It is necessary to start with a little history.

8. The first phone hacking claim against the defendant was brought in 2007 by Gordon Taylor, then chairman of the Professional Footballers' Association, following the arrest of Clive Goodman and Glenn Mulcaire in connection with phone hacking in 2006. After Mr Taylor's claim a few other claims were brought and settled, and in 2011 Mr Justice Vos, as he then was, was appointed as managing judge by the Chancellor, to manage and hear in the Chancery Division all claims relating to phone hacking.

9. It was at that time that MTVIL started as managed litigation. At about the same time the Metropolitan Police were inquiring into activities at Mirror Group Newspapers and News Group Newspapers. Further arrests took place, followed eventually by a very prominent criminal trial at the Central Criminal Court in 2014. The Leveson Inquiry was established, sat, and in November 2012 reported.

10. At that time, phone hacking and other media abuses were regularly in the news headlines, and often the lead story.

11. MTVIL has proceeded in tranches. The first tranche was from 15 April 2011 to 27 February 2012, in which there were 64 issued claims. The second tranche ran from 28 February 2012 to 4 July 2014, with 230 issued claims; the third tranche from 5 September 2015 to 23 March 2019, with 91 claims; and the fourth and current tranche opened on 26 March 2019 and still continues.

12. The total number of claims raised or issued in MTVIL is about 1,030, in addition to 358 resolved through News Group International's own Voicemail Interception Compensation Scheme.

13. During the course of tranche 4 there have been 164 issued claims, or thereabouts, to date, and 277 further claims have settled at a pre-action stage.

14. The current number of unresolved and issued claims in the fourth tranche is 58. There are, Mr Sherborne says, 38 further claims where a letter of claim has been sent to the defendant's solicitors, and a further 69 so-called "pipeline claims" by which I assume is meant potential claimants who are currently seeking or receiving advice about whether they have a valid claim and whether to bring one.

15. That means that in a period of almost exactly three years, during which new claims were stayed for a period of some 15 months, there have been 222 claims issued and in total 537 claims raised, with 69 in the pipeline.

16. That is clearly a substantial number of individual claims that have been dealt with in accordance with MTVIL during the fourth tranche. The 222 claims issued so far is significantly in excess of the 91 in tranche 3. It appears that there has been something of a spike in claims issued in the last few months: 24 in the last three months compared with only two in the previous two months. The letters of claim which have not yet turned into issued claims is the same number in March 2022 as it was in December 2021, which suggests that, despite the spike in issued claims, the pipeline continues to flow freely.

17. In paragraph 13 of his 34th witness statement dated 9 March 2022, Mr Galbraith says that there are two to three new claims per month even after taking account of those claims that settle pre-issue or during the litigation process. It appears that he means that there is an increase in the number of subsisting claims, not simply the numbers issued. That is borne out by the table in paragraph 13 and the overall increase in live claims from 16 in June 2021 to 46, and now 58 at the end of March 2022.

18. There is, in short, no indication at present that the rate of issue of new claims is reducing.

19. None of the claims issued under MTVIL has gone to trial. All claims have settled: some very shortly before a trial date but the vast majority significantly in advance of that.

20. There have, I am told, been in total 12 trials fixed since 2011, which have all been vacated. Since 2016 there have been 45 case management conferences in this litigation, taking up 70 days of court time. This is, therefore, case management for settlement on a very large scale, but it is the timetable towards a trial date that generally provides the necessary impetus for settling the remaining claims that do not settle at an early stage.

21. All claims now issued in the fourth tranche comprise two parts: the claimant-specific claim relating to articles published about the claimant, or known infringements of privacy by phone interception, blagging of information or other privacy invasions; and a generic claim, adopted by each new

claimant. The generic claim relates, first, to general phone hacking and information-sourcing activities that are alleged to have been conducted by the defendant at the News of the World and The Sun on a very large scale between 1996 and 2011, to the knowledge and/or with the approval of senior editors, senior executives and NGN's legal department, and second the alleged concealment of this unlawful conduct and deliberate destruction in 2011 of documents relating to such activities.

22. These generic allegations are set out in three sets of generic particulars of claim, which are treated as having been adopted by any claimant in MTVIL without that claimant having to plead such allegations in their claimant-specific particulars of claim. The case on deliberate concealment and destruction is directly relevant to any defence of limitation that the defendant seeks to advance.

23. There is disclosure relating to the generic allegations and claimant-specific disclosure relating to published articles about the claimant and their named associates. The latter includes data relating to phone numbers that each claimant identifies and invoices and payment records relating to private investigators (PIs) paid by the defendant that bear the claimant's name.

24. The phone data and PI payments enable a claimant to allege unlawful information-gathering against the defendant even if it published no articles about the claimant. There has already been a huge quantity of generic disclosure, and generic witness statements have been prepared and served in readiness for trial.

25. Claims that are issued in the fourth tranche of MTVIL proceed in essentially the following way: first, either before or after issue of a claim form, initial disclosure is given by the defendant. This includes phone data and PI information in relation to the claimant and up to four named associates. After that disclosure is given, the claimant serves their claim with claimant-specific particulars of claim in which they can plead details of unlimited numbers of associates and any published articles about which complaint is made. A defence and reply then follow in the usual way.

26. The claimant has access to all the generic disclosure that has been given during MTVIL, on issue of the claim form, and claimant-specific disclosure then follows in relation to all named associates.

27. Witness statements are then prepared in the usual way. Were the case to go to trial, there would be about half of the trial spent on the elements of the generic claim that are relevant to the claimants' claims, and the other half of the trial on the claimant-specific part of the claim.

28. It follows that for each claim that is issued, the defendant has to provide disclosure of call data and invoices and payment records in relation to all named associates without limit of number, and that the claimant may as a result approach some or all of those associates to provide witness statements. Associates who are approached in that way will learn, possibly for the first time, that there is evidence capable of supporting a case that their phones were hacked or that there were other invasions of their privacy.

29. The advantages of MTVIL are that the cases are managed together by the managing judge, having one case management conference at a time for all claims in order to achieve consistency and reduce the overall cost of many individual claims being pursued separately. Allegations of generic matters do not have to be repeated in every claimant's particulars of claim. On issuing a claim, a claimant

obtains the benefit of all that has gone before and is protected from individual exposure to costs and significant individual expense in bringing the claim.

30. The generic case has developed incrementally over many years of disclosure applications and further documents coming to light. This often leads to requests for further searches to be done, and further documents emerge. The generic case has expanded very significantly as a result of the development of the case based on concealment and destruction, and documents have emerged piecemeal following disclosure applications that are opposed by the defendant.

31. The claimants repeatedly refer to it as akin to a game of battleships, as they have to try to find out where helpful documents may be located, if they still exist.

32. The case has also expanded considerably as allegations against The Sun newspaper, rather than just the News of the World, have grown. It has been a very expensive and slow process. Ms Mossman in her witness statement says that the generic disclosure exercise has involved the manual review of over 733,000 documents and that there have been 328 different generic disclosure orders made by the court during the managed litigation. The consequence is that the generic case is very detailed and stands ready for trial.

33. The defendant's proposal of a final cut-off date will allow any claimant to issue and pursue a claim after the cut-off date, subject to the law of limitation of actions, but it will proceed outside MTVIL. The claim would have to be pleaded by the claimant without the benefit of initial disclosure, unless the claimant applies for pre-action disclosure, and the claimant would have to plead any generic allegations made against the defendant before obtaining disclosure, and without the benefit of seeing the generic claims that are pleaded in MTVIL.

34. The defendant in this hearing has not explained how the generic case would be able to be dealt with by individual claimants.

35. MTVIL has undoubtedly cost a great deal of money. The claimants' common costs in tranche 1 were £2.48 million; in tranche 2, £3.96 million; in tranche 3, £19.92 million.

36. The tranche 3 total costs paid by the defendant, including the individual claimants' costs, are alleged to have been about £35 million in comparison with settlement payments of £14.7 million in aggregate. For the first two and a half years of tranche 4, the claimants' common costs are £11.1 million. Settlement amounts, on the other hand, in aggregate for T4 claims are currently about £26 million.

37. The defendant's criticism of the continuation of MTVIL beyond one final group of claims is that there will otherwise be no incentive, other than the law of limitation, for the claimants to press on now with their claims if they are going to make them. As a result, the claims are proceeding in a piecemeal fashion, spread over many years, rather than being brought and managed and tried together.

38. The defendant has referred in evidence to a number of cases in which associates of claimants who brought their claims and settled them years ago are only now bringing their own claims, even though, it is suggested, they must have known that they had a claim to bring at much earlier time.

39. The defendant therefore submits that what is needed is an incentive for claimants to bring their claims without delay, and that a final cut-off date for the managed litigation will provide this incentive.

40. The defendant submits that the advantages of ending the managed litigation would be to further the overriding objective in the following ways:

    (1) Preventing the litigation from absorbing an undue share of the court's resources by shortening the period over which the remaining claims are resolved and bringing the managed claims process to an end.

    (2) Putting an end to exorbitant costs. If there is a final cut-off date for MTVIL, cases would not be dealt with piecemeal over a prolonged period but would be disposed of "in a focused way and within a confined timescale".

    (3) Dealing with cases expeditiously and fairly given the time delay between events of 1996 to 2011 and a trial more than ten years after that period ended. Reference is made to increasing difficulty of finding witnesses and the witnesses remembering events.

    (4) Providing clarity about the quantity of remaining cases at an early stage, which gives a comprehensive view of the remaining cases that the defendant faces. It is suggested that giving knowledge to the defendant about the extent of its likely global liability will assist in the settlement of claims.

41. The defendant suggests that any remaining claims that a claimant wishes to bring will be brought by the cut-off date in order for the claimant to gain the advantage of litigating in MTVIL.

42. The premise underlying the defendant's argument is set out in paragraph 49 of the 38th witness statement of Maxine Mossman dated 12 November 2021 and was repeated almost verbatim in argument by Mr Hudson:

> *"There appears to be no good reason why any individual who suspects (s)he may have been a victim of unlawful information gathering between 1996 and 2011 would not by now be aware of his/her claim and could not reasonably be expected to bring a claim by 29 July 2022, the cut-off date proposed by NGN."*

43. The main reason advanced for this is the notoriety of the phone hacking litigation since at least the Old Bailey trial and the Leveson Report, which has continued to be prominent sporadically since, with for example the judgment of Mann J in the Gulati v MGN case [2015] EWHC 1482 (Ch) and various announcements of settlements since then, including recently a prominent statement of Sienna Miller outside the Rolls Building in December 2021, making very pointed allegations against the owners and editors of The Sun newspaper.

44. The defendant submits that in view of that coverage, and the knowledge that an intending claimant must have about any article published about them and about suspicious telephone and media-related activity at about the same time, it is difficult to understand how an individual could not reasonably be

expected to have brought their claim by now, and that they must therefore be in a position to do so within a few months of this hearing and should be encouraged to do so.

45. The focus of the defendant's complaint is that there are cases where claimants are connected to previous claimants and are said to have waited for years before bringing claims of which they must have had knowledge much earlier. The defendant provided some particular examples of that, where members of the same band or the same family have brought claims much later than others have done.

46. It does appear that there are some cases where new claimants have not issued their claims as early as they might have done, but it is important to recognise that the six-year limitation period running from the time when a claimant does have sufficient knowledge to bring a claim will itself take care of undue delay.The fact that no application to strike out or for summary judgment on the basis of limitation has yet been brought and heard suggests that there has been no such egregious delay yet.

47. The defendant submitted that an important role of a cut-off date in GLO litigation is to incentivise the bringing of claims at an early stage, in the interests of efficient management of all such claims. The defendant referred to two decisions, first that of Turner J in Pearce v Secretary of State for Energy and Climate Change [2015] EWHC 3775 QB.

48. The judgment in that case is extremely short and does not explain the circumstances of the litigation or the GLO. The application was only concerned with the extension of a cut-off date for claimants to be included in the GLO register. The concern was that without an extension a number of potential claimants would find themselves shut out, giving rise to satellite litigation. Turner J said at paragraphs 2 and 6 of that judgment:

> "*2. By way of preliminary observation I say that cut off dates are essential in GLOs to secure the good case management of the claims falling within its scope. The parties depend upon some level of certainty as to the cut off date in order to decide how to deploy their resources and when. Accordingly extensions of the cut off date should not come to be regarded as the norm.*
>
> […]
>
> *6. In order to do justice between the parties, I am, as I have said during the course of argument, minded to extend the cut off date but not to the extent requested. Quite frequently, if cut off dates are applied, they will focus the minds of lead solicitors and have a beneficial result by my incentivising those who are responsible for putting matters together to concentrate their efforts and resources.*"

49. The second decision was that of Saini J in Weaver v British Airways [2021] EWHC 217 QB. That was a GLO claim in relation to a large-scale, inadvertent data breach by British Airways. Saini J said at paragraph 26 and paragraphs 32 to 35 of that judgment:

> *"26. In summary, the principle is that cut-off dates secure the good case management of claims and they assist parties in litigating by providing*

> *some level of certainty. That assists in deciding how parties deploy their resources. I would add that they also promote potential for settlement by fixing to some extent the "size" of a claim faced by a defendant.*
>
> […]
>
> *32. In the context of this case, subject to some qualifications to which I will return, it seems to me as a matter of principle that BA is entitled to know, even if we are only at the liability stage, what the extent is of its potential exposure, if it lost these claims.*
>
> *33. The reasons why it is entitled to have knowledge of such matters are in some respects obvious. First, it seems to me that any litigant will make its resource allocation decisions depending upon potential exposure. Second, and this is particularly important in the context of these proceedings, the approach that a party in BA's position will take in settlement discussions will also be fundamentally dependent upon the size and extent of a claimant group and potential financial exposures.*
>
> *34. The qualifications to which I made reference are as follows: even if a cut-off date is imposed, and subject to the issue of limitation, it is right, as explained by counsel for the claimants, that BA does not have ultimate certainty because there may be additional claimants or indeed a further GLO down the line. I accept those points.*
>
> *35. However, there is a degree of certainty for BA once the group in this litigation is closed, and in my judgment part of the overriding objective is seeking to promote settlement of litigation. The court should ensure that a defendant knows the value and extent of potential claims it is facing, even if there is some continuing uncertainty because of the potential for new claims outside the group in the future. There is certainly a value, and a substantial value, on a defendant having certainty."*

50. As Mr Sherborne pointed out, however, in the Weaver case British Airways had itself notified the potential claimants that they might have a claim. That is the opposite of what happened in this case, the claimants argue, namely that the defendant concealed the fact of phone hacking and other invasions of privacy, and indeed continues not to accept that it ever took place at The Sun newspaper.

51. The defendant strongly resists the notion that potential claimants, who can now be identified from generic disclosure, might be notified that they may have a claim. The advantages of a cut-off date where claimants have been notified of their rights is self-evident. It is by no means clear that the same logic applies if there may be significant numbers of claimants who do not yet know that they can bring a claim.

52. In this regard the claimant's evidence at paragraph 72 of the 33rd witness statement of Mr Galbraith dated 30 November 2021 reads as follows:

> *"MTVIL is unlike other multiple action litigation. For example, in asbestos claims an individual claimant is aware that they have a potential claim because they know they have come into contact with asbestos at a certain time. Victims of unlawful information-gathering are invariably unaware of the activity at the time and are generally unlikely to become aware of it unless it is brought to their attention in some way. That is the point of the activity, it was meant to be covert or concealed at the time. Similarly, this is unlike multiple claims alleging the mis-selling of insurance, where a claimant knows that they had an insurance policy. This is why the fact that NGN specifically concealed what it was doing from victims at the time of wrongdoing and then sought to conceal it after the event, which forms part of every claimants' response to NGN's limitation plea, is so important. It is therefore extremely difficult for a claimant to know that they have a claim to bring unless they are notified in some way as to, for example, there being a private investigator invoice or there being call data relating to an individual."*

53. Mr Sherborne referred in this regard to the judgment of Mann J, the former managing judge in this litigation, in Various Claimants v NGN Limited (No.2) [2013] EWHC 2119.

54. Until shortly before 2013 the Metropolitan Police Service (MPS), which had investigated criminal phone hacking activity, notified potential claimants that they may have been the victims of phone hacking. That practice stopped in May 2012. Claimants or potential claimants so notified then applied for a Norwich Pharmacal order against MPS to seek to obtain the documentary evidence that they needed to substantiate their cases. NGN resisted that application, suggesting that advanced disclosure by MPS was cumbersome and expensive, and that it would be better to allow claimants to bring claims, effectively blind, and to get disclosure later.

55. Mr Justice Mann said at paragraph 62 of that decision:

> *"I have to say that Ms Rose's analysis causes one to take a jaundiced view of the disclaimer advanced by Ms Rose. [I interpolate the disclaimer was of any intention to be obstructive to these claims.] What distinguishes the phone hacking cases from most claims is that the victims (claimants) are unlikely to know that they are victims until someone else (the MPS) tells them, and then they cannot know the extent of the apparent wrong unless someone else (again the MPS) tells them. They could not fully plead a case unless that same person provides information but cannot sensibly take a view on compensation levels without that same information. Quite how it can be said that in those circumstances it would be better to start with a thinly pleaded action and wait for discovery is beyond me. It might be better for NGN for victims to be in ignorance for a longer rather than a shorter time, but it can hardly be better for the claimants."*

56. In Gulati v MGN Limited, a judgment in the parallel managed litigation involving claims against Mirror Group Newspapers, Mann J described the nature of the claims brought as follows:

> "*13. Thus the claimants make claims which are said to fall into three main categories - wrongfully listening to private or confidential information left for or by the claimant, wrongfully obtaining private information via private investigators, and the publication of stories based on that information. MGN admits all those activities (but not the extent of the first two) and accepts that damages are payable as a result, but does not accept that those three "layers" should be treated as separate compensatable matters when it comes to assessing damages. This point will be developed below in considering detailed matters of quantum.*
>
> *14. For the sake of completeness I should add that there was a fourth possible unlawful technique for getting information, which is blagging by the journalists themselves. That probably happened too, but I do not need to consider that separately.*
>
> *15. Mr Yentob's case is different from the other claimants in that it does not have one of those layers. While there was evidence of a lot of hacking directed at him, no stories were published about him as a result. It is likely that the information left for and by him was used to investigate other individuals of more interest to the newspapers.*"

57. At paragraph 50 Mann J noted that:

> *"Not all the information that was obtained from phone hacking was usable for a story. If it was, it would be passed to other journalists who would often not know where the story came from and they would investigate through more legitimate means and if possible write the story. Information that was obtained from hacking would, if published, have its source disguised by attributing the source to a 'friend' or 'pal'. As will appear, this had a particularly caustic effect on the relationships of the victims."*

58. In paragraph 149 the Judge noted that it was common ground that each invasion of privacy and each article is a separate cause of action. That is the case in these proceedings too. In paragraph 155, Mann J said:

> *"I accept that there are three areas of wrongful behaviour which need to be looked at separately. First there is the general hacking activity, each of the individuals had their voicemails and some of those whom they rang hacked frequently, in their own cases daily, with most hacks not resulting directly in an article. Their private information was thus acquired and their right to privacy infringed irrespective of whether an article was published. That fact makes it appropriate to take the activity separately and assess its effect in terms of compensation separately from damage arising from publication."*

59. In the Court of Appeal, on appeal from Mann J's decision, Arden LJ noted at paragraph 5 of her judgment:

> *"The fact of hacking could not be revealed by the newspaper in the published article but the ruse was adopted of quoting an unnamed source said to be close to the subject of the article, or an unnamed friend."*

60. Mr Sherborne relies on those decisions - which admittedly were in the parallel litigation, not this - to show two things. First, that it is not the case even where a potential claimant has an article published about them that it will be obvious to them that the information was the result of illegal phone hacking activity. The hacking was disguised. Second, to show that not all causes of action for which claims may be brought depend on the publication of articles, and that in cases where the cause of action is interception of telephone calls or messages or unlawful PI work, the only evidence to indicate that there was unlawful activity may be the phone data or PI payment record, which has been disclosed but which is not available to other potential claimants unless they are aware that they might have a claim to bring.

61. As Mr Sherborne also pointed out, the claim brought by Mr Yentob in the Gulati case was not in relation to any article about him. He says that there are two current claims in this litigation where there was no article in relation to the claimant or an associate, and there are many claims where there is no article relating to the claimant themselves but articles about an associate of the claimant, which is obviously at one remove so far as concerns the ability of the claimant to deduce that they have been the victim of hacking.

62. If the premise of the defendant's argument is right and potential claimants will all know enough already to be able to bring their claims within a short period, then there is obvious force in the defendant's argument for a cut-off date. There will be a benefit in those circumstances in having all claims that are to be brought issued and case managed together in one further wave, and if potential claimants know enough to be able to bring a claim, the cut-off date will be likely to incentivise them to bring them soon.

63. Conversely, it is unlikely that any claimant will want to wait until after the cut-off date and bring their claim later outside MTVIL. In those circumstances the court resources and costs would be likely to be saved by making an order for a final cut-off date.

64. The real question on this application seems to me to be whether that premise is correct. If it is wrong, then there may be many claims that claimants are not yet aware that they can bring, in which case they will not be incentivised to bring their claims before the final cut-off date and may well bring their claims later as individual claims.

65. If they bring their claims later, the benefits that the defendant seeks to achieve – the four respects in which the defendant asserts that the overriding objective would be furthered – will not materialise, or alternatively claimants who only later realise that they have a claim will not be willing to bring it as a standalone claim because of the cost of bringing such a claim and the costs exposure.

66. While that may be a benefit to the defendant, it is not obviously in the interests of justice. It is therefore necessary to consider the evidence and the basis of the defendant's arguments to see whether it can safely be inferred that anyone, or just about anyone, who has a valid claim to bring must by now know that they have and therefore be expected to bring it before the final cut-off date.

67. What is common ground is the evidence that a significant majority of the live claims in tranche four are claims brought by someone who is in some way connected with or an associate of another claimant. Ms Mossman says in her 38th witness statement at paragraph 42:

> *"The vast majority of the 472 individuals who have intimated a claim during tranche 4 are associated in some way with other claimants who have brought claims in the MTVIL."*

And at paragraph 44:

> *"Many tranche 4 claimants were private individuals who said that they were of interest to the defendant because of their association with a higher profile individual."*

68. The point she is seeking to make is one about the claimants having sufficient knowledge to bring a claim earlier than they do because of their association. But this evidence also illustrates the way that new claims are emerging. It is as a result of an associate of the new claimant bringing a claim or a request to be a witness in such a claim that a new claimant finds out that their phone was hacked and that they too have a claim. This evidence corroborates what Mr Galbraith says about how claimants find out that they have a claim to bring.

69. It may be that fewer of the new claims brought or yet to be brought are high profile article-based claims, though Mr Hugh Grant has just issued a new claim in relation to more than 50 articles published by The Sun, and more claims are by associates who discover that their privacy was invaded in an attempt to source information about someone else. This was indeed the case with Dr Harris, who learned that he was a victim through Sir Simon Hughes identifying Dr Harris as an associate. In turn there are ten identified associates of Dr Harris, for whom the call data disclosed suggests that they may also have a claim to bring.

70. There were only two inconsequential articles mentioning Dr Harris, and neither of those would have or did put him on notice of unlawful phone hacking activity.

71. Mr Galbraith also explains that the alleged concealment of the unlawful information-gathering at the time and destruction of documents in 2011, and the defendant's continuing denials or non-admissions of any unlawful activity at The Sun, which continues to this day, explain why individual claimants are often unaware that they have a valid claim to bring.

72. The claimants' evidence is that there are potentially thousands more who don't yet know that they have a claim to bring. This evidence is based on a detailed analysis of documents in the generic disclosure and documents obtained from the MPS, in particular Glenn Mulcaire's notebooks and the payment records relating to suspected PIs that identify the subject of a request, claimant-specific call data relating to associates of prominent claimants, and other PI information. Mr Galbraith says that many of these potential claimants may not know that they have a claim because they do not know about the unlawful information-gathering. He emphasises that it is not necessary for there to have been a published article before a claim exists. There can still be an invasion of privacy by unlawful information-gathering.

73. I have considered the detailed evidence that was put forward in Mr Galbraith's 33rd witness statement to see whether that evidence that I have just summarised is substantiated. I have referred in particular to the evidence given about the numbers of potential victims featured in the notebooks of Mr Mulcaire, at paragraph 17 of the statement, and the numbers of potential victims identified in relation to the payment records relating to Christine Hart, dealt with at paragraphs 23 to 25 of the witness statement, which suggests that only about 17% of those who are identified have so far brought claims.

74. I have also considered the evidence about the emails produced by Mr Nick Parker, where 107 potential victims are identified, according to the claimants, but so far only 18 of those individuals are on the litigation register.

75. Paragraphs 48 and 49 of Mr Galbraith's witness statement identify a schedule that has been prepared from PI payment records that suggests - making allowance for inappropriate inclusion - that there may be over 6,600 unique identifiable names who were the subject of unlawful PI activities on the claimants' case. Comparing those names with the claims register, Mr Galbraith says that only 4.4% of the individuals have issued a claim.

76. A similar exercise was done in relation to potential victims relating to activities at the News of the World, and the claimant estimates that there may be about 18,000 non-duplicated individuals who have claims to bring.

77. I am satisfied that, on the basis of the claimants' analysis of some of the identifiable subjects of the attention of eight principal PIs, there will be a significant number of people who may not know they have a claim to bring. I do not accept that there are thousands of such theoretical claimants who will be likely to bring a claim. The majority will either never know or not be interested in revisiting the events of ten to 25 years ago with which they may have had only peripheral involvement.

78. But given the very high numbers of theoretical claimants identified in this way, there clearly is a likelihood of further associates of claimants being involved in current claims and discovering their possible involvement in phone hacking activities. In my judgment, those likely to bring further claims will fall mainly into two categories: those who were affected by article publications but because of alleged concealment had not realised how information about them was obtained; and those who discover as a result of their being associates of other claimants that there was interception of their calls or voicemails too, or that they were subject to PI activity.

79. The best evidence of how many more claims may continue to emerge and at what rate in the light of that analysis is probably provided by the current flow of new claims, which I have already referred to. I do make some allowance for the impact that this application may have had on new claims and disregard the very recent spike for that reason.

80. Despite that, there is nevertheless a steady and consistent flow of new cases. There is no evidence or reason to think that the number of claims is now slowing down. Imposing a final cut-off date may well cause an acceleration of claims because those who do already know that they have claims will be incentivised to bring them, as Mr Hudson has explained. But there will be no incentivisation of those who do not yet know enough to bring a claim. Many of the associates of those who do rush to

issue and serve their claims before a final cut-off date will be likely to become involved as potential witnesses, some for the first time in MTVIL, and may learn what they need to know to bring a claim.

81. If, as seems credible given the way that the current claimants emerged, there is a significant number of such new claimants with substantial claims to bring, who will bring them in the future even though they cannot come within the managed litigation, they will be disadvantaged in not being able to be part of it and the objectives of the cut-off date will not be achieved.

82. I accept that in those circumstances the result would be likely to be that more court time is required to manage not just the last 100 to 200 claims within MTVIL, but also a significant number of individual claims. Bringing an individual claim would require each claimant separately to plead the generic case of phone hacking activity and concealment and apply for disclosure, possibly pre-action disclosure, in respect of those issues as well as pleading and then seeking disclosure in relation to claimant-specific aspects of the claim.

83. Mr Hudson was not able to volunteer that existing generic disclosure and the generic pleadings would be made available to the individual claimants. Nor did he explain how those parts of any new claims would be dealt with. He suggested that the generic claim was really wholly irrelevant.

84. I do not accept that. The generic claim and evidence is important to establish the factual background in which a claimant can persuasively allege and prove that call data relating to their phone, or a PI invoice or payment record, demonstrates unlawful activity directed at them. It is also important to deal with any limitation defence that the defendant pleads. It is also directly material to the quantum of any damages awarded.

85. Mr Hudson also suggested that how individual claimants should plead any generic aspects of their claims should be left to be worked out in those claims at a later time. I do not accept that either. I would need to be satisfied about what was intended before I could conclude that it was in the interests of justice to make the order that the defendant seeks.

86. What Mr Hudson suggested could be done, if a significant number of new claims were issued after a final cut-off date, is either to allow the individual claims to continue or to allow them to join the managed litigation late, or extend the cut-off date, or set up a different ad hoc managed scheme for those claims.

87. I am not persuaded that allowing more and more new claims to be brought back into the managed litigation or (what amounts to the same thing) retrospectively extending the cut-off date would work, except if there were only a few such new claims. Any such claims would have been pleaded on a different basis, and after only a few months had gone by further new claims would be unable to fit into the timetable for trial of the remaining MTVIL claims.

88. It may be that a new managed scheme could be established, but this would only add complexity and incur further costs. It would involve reinventing the wheel to some extent and require separate case management to be conducted. This would add cost and consume more court resources. There already is a managed litigation scheme in existence which has been finessed and made to work over time with the generic parts of the claim prepared and ready to be tried, and it would clearly be preferable for

any new claims to be managed within the existing scheme, where the focus can and will be on the preparation of the claimant-specific aspects of each claim.

89. I therefore conclude that I should not impose a final cut-off date at this stage unless Mr Hudson's premise is proved, namely that substantially any potential claimant with a claim to bring against the defendant must know enough by now to bring it before the cut-off date.

90. I agree with Mr Sherborne that to close the existing scheme and then have to deal with a significant number of similar claims outside the scheme would be likely to have the opposite effect to what NGN professes to seek to achieve in terms of saving costs and court resources, speeding up the process and enabling it to settle claims more speedily.

91. For the following brief reasons I am not persuaded by Mr Hudson's premise:

(1) There is a continuous stream of new claims being issued which does not appear to be abating.

(2) The reason for the stream of new cases is accepted to be that new claims arise out of the management and preparation for trial of existing claims. Persons who were not previously involved as claimants have become involved as potential witnesses, or at least as named associates of existing claimants, and by those means or possibly other means, have discovered that they were subjected to phone hacking. That is a process that in my judgment is likely to continue given the very large number of persons who have been identified from the disclosure in this litigation who may, at least in theory, have a claim against the defendant, and the significant number of new cases still being brought which will lead to disclosure of call data and PI payments for their associates.

(3) More claims are now being brought that do not arise from an article published about the claimant. That is a process that may well continue. It is not therefore the case that any claimants must know, because of the article, that they are victims.

(4) Even where the potential claimant did have an article about them published, it is not necessarily obvious from that fact that the information was obtained by unlawful activity. Indeed, as has already been found in the MGN case, that company went to some lengths to conceal the origin of the information and make it appear innocuous. There appears to me to be close similarity between the NGN articles and practices and the MGN articles and practices in that respect.

(5) Suspicious phone activity may or may not cause a potential claimant to think that they might have been a victim of phone hacking. But it cannot automatically be said that because someone knew that there was something odd happening with their mobile phone they might be a victim of hacking, and as a result they have the information needed to know that they can bring a claim. That is especially so at this remove of time, between 11 and 25 years from the events in question. Many potential claimants are ordinary people, who would not imagine that their phones would be hacked, yet they have one or more friends who are in the public eye and of interest to the tabloid press.

(6) For many if not most claimants, it is only the facts established by phone data or PI invoices that make them realise that they have a claim. Knowledge about phone hacking practices generally through media coverage does not equate to realisation that a person was themselves a victim of phone hacking, even if they know or are related to someone who has brought a claim. Although pre-action disclosure is given on request now by the defendant, and by MPS, that only helps a potential claimant if they are aware that they may have a claim. If they are not aware, they will not apply for disclosure.

92. As a fallback position Mr Hudson submitted that a final cut-off date would serve an admirable purpose as regards those potential claimants who have not yet issued a claim but who have written a letter before action, and the further potential claimants "in the pipeline". He submitted that a final cut-off date should be imposed to capture that benefit, which is sufficient in itself to justify it, and then the position in relation to any further claims that are issued after the cut-off date can be reviewed in due course. If necessary, the new claimants could be admitted to the MTVIL scheme belatedly, or a new managed litigation could be established.

93. I am not attracted to that option for the reasons I have already given. It cannot be said that all further claims will be of a different character from existing claims so that they should be dealt with separately. Further, such a course runs the risk of claimants who cannot make the deadline deciding not to issue standalone claims because of the complexity and cost, and costs exposure, of the claim, which would have to be addressed by that claimant on their own without the benefits of the managed litigation.

94. Although Mr Hudson said that rolling cut-off dates are proved not to have sufficiently incentivised the prompt issue of claims, I consider that the position may well be different this time in that limitation becomes progressively more of an issue, at least potentially, for claimants as time goes by, and any potential claimant who does not issue a claim by a new rolling cut-off date may well have a later claim stayed for a considerable period of time while a large group of tranche 4 claims are brought towards trial in early 2024, or settlement.

95. There may therefore be a substantial delay in progressing any claims that are not issued by the cut-off date. When the stay is lifted will of course be kept under review, having regard to the number of claims issued, but at this stage I am not attracted by Mr Sherborne's suggestion that it would be beneficial in case management terms to have two or more tracks of cases being case managed in parallel and two different trial dates.

96. The fact that I am not persuaded today that there should be a final cut-off date does not mean that the same conclusion will necessarily be reached if another similar application is made at a later date.

97. Mr Sherborne properly conceded that at some stage the managed litigation has to be brought to a controlled conclusion. It is likely to be appropriate when it can be seen that the number of new claims is significantly tailing off, or if new claimants are mainly ones who have known about the fact that they have a claim for a long time, rather than ones who have relatively recently learned of their claims. In that regard it might well be instructive to consider, after the next rolling cut-off date has expired, the circumstances of the claimants who have issued claims between the lifting of the stay in September 2021 and the new cut-off date.

98. What I have decided is that on the basis of the evidence that is before me today there should not be a final cut-off date in 2022. In other words, there will be at least one more window following the lifting of the stay on new claims which will be imposed when the next rolling cut-off date arrives. That stay may remain in place until late 2023 or early 2024, subject to settlements, and the circumstances may well appear differently at that time.

99. The position might also be very different if the defendant were willing to make disclosure in some form, identifying those persons or perhaps categories of person who might well have a claim that they could bring, or notifying certain categories of potential claimant.

100. A communication or announcement of that kind in appropriate terms would be likely to put a larger number of potential claimants on notice and give them the opportunity to consider whether to bring a claim before a hard deadline for participation in MTVIL. The detail of how this might be done and to what extent was not addressed in any detail in argument or evidence and therefore I say no more about it at this stage.

101. For the reasons that I have given, I dismiss the defendant's application.