IN THE HIGH COURT OF JUSTICE No. HC10C01363

CHANCERY DIVISION

[2011] EWHC 734 (Ch)

Royal Courts of Justice

Friday, 18th March 2011

Before:

MR. JUSTICE VOS

B E T W E E N :

SKYLET ANDREW Claimant

- and -

(1) NEWS GROUP NEWSPAPERS LIMITED
(2) GLENN MICHAEL MULCAIRE Defendants

- and -

THE COMMISSIONER OF POLICE OF THE METROPOLIS Respondent

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MR. JEREMY REED (instructed by Mishcon de Reya) appeared on behalf of the Claimant.

MR. EDWIN BUCKETT (instructed by the solicitor for the Metropolitan Police) appeared on behalf of the Respondent.

MR. ANTHONY HUDSON and MR. D. HIRST (instructed by Farrer & Co.) appeared for News Group Newspapers Limited.

J U D G M E N T

(As approved by the Judge)

MR. JUSTICE VOS:

Introduction

1 This is an application dated 7th February 2011 by which Mr. Skylet Andrew (whom I shall call "Mr. Andrew") seeks disclosure of unredacted copies of documents disclosed by the Commissioner of Police of the Metropolis ("the Commissioner") pursuant to my order dated 6th December 2010 and further disclosure beyond the scope of the previous order.

2 The main, but by no means the only, issues that arise for determination are twofold. First, the relevance of the documents of which unredaction or disclosure is sought and, secondly, whether the Commissioner can properly claim that the documents should be protected from disclosure by public interest immunity. The immunity in question is said to be applicable because the Commissioner fears that disclosure will impede or hamper the current police investigation into phone interception activities undertaken at the News of the World newspaper ("NoTW") between 2005 and 2006.

3 The Commissioner raised these matters with me in an application he made in private and without notice to the parties to the proceedings on 10th and 11th March 2011. Accordingly, I informed the parties at the outset of this hearing in public as follows:

> "I gave judgment on 1st March 2011 on the applications for non-party disclosure made by the claimants against the Commissioner in the phone interception cases brought by Paul Gascoigne, Michael McGuire and George Galloway. In the course of that judgment I said the following paragraph 13:
>
> 'If, for example, the Commissioner came to the conclusion that disclosure of some documents in compliance with the order would impede police investigations it would be entirely appropriate for him to apply to a judge of this division to explain that difficulty and seek a limitation on the compliance'.
>
> And I said the following at paragraph 18:
>
> 'They can, as I indicated before, make without notice applications in private to the court to seek directions in an appropriate case if sensitive matters need to be raised and I have every confidence in their ability to assist the court to make sure that civil litigation that is being undertaken in the Chancery Division is conducted efficiently and not conducted in ignorance of matters that the court at least, even if the parties cannot be made aware of them, should be aware of.'

In response to these invitations the Commissioner made application to me in private without notice to the parties to the actions on 9th and 10th March 2011 in relation to the disclosure of documents in the three phone interception cases brought by Mr. Andrew, Mr. Andrew Grey and Mr. Stephen Cougan. The Commissioner applied for orders that he should be at liberty to withhold disclosure of some of the material that he had previously redacted on the grounds that disclosure would damage the public interest because it would hamper the investigations currently being undertaken by the Metropolitan Police. The Commissioner asked for an order that he should be at liberty to withhold such disclosure for a period of some 12 to 14 weeks. The application was made specifically in preparation for this hearing today. After hearing from Mr. Edwin Buckett for the Commissioner and having been shown some of the unredacted documents in question I gave judgment on 10th March 2011. I made no order on the Commissioner's application. I did however order that my judgment and my orders in relation to the applications dated 4th and 10th March should be open to inspection by any person other than the Commissioner and should not be served on any person other than the Commissioner under CPR Part 31.19(2). I made those orders over today but have left it to the Commissioner to apply today for any extension of that order indicating that, subject to any submissions the parties might wish to make, I would be inclined to continue my order sealing my judgment of the 10th March 2011 for some 12 weeks or for such period as the Metropolitan Police thought it necessary to protect their investigations. I will hear counsel on the continuation of the order sealing my judgment or on any other matter. In particular I need to make it clear that I have seen unredacted copies of the documents that are or may be the subject of this application. That is not to say I will recall what they show or say. I intend to put any such knowledge out of my mind in dealing with this application but if any party wanted to say that that meant I should recuse myself of hearing this application I will hear that application first".

4 No application was made by any party asking me to recuse myself and I do not think therefore there is any reason why I should not have heard this application. Accordingly, I did so. After initial argument I also ordered at the start of the hearing of this application on 14th March 2011 that my order, sealing the orders of 4th March and 10th March and my judgment of 10th March should continue until after I had delivered this judgment when the parties can make submissions on the desirability of the continuation of the sealing of those orders.

5 I should also mention that in the course of the hearing Mr. Jeremy Reed, counsel for Mr Andrew, told me that Mr. Buckett had suggested to him that this application might be adjourned for three months. Mr. Reed said he did not agree to that course but was in the court's hands if I thought it was appropriate.

The objective was to allow the question of public interest immunity to be decided once the Commissioner had had the three month period he was seeking to protect his investigation. I considered that question alongside the trial management issues that arise in what are now known to be at least 14 telephone interception cases and where the trial in this case is already fixed for early 2012. It seemed to me that adjourning the application would waste time and costs and not be likely actually to resolve everything. It was better for me to determine this application on its merits and then decide whether any delay in implementation of any order I decided to make was justified or whether other prophylactic measures should be adopted.

6 I should also mention two further matters by way of introduction.

7 First, and also whilst the hearing was proceeding, I was appointed by the Chancellor of the High Court to undertake the case management and interlocutory hearings of all the pending telephone interception cases. This is important because some issues that have an impact beyond the case brought by Mr. Andrew were raised in the course of argument. I would not have wanted to deal with any such issues in this judgment had I not been appointed to handle these cases for fear of stepping on the toes of the judge who was so appointed. That concern has now been assuaged by my appointment.

8 Secondly, it should be noted that this application and others like it are made against the Commissioner because he happens to be in possession of sensitive documents that a criminal court ordered to be forfeited by Mr. Mulcaire. In more normal circumstances Mr. Mulcaire would be in possession of such documents. Thus the forfeiture order has had the effect that the Commissioner has been faced with a considerable number of applications under Part 31.17 of the Civil Procedure Rules for non- party disclosure. It must be borne in mind that the Commissioner is running a police force whose task is to investigate crime. It is not his task to put together information for civil claimants in quite separate litigation to which he is not a party and with which he is not concerned. This is important because some of the submissions made by the claimant seem to me to border on saying that the Commissioner could or should be required to work on the documents he held for the benefit of the claimant or to avoid the embarrassment of confidential documents being disclosed to an individual claimant. This was denied by Mr. Reed, counsel for the claimant, who said that his submissions merely amounted to saying that he was entitled to an order for disclosure but that the Commissioner might prefer to perform that order in a way that preserved confidentiality but still gave the claimant what he needed. I will return to deal with the effect of Part 31.17 but I should say at once that I would be most reluctant to make any order that put the Commissioner to additional effort or expense beyond that which was absolutely necessary. I am acutely conscious that his job is to investigate crime and bring offenders to account and that the court should hesitate before making orders that interfere

with that task by requiring him to deliver up or to discuss with civil claimants the materials he has gathered for that purpose.

9 I would conclude this introduction by saying therefore that I think that there is a significant difference between the documents delivered up by Mr. Mulcaire to the Commissioner and the documents that the Commissioner has obtained for himself in pursuit of his on-going investigations.

The order sought

10 With that introduction, I can now set out the ten categories of documentation of which Mr. Andrew now seeks disclosure. The categories numbered 1.4 and 1.10 are excluded as they are no longer pursued:

1.1 Pages 8, 9, 10, 11 and 13 of the 13 page document comprising call data from telephone number 020 8641 3765 for the period from 24th January 2006 until 17th February 2006 with no redactions save as expressly permitted in the proviso to this order;

1.2 Pages 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 34, 35, 42 and 50 of the 54 page document comprises call data from telephone number 020 8641 2228 for the period 1st December 2005 to 15th June 2006 with no redactions save as expressly permitted in the proviso to this order;

1.3 Page 13 of the 20 page document compromising call data from telephone number 020 8641 2228 for the period 1st June 2006 to 24th August 2006 with no redactions save as expressly permitted in the proviso to this order;

1.5 The cover page and pages 1 and 22 to 26 inclusive from the 80 page Sigma Refill pad split from WAB/66 book 2.0141 with no redactions save as expressly permitted in the proviso to this order;

1.6 The whole of the 38 page red Buroclass notebook split from WAB/66, book 2.0142 with no redactions save as expressly permitted in the proviso to this order;

1.7 Pages 17 and 18 of WAB/115 book 2.1 115 (those pages being a chain of emails) with no redactions whatsoever;

1.8 The cover page and pages 1 and 43 to 47 inclusive from the 117 page document identified as NSF/14 (WAB95) document E with no redactions save as expressly permitted in the provision to this order;

1.9 The cover page and pages 1 and 173 to 177 inclusive from the 221 page document identified as being two notebooks split from WAB/107 NSF/31 book 2.0160;

1.11 Mr. Mulcaire's hard copy telephone contact lists with no redactions whatsoever;

1.12 Mr. Mulcaire's telephone contact list (names and numbers) stored on his mobile phones with no redactions whatsoever.

11 The claimant suggests a protocol for redactions in the proviso to the draft order sought as follows:

> "Provided that the respondent may where expressly permitted above redact a mobile phone number or a direct dial voicemail number only if the full name of the owner of that number is known to the respondent and if the respondent believes that person to be a victim of voicemail interception, provided that the redaction states the full name of the owner and whether it was a mobile phone number or a direct dial voicemail number; pin numbers, account numbers and account passwords may be redacted provided that each such redaction is labelled with one of those descriptions."

12 In addition, the claimant seeks an order that the Commissioner should inform him within seven days whether he has in his possession the following two further categories of documents as follows:

> 2.1 Call data concerning calls made to telephone numbers 020 8641 3765 and/or 020 8641 2228 and if so stating the full period of such records;
>
> 2.2 Call data where the calls made or calls received concerning any telephone numbers other than 020 8641 3765 and 020 8641 2228, in each case stating the relevant telephone number, the full period of such records and the owner of the relevant telephone number."

13 In his submissions, Mr. Buckett informed me on instructions that he could not say whether the Commissioner held any documents falling within paragraph 2.2 of the draft order, but that he did have one page which comprised incoming phone data falling within the provisions of paragraph 2.1 of the draft order. That document had, however, been provided to the Commissioner by a third party on express conditions as to confidentiality.

14 The categories of documents in paragraph 1 of the draft order break down into the following four categories as follows:

(1) Category 1: unredacted call data from Mr. Mulcaire's landlines (items 1.1 to 1.3).

(2) Category 2: Mr. Mulcaire's Buroclass notebook (including document C), contact lists and telephone contacts (1.6, 1.11 and 1.12).

(3) Category 3: unredacted copies of various pages in Mr. Mulcaire's notebooks (including pages B, E and F) and the two pages either side of any mention of Mr. Andrew (items 1.5, 1.8 and 1.9). As will later appear the pages themselves have now been disclosed unredacted but the adjoining pages remain in issue.

(4) Category 4: unredacted copies of a chain of emails known as document D (item 1.7).

15 In the course of argument on the first day of the hearing, Mr. Reed expanded his request for disclosure under category 1 (items 1.5, 1.8 and 1.9) from two pages either side of the entry relating to Mr. Andrew to the entirety of the notebooks. As the argument on this point developed, however, it became apparent that the issue raised a completely new question of whether the way the notebooks were compiled and laid out would be likely to provide useful information for the claimant's case and whether there would be any pattern disclosed in them that would bear on the conspiracy allegations made against NGN and Mr. Mulcaire. In the end, Mr. Buckett submitted that he had not had enough notice to deal with the extended application and Mr. Reed accepted that contention and agreed that I should not deal with that application at this stage. It will be open to Mr. Andrew to issue a further application in due course, obviously in the light of this judgment, if he wishes to press for disclosure of the entirety of the notebooks.

16 I should say one more thing before leaving the question of the entirety of the notebooks. I indicated in argument that I was keen to avoid multiple repetitive applications against the Commissioner that risked impairing his ability to progress his investigation and constituted an avoidable burden upon his staff and resources. In that context I was keen to consider whether immediately before the trial of this action it would look ridiculous that only small extracts from Mr. Mulcaire's notebooks had been sought and obtained from the Commissioner. If numerous actions are started and many parts of the notebooks eventually come into the public domain will it, one may ask rhetorically, look absurd in the run up to trial alongside other information likely to have been obtained on disclosure by then, not to have the full notebooks available to the trial judge to make what he can of them. This is not now a question for this specific application since the entirety of the notebooks are not sought but it will

be an issue at some stage, probably in this particular claim and very likely in relation to the proper management of the phone interception cases generally with which I am now charged.

The relevant legal background

17 This application is made under CPR Part 31.17 which provides as follows:

> "1. This rule applies where an application is made to the court under any Act for disclosure by a person who is not a party to the proceedings.
>
> 2. The application must be supported by evidence.
>
> 3. The court may make an order under this rule only where (a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings and (b) disclosure is necessary in order to dispose fairly of the claim or to save costs.
>
> 4. An order under this rule must (a) specify the documents or the classes of documents which the respondent must disclose and (b) require the respondent when making disclosure to specify any of those documents (i) which are no longer in his control or (ii) in respect of which he claims a right or duty to withhold inspection.
>
> 5. Such an order may (a) require the respondent to indicate what has happened to any documents which are no longer in his control and (b) specify the time and place for disclosure and inspection."

18 CPR Part 31.22 protects documents disclosed and information disclosed as follows:

> "(1) A party to whom a document is being disclosed may use the document only for the purpose of the proceedings in which it is disclosed except where (a) the document has been read to or by the court or referred to at a hearing which has been held in public; (b) the court gives permission or (c) the party who discloses the document and the person to whom the document belongs agrees.
>
> (2) The court may make an order restricting or prohibiting the use of a document which has been disclosed even where the document has been read to or by the court or referred to at a hearing which has been held in public ..."

19 CPR Part 31.19 under which the application was made by the Commissioner to me on 9th and 10th March 2011 provides as follows:

"1. A person may apply without notice for an order permitting him to withhold disclosure of a document on the ground that the disclosure would damage the public interest;

2. Unless the court orders otherwise, an order of the court under paragraph 1 (a) must not be served on any other person and (b) must not be open to inspection by any person;

3. A person who wishes to claim that he has a right or a duty to withhold inspection of a document or part of a document must state in writing (a) that he has such a right or duty and (b) the grounds on which he claims that right or duty.

4. The statement referred to in paragraph 3 must be made (a) in the list in which the document is disclosed or (b) if there is no list to the person wishing to inspect the document.

5. A party may apply to the court to decide whether a claim made under paragraph 3 should be upheld.

6. For the purpose of deciding an application under paragraph 1, application to withhold disclosure or paragraph 3 claim to withhold inspection the court may (a) require the person seeking to withhold disclosure or inspection of the document to produce that document to the court and (b) invite any person whether or not a party to make representations.

7. An application under the paragraph 1 or paragraph 5 must be supported by evidence.

8. This part does not affect any rule of law which permits or requires a document to be withheld from disclosure or inspection on the ground that its disclosure or inspection would damage the public interest."

20 Mr. Justice Eady in the case of *Barry Flood v. Times Newspapers* [2009] EMLR 18 at paragraph 29 said this in relation to Part 31.17 applications:

> "In any event the court has a clear obligation to ensure, if necessary of its own motion, that this intrusive jurisdiction is not used inappropriately - even by consent. In exercising its responsibility the court may well be assisted by submissions made on behalf of any third party, the protection of whose interests require to be considered."

21 In the case of *Maxwell Frank Clifford v. NGN and Mr. Mulcaire* in which I gave judgment on 3rd February 2010 and in the applications made by Messrs.

Gascoigne, McGuire and Galloway to which I have already referred, I pointed out that there are three steps in every case such as this:

> (1) First it has to be shown that the documentation is likely to support the case of the applicant or adversely affect the case of the respondent. The word 'likely' has been interpreted by the Court of Appeal in the case of *Three Rivers District Council v. Bank of England No. 4* [2003] 1 WLR 2010 as meaning 'may well'.
>
> (2) The second requirement under Part 31.17 is that disclosure is necessary in order to dispose fairly of the claim or to save costs.
>
> (3) The third requirement is the exercise of a residual discretion that the court must exercise even if the first two hurdles are overcome in deciding to order the disclosure sought. (See *Frankson v. The Home Office* [2003] 1 WLR 1952). In exercising that residual discretion the court has to consider the balance of convenience and whether the order would infringe third parties' rights of privacy and matters of that kind including the pubic interest.

22 The balancing exercise was described by the Court of Appeal in *Frankson* where the balance was between the confidence that existed in statements made to the police for the purposes of an investigation on the one hand and disclosure necessary to dispose fairly of a civil action against the Home Office in respect of alleged assaults on prisoners on the other hand. Lord Justice Scott Baker said this at paragraph 38:

> "The court has in cases such as the present a difficult balancing exercise to perform between the two conflicting public interests. For my part I would not put interviews under caution of suspects into any special category. It seems to me all who make statements to or answer questions by the police do so in the expectation that confidence will be maintained unless (1) they agree to waive it, or (2) it is overridden by some greater public interest. The weigh to be attached to the confidence will vary according to the particular circumstances with which the court is dealing. In the present case the countervailing public interest is one which in my judgment is of very great weight and one which outweighs the desirability of maintaining confidentiality. In conducting the balancing exercise the judge had clearly in mind the need to maintain the confidences so far as it was possible to do so. To that end he imposed stringent conditions on the extent and manner of disclosure. This is in my view a course which should always be followed in similar cases where the court decides that disclosure is required."

23 It is also at the third stage that I have described that the question of public interest immunity raised by the Commissioner comes into play.

24 The question of public interest immunity for documents relating to a police investigation is not commonly raised. Indeed, the parties have only been able to find one case directly on point, the *Arias* case to which I shall come in a moment. Despite that it is a recognised possibility that such an immunity might be available. It is, however, a slightly different kind of category from the more well known categories of public interest immunity like national security or the workings of central government. Mr. Buckett relies on three categories of public interest immunity described in Hollander on Documentary Evidence 10th edition 2009 as "Proper functioning of the public service", "the Police" and "Information leading to the detection of crime", but none of these is actually directly in point here.

25 I do not propose in this judgment to go through the history of the law of public interest immunity following landmark cases such as *Conway v. Rimmer* [1968] A.C. 910 and the *R. v. Chief Constable for the West Midlands Ex parte Wiley* [1995] 1 A.C. 274, but I was referred to the chapter on public interest immunity in *Hollander* including the following useful passages which I cite as briefly as I can.

> "18.02 There is a public interest in allowing material to be withheld where its disclosure would harm the nation or the administration of justice. That public interest may clash with the public interest in the administration of justice which requires the disclosure of documents so that trials may be conducted fairly. Public interest immunity is the expression used when the public interest in favour of withholding the documents from disclosure purvey it.
>
> 18.13 ... a claim made by a government department will usually be supported by a witness statement evidence from the relevant Minister or head of department identifying the documents and the grounds for withholding them in as much detail as possible. In the case of a ministerial objection, a certificate signed by the Minister may suffice. The issue will normally be raised in a criminal trial before the judge in the absence of a jury."
>
> 18.15: ... Assuming that the court is satisfied that disclosure would be likely to cause real harm to the public interest, the next step is to conduct the *Wiley* balance: is the probative value so important to a fair resolution of the issues in the action and the exigencies of the public interest in achieving a fair resolution of the issues in the action to outweigh the risk of harm outlined in the certificate?

> Although the ECtHR cases are concerned with claiming public interest immunity in criminal cases, the effect of this jurisprudence is not confined to criminal cases. In criminal cases, the attitude of the courts is clear: even if this is an appropriate case for public interest immunity, what can be done to provide the maximum possible protection for the interests of the other party? In the past, this was rarely an issue in civil cases. The court would generally merely rule as to whether the public interest immunity application was well founded. Now the approach is not merely to consider whether the immunity is well founded but also to assess how the issue can be resolved fairly. For this purpose the court will wish to consider whether the position can be resolved by ordering disclosure on terms which protect the public interest. Disclosure may be limited to solicitors and counsel. Redactions may be permitted."

I would also refer briefly to two short passages in the chapter from *Hollander* under the heading of "Non-Party Disclosure" under CPR Part 31.17 at paragraphs 4-07 to 4-08. The learned author said this, referring to Chadwick LJ's judgment in *Novartis*, to which I will come again in due course:

> "He also said that in applying the test to individual documents, it was necessary to have in mind that each document had to be read in context, so that a document which considered in isolation might appear not to satisfy the test, might do so if viewed as one of a class. There was no objection to an order for disclosure of a class of documents provided that the court was satisfied that all the documents in the class (viewed individually and as members of the class) did meet the condition, in the sense that there were no documents in the class which cannot be said to be likely to support the case of the claimant or adversely affect that of another party."

> "4.08 Thus in two separate decisions the Court of Appeal have now held that a collection of documents in the possession of a non-party can be the subject of an order under r.31.17 even though it is probable that many of them will, on consideration, prove individually to be irrelevant and even though there was no evidence to suggest which party (if any) any of the documents were likely to help. These decisions suggest that the court will be willing to make orders under CPR, r.31.17 in circumstances in which they would never have been contemplated under the RSC, and in circumstances

in which the change does not seem to have been any part of the thinking of Lord Woolf."

26 In Cross and Tapper on Evidence (12th Edn 2010) at p.488 the following is said about public interest immunity applications to materials held by the police:

> "Despite the fact that the police are not strictly to be regarded as an emanation of the state, it has been common to accord public policy immunity to some, at least, of the information and documents held by them. Information may come into the hands of the police either in the course of an internal inquiry, or from outside the police force in the ordinary course of police business. Other materials may be generated by the police themselves in either pursuit, or indeed independently".

27 In the case of *Arias & Ors. -v- Commissioner for the Metropolitan Police & Anor*. (1984) SJ (128) 784 1st August 1984, a police officer searched premises with a warrant and seized documents of a trust corporation managed by the occupier. The trustees sought return of the documents or, alternatively, copies of them. The police believed that the documents were evidence of a widespread fraud and that the documents were crucial to their investigations and that the investigation might be "hampered" and disclosure might provide "an opportunity to fabricate evidence". The police claim succeeded at first instance but was rejected in the Court of Appeal. Lord Justice May gave the leading judgment of a two judge court. I shall cite certain passages from his judgment as follows:

> "For my part I respectfully do not think that in that passage from his speech in *IRC v. Rossminster* ... which I have just read, Lord Diplock was intending to go as far as that. It seems to me quite apparent from his reference to 'other evidence' on the relevant application being 'strong enough to justify the inference that no reasonable person could have thought so' necessarily contemplates that to which Lord Morris referred in his speech in *Conway v. Rimmer* ... namely that in all these cases where there are conflicting public interests the ultimate decision as to which is to prevail must depend upon the exercise of discretion by the judge before whom the relevant application is made, that is to say by him conducting an appropriate balancing exercise of the one public interest against the other, and of the harm which would result from denying one public interest against the harm which would result from denying the other. That that is the duty of the court in these circumstances is, I think, quite apparent also from such cases as *D v. NSPCC*..."

"In that context I quote paragraphs 19 and 21 of the learned judge's judgment:

> '19. The second defendant -- that is, the detective constable -- has sworn that all the documents are crucial to his investigation and the reason why copies should not be provided he goes on to say, is because if they are disclosed at this stage there is a future real danger that his investigations may be hampered and an opportunity provided to fabricate evidence.
>
> '21. I am not satisfied that the evidence I have considered is strong enough to justify the inference that the Second Defendant has no reasonable grounds for his belief and accordingly this application for a mandatory injunction is refused.'

"It will be immediately apparent that the learned judge's reference to 'evidence' and 'inference' in paragraph 21 stems from the dictum of Lord Diplock in the *Rossminster* case which I have quoted...

"For my part I accept that in the factual context of the present case a claim to a public interest to retain documents so that criminal investigations may be properly prosecuted is at least arguable. I also accept, however, Mr. Purnell's submission that in this particular case the claim to that public interest immunity goes very much further than it has in any other case. He submits, for instance, that it would not be difficult in almost any case -- particularly any case involving documentary material -- for the prosecuting authority to come along and depose genuinely on affidavit to their fear that if the documents were disclosed the alleged offenders might seek to fabricate defences. This shows, he submits, how wide is the claim for immunity in this appeal.

"For the reasons which I have tried to give, I think at the end of the day, in these cases where there are two conflicting public interests involved and one cannot at once say that in the particular circumstances one or the other must clearly prevail, it is a question for the court to perform the sort of balancing exercise to which I have referred, setting the one public interest against the other, the benefit of which will accrue from the maintenance of the one against the benefit which will accrue from the maintenance of the other, and also the harm which will accrue from not allowing one or the other to succeed. ...

"Whilst I bear in mind what Lord Morris said in his speech in *Conway v. Rimmer* ... that one must remember that it may sometimes be difficult for a person claiming this particular public interest privilege to condescend to substantial particulars for the very reason that, if he does, he may give the whole game away at that stage, I am satisfied that the evidence in the two affidavits to which I have referred, when properly and realistically analysed, is really only speculation. What the officer says, for instance, in the most recent affidavit is that, if the information were to be made available, 'it would enable them, if so minded, to attempt to cover their tracks by the production of other documents based on the information contained in the documents which I hold.

"As I have said, I take the view that in all these cases what the court has to do is to conduct the appropriate balancing exercise. I would not wish it to be thought that in every case something more than the mere statement of belief on reasonable grounds on the part of the relevant police officer or revenue officer is required. Each of these cases, in which this conflict of public interest arises has to be decided on its own facts having regard to all the circumstances of the case as they then appear to the court. Doing the balancing exercise in the present case, however, bearing in mind the view that I take of the speculative character of the evidence proffered on behalf of the respondents, I am driven to the conclusion that the fact that these documents are the appellants' own documents, and that they are only asking for copies of them to enable the trust business to be carried on, even if they may wish to prepare their defence to any criminal prosecution which may hereafter be instituted, leads to the balance coming down clearly in favour of the appellants. ... In my judgment, to make good that claim would require substantially more cogent evidence than is available in the affidavits sworn by the detective constable in the instant case."

Lord Justice Kerr delivered a concurring judgment drawing attention also to the nature of the evidence provided by the police.

29 It is this balancing exercise, described in the cases to which I have referred, that is necessary then in dealing with my residual discretion if we reach stage 3 of the process.

30 It is as well at this stage to consider what happens once the balancing exercise has been undertaken. In this regard, Mr. Buckett cited *Powell v Chief Constable of North Wales Constabulary* 16th December 1999. He referred to a short passage from the concurring judgment of Roch LJ as follows:

> "When an issue of public interest immunity is raised, the court's first duty is to weigh the public interest in preserving the immunity against the public interest that all relevant information which might assist a court to ascertain facts relevant to an issue upon which the court is required to adjudicate should be before the court. See the passage from the speech of Lord Diplock in *D v. NSPCC* cited in Schiemann's LJ's judgment. Clearly the second public interest will be stronger in criminal cases than in civil cases because, normally, what will be at stake in criminal cases, namely the good name and liberty of the accused, will be weightier than what will be at stake in civil proceedings. No doubt there will be cases where, in order to carry out this balancing exercise, the judge will have to have disclosed to him the information for which the immunity is sought. ... Once the balance comes down in favour of preserving the immunity from disclosure, then the court has no further discretion. Once that point is reached, it becomes a rule of law that the material or information must be excluded from the case, see *Marks v. Beyfus* and the passages from that case cited by Schiemann LJ."

31 Finally, by way of introduction, Mr. Buckett cited two cases concerning the question of whether or not the court should inspect the documents for which public interest immunity is claimed.

(1) In *Wallace Smith v Deloitte* [1997] 1 WLR 257, the Court of Appeal held that if the party seeking discovery showed that the documents might be necessary for a fair disposal of the action an order should normally only be refused after the court had examined the documents and considered them in the light of the material already in the applicant's possession.

(2) In *Goodridge v Chief Constable of Hampshire* 6th March 1998, Moore-Bick J. (as he then was) noted the caveat mentioned in the *Wallace Smith* case, that the possibility that the documents may contain something useful must be real and not fanciful.

32 It was common ground between the parties that in the light of the evidence and these authorities that I have mentioned, that I should inspect copies of the documents of which disclosure was sought and I have done so.

Background chronology

33 The Claimant is a professional sports agent who acts for a number of well-known footballers and other sports personalities.

34 In August 2006 Mr. Mulcaire, the second defendant, was arrested by the Metropolitan Police.

35 On 29th November 2006 Mr. Mulcaire pleaded guilty to a number of criminal charges, including:-

(1) A count concerning a conspiracy to intercept communications with three members of the royal household, contrary to section 1(1) of the Criminal Law Act 1977.

(2) Other counts concerning intentional interception of voicemail communications contrary to section 1(1) of the Regulation of Investigatory Powers Act 2000 relating to five non-royal victims including, specifically, Mr. Andrew.

36 On 26th January 2007, Mr. Mulcaire was sentenced to six months' imprisonment by Gross J. for offences including the interception of Mr. Andrew's telephone. In addition of course, Mr. Clive Goodman, the NoTW's royal reporter, was sentenced to four months imprisonment.

37 On 23rd April 2010, Mr. Andrew's claim form was issued. Mr. Andrew's particulars of claim allege at paragraph 32 as follows:-

> "Commencing on a date unknown to the Claimant, the Defendants, acting in concert, intercepted and listened to Mr. Andrew's mobile phone voicemail messages (including messages left for and by Mr. Andrew) and kept notes, records and recordings relating thereto. To the best of the Claimant's belief the interceptions were in the period from February 2005 to August 2006 although the Claimant was put on notice that his voicemail pin code had been changed without his consent in 2004. At the trial the Claimant will seek relief in respect of all such acts. Pending disclosure from the Defendants and third parties such as the Metropolitan Police and the Information Commissioner, pending the provision of further information, and pending the provision of witness statements and cross-examination, the Claimant does not know the full extent of the Defendants' interception, recording and use of the Claimant's voicemail messages, or the identities of the persons at NGN who were involved, but in the meantime relies upon the following facts and matters in support of this plea."

There are then set out some 15 sub-paragraphs detailing the evidence upon which Mr. Andrew intends to rely in support of his main allegation of conspiracy that I have dealt with.

At paragraphs 33 to 38 Mr. Andrew pleads as follows:

> "33. Further NGN and News of the World carried out, procured and conspired in the aforesaid acts of interception of Mr. Andrew's and his clients' mobile phone voicemail messages (including messages left for and by Mr. Andrew) intending to use and using the information thereby obtained for the following purposes:
>
> "33.1 The investigation and publication of stories based upon using or including such information; and
>
> "33.2 The investigation and publication of stories discovered as a consequence of or corroborated by such information.
> In support of this plea the Claimant will rely upon the nature of the stories published by the News of the World, the fact of and amount of payments to Mr. Mulcaire for the information, the nature of Mr. Andrew's business, the knowledge of the type of well-known persons who called Mr. Andrew and the type of information discussed by them, the potential commercial value of such information to the News of the World, and the absence of any other reasons for intercepting and paying to intercept Mr. Andrew's voicemail message.
>
> "34. The interception, and the subsequent use and/or threatened uses of the private information and confidential information in or associated with Mr. Andrew's mobile phone voicemail messages were detrimental to Mr. Andrew...
>
> "35. By reason of the matters aforesaid NGN has misused and threatened to misuse Mr. Andrew's confidential information ...
>
> "37. In the premises the Defendants and each of them have breached the equitable duty of confidence owed to the Claimant.
>
> "38. Further or alternatively the Defendants and each of them have invaded the Claimant's privacy and misused the Claimant's private information.

38 On 22nd June 2010, NGN filed its defence broadly not admitting the allegations of breach of confidence and acting in concert with Mr. Mulcaire. Paragraph 24.4 of NGN's defence read as follows:

"In relation to paragraph 32 it is admitted and averred that:
24.4 No articles concerning the Claimant were published in the News of the World during 2006. If, which is not admitted, any information was obtained by Mr. Mulcaire as a result of accessing the Claimant's mobile phone and voicemail message service, it is not admitted (if it is the Claimant's case) that the First Defendant received and/or published any information so obtained."

39 Thereafter, on a date unknown, Mr. Mulcaire filed his defence. It is sufficient for me to allude to paragraph 22 which pleads as follows:

"It is admitted that the Second Defendant accessed or attempted to access the Claimant's mobile phone voice messages on 21 occasions between 4 March 2006 and 7 June 2006, as set out in the table at paragraph 32.10. The Second Defendant pleaded guilty in relation to charges based on these activities. No further admissions are made in respect of any other alleged incident."

40 On 6th December 2010, I made an order requiring Mr. Mulcaire to answer certain Part 18 requests to which I shall come in a moment.

41 Also on 6th December 2010, I made an order requiring the Commissioner to make disclosure of six classes of documents by 4 pm on 12th January 2011. I can summarise the classes of documents to which I referred as follows:

(1) Telephone records used by Mr. Mulcaire relating to the accessing of Mr. Andrew's voicemails.
(2) Documents evidencing communications between Mr. Mulcaire and another person concerning Mr. Mulcaire's interception activities in relation to Mr. Andrew's voicemails.
(3) Documents evidencing communications between Mr. Mulcaire and employees of NGN concerning information about the claimant.
(4) Documents concerning payments for information made by NGN to Mr. Mulcaire.
(5) Transcripts of the Claimants' voicemail messages obtained from Mr. Mulcaire
(6) Documents found during the Commissioner's investigation referring to the Claimant or his mobile phone.

42 On 12th January 2011, Ms Sara Royan of the Metropolitan Police's Directorate of Legal Services wrote to JMW solicitors, then acting for Mr. Andrew, enclosing documents in response to categories 1 and 6 of the order dated 6th December 2010, and saying that there were no such documents existing in relation to categories 2-5 of the order.

(1) They disclosed redacted call data for two landline numbers used by Mr. Mulcaire: 020-8641-3765 and 020-8641-2228. They disclosed call data for the number ending 3765 from 24th January to 17th February 2006 and data for the number ending 2228 from 1st December 2005 to 15th June 2006, and from 1st June 2006 to 24th August 2006.
(2) The data disclosed shows, as Mr. Mulcaire has admitted, that he made 21 calls to Mr. Andrew's direct dial voicemail, at least one lasting well over three minutes.

43 On 17th January 2011 Mr. Mulcaire provided further information to the claimant indicating that he had supplied the information from Mr. Andrew's voicemail to the news desk at the NoTW, and that he was requested to intercept the claimant's mobile phone voicemail by Mr. Ian Edmondson.

44 On 25th January 2011, NGN dismissed Mr. Ian Edmondson, the News Editor of the NoTW in connection with the alleged phone interception activities.

45 On 26th January 2011, the Commissioner says that he received new information from NGN relating to the allegations of telephone interception in 2005/2006. On the same day, the Commissioner launched a major new investigation codenamed "Operation Weeting" under the direction of Deputy Assistant Commissioner Sue Akers QPM.

46 On 27th Jan 2011, Mr. Mulcaire gave further further information, having omitted to answer two specific questions.

47 On 11th February 2011 Farrer & Co, solicitors for NGN, refused to give any further information concerning who worked at the news desk. An application pursuing that information was, I was told, listed for today but has now been adjourned by consent.

48 On 1st March 2011, Ms Royan for the Commissioner disclosed unredacted versions of the pages from Mr. Mulcaire's notebooks that mentioned Mr. Andrew. In particular, she disclosed unredacted versions of the documents that have been described as documents B, C, E and F, but not of the pages either side in the notebooks. She also disclosed an un-redacted version of the email exchange at Document D that I have already described, concealing only five mentions of one party to the email, who is said by Mr. Buckett to be a person of particular interest to the Police investigation, in other words a suspect. These unredactions were produced perhaps with the pressure of this application pending, and because Mr. Andrew's solicitors asked specific questions about the pages suggesting to the Commissioner that he had redacted the names of a well known client of Mr. Andrew and his then girlfriend, which Mr. Andrew named. (That is the girlfriend of the client, not the girlfriend of Mr. Andrew). It turned

out that Mr. Andrew's deductions were correct, a fact upon which Mr. Reed relies as demonstrating that the redaction policy operated by the Commissioner has been unreasonably broad.

49 On 10th March 2011, Mr. Mulcaire provided yet further information, this time saying that he had provided the intercepted messages, not to the people on the NoTW news desk, whom he could not recall (which is what he had said previously) but that he had handed the messages to Mr. Ian Edmondson at the news desk. Mr. Reed relies heavily on this change of position as being evidence that more disclosure is needed to resolve precisely with whom Mr. Mulcaire was working in relation to the interception of Mr. Andrew's telephone.

Redactions

50 As I have already indicated, on 1st March 2011 I gave judgment on similar applications for disclosure against the Commissioner made by three other claimants, Messrs. Galloway, Gascoigne and McGuire. I was asked by counsel for the claimants and by the Commissioner to give guidance as to the appropriate level of redactions, and I did so in the following terms in three areas:

> "(1) The first is the question of telephone numbers. In many cases Mr. Mulcaire's notebooks record a telephone number without making it entirely clear whether it is a telephone number that he has obtained from some voicemail box, or whether it is a telephone number of somebody else. The suggestion made by Mr. Reed, which is one that I think is very sensible, is that, where the Metropolitan Police consider that a telephone number is likely to be one that has been extracted from a voicemail box belonging to a claimant, the last five digits only should be redacted. This will enable the claimant to consider whether the telephone number is likely to be one of somebody who has telephoned him. There can then be further discussion about whether the full telephone number should be released in due course. That would not be costly, because it would not involve looking at more than the page in question.
>
> (2) In addition, the question arises as to whether names that are contained in the notebooks should be redacted. It seems to me that the names of people who may be employees of the News of the World should not be redacted when disclosure is made. Nor should the names of people associated with the claimants be redacted, because it is likely that these are people who may have telephoned the claimants and whose messages may have been intercepted.

(3) As regards codes and account numbers and passwords and direct-dial voicemail numbers, these, it seems to me, can and should properly be redacted where they do not relate directly to the claimant, but it would be useful if the Metropolitan Police were to make clear when redacting these numbers what they were redacting."

51 In this case both sides have sought further and, in some cases, amended guidance in the light of significant further argument that has been advanced. In particular, much of the guidance I gave in Mr. Galloway's case (albeit only two or three weeks ago) was common ground. Since then, in this case, Mr. Reed has changed his position and seeks guidance so as to allow less redaction.

Evidence of Miss Harris for the claimant

52 Miss Harris' statement includes the following on behalf of Mr. Andrew at paragraphs 32 to 34:

"32. This pattern of calling was explained by Mr. Perry QC to Mr. Justice Gross (continuing directly from the extract quoted above) ...

'My Lord, an overall analysis of the calls made by Mr. Mulcaire to voice mailboxes to two members of the royal household shows a pattern of calls consistent with, first, a discussion taking place between Mr. Mulcaire and Mr. Goodman; secondly, Mr. Mulcaire calling the network operator, the purpose of which was to obtain by deception the private access codes of the relevant mailboxes; third, Mr. Mulcaire calling the mailboxes; and, finally, Mr. Mulcaire calling Mr. Goodman, no doubt to report on what he had discovered and to pass on private access codes so that Mr. Goodman could access the mailboxes himself. As I have already stated, an analysis shows that Mr. Goodman also accessed the mailboxes as well as Mr. Mulcaire.'

"33. It is this 'overall analysis' that the Claimant is, at present, unable to do because all the phone numbers have been redacted, other than the calls to the Claimant's phone. Of critical importance are likely to be the calls preceding, and the calls following, each call to the Claimant's phone. Given that one appears to be looking at a 'pattern' and an 'overall analysis', it is plainly far too narrow to simply look at the preceding number and the following number. The reality is that much more disclosure is needed in order to carry out a robust and fair analysis of the call data in respect of the Claimant.

"34. A cursory glance at the 'duration' column in the call data shows that Mr. Mulcaire was making a very large number of calls that were lasting just a few seconds. Given that it seems that Mr. Mulcaire was intercepting the voicemails of many people, of which the Claimant was just one, I believe that many of these calls were reasonably likely to be Mr. Mulcaire accessing other voicemails. Of course, assuming that Mr. Mulcaire would attack one particular group at a time, there is a reasonable chance that the intercepts surrounding the calls to Mr. Andrew's voicemail were concerned with people with whom Mr. Andrew had dealings, such as Mr. Andrew's friends, relations and clients. Of course, until I have seen the actual call data, I am only able to try to draw inferences based upon what has been said about Mr. Mulcaire's practices. The call data is necessary to do a proper analysis. In the absence of this call data, the trial judge will be left to draw inferences as to what calls were made, in circumstances where the trial judge could have actual knowledge as to what calls were made (because the data exists)."

Evidence of Ms. Royan for the Commissioner

53 Ms. Royan's statement includes the following paragraphs concerning the claim for public interest immunity:

"5. In response to this application the Respondent wishes to draw the Court's attention to:
the new criminal investigation into phone hacking and the serious and negative effect that certain disclosure may have on this investigation if made,

"6. On the 26th January 2011 the Respondent received significant new information from News International relating to allegations of phone hacking at the *News of the World* in 2005/2006. As a result, the Respondent launched a new investigation to consider this material and into criminal conduct arising out of phone hacking activities by journalists at the News of the World.

"10. The Respondent is anxious not to prejudice the on-going criminal investigation. The Respondent would not wish to disclose information that could prejudice the prosecution of any potential Defendant or hamper his ability to bring any potential offenders to justice. The Respondent would, also, wish to avoid circumstances whereby any disclosure made in civil proceedings might '*tip off*' a potential Defendant before the police have had an opportunity to

either carry out a search of such a person's address or arrest and question that person without forewarning. The element of surprise may be valuable and will ensure potential subjects cannot collude and/or destroy incriminating evidence even this long after alleged phone hacking activities and should therefore not be discounted. To a large extent, the evidence that may exist as to whether individuals were involved in phone hacking will be in document from, such as phone records, e-mails, computer records and the like and the Respondent would wish to have the best opportunity of preserving that evidence by carrying out an unencumbered criminal investigation.

"20. It is the Respondent's case that disclosure of these telephone numbers will undermine the on going criminal investigation. The Claimant wants the '*full extent of the phone records*' and acknowledges in paragraph 25 of his solicitor's statement that the call data might relate to '*all potential suspects*'. It is believed by Operation Weeting that this data may well identify persons suspected of being involved in a criminal conspiracy to intercept voice messages. To reveal the data will compromise the police investigation and may lead to suspects being forewarned. Potential evidence could be lost. The court is being asked to strike a balance between the competing interests of preserving the integrity of the ongoing criminal investigation and considering the importance to the Claimant of disclosure of these pages at this time in unredacted form. In this instance, the Respondent asks the court not to order disclosure of the pages in an unredacted manner because it is likely to affect his ability to investigate and pursue potential Defendants in this case.

"21. The second reason for redacting these pages is because revealing the other telephone numbers will compromise the privacy and confidentiality of the owners of the telephone numbers, whoever they belong to ...

"28. It will be for the court to decide whether the Claimant shows an entitlement to the remaining 37 pages (in other words the entire red Buroclass notebook) or not. Again, the Respondent is concerned about the impact this could have on their ongoing investigation and disclosure of the identity of third parties ... where unconnected to the Claimant...

In relation to the email at document D:
"29. The respondent has redacted the identity of the sender at the top of the e-mail chain on page 30 as he is a person of interest to the

current criminal investigation that the Respondent is undertaking ... the respondent asks the Court not to order the unredacted identity of this person as he is very relevant to the current investigation."

The relevance of the documents sought

54 The question here is whether the documents are likely to or "may well" support the claimant's case or damage the defendants' case. At this stage, I am not balancing the public interest in proper resolution of civil litigation against privacy rights or the public interest in criminal investigations being properly undertaken. I am simply deciding on the relevance of the documents in question.

55 I shall deal with this primary question in the four categories I have already set out.

(1) Un-redacted call data for Mr. Mulcaire's land lines.
(2) Mr. Mulcaire's contact lists and telephone contacts.
(3) Un-redacted copies of the 2 pages either side of any mention of Mr. Andrew in Mr. Mulcaire's notebooks.
(4) Un-redacted copies of the chain of emails at document D uncovering the name of the party to them.

Category 1: Un-redacted call data for Mr. Mulcaire's land lines

57 As I have already set out, Mr. Andrew's case theory is that advanced by the prosecution in the trial of Messrs Goodman and Mulcaire. It is said that the call records will likely show that a journalist from NoTW called Mr. Mulcaire to ask him to gain access to Mr. Andrew's voicemails, and that Mr. Mulcaire made calls for that purpose by first calling the telephone company to change the PIN number, a process known as "blagging", and then calling the DDN number to intercept Mr. Andrew's messages. Thereafter, Mr. Mulcaire, so the theory goes, will have called the relevant journalist back with the results, and passed on the DDN and PIN details to enable the journalists on some occasions to listen to the messages of interest himself or herself.

58 This process could obviously be revealed by the telephone records of Mr. Mulcaire, provided the relevant numbers were unredacted and could then be traced. It seems obvious therefore that the unredaction of the numbers called by Mr. Mulcaire shortly before and shortly after the calls to Mr. Andrew's voicemail box would be likely to assist the claimant's case.

59 Moreover, as Mr. Reed said in argument, the calls from Mr. Mulcaire's mobile phone and the incoming calls to Mr. Mulcaire's landlines would also be likely to assist in demonstrating whether the pattern or modus operandi alleged occurred

and how frequently. I shall deal with the second part of this application concerning these records separately in due course.

60 But I have no doubt that all calls inwards and outwards on days when Mr. Mulcaire called Mr. Andrew's DDN would fall within the category of relevance required by Part 31.17. Indeed one might go so far as to say that without them it will be extremely difficult for the claimant to prove his case, that there was an effective interception of his phone lines at the behest of NoTW reporters, and then reports made of the interceptions to those reporters.

61 I limit the category of relevance to days on which interception calls were made, since generally the calls fall in the middle of a day, and seem to have calls both before and after them on the same day. It will be open, if these documents pass the other tests, for the claimant to seek in a particular case some calls on the previous or the following day for specific reasons.

Category 2: Mr. Mulcaire's contact lists and telephone contacts (items 1.6, 1.11 and 1.12)

62 Logically this follows from the phone records. I have inspected the contact list referred to at paragraph 1.6, which is the Buroclass notebook, which contained contact details and phone details for Mr. Andrew on document C, now disclosed unredacted. It appears to contain, though I am by no means certain this is all it contains, names of victims or potential victims of phone interception together with numeric details. Plainly in checking the numbers that concern Mr. Andrew, names and details of other victims will not be crucial. It is very unlikely that, in a single action brought by a single victim, it will be possible for that claimant victim to identify each of the numerous calls that Mr. Mulcaire made even on the day that an interception took place.

63 The names and numbers in the Buroclass notebook will only truly assist Mr. Andrew insofar as they are not the names of persons who are victims themselves. There may well be such names in the notebook, and I find that insofar as the notebook contains names of persons other than persons reasonably believed to be victims or intended victims themselves, the notebook would be likely to assist the claimant's case. I shall deal later with the protection of private confidences.

64 Likewise, other contact lists, if any exist, as described in items 1.11 and 1.12 would undoubtedly assist the claimants in identifying telephone numbers that Mr. Mulcaire was using before and after interceptions. They would, therefore, be likely to assist the claimant's case.

65 Subject to the caveats that I have entered, these categories of documents satisfy the first test of relevance.

Category 3: Un-redacted copies of the 2 pages either side of any mention of Mr. Andrew

66 I have looked carefully at the 3 extracts from Mr. Mulcaire's notebook numbered documents B, E and F, and the two pages either side that have been shown to me. Pages B, E and F have now been voluntarily unredacted by the Police, as I have said.

67 It seems to me that there is no evidence whatsoever that adjoining pages in Mr. Mulcaire's notebooks had anything to do with Mr. Andrew's case. The evidence is rather the reverse, namely that Mr. Mulcaire was engaged in random noting of the tasks he was undertaking.

68 Mr. Reed's request for the entirety of the notebooks would, as I have already indicated, raise different questions as to whether a systematic enquiry could be made from the whole of these books into Mr. Mulcaire's activities over an extended period. The two pages either side will not assist Mr. Andrew to undertake such a systematic and detailed review.

69 I have taken into account the desire of Mr. Andrew to date the entries for his interception. But I do not think that, even though the pages either side do occasionally mention a date, they will by themselves assist in this process. If such a process were to be undertaken it would require the full notebooks which Mr. Reed has not at the moment sought.

70 I therefore find that the two pages either side the three mentions of Mr. Andrew in the notebooks would not, anyway by themselves, be likely to advance his case or damage the case of the defendants.

Category 4: The email at document D

71 There is no doubt that the identity of the person with whom Mr. Mulcaire was in email communication about Mr. Andrew and his clients in April 2006 when interceptions were known to be taking place would be likely to assist Mr. Andrew's case.

72 The only reason that the Commissioner has concealed the name of the person concerned is because he or she is said to be a suspect. The first stage is satisfied in this case, therefore. The question will be where the balance of public interest lies, to which I will turn in a moment.

The second requirement under Part 31.17: Is disclosure necessary in order to dispose fairly of the claim or to save costs?

73 This requirement seems to me to be largely, but not wholly, to follow relevance. I need to have regard here to the availability to the claimant of similar documentation or information from other sources.

74 This is a complex area. It can be summarised as follows:-

(1) So far, the disclosure provided by NGN has been exiguous. As I commented in the *Gray* case in which I gave judgment on the privilege against self-incrimination on 25th February 2011:

> "In addition, NGN's disclosure is at the moment somewhat exiguous. I have no evidence as to whether there are justifiable reasons for that, but NGN has, as yet, disclosed none of its telephone records or electronic documents, which might be expected to show whether its journalists were making use of intercepted information emanating via Mr. Mulcaire, from Mr. Gray's voicemails."

(2) The position seems to be the same in Mr. Andrew's case save that Mr. Andrew has an extant application for additional disclosure from NGN.

(3) The documentation provided by Mr. Mulcaire himself has also been limited, but understandably so since he was the subject of a forfeiture order made by Gross J. at the end of his criminal trial.

(4) Mr. Reed says, and I accept, that he could make his own applications for phone records from Mr. Mulcaire's phone companies, but that would be problematic because such companies routinely destroy such records after 12 months. It may be that the records will have been retained because of the police investigation in 2006, but all that is, for now, speculation.

(5) Though it is perhaps regrettable, it appears therefore that the records in the possession of the Commissioner are a very important piece in the jigsaw that the claimant is seeking to put together.

75 It is for these reasons that I am satisfied that this second requirement, namely that the documents are required for the purpose of disposing fairly of the claim and for saving costs, is satisfied in the case of the documents that I have held to be relevant. It would be costly and disproportionate to expect the claimant to make numerous third party applications for disclosure against telephone companies and others when the documents are already gathered together in possession of the Commissioner. Moreover, the disclosure that may be expected from NGN will be of a different character and will not replace the material that I am now considering that is held by the Commissioner.

The residual discretion

76 As I have already said, the residual discretion brings into play, amongst other more general factors, two specific matters that are peculiarly important here, namely:
(1) The infringement of third party's rights of privacy
(2) The question of public interest immunity.

77 I will deal first with public interest immunity.

Public interest immunity

78 As the Court of Appeal's judgment in *Arias* make clear, very cogent evidence is required if documents are to be withheld on the ground that they would hamper a police investigation. That is not to say that the belief of the relevant investigating officer to that effect is to be ignored. It is not.

79 In this case, Mr. Reed complained that the Commissioner had not even produced his own evidence, evidence from the relevant Minister or evidence from the investigating officer. I do not think that is crucial in itself. The evidence is from a properly authorised person, Ms. Royan, speaking with the authority of the Commissioner. What is more important is the content of the evidence we do have, the core of which I have set out above when I cited from Ms. Royan's statement.

80 Ms. Royan's assertion is that she believes that disclosure of the materials sought may tip off potential defendants before the police have had the opportunity to search their premises and arrest them. She says the element of surprise will be valuable, and will "ensure potential suspects cannot collude and/or destroy incriminating evidence even this long after the alleged phone hacking activities and should not therefore be discounted". She says that the Police would wish to have the best opportunity of preserving the documentary evidence that may exist by carrying out an unencumbered criminal investigation. She is concerned that the disclosure of this information may allow the suspects some defence in any forthcoming criminal proceedings.

81 The problem with these arguments, says Mr. Reed, is that the horse has already bolted. The names of some five NoTW journalists allegedly involved in phone interception activities have been mentioned in court already in this case. They have been published in repeated press articles and have been broadcast as recently as Monday night on the eve of this hearing in the BBC's Panorama Programme. The idea that the journalists at the NoTW who may be suspects in

this case, say Mr. Reed, do not know who they are and have not had ample opportunity to do whatever they would wish is "fanciful".

82 Mr. Reed may have put his case a little high. I accept what Ms. Royan says, namely that even a long time after the event, some documents may well remain available. But as regards the idea that there may be suspects of the police investigation who do not know they are being investigated and may, therefore, be surprised when they are approached by the police, I am afraid I cannot accept that that is likely. These 14 civil cases, and others that are in the pipeline, have been conducted in a blaze of publicity, and they followed a Parliamentary investigation and Operation Motorman. The ground has been well raked over in the media and in public court hearings.

83 In regard to the claimed public interest immunity, I have ultimately to weigh up the public interest in protecting the police investigation against the public interest in disclosure to enable a fair and expeditious resolution of these proceedings. It is useful to look at both sides of the balance.

84 On the police investigation side, I have already said that whilst I understand the desire to keep the names of suspects secret, I doubt that any of them can truly be in doubt about who they are.

85 Moreover, I do not accept that revealing the documents I have indicated to be relevant would have the effect of tipping off that is feared. The documents are simply phone records and address books which may show the names of NoTW journalists and others with whom Mr. Mulcaire was in contact. This in itself will not tip anyone off since the claimant will be bound by an obligation only to use the information for the purposes of the litigation. And even if the information is used to approach witnesses, those persons are hardly likely to become more agitated by the prospect of becoming suspects in the police investigation than they already have become as a result of the media coverage. I am inclined also to think that the release of hitherto unrevealed names of suspects can be protected by an express order preventing the solicitors for the claimant revealing those names to his client or to any third party without the permission of the court, and directing that these persons are also referred to in court by an agreed lettering code.

86 With this precaution in place, I do not think the public interest in favour of the privilege weighs very heavily. One might say, perhaps ungenerously, that the police have had many years to investigate these matters. In some measure, the existence of these highly publicised civil claims sparked the renewed interest of the police in the then closed investigation.

87 I should say also that the Commissioner has not given me any confidence that his desire to protect the material for “3 months” is a reliable estimate of the time

it may take to complete his work. He has given no details of why three months is necessary or why he cannot move against the suspects in a different time frame.

88 In addition, I take into account that the material itself is not of a kind, like in *Frankson*, which was provided to the police in the expectation of confidence. It was seized from Mr. Mulcaire as the fruits of his crimes. Whilst the material contains information confidential to numerous third parties, it is not information that the public interest requires inherently to be protected. If the material sought were materials prepared by the police for their investigations (for example, their own analysis of the phone records) that would be a different matter altogether, but at the moment such material is not sought.

89 On the other side of the balance, this case and the other cases cannot be fairly tried without the necessary information being provided to enable the court fairly to evaluate the claims brought against NGN and Mr. Mulcaire.

90 The documents that the claimant seek go to the heart of his case, that NGN and Mr. Mulcaire conspired to intercept his phone and use his confidential information for the purposes of journalism. This case is already five years old, in that we are talking about phone interceptions in early 2006. Memories fade fast, and the case cannot be delayed indefinitely whilst the police investigation proceeds. There is much work to be done by the claimant to get his case in order (just as there is much work to be done by the police to get their renewed investigation in order).

91 There is presently a trial in this case fixed for January 2012. If I were to decline or adjourn this application, that trial date would be jeopardised. Such delay would not be in the interests of justice. I shall now be case managing all the phone interception cases and shall be keen to see them resolved speedily and in an orderly proportionate and cost effective manner. I simply do not think that waiting for some months for the police investigation to take its course is a reasonable option, bearing in mind the relatively flimsy grounds put forward on behalf of the Commissioner and the publicity that these cases have already been accorded.

92 All in all, whilst I accept that the Commissioner would rather undertake his investigation in the calm of the knowledge that Mr. Andrew's claims and the other 13 claims were not proceeding, and that the documents the police hold were not being sought in those actions, I do not think that such a situation is now reality. The police only re-started their investigation in response to the publicity and new documents emanating from NGN. They cannot now prevent the public being interested in the matters they are investigating, nor the victims

of phone interceptions that took place now five to six years ago wishing to pursue whatever claims they may properly have with expedition and efficiency.

93 It is for these reasons that I was unattracted by delaying this application. These matters are old. The Commissioner investigated them a long time ago, and is now doing so again. But in my judgment, no sufficiently strong public interest has been demonstrated to show that the new investigation will be significantly hampered if the disclosure sought is provided.

Third party confidence

94 The police have been assiduous in seeking to protect third party confidences in giving the disclosures they have. Mr. Reed, indeed, complains that they have been over zealous in this regard; even to the extent of redacting Mr. Andrew's own clients from the notebooks, as I have indicated. But I do not need to comment on the history; I only need to decide how matters should be resolved for the future.

95 It seems to me under this head that I have to balance the interests of third parties to privacy against the public interest in disclosure so that the actions can be fairly tried, as Eady J. did in the *Kelly Hoppen* case to which I was referred.

96 It is useful to consider the documents again in this regard under the categories that I have mentioned before.

Category 1: Un-redacted call data for Mr. Mulcaire's land lines (Items 1.1-1.3)

97 The question here is whether unredacted phone numbers should be disclosed. In the first instance, the numbers were redacted on the call data emanating from Mr. Mulcaire's land lines.

98 They will need to be disclosed however for the purpose of the analysis I have already described, namely in order to enable the claimant to ascertain whether NoTW reporters called Mr. Mulcaire to commission the interception and were then contacted thereafter with the information obtained.

99 Previously, I suggested that numbers that did not belong to another victim in the notebooks should have the last five digits redacted so that the claimant could see if he possibly recognised the numbers before asking for further details. That would not be satisfactory here, as the investigation requires the claimant to ascertain the identity of the phone numbers.

100 It seems to me that the call data should now be revealed unredacted for the days on which interceptions were undertaken, as I have already indicated.

101 The question is how to protect third party confidences. I suggest that the police should be permitted to redact the DDN or phone numbers of any other victim of interception of which they are aware. This should protect the bulk of confidences. As for the other numbers which may be revealed, they may be of NoTW staff or of third parties, but I see no reason to protect these beyond the known victims as I have indicated.

102 All the telephone numbers disclosed should, however, be subject to an embargo on the solicitors and their client disclosing to third parties, save for the purposes of specific investigations aimed at advancing the case.

Category 2: Mr. Mulcaire's Buroclass notebook (document C), contact lists and telephone contacts (items 1.6, 1.11 and 1.12).

103 I have already indicated that the names and all numbers of those persons thought by the Commissioner to be victims or intended victims of interception should be redacted from the contacts list (except for those victims admitted to be such in the criminal proceedings or elsewhere).

104 The other names and numbers are unlikely to require such a high level of protection. It seems to me that it would be sufficient for any passwords and PIN numbers and account numbers to be redacted (even though these other persons may well not have such numbers shown) provided the police show what category of number or code has been redacted in each case.

Category 3: Two pages either side any mention of Mr. Andrew in Mr. Mulcaire's notebooks (pages B, E & F).

105 I will not be ordering disclosure of these documents, so there is no need to deal with the privacy balance.

Catgeory 4: Un-redacted copies of a chain of emails known as document D

106 I have already indicated that there should be special protection for the names of relevant NoTW journalists and staff to protect, so far as possible, the police investigation. The express order I have suggested will be sufficient I think to protect the personal confidence of the NoTW personnel: the order will prevent the solicitors for the claimant revealing those names (or associated numbers) to their client or to any third party without the permission of the court, and directing that these persons are always referred to in court by an agreed coded lettering.

The second part of the application

107 As I have already indicated, the second part of the application concerns a request that the Commissioner should notify the claimant whether he has in its possession:-
(1) Call data concerning incoming calls made to Mr. Mulcaire's two relevant lines and the full period of such records.
(2) Call data concerning incoming and outgoing calls from any other numbers, the full period of the records and the owner of the number in question.

108 As I have said, Mr. Buckett has already told the claimant that the Commissioner has one page of records concerning para.2.1, but he has not indicated the period of that record.

109 Mr. Buckett submits that, even before coming to the question of jurisdiction, the second claim is hopelessly wide. It covers anybody's phone at all, whether related to Mr. Mulcaire or telephone interception or not. I imagine, however, that Mr. Reed meant to limit his claim to data held in relation to the phone interception investigation.

110 I would say that, even with that limitation, this request is too wide. I propose to consider it as if it was limited to records concerning calls on lines used for making calls by or to Mr. Mulcaire.

111 Before coming then to the question of the appropriateness of the order sought, I should deal with the jurisdiction to make the order. Part 31.17 relates only to orders made against non-parties for disclosure of documents or classes of documents. It does not expressly permit the disclosure of information about documents. Indeed, many of the cases to which I have but briefly referred debate at some length whether classes of documents can be ordered to be disclosed even though it is clear that many of the documents in the class will not themselves individually be relevant to the claim (see e.g. *Three Rivers* and *American Home Products v Novartis*).

112 Mr. Reed submits that there are two possibilities. Either (a) there is an ancillary jurisdiction to Part 31.17 allowing a party to interrogate a non-party as to what documents it holds, or at least to allow the court to make an order that a non-party say whether it holds specific classes of documents, or (b) that the claimant can apply for these classes and wait to be told in response whether the police have them.

113 It seems to me that the position can only be resolved by reference to the rules. The cases I have mentioned debate at length whether classes of documents, some of which may well be relevant, can be disclosed under Part 31.17. If the

answer to that question were that the court could order the non-party to say what he had and what was relevant, that would have been a quick answer to those debates. If the parties had consented to a pragmatic solution, that is fine, but the Commissioner has not consented here, probably because he does not want to trawl through what may be thousands of documents looking to identify precisely what they are.

114 Moreover, the documents in question here are not necessarily ones taken from Mr. Mulcaire. They are likely to be the fruits of the police's own ongoing investigations as part of Operation Weeting. It seems to me, therefore, that one should be cautious before burdening the police with a massive amount of additional work in relation to the documentation they may recently have obtained for the purposes of an ongoing criminal investigation.

115 I propose then to consider the matter as if it were an application for these documents under Part 31.17, since it will save time and money for me to do so. If Mr. Buckett wants a formal application issued, he can ask for it.

116 The first category of incoming calls to Mr. Mulcaire's two known numbers is narrow. It is obviously potentially relevant, if, but only if, it relates to days on which interceptions were made of Mr. Andrew's voicemail. I propose to order that unredacted copies of any call records that show incoming calls to Mr. Mulcaire's phones on dates upon which interceptions of Mr. Andrew's voicemails are known to have been made or attempted. The police will only need to look at one page for this purpose. I have considered the confidentiality terms on which the Commissioner received this document, but since it is (if of the relevant date) likely to be of direct and important relevance to the fair trial of the action, I think the balance lies in favour of its disclosure.

117 The second category sought is very wide indeed even if restricted in the way I have already suggested. Moreover, I have no reason to suppose that, in making disclosure of call records the police have not complied properly with my 6th December 2010 order that required disclosure of the following four categories, as previously summarised:

(1) Telephone records used by Mr. Mulcaire relating to the accessing of Mr. Andrew's voicemails.
(2) Documents evidencing communications between Mr. Mulcaire and another person concerning Mr. Mulcaire's interception activities in relation to Mr. Andrew's voicemails.
(3) Documents evidencing communications between Mr. Mulcaire and employees of NGN concerning information about the claimant.
(6) Documents found during the Commissioner's investigation referring to the claimant or his mobile phone.

118 If the Commissioner, therefore, had relevant records of Mr. Mulcaire's mobile number, they would presumably have said so in response to categories (1) and (6) at least. They obviously did not at the time they complied with my first order. Moreover, the Commissioner has reviewed his compliance with my order in this and other cases. If he has obtained more records recently in the course of his ongoing investigation, that disclose hitherto unknown interception activities, I would expect him to have shared that information with the victim, Mr. Andrew, as he has done in the past, and I would urge him to do in the future.

119 In the meantime, I do not think it can be said that the wide order sought by Mr. Reed in paragraph 2.2, even if narrowed as I have suggested, is likely to assist his case. It is certainly not clear that the entire class would do so. Rather, it is likely that the bulk of the entire class would be irrelevant, and there is no case for suggesting that, even viewed as a class, the documents meet the condition of relevance, in all the circumstances including the fact that disclosure has already been made under the 6th December order.

120 I would anyway only have ordered disclosure of records of calls made on days when interception took place, but for the reasons I have given such an order is not appropriate in response to the present application.

121 I do not need to consider the second and third stages in relation to the application under paragraph 2.2.

<u>How should private interests be protected</u>?

122 I have already indicated some of the ways in which privacy of the material that must now be disclosed should be protected. I should, however, deal specifically with Mr. Buckett's proposals for guidance in this regard and with the guidance I previously gave.

123 In relation to Mr. Mulcaire's handwritten documents, the Commissioner suggested a regime of redactions, with which I largely, but not wholly, agree.

124 I will give the following guidance, which I hope is consistent with what I have indicated above. If it is not I will hear counsel so as to make sure that it becomes so.

125 In relation to Mr. Mulcaire's handwritten notes, the Commissioner will normally disclose pages that mention, refer or relate to the claimant. In relation to these pages ordered to be disclosed (but not to contact lists):-

(1) The Commissioner should not redact:-
    (a) The claimant's name (in whole or in part).
    (b) The claimant's nickname (if known).

(c) The claimant's address.
(d) The claimant's telephone numbers, DDN, passwords, PIN code or account numbers.
(e) Any free text, including any dates.
(f) Names of employees of the NoTW.
(g) Names of any people who the respondent considers to be associated with the claimant (e.g. spouse, boy- or girl-friend, agent, client, partner etc).
(h) Names of people who are on the same page as the claimant, unless there is a clear division across the page written by Mr. Mulcaire.

(2) The Commissioner shall redact (specifying the nature of that redaction, using shorthand):-
(a) The addresses of other people on the same page by taking out the street number and second part of the post code only. So, "31 Acacia Avenue, London, SW3 5TC" would read "XX Acacia Avenue, London, SW3 XXX"
(b) The phone numbers and DDN of any persons believed by the Commissioner to be a victim or intended victim of phone hacking.
(c) The PIN codes, passwords, account numbers of individuals other than the claimant.

126 As far as contact lists are concerned, and indeed any other list of names in the hand-written notes, the Commissioner should redact:-
(1) The names, phone numbers, DDN, PIN, password and account numbers and addresses of any person believed by the Commissioner to be a victim or intended victim of phone hacking, apart from:-
(a) The claimant and persons connected with him, and
(b) Victims that have been admitted as being victims in the criminal proceedings or elsewhere.

(2) The addresses of other people by taking out the street number and second part of the post code only.

(3) The PIN codes, passwords, and account numbers of any other people (apart from the claimant and people associated with him).

(4) The phone numbers and DDN numbers of victims that have been admitted as being victims in the criminal proceedings or elsewhere.

127 In relation to unredacted call data that has been ordered to be disclosed (for the days of known interceptions of the claimant's voicemail box) the Commissioner may redact the DDN or phone numbers of any other victim or intended victim of

interception of which they are aware (apart from the claimant and people associated with him).

128 I should make clear, as requested by Mr. Buckett, that unknown numbers in the handwritten notes and contact details that are not believed to relate to other victims or intended victims should not be redacted. Otherwise the linkages that the claimant seeks legitimately to draw with NGN contacts and clients and friends of the claimant will be impeded. Moreover, the five digit solution that Mr. Reed suggested in Mr. Galloway's case (and I acceded to) was a first stage only. I do not think the Commissioner should be put to more work than necessary. This solution prevents the Commissioner having to revisit these numbers every time a claimant asks for the last five digits to be unredacted. The privacy in these numbers is not, as Mr. Reed submitted, like intimate details of a person's private life. With the other protections I intend to put in place, it is unlikely that the owners of these numbers will be affected at all - at worst they might receive one or two calls from a solicitor asking their names or possibly asking to interview them.

129 My previous guidance given in Mr. Galloway's case stands but must be amended and slightly abbreviated as follows:-

(1) Telephone numbers on the same page as the name of the claimant or material related to the claimant should not be redacted unless they are numbers or DDN numbers for other persons thought by the Commissioner to be victims or intended victims of Mr. Mulcaire's interception activities.

(2) The names of people who may be employees of the NoTW should not be redacted when disclosure is made. Nor should the names of people associated with the claimants be redacted. The only name redaction on relevant pages disclosed should be those thought by the Commissioner to be other victims or intended victims of Mr. Mulcaire's interception activities (apart from victims that have been admitted as being victims in the criminal proceedings or elsewhere).

(3) Account numbers, codes and passwords should normally be redacted unless they relate to the claimant or those directly associated with him. Telephone numbers and direct-dial voicemail numbers should only be redacted where they are thought by the Commissioner to relate to victims or intended victims of Mr. Mulcaire's interception activities. The shorthand reason for redactions should always be stated.

Conclusions

130 For the reasons I have given, having undertaken the balancing exercises required by the authorities, I do not find the Commissioner's claim to public interest immunity made out.

131 Applying the three stage test applicable under Part 31.17, I intend to order disclosure of the following documents, subject to the redaction regime already set out above:-

(1) Unredacted copies of outward call data from Mr. Mulcaire's landline telephone numbers 020-8641-3765 and 020-8641-2228 for the days on which calls are known to have been made by Mr. Mulcaire to the claimant's voicemail box.

(2) The red Buroclass notebook referred to at paragraph 1.6 of the draft order, and any other hard copy telephone contact lists belonging to Mr. Mulcaire, and any telephone contact lists stored on Mr. Mulcaire's mobile phone.

(3) A copy of the chain of emails referred to at paragraph 1.7 of the draft order.

(4) Copies of any call records that show incoming calls to Mr. Mulcaire's landline telephone numbers 020-8641-3765 and 020-8641-2228 for the days on which calls are known to have been made by Mr. Mulcaire to the claimant's voicemail box.

132 I make no order in relation to the adjoining pages of Mr. Mulcaire's manuscript notebooks (apart from the Buroclass address book) but that should not be taken as in any way pre-judging an application that may later be made for disclosure of the entirety of the manuscript notebooks on broader grounds than have been advanced at this hearing.

133 Two further protections should be imposed to protect the police investigation and privacy:-

(1) The solicitors for the Claimant should not reveal the names of any NoTW staff that are revealed in the documents disclosed (but not made public already in phone interception cases) to their client or to any third party without the permission of the court. These persons will always be referred to in court from now on by an agreed coded lettering.

(2) The solicitors to the claimant and the claimant himself must not reveal the telephone numbers and any telephone details disclosed under this order to

third parties, save for the purpose of specific investigations aimed at advancing the claimant's case.

134 The provisions of Part 31.22(1) will also apply to disclosures pursuant to the order I shall make.

135 I will hear counsel on the question of the precise form of the order and costs.

MR. JUSTICE VOS: Mr. Reed?

MR. REED: My Lord, I am grateful. Obviously in terms of the precise form of the order, my Lord, has given some very specific guidance. I was writing as fast as I am able.

MR. JUSTICE VOS: Not able to write fast enough.

MR. REED: I could not write quite fast enough but hopefully will be able to sort it out or it may be that some of the key parts ----

MR. JUSTICE VOS: You would quite like to see my notes?

MR. REED: My Lord, it would speed it up in that respect.

MR. JUSTICE VOS: I do not mind giving counsel on conditions of confidentiality - we are big on confidentiality here - my notes provided that as soon as a transcript is available -- provided you accept that they are not to be used for any purpose whatever except for drafting the order.

MR. REED: Yes.

MR. JUSTICE VOS: It would be useful I think for you to go through them because you may highlight -- I have done this at breakneck speed as you probably realise. I had another full day case yesterday and so there may be inconsistencies in what I have said. There were not intended to be, but I had a limited opportunity to check and I would like you to check so I think I will let you have my document. It is pretty well what I read out without the quotations. I did not have a lot of cause to change it as I went along which I sometimes do, so you can have it on very strict undertakings only counsel. I am going to let Mr. Hirst have it as well as Mr. Hudson, but apart from that that will be it.

MR. REED: My Lord, yes, I was going to pre-empt something that Mr. Buckett might say there, of course from their perspective the guidance is highly relevant to other cases and what no doubt Mr. Buckett ----

THE DEPUTY JUDGE: Mr. Buckett needs it because there was another case this morning in which he was involved.

MR. REED: Yes, exactly.

THE DEPUTY JUDGE: He needs to see how it impacts on that order.

MR. REED: My Lord, I am extremely grateful for that and I am again grateful to my Lord in considering it so quickly and in so much detail.

I am pleased to say that we are able to lighten my Lord's load in relation to costs. It was actually agreed this morning, not knowing what my Lord was going to say -- I will say the gist of it because I come up with the exact wording, essentially it is claimants and defendants' costs in the case and that the claimant will pay the respondent's costs but with the assessment of that being shunted off to the end of the case, and enabling the claimant, if he is successful, to have those costs being costs in the claim, such that it is the defendants, if appropriate, that end up paying them. That is the way it is intended to work. The actual wording specifically agreed by, my Lord, is this: (1) claimant's costs ----

MR. JUSTICE VOS: I am not going to take it down.

MR. REED: My Lord, we have an agreed form ----

MR. JUSTICE VOS: You are going to do a minute?

MR. REED: Yes.

MR. JUSTICE VOS: So you can put it in your minute.

MR. REED: My Lord, those costs are agreed. There is nothing else from my perspective.

MR. JUSTICE VOS: There is. We need to discuss what is to happen to my judgment of 10th March. Mr. Buckett, you may think that that judgment does not really say anything more than I have said today.

MR. BUCKETT: Can I just take instructions? (After a short pause) My Lord, thank you for that time. I think the respondent would simply like two weeks please on that.

MR. JUSTICE VOS: Yes, what I will do is, it is subject to Mr. Reed or indeed Mr. Hirst, I will order that the sealing continue until the whenever two weeks is

from now. Has anybody got any idea, 32nd March which might be 1st April. So that will be 1st April at 4:00 pm unless further application is made in the meantime.

MR. BUCKETT: Yes.

MR. JUSTICE VOS: And by then we should have the transcript of it.

MR. BUCKETT: Two other matters, one is the time for compliance of the order in general terms.

MR. JUSTICE VOS: Yes, 28 days.

MR. BUCKETT: My Lord, can I just take instructions? (After a short pause) My Lord, I am instructed to ask for eight weeks if possible.

MR. JUSTICE VOS: You were asking for four this morning. Why do you want eight?

MR. BUCKETT: My Lord, we have got to go through it carefully. There is some new material here, potentially.

MR. JUSTICE VOS: There is not a lot of new material. I want to hand these back to you, talking about material.

MR. BUCKETT: Yes.

MR. JUSTICE VOS: Can I hand these back to you please, the original documents. I do not want to be in possession of them. You have to look at one new page and you have not got to go through the notebooks. You have to find some lists if you have got any, but you must know whether you have any.

MR. BUCKETT: I am not sure about ----

MR. JUSTICE VOS: Contact lists.

MR. BUCKETT: That may take time.

MR. JUSTICE VOS: I am going to give you 28 days with liberty to apply.

MR. BUCKETT: Thank you very much. My Lord, that deals with that. I think one last matter is to say thank you for a very careful and comprehensive judgment given in a short space of time.

MR. JUSTICE VOS: You would like to appeal?

MR. BUCKETT: Yes. I would ask for permission.

MR. JUSTICE VOS: I gave you permission, did I not, the last time.

MR. BUCKETT: Yes, in relation to that particular application in relation to going ex parte as it were. I do make the same application in relation to the PII aspect of the ruling.

MR. JUSTICE VOS: Yes, obviously. Mr. Reed?

MR. REED: I have no ... on that.

MR. JUSTICE VOS: Mr. Hirst?

MR. HIRST: Since you know Newsgroup is in a neutral position.

MR. JUSTICE VOS: On everything?

MR. HIRST: I will take instructions.

MR. JUSTICE VOS: Described as studied neutrality during the course of argument, Mr. Hirst. Yes, I will grant permission to appeal on the PII aspect on the same basis as I did before. It is a matter of public importance and not a matter on which there has been much authority and although I have drawn the balance in accordance with what I perceive to be the appropriate principles there would be room for argument that I had in some way drawn it in the wrong place.

MR. BUCKETT: My Lord, one tiny thing, 21 days is the norm unless the court is asked otherwise. I am asking for another seven days on top of that so I am asking for 28 days.

MR. JUSTICE VOS: What, to do your notice?

MR. BUCKETT: Yes, to do my notice.

MR. JUSTICE VOS: No, I am not going to give you any more time. If you are going to appeal you have actually got to get on with it.

MR. BUCKETT: My Lord, I understand that. I only had a professional engagement which took me to the US next week...

MR. JUSTICE VOS: You mean you will not be here next week?

MR. BUCKETT: I will not be here next week.

MR. JUSTICE VOS: That is terribly disappointing. I am hoping we might have a phone hack free week.

MR. BUCKETT: So do I. Yes, very well.

MR. JUSTICE VOS: No, you will have to bash it out because if you are going to appeal I should say also I would urge you to apply for expedition because it would be disaster if you got a stay from the Court of Appeal - I notice you have not asked me for one - and all this was going to handicap the progress of these actions.

MR. BUCKETT: My Lord, yes.

MR. JUSTICE VOS: I understand you will need 21 days to take instructions, think about it, draft your documentation but if you do apply please may I urge the parties to apply or expedition in any appeal.

MR. BUCKETT: My Lord, that does obviously raise the issue of a stay whether this court is prepared to grant a stay, obviously 28 days is
the ----

MR. JUSTICE VOS: I am really not prepared to grant a stay. My view about a stay is that if you want a stay you will have to go to the Court of Appeal and you might as well do so at the same time as you ask for expedition. They will then be able to judge -- the Court of Appeal will not give you expedition without knowing about it, so they will have to take a view on that.

MR. BUCKETT: Yes.

MR. JUSTICE VOS: And if you do appeal with expedition it is best the Court of Appeal decide whether the order should be stayed in the meantime but I do not want you to be holding back I am afraid in preparing the material.

MR. HIRST: My Lord, one matter does arise ... Newsgroup Newspapers as to the formulation of the order. It is a matter, as I understand it, which the parties agree on, which is that Newsgroup should have simultaneous disclosure of the material to be provided to the claimant.

MR. JUSTICE VOS: Yes, that is understood, yes.

MR. HIRST: ... of the embargo to free the relevant executives with instructions.

MR. JUSTICE VOS: Yes. You will have to draft an appropriate embargo based upon what I have said and I will consider it. Make sure that it is highlighted for me in any draft minute please. Thank you. Anything else?

MR. REED: No, my Lord, I am grateful.

MR. JUSTICE VOS: I am grateful to you, Mr. Reed, and you, Mr. Buckett, and indeed Mr. Hudson for the argument and your instructing solicitors. It was an effectively conducted application and not one without its difficulties.