Neutral Citation Number: [2022] EWHC 946 (QB)

Case No: QB-2020-002028

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**MEDIA AND COMMUNICATIONS LIST**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 April 2022

**Before**:

**THE HON. MRS JUSTICE STEYN DBE**

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**Between:**

| | |
|---|---|
| **REBEKAH VARDY** | **Claimant** |
| **- and -** | |
| **COLEEN ROONEY** | **Defendant** |
| **- and -** | |
| **NEWS GROUP NEWSPAPERS LIMITED** | **Respondent** |

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**Hugh Tomlinson QC and Sara Mansoori QC** (instructed by **Kingsley Napley LLP**) for the **Claimant**
**David Sherborne and Ben Hamer** (instructed by **Brabners LLP**) for the **Defendant**
**Adam Wolanski QC and Clara Hamer** (instructed by **Simons Muirhead Burton LLP**) for the **Respondent**
**David Price QC (Solicitor-Advocate)** (**of David Price Solicitors & Advocates**) for the **Summonsed Journalists**

Hearing date: 13 April 2022

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# Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MRS JUSTICE STEYN DBE

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be **10:30** on **21 April 2022**

**Mrs Justice Steyn DBE :**

## Introduction

1. This is a libel claim brought by Mrs Rebekah Vardy (the claimant) against Mrs Coleen Rooney (the defendant). This judgment is given after a pre-trial review on 13 April 2022. The trial is listed for a hearing beginning on 9 May 2022, with a time estimate of 7 days. Amongst the applications I heard at the pre-trial review were three on which I indicated that I would put my reasons in writing, namely:

    i) The defendant's application dated 5 April 2022 for disclosure from the respondent, a non-party to the claim;

    ii) The claimant's application made at the hearing on 13 April 2022 for permission to rely on witness summaries and for relief from sanctions; and

    iii) The claimant's application dated 11 April 2022 for various paragraphs or parts of paragraphs of the defendant's witness statement to be deleted.

## The claim

2. On 9 October 2019, the defendant published a Post on her public Instagram, Twitter and Facebook accounts about the claimant ("the Post"). The Post was very widely published. Warby J has determined that the Post made the following defamatory allegation concerning the claimant:

> "Over a period of years the Claimant had regularly and frequently abused her status as a trusted follower of the Defendant's personal Instagram account by secretly informing The Sun newspaper of the Defendant's private posts and stories, thereby making public without the Defendant's permission a great deal of information about the Defendant, her friends and family which she did not want made public."

3. The defendant has pleaded defences of truth and public interest which are contested.

## (1) The defendant's non-party disclosure application

4. The defendant seeks an order against the respondent, News Group Newspapers Ltd, the publisher of *The Sun,* of communications between the claimant and nine named journalists and between Ms Caroline Watt, the claimant's agent, and those nine named journalists. Paragraph 1 of the order sought is in these terms:

> "The Respondent shall disclose and permit inspection of the documents (including electronic documents such as e-mail) dated from 1 September 2017 to 9 October 2019 within its control as described below:
>
> 1.1. All emails, WhatsApp messages, iMessages, texts, voice notes, Twitter direct messages and Instagram direct messages (including media in such messages), between Rebekah Vardy

> and (a) Andy Halls; (b) Amy Brookbanks; (c) Simon Boyle; (d) Dan Wootton; (e) Hannah Hope; (f) Beth Neil; (g) Ellie Henman; (h) Jane Atkinson; or (i) Victoria Newton in which information or stories concerning Coleen Rooney (including content from Mrs Rooney's Instagram account or otherwise) or others are being exchanged.
>
> 1.2. All emails, WhatsApp messages, iMessages, texts, voice notes, Twitter direct messages and Instagram direct messages (including media in such messages), between Caroline Watt and (a) Andy Halls; (b) Amy Brookbanks; (c) Simon Boyle; (d) Dan Wootton; (e) Hannah Hope; (f) Beth Neil; (g) Ellie Henman; (h) Jane Atkinson; or (i) Victoria Newton in which information or stories concerning Coleen Rooney (including content from Mrs Rooney's Instagram account or otherwise) or others are being exchanged.

5. Paragraph 2 of the draft order indicates that the respondent should specify, when providing disclosure by list, which documents are no longer in its control and what has happened to those documents, and the documents over which it claims a right or duty to withhold inspection.

6. An unsealed copy of the application was served on the respondent on 5 April 2022, with the sealed version being served on 11 April 2022. Although the respondent had less than three clear days' notice of the hearing, the respondent submitted a helpful skeleton argument the evening before the hearing and was represented. Mr Wolanksi QC did not seek an adjournment of the application. I have borne in mind the limited time the respondent had to prepare for the hearing, but in the circumstances considered it was clearly appropriate to determine the application.

7. The application is made pursuant to CPR 31.17 and supported by the sixth statement of Mr Lunt. The respondent opposes the application on the basis that neither of the requirements of CPR 31.17(3)(a) and (b) are met and, in any event, the court should not make the order in the exercise of its discretion.

8. The claimant is neutral but critical of the scope of the application and has proposed an alternative form of order in paragraph 18 of Ms Harris' sixth statement which limits the disclosure sought (by reference to the same platforms and communications with the same nine journalists) to "information or stories concerning Coleen Rooney in relation to" eight named articles (referred to as the Marriage Article, the Pyjamas Article, the Car Article, the Confidential Article, the Soho House Article, the Gender Selection Article, the TV Decisions Article and the Flooded Basement Article). The respondent was not supportive of this alternative proposal as, although the outcome in terms of disclosed documents might be more limited, the search would be no less onerous and potentially more difficult.

9. CPR 31.17(3) provides:

> "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."

10. Third party disclosure is "the exception rather than the rule. Disclosure will not be routinely ordered but only where the conditions there specified are met": *Frankson v Secretary of State for the Home Department* [2003] EWCA Civ 655, [2003] 1 WLR 1952, Scott Baker LJ at [10]. Although the defendant will bear the respondent's costs, the jurisdiction to make an order against a non-party, which has been described as an 'intrusive' one, must be exercised with some caution: *Re Howglen Ltd* [2001] 1 All ER 376, Pumfrey J at 381.

11. The first requirement under CPR 31.17(3) is that any documents sought must be shown to be likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings. In this context, '*likely*' means that the documents '*may well*' assist: *Three Rivers DC v Bank of England (No. 4)* [2002] EWCA Civ 1182.

12. Where disclosure is sought of a class of documents, the test must be applied to each document in the class. As noted in *Disclosure*, *Matthews and Malek* (5th ed.) ("Matthews & Malek") at 4.63,

> "Where disclosure is sought of a class of documents, the threshold test must be applied to each document in the class. The test is not satisfied if there are documents within the class which are not relevant to any issue within the proceedings. … The court is wary of categories which are loosely or unnecessarily broadly defined and alert for requests which appear to be of a fishing nature. It is not appropriate to leave the non-party with the duty of making its mind up whether they do or not. Equally the court must be satisfied that the documents do in fact exist, since it is not right to send the non-party off on a search before it can satisfy itself that no such documents do in fact exist."

13. As Eady J said in *Flood v Times Newspapers Ltd* [2009] EMLR 18 at [34], "*It is not appropriate to require third parties to go off and investigate whether there are any documents which happen to fit the description*."

14. The second requirement under CPR 31.17(3) is that disclosure of the documents sought is '*necessary*' in order to dispose fairly of the claim or to save costs. In this case, the application is only put on the basis that it is necessary to dispose fairly of the claim. This requirement only falls for consideration if requirement (a) has been satisfied. Matthews & Malek observe at 4.64:

> "This requirement focuses on the *necessity* of disclosure because non-party disclosure ought not to be ordered by the court if it is not necessary to do so. The court also must consider whether the disclosure is needed to dispose fairly of the action or save costs. There may, for example, be another route to obtain the necessary

> information or documentation, such as where it is in the possession or control of another party to the proceedings. If an applicant has already received disclosure of sufficient documents to enable it to advance its case, this may make disclosure not necessary. The court will decline to order disclosure of documents that appear to provide merely background or material that might be useful in cross-examination. The disclosure sought may add to the costs rather than save them. The stage at which the proceedings have reached may be a relevant factor in this regard."

15. Even where both requirements (a) and (b) are satisfied it does not necessarily follow that non-party disclosure should be ordered. The court retains a discretion. The court must be alive to the wider rights of third parties. In *Frankson*, Scott Baker LJ said at [13]:

> "The third and final stage under Rule 31.17(3) is for the court to exercise its discretion whether or not to make an order. Here, wider considerations may come into play, but the court only reaches this stage if the two conditions in (a) and (b) are met. It is at this point, in my judgment, that public interest considerations fall to be taken into account and, if necessary, to be balanced. Two competing public interests have been identified in the present case, on the one hand the public interest of maintaining the confidentiality of those who make statements to the police in the course of a criminal investigation, and on the other the public interest of ensuring that as far as possible the courts try civil claims on the basis of all the relevant material and thus have the best prospect of reaching a fair and just result."

16. I indicated at the hearing that I would make the disclosure order sought against the respondent but limited to the communications with one journalist, Mr Andrew Halls. I refused the application in relation to communications with the other eight journalists.

***Communications with Mr Halls***

17. Mr Halls is the author of three articles published by *The Sun* which are in issue in these proceedings:

    i) The article dated 25 January 2019 entitled "ROO-INED MOTOR Coleen Rooney narrowly avoids injury in car crash and wrecks just weeks after Wayne's arrest for 'public intoxication' in Washington" ("the Car Crash Article");

    ii) The article dated 13 August 2019 entitled "SIP HOORAY Colleen Rooney stunned guests at Beckhams' favourite hangout by chugging wine from a bottle to celebrate Wayne's return" ("the Soho House Article"); and

    iii) The article entitled "COL's BABY GIRL BID Coleen Rooney travelled to Mexico to look into 8k 'gender selection' treatment in desperate bid to have baby girl" published in *The Sun* online on 15 August 2019 and in a shortened version in print on 16 August 2019 ("the Gender Selection Article").

18. The defendant alleges that the claimant, either directly or indirectly via Ms Watt, disclosed to *The Sun* posts/stories from her Private Instagram Account which were used in each of these articles, namely, "the Car Crash Post" on 22 January 2019, "the Soho House Post" on 13 August 2019 and "the Gender Selection Post" dated 8 April 2019. The latter is one of three "sting" posts (i.e. the ones that it is alleged were fabricated and made accessible only to the claimant's account with a view to seeing whether they would be leaked to *The Sun*). These allegations are denied by the claimant.

19. This is part of the defendant's broader pleaded position that the claimant was responsible for consistently passing on information about the defendant's private Instagram posts or stories to *The Sun*. In support of this key allegation, the defendant's pleaded case is that the claimant had an established history and habitual practice of providing private information to journalists and the press, including *The Sun* and *The Sun on Sunday*, with whom she had especially close relationships, and that she sometimes provided such information through third parties, including in particular Ms Watt, who was acting as approved or condoned by the claimant. All of these allegations are denied and will be matters for determination at the forthcoming trial.

20. There is evidence that communications exist both between the claimant and Mr Halls and between Ms Watt and Mr Halls.

21. First, in relation to the Car Crash Post, WhatsApp messages between the claimant and Ms Watt on 25 January 2019 (considered in the context of messages on the 23 January 2019) indicate that Ms Watt was in communication with Mr Halls. Messages between the claimant and Ms Watt on 25 January 2019 state:

> "[25/01/2019, 11:13:43] Caroline: Halls is trying to do a story on Coleen crashing her car but her PR won't even reply. I've told him I'm 100% confident that it happened but don't know how
>
> [25/01/2019, 11:22:32] Bex : Haha she defo did x
>
> …
>
> [25/01/2019, 16:05:11] Caroline: image omitted
>
> [25/01/2019, 16:05:28] Caroline: Is that the same as the damage that Coleen posted?
>
> [25/01/2019, 16:17:55] Bex : Yeah that's it! Different pic though x
>
> [25/01/2019, 16:18:00] Bex : 2 mins I'll call you x
>
> [25/01/2019, 16:18:22] Caroline: Yeh I told him it was a close up pic not that one so it's fine x"
>
> (Emphasis added.)

22. In a subsequent message on 6 February 2019 (see below), Ms Watt wrote to the claimant that "the sun had that pic of her car in America anyway".

23. Although communications between Ms Watt and Mr Halls may have been, for example, by telephone rather than via any of the identified messaging platforms, it appears from these communications that at least some documents will exist given that an image (held by *The Sun* and apparently of the defendant's car) seems to have been sent to Ms Watt and then by her to the claimant.

24. Secondly, WhatsApp messages between the claimant and Ms Watt on 6 February 2019, after the defendant (temporarily) removed the claimant as a follower of her Private Instagram Account, indicate that there were messages between Ms Watt and Mr Halls. The messages between the claimant and Ms Watt on 6 February 2019 include the following:

> "[06/02/2019, 17:53:39] Bex : Unless someone told her it came from you? X
>
> [06/02/2019, 17:55:03] Caroline: I don't think anyone would. Andy never would and I wouldn't tell anyone but the sun and you would think she'd message you if someone said your agent had done that surely? X
>
> [06/02/2019, 17:55:20] Caroline: Also the sun had that pic of her car in America anyway, not that she knows that
>
> …
>
> [06/02/2019, 18:04:06] Caroline: I just messaged Andy halls and he said maybe she noticed that we were together with them and dan wootton at the NTA's
>
> [06/02/2019, 18:04:17] Caroline: And put 2 and 2 together and got 5
>
> [06/02/2019, 18:04:43] Caroline: NTA's were the day of the crash weren't they. Doesn't fucking prove anything though and if she wants to think that then fuck her x
>
> …
>
> [06/02/2019, 18:15:38] Caroline: If she does try to say it or that it was me and it's undeniably obvious what we'll do is say I left the company I was working for in jan and one of the girls in the office has my old laptop that had your passwords saved on it so it will have been them and now you will have to change everything x
>
> [06/02/2019, 18:16:29] Bex : Ok! Just don't know how she ever would know that unless halls has leaked it in which case please don't give him the [Mr X] stuff x
>
> …

> [06/02/2019, 18:18:52] Caroline: No I messaged him and he said absolutely not and he never would say what his source was for anything at all. I know he wouldn't either x"
>
> (Emphasis added.)

25. Thirdly, on 8 April 2019 WhatsApp messages between the claimant and Ms Watt indicate that Ms Watt sent a message to Mr Halls passing on information provided by the claimant regarding Danny Drinkwater, and that Mr Halls replied. The messages include the following:

> "[08/04/2019, 20:59:16] Bex : Story.... Danny Drinkwater arrested x
>
> [08/04/2019, 20:59:32] Caroline: For what?
>
> [08/04/2019, 20:59:44] Bex : Crashed his car drunk with 2 girls in it.... both in hospital one with broken ribs x
>
> [08/04/2019, 20:59:52] Caroline: Fuck. When?
>
> [08/04/2019, 20:59:53] Bex : He's only just been let out of the cells x
>
> [08/04/2019, 20:59:57] Bex : Last night! X
>
> [08/04/2019, 21:00:04] Bex : I want paying for this x
>
> [08/04/2019, 21:00:05] Caroline: Which police station?
>
> [08/04/2019, 21:00:23] Caroline: They would have to get the police station to confirm before they can write it x
>
> [08/04/2019, 21:00:25] Bex : Hale area... was at a house party last night x
>
> [08/04/2019, 21:00:30] Caroline: Also do you know what car he has? x
>
> [08/04/2019, 21:00:40] Bex : Let me find out x
>
> [08/04/2019, 21:00:45] Bex : He's only just been let out x
>
> [08/04/2019, 21:00:49] Bex : It's bad x
>
> [08/04/2019, 21:01:48] Caroline: What a dick x
>
> [08/04/2019, 21:01:58] Bex : Range Rover I think... at least £100k worth of damage x
>
> [08/04/2019, 21:02:01] Caroline: Just sent it to Andy halls
>
> [08/04/2019, 21:02:06] Bex : He's in big big trouble x

> [08/04/2019, 21:02:09] Caroline: He relied [sic] instantly and said news are already on it
>
> …
>
> [08/04/2019, 21:02:20] Caroline: Someone leaked it from police station."
>
> (Emphasis added.)

26. Fourthly, the WhatsApp messages between the claimant and Ms Watt on 26 November 2018 and 10 June 2019 indicate that there were communications between Ms Watt and Mr Halls, it appears in relation to work with the claimant. And the WhatsApp messages between Ms Watt and the claimant on 16 August 2019 indicate that Ms Watt "asked Andy halls a couple of days ago where they are getting so much coleen stuff from and he wouldn't say…".

27. Fifthly, in WhatsApp messages between the claimant and Ms Watt on 26 August 2019 and 4 September 2019, the claimant indicates that she directly messaged Mr Halls. The first message appears to relate to a headline about the claimant. In the second message the claimant wrote "Hahahahaha yes I was buzzing I messaged Halls x" in response to an (omitted) image sent by Ms Watt.

28. The messages that it is evident exist between the claimant and Mr Halls and Ms Watt and Mr Halls are likely to (in the sense that they may well) support the defendant's case or adversely affect the claimant's case. In particular, such messages may well support the defendant's core case in relation to the disclosure of posts from her Private Instagram Account as well as the broader case she makes to which I have referred in paragraph 19 above.

29. I am satisfied that the test in CPR 31.17(3)(a) is met in relation to the documents sought insofar as they are communications with Mr Halls. I have borne in mind that the class of documents is not limited to information or stories concerning the defendant, but extends to "others". However, that does not have the effect that there will be documents within the class which are not relevant to any issue in the proceedings. First, the meaning of the Post extends beyond information about the defendant to encompass information about her friends and family. Secondly, information or stories concerning others (such as Mr Drinkwater or Mr X) would be relevant to the defendant's broader case. Thirdly, insofar as the term "others" encompasses the claimant, such information is relevant to her relationship with Mr Halls, which is a disputed issue.

30. I have also considered whether, given Ms Watt's role as an agent, paragraph 1.2 of the defendant's draft order may encompass irrelevant material. However, there is no evidence before me that Ms Watt's communications with Mr Halls would have included communications on behalf of other clients. I accept Mr Sherborne's submission that in circumstances where Ms Watt has not provided any instructions to the claimant's solicitor in relation to this application (as explained by Ms Harris, in her sixth witness statement at paragraph 21), albeit for health reasons, the court ought not to speculate.

31. As regards CPR 31.17(3)(b), the disclosure provided by the claimant has not resulted in any of the communications between Ms Watt and Mr Halls or the claimant and Mr

Halls which are referenced in the messages I have referred to above being disclosed. Some Instagram messages between the claimant and Mr Halls have been disclosed, and the defendant has made clear the order sought is limited to exclude provision of those communications already provided by the claimant. The claimant confirmed at the hearing on 8-9 February 2022 that "*all communications between the claimant and any of the named journalists from the Sun have been disclosed*". It is clear that the possibility of obtaining such communications from the claimant have been fully explored and exhausted.

32. In addition, both the claimant and the defendant have made data subject access requests of the respondent. The claimant's request has not resulted in the provision of information as the respondent has applied the journalism exemption under Schedule 2, Part 5, para 26(3) of the Data Protection Act 2018. A substantive response to the defendant's request has not yet been received, as the respondent stated on 2 March 2022 that they would be extending time for compliance by two months. I accept the defendant's submission that it is unlikely that the defendant will receive the documents sought via this avenue.

33. Mr Wolanski QC submits that given the defendant's repeated assertions as to the strength of her case on the evidence already available, it is not necessary to fairly dispose of the claim to make an order against the respondent. Unsurprisingly, both parties make assertions as to the strength of their respective cases. It does not seem to me that such claims, in themselves, should be accorded any weight. Whatever the merits of the parties' cases may ultimately prove to be, it is impossible to say at this stage that the communications with Mr Halls are unnecessary, in circumstances where the defendant's case is not based on any direct communications with a journalist in which any private information is disclosed, but on drawing inferences from a range of other material.

34. Having found the tests in CPR 31.17(3)(a) and (b) are met, so far as the communications with Mr Halls are concerned, the question remains whether I should exercise my discretion to make the order sought in relation to such communications. In my judgement, it is appropriate and proportionate in the exercise of my discretion to make the order sought in relation to communications with Mr Halls.

35. The respondent has raised a number of points that go to the exercise of my discretion. The first is that the defendant has left it until the eve of trial before making this application. Although the trial is only a few weeks away, I reject this contention in circumstances where it is clear that the defendant has been pursuing both the claimant in the context of these proceedings, and the respondent through the data subject access requests, for the material that is now sought.

36. The second objection is that the order sought would place very significant and costly burdens on the respondent, ascertaining what devices each named journalist uses or has used during the 25 month period; ascertaining whether the respondent has control of such devices; if so, obtaining the devices, carrying out the searches and reviews; and producing lists of documents which omit any information which could, for example, disclose sources. This would, in my judgement, have been a powerful objection, particularly so close to the trial date, if I were considering exercising my discretion to make the order sought in relation to all nine journalists.

37. However, it has much less force in circumstances where I have determined that the requirements of CPR 31.17(3) are met only in relation to a single journalist. On the evidence before me, it appears likely that the number of messages between the claimant and Mr Halls in the 25 month period sought will be low. The number of messages between Ms Watt and Mr Halls may be rather higher, but the evidence does not suggest that the search for their communications should be a particularly onerous task. The tasks of considering source protection in the way in which documents are listed, and of considering whether to claim a right or duty to withhold inspection of documents, are ones with which the respondent will be familiar as a major news organisation. I do not consider that the limited order that I have made is unduly onerous or disproportionate.

***Communications with Amy Brookbanks, Simon Boyle, Dan Wootton, Hannah Hope, Beth Neil, Ellie Henman, Jane Atkinson and Victoria Newton***

38. In his sixth witness statement, Mr Lunt states that there "must also be further evidence in connection with the Key Issues, predominantly in the form of exchanges between (i) Mrs Vardy and journalists from *The Sun*; and (ii) Ms Watt and journalists from *The Sun* in connection with the Key Issues, not least because certain messages between/amongst those individuals are referenced in the WhatsApp exchanges detailed above".

39. The claimant has disclosed exchanges between herself and Simon Boyle, Dan Wootton, Hannah Hope, Amy Brookbanks and Beth Neil. The defendant acknowledges that any order against the respondent should not seek information that has already been disclosed. The disclosed exchanges are not relied on by the defendant as showing that there must be other relevant communications.

40. I have addressed the WhatsApp messages between the claimant and Ms Watt which reference communications with Mr Halls. In relation to the other eight journalists the only messages referencing, or allegedly referencing, them are the following:

41. First, there is a WhatsApp message from Ms Watt to the claimant on 11 November 2018 in which Ms Watt asked the claimant, "if you see this girl [Ms Brookbanks] please make a point of saying hello and introducing yourself". Ms Watt commented that Ms Brookbanks was from *The Sun Online*, "always writes nice stories, does whatever I ask her and gets stories changed that she hasn't even written. She loves you x". There is no other reference to Ms Brookbanks in the messages that have been disclosed between the claimant and Ms Watt.

42. Secondly, on 8 March 2018 the claimant and Ms Watt exchanged the following messages:

> "[08/03/2018, 12:47:54] Bex : Did Jane ever message you? X
>
> [08/03/2018, 12:50:06] Caroline: Yeh she just needed the name of the woman he cheated with in Cyprus x"

43. Thirdly, on 11 September 2019 the claimant and Ms Watt exchanged the following messages:

> "[11/09/2019, 15:23:07] Bex : Did ash get those pics back to you x

> [11/09/2019, 15:23:48] Caroline: Yeh we sorted them all and he has shown them today but the sun said no and so did the mirror which is weird so daily mail are just looking at them at the moment x
>
> [11/09/2019, 15:24:32] Bex : Fuck sake what's with the sun still saying no x
>
> [11/09/2019, 15:24:56] Caroline: I know why Victoria is saying no but I don't get the daily. Ash is going to call them back again x
>
> [11/09/2019, 15:26:39] Bex : Yeah but I'm getting annoyed with them still saying no! Are they never going to have anything while that other thing is running x
>
> [11/09/2019, 15:27:20] Bex : We still need to make money x
>
> [11/09/2019, 15:30:01] Caroline: I'll speak to Jane as I think Victoria is overthinking it x
>
> [11/09/2019, 16:16:09] Bex : Yeah massively x"
>
> (Emphasis added.)

44. With reference to the latter messages, Mr Lunt states:

> "The Defendant's understanding is that the references to "Jane" and "Victoria" are to Jane Atkinson and Victoria Newton, both of whom are journalists at The Sun and both of whom the Defendant understands were responsible for the production of the Secret Wag column. The Defendant infers that Mrs Vardy's reference to "that other thing" is a reference to the Secret Wag column and that explains The Sun's reluctance to publish staged paparazzi photographs of Mrs Vardy whilst the Secret Wag column was running (i.e., to avoid readers suspecting that Mrs Vardy's close relationship with The Sun meant that she was a source for the Secret Wag column)."

45. Fourthly, in messages sent on 16 August 2019 Ms Watt and the claimant wrote:

> "[16/08/2019, 08:26:59] Caroline: So I asked Andy halls a couple of days ago where they are getting so much coleen stuff from and he wouldn't say who but the same girl in the sun who gets all the tips of Adam Johnson's sister is the one getting them x
>
> …
>
> [16/08/2019, 16:48:48] Bex : Do you think she still thinks it's me x

> [16/08/2019, 16:48:54] Caroline: That's why I asked him who he got stuff from
>
> [16/08/2019, 16:49:19] Caroline: And that's when he said Ellie henman gets it all but sometimes they put it under his byline to make it less obvious".
>
> (Emphasis added.)

46. The messages which refer to Amy Brookbanks and Ellie Henman do not show that there have been any communications between the claimant and either journalist. There is nothing to indicate that Ms Watt had been in communication with Ms Henman either: she is referred to as a journalist who received information regarding the defendant from some other unidentified source. It may be inferred that Ms Watt had a professional relationship with Ms Brookbanks but there is nothing to indicate that any written communications between them that are relevant to these proceedings exist.

47. The messages which refer to "Jane" and "Victoria" do not show that there have been any communications between the claimant and either Jane Atkinson or Victoria Newton. The 16 August 2019 messages suggest an intention on Ms Watt's part to speak to "Jane"; they make no reference to any written communications between Ms Watt and either "Jane" or "Victoria". The only one of these messages that refers to any written communications being sent that appear to concern disclosure of information about others are the messages on 8 March 2018, referencing messages between Ms Watt and "Jane".

48. No evidence is relied on as referring to written communications between either the claimant or Ms Watt and any of the other four journalists (Simon Boyle, Dan Wootton, Hannah Hope, Beth Neil). Mr Lunt refers to other messages between the claimant and Ms Watt dated 9 November 2017, 1 February 2018, 5 September 2018 and 6 August 2019 regarding the disclosure of information about others (or a possible intent or attempt to leak such information) but none of these messages refer to any individual journalist or newspaper.

49. In his oral submissions, Mr Sherborne acknowledged that if I were to make the order sought by the defendant, the result may be "*nil responses from several of the journalists*". The defendant's application is based on drawing the inference that there will be relevant communications between the claimant, or more probably Ms Watt, and journalists at *The Sun* (in addition to those with Mr Halls). It is apparent that the defendant has named each of these eight journalists in order to cast the net wide enough, without being in a position to show that communications with any identified journalist exist (other than with Mr Halls and, to the very limited extent referred to above, with Jane).

50. In my judgement, Mr Wolanski is right to characterise the application (save to the extent that it relates to communications with Mr Halls) as a "fishing expedition". It follows that the first requirement in CPR 31.17(3) is not met and therefore I refuse the defendant's application insofar as communications with any journalists other than Mr Halls are sought. Accordingly, it is unnecessary to consider the second requirement or the exercise of my discretion. I merely note that I would have had serious concerns about the necessity and proportionality of making an order against a non-party of the

breadth of the order sought by the defendant, particularly in circumstances where the limited evidence of communications does not go to the heart of the case, particularly at this stage of the proceedings.

## (2) Claimant's application to rely on witness summaries and for relief from sanctions

### *The application*

51. Paragraph 4 of Master Eastman's Order dated 4 August 2021 provided:

> "**WITNESS STATEMENTS OF FACT**
>
> 4. Evidence of fact will be dealt with as follows:
>
> a. by 4pm on Friday 25 March 2022 all parties must serve on each other copies of the signed statement of all witnesses on whom they intend to rely and all Hearsay notices relating to evidence and all witness summaries; and
>
> b. oral evidence will not be permitted at trial from a witness whose statement or summary has not been served in accordance with this order or has been served late, except with permission from the Court."

52. Paragraph 15 of my order of 14 February 2022 (as varied on 29 March 2022) was in the same terms, save that I extended the time limit in subparagraph (a) to 4pm on 1 April 2022.

53. On 1 April 2022, the claimant served two witness statements, namely, her own statement and a statement made by Ms Watt (which is no longer relied on for health reasons). In addition, she served eight witness summaries in relation to eight journalists, each of whom has been served with a witness summons, namely, (i) Andrew Halls, (ii) Simon Boyle, (iii) Michael Hamilton, (iv) Amy Brookbanks, (v) Issy Sampson, (vi) Rachel Dale, (vii) Stephen Moyes and (viii) Richard Moriarty.

54. In her skeleton argument for this hearing, the defendant drew attention to *Otuo v The Watch Tower Bible and Tract Society of Britain* [2019] EWHC 346 (QB). In *Otuo* Warby J held at [8]-[9]:

> "8. The regime for service of written evidence in this case was laid down by the Order of HHJ Parkes QC dated 17 September 2018 ("the Parkes Order"), which provided, by paragraph 16, as follows:-
>
> "Evidence of fact will be dealt with as follows:
>
> a. By 4.00pm on 14 January 2019 all parties must file and serve on each other copies of the signed statements of themselves and of all witnesses on whom they intend to rely in both claims, and all notices relating to evidence and (in the case of any witness whom the party wishes to summons to

> give evidence) a copy of the summary of the evidence intended to be given.
>
> b. Oral evidence will not be permitted at trial from a witness whose statement or summary has not been served in accordance with this order or has been served late, except with permission from the Court."
>
> 9. I have previously ruled that this form of Order did not serve to grant Mr Otuo permission to serve summaries. There is nothing in these words which expressly grants permission to serve summaries in place of witness statements, and I see no room for implying the grant of permission into the order, merely because it contemplates – as it certainly does – that summaries might be served as well as or instead of witness statements. It would be surprising and, on the face of it, illegitimate for the Court to grant a general licence to serve summaries. It is a condition of permission to take that course that the party concerned "is unable to" obtain a witness statement. That is a matter that would normally require proof in relation to each individual witness, in respect of whom a summary is to be served. Moreover, the Court would normally need to be satisfied, before permitting service of a summary, that the witness had some relevant evidence to give. There is nothing in the judgment given by Judge Parkes on 30 August 2018 that indicates to me that any of these conditions were satisfied, or that he intended to grant Mr Otuo a general licence to serve witness summaries." (Emphasis added.)

55. The normal rule of course is that a party who wishes to call oral evidence from a witness must serve a signed statement from that witness. CPR 32.9 provides, so far as material:

> "(1) A party who—
>
> (a) is required to serve a witness statement for use at trial; but
>
> (b) is unable to obtain one, may apply, without notice, for permission to serve a witness summary instead.
>
> (2) A witness summary is a summary of—
>
> (a) the evidence, if known, which would otherwise be included in a witness statement; or
>
> (b) if the evidence is not known, the matters about which the party serving the witness summary proposes to question the witness."
>
> (Emphasis added.)

56. CPR 32.10 provides:

> "If a witness statement or a witness summary for use at trial is not served in respect of an intended witness within the time specified by the court, then the witness may not be called to give oral evidence unless the court gives permission."

57. In *Otuo,* Warby J considered that Mr Otuo ought to have applied for permission to use witness summaries. As he had not done so in time, CPR 32.10 applied and so permission for use of witness summaries could only be granted if relief from sanctions was granted. In her skeleton argument for this hearing, the defendant raised the point that, as in *Otuo,* no permission to serve witness summaries had been granted and so, in order to rely on the eight witness summaries she had served, the claimant would have to apply for relief from sanctions.

58. On the morning of the pre-trial review, the claimant served the seventh witness statement of Ms Harris which states:

> "10. As the order of Master Eastman (and the orders of Mrs Justice Steyn which varied it) provided for the service of witness summaries the Claimant's advisors took the view that it was unnecessary for specific applications to be made for permission to serve witness summaries. …
>
> 11. The Witness Summaries were served on 1 April 2022 as contemplated by the Court's Order. Kingsley Napley then arranged for witness summonses to be issued. …
>
> 13. On 12 April 2022 the Defendant served her Skeleton Argument for the Pre-Trial Review in this action. This raised, for the first time, a complaint that the witness summaries had been served without obtaining the permission of the Court and drew attention to the case of *Otuo v Watch Tower Bible and Tract Society of Britain* [2019] EWHC 346 (QB) which indicates that an order in the form made in this case cannot be construed as a grant of permission to serve witness summaries.
>
> 14. This was an error on the part of the Claimant's legal advisors for which I apologise to the Court. There was no intention to avoid complying with the rules but I now accept that there was a breach. As a result the Claimant applies for permission to serve the witness summaries. This is an application for relief from sanctions …"
>
> (Emphasis added.)

59. As the above extract makes clear, the claimant accepts that the order made in this case (like the Parkes order in *Otuo*) did not give the parties permission to serve any witness summaries instead of witness statements. The claimant acknowledges that she requires relief from sanctions.

60. An application notice seeking permission to rely on witness summaries, and seeking relief from sanctions, has not been served by the claimant due, no doubt, to the issue

coming to her representatives' attention only on the eve of the pre-trial review. Mr Tomlinson QC made the application orally at the pre-trial review, supported by the seventh statement of Ms Harris. However, the claimant does not seek permission to rely on two of the witness summaries, namely, those served in respect of Issy Sampson and Richard Moriarty. In her seventh statement, Ms Harris explains that since those summaries were served:

> "I have subsequently been informed by the journalists' solicitor that Mr Moriarty and Ms Sampson are unable to provide any evidence as to the sources of the information in the articles which bear their names."

61. The witness summaries that have been served are broadly in similar form. An example is the witness summary for Ms Brookbanks which states:

> "AMY BROOKBANKS, a journalist at the Sun Newspaper, 1 London Bridge Place, London SE1 9GF will say
>
> 1. She is the co-author (with Issy Sampson) of the article entitled "LOOK ROO's BACK – Wayne Rooney is back at home – and in bed with Coleen – as she shares snaps with pals celebrating Halloween together" published in The Sun on 1 November 2017 ("the Pyjamas Article") which is in issue in these proceedings.
>
> 2. She will say as follows:
>
> (a) That the assertion that she has "an exceptionally close relationship" or any close relationship with the Claimant is untrue.
>
> (b) That she understands that Caroline Watt is the Claimant's agent.
>
> (c) That she co-authored the Pyjamas Article along with Issy Sampson.
>
> (d) That although as a professional journalist Ms Brookbanks will not disclose her confidential journalistic sources, she has seen the Waiver and Consent statements signed by the Claimant and Caroline Watt and understands them to mean that both the Claimant and Ms Watt have waived any right to confidential source protection in respect of disclosure by her in these proceedings whether they (or either of them) were (or was) the source in respect of the Pyjamas Article.
>
> (e) That neither the Claimant nor Ms Watt was (or were) the source of the Pyjamas Article."

62. The witness summaries for Rachel Dale and Stephen Moyes are in identical terms to that of Ms Brookbanks, save that they are described in paragraph 1 as being the co-authors of "the article entitled "Someone's Played Away: Married England Act has

Lovechild" published in *The Sun* on 3 March 2019 ("the Confidential Article")", and the references in paragraph 2(c), (d) and (e) of the witness summaries for them refer to the Confidential Article rather than the Pyjamas Article.

63. The witness summaries for Michael Hamilton and Simon Boyle describe them as, respectively, the author of the TV Decisions Articles and the author of the Flooded Basement and Marriage Articles. Each summary goes into a little more detail regarding their work as journalists and relationship with the claimant but is otherwise in essentially the same terms as that of Ms Brookbanks.

64. The witness summary for Mr Halls attaches a statement made by him on 20 December 2019. In that witness statement, which has only been served as an attachment to the witness summary, not as a witness statement, Mr Halls states that the claimant was not the source of the Gender Selection Article and that she "has never provided any story or information to me". He also states that he does not have a personal friendship with the claimant. In the witness summary, three articles by Mr Halls are referred to, the Car Article, the Soho House Article and the Gender Selection Article. The summary is in similar terms to that of Ms Brookbanks, save that in relation to the Gender Selection Article reference is made to what he said in his witness statement.

65. Since the witness summaries were served, Ms Watt's witness statement and the document in which she waived the right to source protection have been withdrawn. Consequently, the claimant does not intend to adduce any evidence from any of those who have been summonsed going to the question whether Ms Watt provided any information for any of the articles in issue. Mr Tomlinson QC seeks permission to amend the witness summaries to remove references to Ms Watt.

66. Mr Price QC, who represents the journalists who have been summonsed, informed the court that there is at least a real prospect of his clients seeking to set aside the witness summonses. In particular, there is a real prospect of such an application being made on behalf of Mr Halls, Ms Brookbanks and Mr Boyle. However, no such applications were made at the pre-trial review.

***Relief from sanctions: the applicable principles***

67. The overriding objective is enabling the court to deal with cases justly and at proportionate cost. CPR 3.9(1) provides:

> "(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –
>
> (a) for litigation to be conducted efficiently and at proportionate cost; and
>
> (b) to enforce compliance with rules, practice directions and orders."

68. The court's first task is to identify the "*failure to comply with any rule, practice direction or court order*" which has triggered the operation of CPR 3.9(1) : see *Denton v TH White Limited* [2014] 1 WLR 3926 at [23]. In *Denton* the Court of Appeal explained at [24]:

> "A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the 'failure to comply with any rule, practice direction or court order' which engages rule 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate 'all the circumstances of the case, so as to enable [the court] to deal justly with the application including [factors (a) and (b)]'."

***Permission to rely on witness summaries: the applicable principles***

69. As in *Otuo* "*there is a separate and important question of whether and to what extent permission to serve summaries is appropriate*" (Warby J at [14]). As Warby J observed at [20]:

> "This aspect of the application requires a review, in relation to each proposed witness, of four issues: (1) the threshold question of whether Mr Otuo has shown an inability to obtain a witness statement; subject to that (2) the extent to which the witness is likely to be able to give relevant evidence: (3) the compatibility with the overriding objective of permitting Mr Otuo to lead evidence from the witness in question on the topics he has specified; and (4) the adequacy of the content of the summary."

***Application of the principles***

70. The default in this case was the failure to make an application, supported by evidence, for permission to serve witness summaries sufficiently far in advance of 1 April 2022 to obtain permission by that date. An application for permission ought to have been made pursuant to CPR 32.9. As Warby J observed in *Otuo* at [10], having cited CPR 32.10:

> "Permission will only be granted if the applicant satisfies the requirements for relief from sanctions. That is clear from the *Denton* case, in which the Court of Appeal reversed the decision of the Judge at first instance to grant relief from sanctions under r.32.10: *Denton v TH White* [2014] EWCA Civ 906 [2014] 1 WLR 3926 [52-53]."

In the event, the application was made on 13 April 2022.

71. In my judgement, the service of witness summaries in respect of these six individuals without first having applied for and obtained permission to do so, resulting in an application less than four weeks before the trial is due to begin, is a significant default

on the part of the claimant. As Warby J observed in *Otuo* at [17], witness statements are a key tool in managing litigation effectively and at proportionate cost. If evidence is to be adduced from witnesses who have not given statements, that has a potential impact on the trial timetable, not least as there needs to be time for examination-in-chief.

72. At the hearing on 8-9 February 2022, Mr Tomlinson QC described the witness statements for the claimant as "oven-ready". On 14 March 2022 the claimant's pre-trial checklist indicated that she intended to call five witnesses, namely, herself, Ms Watt, Mr Halls, Mr Boyle and Mr Hamilton. There was no reference to any intention to call Ms Brookbanks, Ms Dale or Mr Moyes (or Ms Sampson or Mr Moriarty, albeit the application is not pursued in relation to them). Nor was there any reference in the pre-trial checklist to any intention to seek summonses for eight witnesses, although it appears from Ms Harris's seventh statement that by 10 March a legal advisor at *The Sun* had informed the claimant's solicitors that "the journalists would not be providing statements".

73. As it happens, as Ms Watt is no longer going to be called, and the claimant does not seek to call Ms Sampson or Mr Moriarty, the claimant is now seeking to call only two more witnesses than indicated on her pre-trial checklist, and it seems likely that the evidence of the three witnesses who were not referred to on the checklist will take no more time than the evidence of Ms Watt would have done.

74. While I do not accept that the default is insignificant, as it has to some extent disrupted the pre-trial review, it is not one which imperils the forthcoming trial (or any other hearing date).

75. The reason for the default is an error on the part of the claimant's representatives. In *Otuo* Warby J considered the default was "*if not excusable then understandable, bearing in mind Mr Otuo's status as a litigant in person*". The default in this case is considerably less excusable or understandable given that the claimant is represented and if the claimant's representatives had considered CPR 32.9 the clear authority of *Otuo* is cited in the brief commentary in the White Book, para 32.9.1. Plainly, such an error cannot be characterised as a good reason for the default.

76. At the third stage, the court must consider all the circumstances of the case so as to enable it to deal with the application justly. In doing so, the court must give particular weight to the two important factors expressly referred to in CPR 3.9(1), namely, (a) the requirement that litigation should be conducted efficiently and at proportionate cost, and (b) the interests of justice in the particular case.

77. An important aspect of the circumstances in this case is whether, applying the principles to which I have referred in paragraph 69 above, it would be appropriate to grant permission to rely on the witness summaries.

78. In her seventh statement, Ms Harris explains that at an early stage of the dispute, "*on 20 December 2019, we obtained a witness statement in support of the Claimant form Andy Halls*". She states that she and (unidentified) "*others on behalf of the Claimant*" spoke to "*the other Sun journalists who were the source of the three fake stories*", which I take to be a reference to Simon Boyle (the author of the Flooded Basement Articles) and Michael Hamilton (the author of the TV Decisions Article). Ms Harris states they

"*confirmed that the Claimant was not the source of those stories and indicated a willingness to provide witness statements*". However, they needed to check the position with the respondent's legal advisors. Ms Harris refers to a conversation she had with Mr Boyle about providing a statement.

79. Ms Harris states that she

> "made an approach to a senior legal advisor at the *Sun* and as a result of that conversation, my associate Rosa Malley, wrote to the Editor on 4 March 2022. However, on 10 March [2022] Ms Malley was informed by a legal advisor at the *Sun* that the journalists would not be providing statements.
>
> It was apparent from these communications with the Sun that no journalists would provide witness statements to the Claimant."

80. It is reasonably clear from this statement that the claimant has sought but been unable to obtain due to the stance taken by the respondent, witness statements from Mr Halls, Mr Boyle and Mr Hamilton.

81. Mr Halls, Mr Boyle and Mr Hamilton are each (sole) authors of one of the three articles which are alleged to have been based on posts that were fabricated and disclosed only to the claimant. In addition, Mr Halls and Mr Boyle are the authors or co-authors of other articles that are in issue in these proceedings. The defendant has pleaded that the claimant enjoyed an "extremely close relationship" with Mr Halls and Mr Boyle, and that they were people she directly communicated and interacted with on social media for several years. The same is not said expressly about Mr Hamilton, although he may be encompassed in the allegation that the claimant had extremely close relationships with journalists from *The Sun*. In circumstances where each of them has been approached about the provision of a statement, I accept it is likely that they will be able to give relevant evidence regarding their relationships with the claimant and, subject to any question of source protection, whether she was a source of private information about the defendant and others published in their articles.

82. In my judgement, despite the default in seeking permission pursuant to CPR 32.9 and lack of good reason for that default, the interests of justice weigh in favour of giving (retrospective) permission (and relief from sanctions) to the claimant to serve the witness summaries for Mr Halls, Mr Boyle and Mr Hamilton. They are each the author of articles that are at the core of these proceedings. The topics on which the claimant wishes to adduce evidence from each of them, namely the nature of their relationships with the claimant and whether she is a source of the identified articles, are sufficiently clear. The defendant received the summaries on the date when statements were due and has been on notice for longer that the claimant intended to call each of these witnesses.

83. I do not consider that the need to amend the witness summaries, which has arisen due to a very recent change of position on the part of Ms Watt, affects my decision as to whether it is appropriate to grant permission to rely on the summaries. The effect is simply to narrow the topics on which the claimant will seek to adduce evidence so that it does not encompass asking whether Ms Watt was a source for any of the articles.

84. The position in relation to Ms Brookbanks, Ms Dale and Mr Moyes is rather different. It is implicit in Ms Harris's seventh statement, although the point is nowhere expressly acknowledged, that no attempt was made to approach Ms Brookbanks, Ms Dale or Mr Moyes to see if they were willing to provide statements for the claimant. Ms Harris's statement does not make clear to what extent communications with the Editor or legal advisors at *The Sun* referred to named journalists when discussing whether they would be providing statements. Nevertheless, although the evidence is less transparent than it should have been, I accept Ms Harris's statement that it was apparent from these communications that no journalists at *The Sun* would be able to provide witness statements for the claimant.

85. Ms Brookbanks was the co-author of an article about the defendant that is in issue in these proceedings. She is one of *The Sun* journalists with whom the claimant is alleged to have been heavily engaged on social media. Although there is no evidence that any attempt has been made to speak to her to ascertain whether she is likely to be able to give relevant evidence, I accept that she is at least likely to be able to give relevant evidence regarding her relationship with the claimant. She may also be able to give evidence, subject to any question of source protection, as to whether the claimant was a source of private information about others published in her articles, although it does not necessarily follow from her name appearing on the byline that she will know the source(s) of information, as is apparent from claimant's acceptance that the co-author, Ms Sampson, has no relevant evidence to give.

86. Ms Dale and Mr Moyes are co-authors of an article that is relied on in the proceedings as allegedly resulting from the leaking of information by the claimant, via Ms Watt, about an individual other than the defendant or her family to journalists at *The Sun*. They are not otherwise referred to in the Re-Re-Amended Defence (or Confidential Schedule). These are not individuals with whom the claimant is alleged to have communicated on social media or otherwise had a close relationship. It does not appear from the evidence that any attempt has been made to speak to either of them to ascertain whether they are likely to be able to give any relevant evidence regarding the source of the article. As I have said, it does not follow from the fact that they are the named authors of the article that each of them knows the source(s) of the relevant information in the article.

87. I have some concern that the summaries purport to state what these three witnesses "will say" in circumstances where what is set out is entirely based on instructions from the claimant and Ms Watt, rather than from speaking to the witnesses themselves. However, the summaries make sufficiently clear the topics on which the claimant wishes to adduce evidence from these witnesses.

88. On balance, I consider that the interests of justice weigh in favour of granting (retrospective) permission to serve the witness summary of Ms Brookbanks. She is the author of one of the articles about the defendant which is alleged to be based on leaked posts from the defendant's Private Instagram Account, and she is one of the journalists with whom the claimant is alleged to have had a close relationship.

89. I take a different view of the application in relation to Ms Dale and Mr Moyes. For the reasons I have given, I am not satisfied on the evidence before me that they are likely to be able to give relevant evidence. In addition, the article of which they are co-authors is not at the core of the claim, being an article about someone other than the defendant

and her family. I have found that the default was significant and there was no good reason for it. In all the circumstances, having regard to the interests of justice and the impact on the efficient litigation of the trial of numerous witnesses being called for whom there are no witness statements, I am not prepared to give retrospective permission and relief from sanctions to serve the witness summaries of Ms Dale and Mr Moyes.

## (3) The claimant's application to strike out parts of the defendant's witness statement

90. The claimant applied by an application notice dated 11 April 2022 for an order that:

> "The Defendant shall, by 4pm on 19 April 2022, file and serve an amended version of her witness statement dated 1 April 2022, which deletes the paragraphs or parts of paragraphs identified in the Schedule to this Order."

91. The schedule identifies about 111 whole paragraphs and parts of a further 16 paragraphs which the claimant submits should be deleted.

92. The defendant's position is that the application is disproportionate, concerns passages that provide background narrative, and that in any event it would be better considered (if necessary) at the start of the trial itself. In support of her opposition to the claimant's application, the defendant has identified eight paragraphs of the claimant's statement that she submits are examples of the same type of evidence as the claimant complains of in her statement.

### *The law*

93. CPR 32.1 provides, so far as material:

> "The court may control the evidence by giving directions as to—
>
> (a) the issues on which it requires evidence;
>
> (b) the nature of the evidence which it requires to decide those issues; and
>
> (c) the way in which the evidence is to be placed before the court.
>
> (2) The court may use its power under this rule to exclude evidence that would otherwise be admissible."

94. CPR 32.4(1) provides:

> "A witness statement is a written statement signed by a person which contains the evidence which that person would be allowed to give orally."

95. The Queen's Bench Guide 2022 states at paragraph 10.60 that the following matters should be borne in mind:

> "1. A witness statement must contain the truth, the whole truth and nothing but the truth on the issues it covers;
>
> 2. Those issues should consist only of the issues on which the party serving the witness statement wishes that witness to give evidence in chief and should not include commentary on the trial bundle or other matters which may arise during the trial or may have arisen during the proceedings;
>
> 3. A witness statement should be as concise as the circumstances allow; inadmissible or irrelevant material should not be included. An application may be made by an opposing party to strike out inadmissible or irrelevant material. If a party does object to the contents of a witness statement, they should notify the other party of their objection within 28 days after service of the statement and the parties should seek to resolve the matter. Otherwise an application should be made to the court for direction; …" (Emphasis added.)

96. As Sedley LJ observed in *William v Wandsworth LBC* [2006] EWCA Civ 535 at [80], "*witness statements are a proper vehicle for relevant and admissible evidence going to the issue before the court, and for nothing else. Argument is for advocates. Innuendo has no place at all*".

97. In *JD Wetherspoon plc v Harris (Practice Note)* [2013] 1 WLR 3296 Sir Terence Etherton C heard, amongst other matters, an application to strike out the majority of a witness statement made by Mr Goldberger on behalf of the second to fourth defendants. He held:

> "33. The vast majority of Mr Goldberger's witness statement contains a recitation of facts based on the documents, commentary on those documents, argument, submissions and expressions of opinion, particularly on aspects of the commercial property market. In all those respects Mr Goldberger's witness statement is an abuse. The abusive parts should be struck out.
>
> …
>
> 39. Mr Goldberger would not be allowed at trial to give oral evidence which merely recites the relevant events, of which he does not have direct knowledge, by reference to documents he has read. Nor would he be permitted at trial to advance arguments and make submissions which might be expected of an advocate rather than a witness of fact. These points are made clear in paragraph 7 of Appendix 9 to the Chancery Guide 7th ed (2013), which is as follows:
>
> > "A witness statement should simply cover those issues, but only those issues, on which the party serving the statement wishes that witness to give evidence in chief. Thus it is not, for example, the function of a witness statement to provide a

> commentary on the documents in the trial bundle, nor to set out quotations from such documents, nor to engage in matters of argument. Witness statements should not deal with other matters merely because they may arise in the course of the trial."
>
> …
>
> 41 I recognise, of course, that these rules as to witness statements and their contents are not rigid statutes. It is conceivable that in particular circumstances they may properly be relaxed in order to achieve the overriding objective in CPR r 1 of dealing with cases justly. I can see no good reason, however, why they should not apply to Mr Goldberger's witness statement in the present proceedings." (Emphasis added.)

98. In *Aven v Orbis* [2020] EWHC 474 (QB) Warby J observed at [17] that the additional points made in the passage from the Chancery Guide cited by the Chancellor in *JD Wetherspoon* at [39], that it is not the function of a witness statement to set out quotations from documents in the trial bundle nor to engage in matters of argument, are not specific to the Chancery Division. At [13], Warby J observed that the Chancellor, in *JD Wetherspoon*

> "evidently accepted the submission for the claimant, that the claimant would be placed in difficulty by such a statement because it would be difficult for counsel to decide how much of, and precisely which parts of, the witness statement should be the subject of cross-examination. I would respectfully accept and adopt that point. I would add that a proper separation between evidence and argument, fact and opinion, is important for other participants in or observers of the judicial process. The task of the Judge is complicated if these distinct matters are confused or intertwined, in a witness statement. Muddling up these separate elements of the process will also tend to make proceedings harder for observers to follow, and for reporters to explain. For all these reasons, it is important that documents presented to the Court should focus on the functions they are meant to perform, and not stray into other domains."

99. In *Wilkinson v West Coast Capital* [2005] EWHC 1606 (Ch) Mann J considered an application, at a pre-trial review, to strike out paragraphs in witness statements on the grounds of obvious irrelevance and/or disproportionality. He observed at [5]:

> "… However, desirable though the power to control evidence obviously is, particular care must in my view be taken when it is sought to exercise the power before a trial. It is noteworthy that the two cases which I have referred to above were both cases in which the issues as to evidence arose during the course of trials. By the time that the issue arises in that context, the judge is likely to have a much fuller overall picture of the issues in the case and of the evidence which is going to be adduced in support of them.

> In a large number of cases, he or she is likely to be in a better position to make judgments which turn on the real value of the line of evidence in question and its proportionality, and in very many cases its admissibility. A court which is asked to approach these questions at the interlocutory stage is much less likely to have that picture, and should be that much more careful in forming a view that the evidence is going to be irrelevant, or if relevant, unhelpful and/or disproportionate. One must also bear in mind the extent to which it is desirable to consider these matters at all at an interlocutory stage. One must be on one's guard, in applications such as this, not to allow case management in relation to witness statements to give rise to significant time−and cost−wasting applications; those should not be encouraged. In my view, I should only strike out the parts of the witness statements which I am currently considering if it is quite plain to me that, no matter how the proceedings look at trial, the evidence will never appear to be either relevant or, if relevant, will never be sufficiently helpful to make it right to allow the party in question to adduce it. With evidence of this nature, that is likely to be quite a heavy burden. ”

***Analysis***

100. There is no real dispute as to the legal principles. The question that arises is how they should be applied in this case. The defendant’s witness statement runs to 300 paragraphs, covering 61 pages. The claimant has prepared a schedule of the material she seeks to strike out. The various reasons the claimant seeks to strike out material in the defendant’s witness statement are that the paragraphs consist of (i) a recitation of material disclosed by the claimant which will be included in the trial bundle; (ii) commentary or submissions; (iii) material which is irrelevant; (iv) material which is hearsay; and (v) material which is unpleaded or seeks to reintroduce material that has been struck out of the defence.

***Recitation of disclosure and commentary/submissions***

101. The overlapping objections that the defendant’s statement consists of recitation of or commentary on documents in the trial bundle is raised in respect of the following paragraphs: 7-12, 28-29, 43-44, 59-60, 62-63, 69 (part), 70, 72-74. 77, 79, 84, 94, 97-114, 119-121, 123-124, 130-133, 134 (part), 136, 137 (part), 138 (part), 139 (part), 140, 141 (part), 162-163, 165, 168, 169, 175-176, 184, 200 (part), 202, 204-205, 209 (part), 210, 211 (part), 212, 217, 218, 219 (part), 220, 221-222, 223 (part), 224, 231, 232 (part), 233, 247 (part), 253, 255 (part), 256 (part), 257, 258 (part), 260, 265-266 and 269.

102. For example, under the heading “overview”, in paragraphs 7-12, the defendant states:

> “7. I have always been confident in the truth of what I posted on 9 October 2019 and the documentation which Becky has disclosed as part of these proceedings, in particular her WhatsApp conversations with her agent Caroline Watt, has only further reinforced my view on that. [The defendant then exhibits 43 pages of WhatsApp exchanges between the claimant and Ms

> Watt, as well as 9 pages of WhatsApp exchanges between herself and the claimant.]
>
> 8. For instance, in the course of discussing my Instagram story about being involved in a car accident (which eventually appeared in The Sun) and my post on Twitter expressing my disappointment that someone I trusted was leaking my posts/stories to The Sun in January/February 2019, they exchanged the following messages…"

103. The remainder of paragraph 8 consists of five subparagraphs (a) to (e) in which the defendant quotes and in two cases comments on messages between the claimant and Ms Watt. In paragraph 9, the defendant comments on what she considers to be clear from these messages. In paragraph 10, the defendant states that it has become clear to her that the claimant and Ms Watt "worked together, almost in a business-like fashion, in order to leak private information about other high-profile individuals to the press", a contention that the defendant seeks to support in subparagraphs (a) to (h), each of which quotes from WhatsApp messages exchanged between the claimant and Ms Watt. The defendant's "overview" continues:

> "11. What is more, it is clear to me from their exchanges that Becky was also actively participating in leaking private information about other individuals to The Sun. My suspicion that Becky engaged in this sort of conduct was one of the factors which led me to believe she was the source in October 2019 when I uploaded my post on social media and was what I was trying to say to everyone.
>
> 12. It has also come to light that there are numerous occasions on which we have been prevented from viewing potentially crucial evidence from Becky's side…"

104. The defendant's statement continues in subparagraphs (a) to (i) to describe alleged failings in the disclosure process.

105. Two further examples will suffice:

i) In paragraph 62, the defendant sets out in subparagraphs (a) to (e) events that she states she is now aware of as "a result of Becky's disclosure", quoting in each subparagraph from that disclosure, and then giving her view on what this disclosure shows in paragraph 63.

ii) In paragraphs 98 to 104, the defendant refers to articles by Mr Halls, suggests the claimant's WhatsApp communications with Ms Watt show that he was a close contact of Ms Watt, comments on the nature of the information revealed in the articles, sets out messages between the claimant and Ms Watt is referenced, and comments on the disclosed documents.

106. The defendant contends that her ongoing belief in the truth of her Post is relevant given the claimant's claim for general and aggravated damages relies on the fact that the Post continues to be published online. She contends that it would not be right to strike out

background narrative, particularly at this stage. The claimant's approach is "nit-picking", disproportionate and liable to increase costs and potentially add to delay. Further, it is inconsistent with certain paragraphs of the claimant's own statement in which she comments on disclosure and engages in argument.

107. I accept the defendant's submission that her ongoing belief is, or at least may be, relevant and so it would not be appropriate to strike out expressions of her current belief. But the claimant's objections to the large number of paragraphs in which the defendant quotes the messages between the claimant and Ms Watt, comments on those messages or on other matters such as the claimant's disclosure, cannot reasonably be described as nit-picking. The defendant cannot give evidence regarding communications to which she was not a party. Commentary on the effect of those communications is a matter of argument for counsel. It has no place in the defendant's witness statement. In my judgement, the pre-trial review is a proper stage to require the excision of parts of the defendant's statement which should not have been included. On the other hand, I bear in mind the need to take a proportionate approach, and to avoid any unnecessary increase in costs or delay where material does not obstruct the adjudicative process.

108. Applying the principles to which I have referred, the claimant's application in respect of the material referred to in paragraph 101 succeeds save to the extent that the following material will *not* be struck out:

i) Paragraph 7: the defendant is entitled to refer to her current belief

ii) Paragraphs 59-60: although these paragraphs cite from and comment on disclosure, I am prepared to leave them in on the basis that the defendant is referring to messages between herself and the claimant about which she can give evidence.

iii) Paragraph 69: it would be disproportionate to strike out the single sentence in the middle of the paragraph to which objection is taken.

iv) Paragraph 110: the defendant is entitled to give evidence as to her general awareness when she wrote the Post of "*the strong relationship which Becky seemed to have with The Sun and its journalists at the time*".

v) Paragraph 133(b): the defendant is able to give evidence as to who Dawn Ward and Leanne Brown are (two people mentioned in messages between the claimant and Ms Watt) and to explain why she discounted them as people who might have disclosed posts from her Private Instagram Account. Although the beginning of this subparagraph includes commentary on messages between the claimant and Ms Watt, a reference to their messages referring to Ms Ward and Ms Brown is necessary background and it would be disproportionate to excise parts of sentences.

vi) Paragraph 133(g): the defendant is able to give evidence to explain the reference to Rosie in the claimant's message to Ms Watt. Again, although this subparagraph includes some commentary on the disclosure, it is proportionate to allow the whole subparagraph to remain.

vii) Paragraph 134: the defendant is able to give evidence regarding an article about herself and her husband, and the messages that she exchanged with the claimant. Although this paragraph also includes some commentary on and recitation of messages between the claimant and Ms Watt, in explaining the chronology, it would be disproportionate to excise those parts of the paragraph.

viii) Paragraphs 138, 139 and 141: although there is a sentence of commentary in each of these paragraphs, there is no objection to most of each of these paragraphs and it would be disproportionate to excise the parts of paragraphs to which objection is taken.

ix) Paragraph 184: although this paragraph includes some commentary on disclosure, it also includes the defendant's evidence as to matters that she noticed prior to her Post about which she is able to give evidence. It would be disproportionate to excise parts of this paragraph.

x) Paragraph 200: there is less than a sentence of commentary on disclosure in this paragraph, the vast majority of which is unobjectionable, and it would be disproportionate to require the removal of that small part.

xi) Paragraph 218: the defendant is able to give evidence from her own knowledge as to who Ashley Moore is and it would be disproportionate to remove the minimal commentary in the first sentence.

xii) Paragraph 219 (part only): in addition to the first sentence to which no objection is taken, the defendant is also able to give evidence of her understanding that the Secret WAG column was said to have been worked on by only Jane Atkinson and Victoria Newton. However, the remainder of the paragraph is clearly commentary on disclosure and argument as to what was meant by messages to which the defendant was not a party and should not be in the witness statement.

xiii) Paragraph 247: the vast majority of this paragraph is unobjectionable and it would be disproportionate and unnecessary to remove the brief general comment to which objection is taken.

xiv) Paragraph 255: the defendant is able to give evidence regarding her own exchange with the claimant. Although there is some commentary in this paragraph, it is minimal.

109. In relation to paragraph 269, the first two sentences are not recitation of disclosure, commentary or argument. I consider the objection to these two sentences, namely that they are irrelevant, in the section below. The claimant's application succeeds in relation to the remainder of the paragraph which consists of a submission that can be made by counsel but has no place in the defendant's statement.

***Material which is irrelevant, hearsay, unpleaded and/or relates to material that was struck out***

110. The objections that the defendant's statement consists of irrelevant, hearsay or unpleaded material (including material struck out of the defence) is raised in respect of the following paragraphs: paragraphs 7-8, 71-72, 85 (part) 97-114, 261-269, 271, 273-

291 and 292-295. I have already found that the claimant's application in respect of paragraphs 8, 72, 97-109, 111-114, 265-266 and 269 (from "I find it staggering…") succeeds on the basis addressed in the section above.

111. It is appropriate to take a generous view of what may be relevant at this stage, bearing in mind this is only the pre-trial review. Although I have the statements of case, I have not yet heard the full range of arguments that the parties will deploy when the substantive issues are tried. For the reasons I have given in the section above, I reject the application to strike out paragraphs 7 and 110.

112. Paragraph 71 of the defendant's statement states:

> "As an aside, I am aware that Becky had attended the 2018 National Television Awards and produced and provided various pieces of "behind the scenes" footage for The Sun. She also got in a spat with former Girls Aloud group member Sarah Harding ("Sarah") during the 2018 event because Sarah apparently caught Becky taking photographs of the contents of Sarah's handbag when Sarah had dropped it on the floor. Their dispute subsequently appeared in The Sun."

113. The defendant's Amended Defence had included, at paragraph 15(37(h), the following:

> "Similarly, the Claimant was working for *The Sun* during the 23rd National Television Awards on 23 January 2018 and produced a 'behind the scenes' video that was subsequently published on The Sun website. This was organised through FRP. At the awards ceremony the Claimant was accused by Sarah Harding of taking intrusive photographs of her without her consent, as was reported in *The Sun* on 27 January 2018."

114. I struck out paragraph 15(37)(h) pursuant to CPR 3.4(2)(a) and (b), giving the following reasons in my judgment of 7 July 2021 (*Vardy v Rooney (2)* [2021] EWHC 1888 (QB)) at [56]-[57]:

> "Paragraph 15(37)(h) includes the pleading that at an awards ceremony "the Claimant was accused by Sarah Harding of taking intrusive photographs of her without her consent". A breach of privacy, in the form of taking intrusive photographs, would be potentially probative. However, the defendant does not allege that the claimant took intrusive photographs of Ms Harding. The fact that the claimant was *accused* of doing so is incapable of providing any support for the defendant's plea of truth.
>
> In my judgment, insofar as the facts pleaded in §15(37) have any relevance, it is as background facts or evidence, not material facts necessary for the purpose of formulating the defence."

115. The claimant objects to paragraph 71 on the basis that (i) it is not a matter on which the defendant can give direct evidence (ii) it is irrelevant and (iii) it relates to material that was struck out of the defence.

116. The hearsay nature of the evidence is a matter that goes to weight rather than admissibility. The fact that the material was struck out of the defence does not, in and of itself, show that it ought to be struck out of the defendant's statement. Statements of case must be concise. They must plead only material facts, meaning those necessary for the purpose of formulating a cause of action or defence, and not background facts or evidence. Paragraph 71 relates to the claimant's relationship with *The Sun* and contains an allegation that the claimant took intrusive photographs while working for them. Applying the generous approach to relevance which I consider to be appropriate at this stage, I reject the contention that paragraph 71 should be struck out.

117. The claimant objects to paragraph 85 (save for the first sentence) on the basis that the material addresses the defendant's reaction to disclosure which is irrelevant. In this paragraph the defendant comments on and quotes from the WhatsApp messages between the claimant and Ms Watt and describes how she felt when she became aware of these exchanges during these proceedings. The defendant's commentary on and recitation of these documents has no place in her witness statement and the effect on her of reading them does not go to any relevant issue. Paragraph 85 (save for the first sentence) should be excised.

118. In paragraphs 261 to 264, under the heading "reaction to the Post – Becky and The Sun", the defendant refers to Tweets by the claimant on 10 October 2019 and articles containing interviews with the claimant's father and with the claimant the same day. The claimant objects that these paragraphs are irrelevant. Applying a generous approach to relevance at this stage, I do not consider that these paragraphs should be struck out. The claimant's initial response to the Post is potentially of some relevance in assessing the defendant's truth defence.

119. In paragraph 267 of the defendant's statement she addresses "communications going on behind the scenes on 10 October 2019 between Becky, Dan Wootton, Caroline Watt and Nicola McLean". I have some concern that this paragraph appears to be commentary on disclosure, but the sole objection taken by the claimant is that it is irrelevant. At this stage, it is not plain to me that, no matter how the proceedings look at trial, the evidence in this paragraph will never appear to be relevant or sufficiently helpful to make it right to allow the defendant to adduce it. Accordingly, I reject the objection to paragraph 267.

120. In the first sentence of paragraph 268 the defendant states that on 11 October 2019 she was informed by Paul Stretford that he had been told by Ian Monk that there was "speculation around the newsrooms" that Ms Watt was going to be sacked as the claimant's agent. In the second sentence the defendant states that she now knows from matters that have come to light during this dispute that on 11 October 2019 Ms Watt deleted her Twitter account. The claimant objects that this paragraph is irrelevant. The defendant submits this material provides a helpful narrative and is relevant to the defendant's continuing belief in the truth of the Post.

121. It is impossible to see how evidence of speculation around the newsrooms that Ms Watt was going to be sacked by the claimant, an eventuality that did not occur, is of any relevance to the determination of the issues in this claim. The deletion of Ms Watt's Twitter account may be of relevance, but that will be a matter for submission: the defendant's reference to its deletion is simply commentary on disclosure.

122. In the first two sentences of paragraph 269, the defendant states that Ms Watt's Twitter account, prior to its deletion, had been very active since its creation in 2011, as the defendant would expect of a PR agent. On its face, this appears to be direct evidence rather than commentary on evidence that has been disclosed. Applying a generous approach to relevance, I reject the contention that these sentences should be struck out.

123. Paragraph 271 refers to an article in the Mail Online on 13 October 2019, containing photographs of the claimant attributed to Splash News, and referring to the claimant's emotional state following the Post. The claimant objects this paragraph is irrelevant. Given there is a claim for aggravated damages, and applying a generous approach to relevance at this stage, I reject the contention that paragraph 271 should be struck out.

124. Paragraphs 273-291 appear under the heading "reaction to the post – other individuals". In these paragraphs the defendant sets out the responses to her Post that she received from (i) Lesley Cloke; (ii) Kim Hart; (iii) Annie Kilner; (iv) Georgina Cleverley; (v) Danielle Lloyd and (vi) Nicola Carragher. The first five all include some form of allegation of disclosure of private information by the claimant. The claimant objects that these paragraphs are hearsay and unpleaded similar fact evidence. Mr Tomlinson QC submits that these paragraphs are particularly objectionable and he submits that such knowledge as the defendant has acquired after publishing her Post is not relevant.

125. In addition, the claimant contends that paragraph 285 includes material that has previously been struck out of the defence. Paragraph 285 of the defendant's statement states:

> "Danielle and Becky also previously had arguments about Becky disclosing screengrabs of her conversations with Danielle to the press; her obtaining private medical information about Danielle; and the fact that Danielle was told by a journalist at The Mail that Becky is the Secret WAG"

126. The Re-Amended Defence had included the following in paragraph 15(32)(h):

> "Further, the Claimant has also directly disclosed private information about other people with whom she is friendly or associated, such as about … Danielle Lloyd's pregnancy …"

This was expanded in paragraph 15(46)(f) which asserted that the claimant improperly obtained information about a medical procedure undertaken by Danielle Lloyd, giving details in eight subparagraphs.

127. In fact, the reference to disclosure of Ms Lloyd's confidential medical information was withdrawn rather than struck out. Following the claimant's application to strike out various parts of the Re-Amended Defence, the defendant withdrew the matters pleaded at paragraphs 15(45) and (46) (and consequently also 15(32)(h)), indicating in the witness statement of Mr Lunt that the court would not be required to further consider the matters there pleaded "which will no longer be pursued": see *Vardy v Rooney (2)* at [5].

128. The defendant contends that paragraphs 273-291 are relevant as they go to the defendant's development and fortification of her ongoing belief that the Post is correct, as well as supporting the defence of truth.

129. The principles to which I have referred in paragraph 116 above apply equally here. As I have said, I accept that given the claim for aggravated damages based on the continuing publication of the Post, the defendant's ongoing belief in the truth of the Post is potentially relevant and so knowledge acquired after the Post was published is potentially relevant.

130. Nonetheless, the claimant's application succeeds in relation to the following paragraphs:

i) 274-275: the material in these paragraphs amounts to a bare assertion of belief on the part of a non-witness, in an exhibited message, that the claimant disclosed a photograph of Ms Cloke and her new partner to her former partner. There is no pleaded allegation that the claimant did so. Moreover, the allegation is not similar to the core allegations in this claim in that it does not involve an allegation of providing private information to journalists or paparazzi for personal gain. Having regard to the overriding objective, it is important to focus on the pleaded allegations and not to allow the issues to be expanded disproportionately by the admission of new hearsay allegations.

ii) 278-279: in these paragraphs the defendant refers to a message from Ms Kilner in which she said that information that she told the claimant, which not many people knew about, ended up in the press. There is no allegation that the claimant disclosed the (unidentified) information, only an inference that she was suspected of doing so; and there is no pleaded allegation in relation to this matter at all. The reasons given in respect of (i) above (save to the extent that the information in this case is said to have reached the press) apply equally to these paragraphs.

iii) 280-281: in these paragraphs the defendant refers to a message from Ms Cleverley that she had been told the claimant had "done it" to her. The defendant states her understanding that this was a reference to the claimant having leaked private information about Ms Cleverley to the press, but there are no details of what information Ms Cleverly was told the claimant had leaked, when or to whom. A reference is made in this paragraph to Ms Cleverley having been the subject of a Secret WAG article, but it is not alleged that that is what Ms Cleverley was referring to. Again, I consider that it is important to focus on the pleaded allegations and not to allow the issues to be expanded disproportionately by the admission of new hearsay allegations

iv) 282-284: these paragraphs refer to a public "spat" on Twitter between the claimant and Ms Lloyd. Although reference is made to two articles in *The Sun*, no allegation is made in these paragraphs that the claimant disclosed private information about Ms Lloyd to a newspaper. The allegation made is that the claimant made public on Twitter the essential content of a WhatsApp message that Ms Lloyd had (it is said jokingly) sent to the claimant. This is dissimilar to the core allegations in this case. Again, having regard to the overriding objective, I consider that these paragraphs should be removed.

v) In paragraph 285 reference is made to other arguments between the claimant and Ms Lloyd about other matters. One of these matters is the obtaining of private medical information, a matter which is distinct from disclosure and a matter which the defendant's solicitor previously said in evidence would not be pursued. The arguments are also said to have related to the claimant disclosing screengrabs of her conversations with Ms Lloyd to the press. There is no allegation (still less any pleaded allegation) that the claimant disclosed the private information which is referred to here in very broad terms. For the same reasons as I have given above, I consider these parts of this paragraph should be removed. Paragraph 285 also refers to their arguments about "the fact that Danielle was told by a journalist at The Mail that Becky is the Secret WAG". This goes to a pleaded issue, namely the defendant's allegation that the claimant is the (or a) source for the Secret WAG column. Although it is hearsay, the question of weight is not a matter for determination now. Accordingly, that part of paragraph 285 is not required to be removed.

131. Paragraph 273 is merely an introductory paragraph to the section. Paragraphs 276-277 refer to a message from Ms Hart expressing the belief that the claimant was the source of an article about her in the Secret WAG column. This goes to a pleaded allegation in the case and, as I have said, the weight to be accorded to such a hearsay statement is a matter for trial. I reject the contention that these paragraphs should be struck out.

132. Paragraphs 286-291 refer to a message from Ms Carragher which contained a screenshot of an email from Matt Wilkinson, a journalist from *The Sun*, to her husband's agent. These paragraphs do not raise any new allegations of disclosure of private information about others. They relate to the disclosure of the defendant's information from her Private Instagram Account. Although this is information the defendant only became aware of the day after her Post, it is relevant to her ongoing belief. I reject the contention that these paragraphs should be removed.

133. Paragraphs 292-295 appear under the heading "reaction to the post – family/friends". The defendant explains the strain on her relationships when people felt they were potentially suspected of being responsible for leaking information. The claimant objects these paragraphs are irrelevant. The defendant contends this forms an important part of the narrative, explaining the need to conduct the "Sting Operation", as well as the broader interest in identifying the leak. At this stage, it cannot be said to be clear that this evidence will not, at trial, appear to be relevant or sufficiently helpful to make it right to allow the defendant to adduce it. Accordingly, I reject the objection to paragraphs 292-295.

### *The claimant's witness statement*

134. The claimant has given a witness statement that is 118 paragraphs long, covering 39 pages. In response to the claimant's objections to the defendant's statement, the defendant has raised objections to the following material:

i) paragraph 43 (first two sentences) on the basis that the claimant is commenting on disclosure;

ii) paragraph 46 (final sentence) on the basis that the claimant is commenting on disclosure;

iii) paragraph 50 (4th and 5th sentences) on the basis that the claimant is commenting on disclosure;

iv) paragraph 58 (2nd sentence) on the basis this is comment;

v) paragraph 65 (2nd sentence) on the basis this is argument;

vi) paragraph 66 (1st and 2nd sentence) on the basis this is argument;

vii) paragraph 70 (4th and 5th sentences) on the ground that the basis for the claimant's understanding is not set out; and

viii) paragraph 116 (whole paragraph) on the basis that this is opinion and argument.

135. Whereas the defendant's statement contains much that is mere recitation, commentary and argument, the same cannot be said of the claimant's statement. In my judgement, the objections to the claimant's statement are either ill-founded or, to the extent that they have any validity, can properly be characterised as nit-picking objections to a few sentences. It would be disproportionate to require the claimant to serve a revised witness statement removing the very small proportion of material to which any objection could properly be taken.

136. For example:

i) In paragraph 46 the claimant refers to her own WhatsApp exchange with Ms Watt on 29 September 2019 and then states, in a single sentence to which the defendant takes objection, "It is obvious that I did not think too much about it at the time and that I doubted whether the article was true". While this is a comment on a disclosed document, it is a very brief comment on what the claimant herself wrote. I have ruled against the claimant's objection to similar comments by the defendant relating to her own messages (see e.g. paragraph 108 above).

ii) In paragraph 58, the claimant refers to the fact that at the time she thought the defendant had deleted a particular post and wondered why and then, in the single sentence to which objection is taken, states "I now realise that because it was a story and not a post it would have automatically disappeared after 24 hours but I did not realise that at the time". That is evidence from the claimant about what she wrote at the time, explaining a point regarding the working of Instagram that she did not know at the time. It is unobjectionable.

iii) In the first two sentences of paragraph 66 the claimant refers to the way in which the defendant and her lawyers have conducted this litigation, making what she describes as "a very wide ranging attack on me and a series of outrageous claims". These are matters she is entitled to address in support of her claim, which includes a claim for aggravated damages.

137. Accordingly, I reject the defendant's submission that there is an inconsistency between the claimant's application and the terms of her own statement.

## Conclusions

138. For the reasons I have given:

i) The defendant's application for disclosure from the respondent is granted insofar as she seeks communications with Mr Andrew Halls; and refused insofar as she seeks communications with the other eight journalists named in the defendant's draft order;

ii) The claimant's application for retrospective permission and relief from sanctions to serve the witness summaries of Mr Andrew Halls, Mr Simon Boyle, Mr Michael Hamilton and Ms Amy Brookbanks is granted; and the application for such permission and relief from sanctions in respect of the witness summaries of Ms Dale and Mr Moyes is refused;

iii) The claimant's application for an order that the defendant serve a revised witness statement removing certain material is allowed to the extent that the following paragraphs or parts of paragraphs should be removed: 8-12, 28-29, 43-44, 62-63, 70, 72-74, 77, 79, 84, 85 (save the first sentence), 94, 97-109, 111-114, 119-121, 123-124, 130-132, 133 (save for subparas (b) and (g)), 136, 137 (save the first sentence), 140, 142, 162-163, 165, 168-169, 175-176, 202, 204-205, 209 (save the first two sentences), 210, 211 (save the first three sentences), 212, 217, 219 (save the first sentence and fourth sentence up to "worked on by only Jane Atkinson and Victoria Newton"), 220-222, 223 (save the first sentence), 224, 231, 232 (from "but I do know that Becky" to the end), 233, 253, 256 (save the first sentence), 257-258, 260, 265-266, 268, 269 (save the first two sentences), 274-275, 278-284, 285 (save the words "Danielle and Becky also previously had arguments about … the fact that Danielle was told by a journalist at The Mail that Becky is the Secret WAG").