

THE PHONE HACKING TRIAL IN VARIOUS V MGN - JUDGMENT OF Mr JUSTICE MANN

OF 21 MAY 2015

In March 2015, Mr Justice Mann heard the trial of 8 representative claims in the managed litigation of phone hacking claims against MGN Limited (“MGN”), the publishers of three tabloid newspapers. The trial was effectively an assessment of damages, since liability was in all cases conceded save that it was not conceded that a handful of articles were published as a result of phone hacking.

Aim of the Trial

The professed aim of this trial was to ascertain the compensation payable so that the damages fixed in these cases could give some guidance as to the awards payable in other cases or future cases. Although MGN admitted that there were illicit hacking activities conducted against all the claimants in these cases, and it was admitted that most of the articles were their product, the extent of those unlawful activities was not admitted.

The Judge accepted in his judgment that there were three layers of claims giving rise to compensation: one, the wrongful listening of voicemail messages; two, wrongfully obtained information by private investigators and thirdly, publication of stories based on that information.

Initial Denials and Then Admissions by MGN

MGN has for years strongly denied that voicemail interception took place at their titles (paragraph 19) and even applied to strike out some of the early claims. However, in September 2014, MGN changed its approach (paragraph 21) and started to make a series of admissions over the next few months. These included admissions that voicemail interception took place at all three newspapers and resulted in articles, that voicemail interception was covert and that substantial use of private investigators probably resulted in obtaining and use of private information including call data.

In his judgment, the Judge has found that MGN’s tactical approach to pleadings and admissions, which meant they declined to plead out their defences in full, lead to them being precluded from putting forward at trial any substantive defences in relation to publication of the articles complained of as one of claims for misuse of private information.(Paragraph 23).

Generic evidence at trial

After reviewing the documentary evidence and hearing the evidence, including live evidence from Dan Evans and James Hipwell, the Judge found that the practice of phone hacking was widespread, institutionalised and long standing at MGN (paragraph 209);

that it took place at all three newspapers; that these activities were covert and the MGN officers knew of and were complicit in such unlawful activities. He also found that wrong statements had been made to the Leveson Inquiry by various individuals who had been employed by MGN (Paragraph 214).

Approach to damages – Multiple awards

In relation to damages, the Judge found, based on a number of established cases, that in assessing privacy damages the Court is not just confined to considering distress but also the damage or affront to dignity or standing. Further, given the different strands of unlawful activity over sustained periods, and the degree of separation, it was appropriate in cases such as these to make multiple awards for the different articles/strands of the case. (Paragraphs 146 – 159).

Giving guidance in assessment of compensation, the judge said that the subject matter of the disclosed information is not a rigid guide to the amount of damages but medical /mental health, physical health information and financial information are likely to attract a higher degree of privacy whereas a social meeting a lower degree of privacy (paragraph 229).

Furthermore, the starting point for the general figure for hacking is £10,000 per year of serious levels of hacking.

The judge awarded substantial damages to the claimants, from £72,500 for Lauren Alcorn to £201,250 for Robert Ashworth, £188,250 for Paul Gascoigne and £260,250 for Sadie Frost. The high awards in these cases, greater than previous cases, reflected the serious and sustained and repeated intrusions into privacy and the impact that it had on the claimants.

In relation to Sadie Frost, Judge found that the phones of Sadie Frost, Ben Jackson, Kate Moss and Holly Davidson were a rich source of information about their lives and others. (Paragraph 605)

Comment

It is possible that, in the litigation going forward, MGN will change tactics and will argue that certain articles are outside of the limitation period and/or are not really private. However the findings about corporate denials and false statements at Leveson together with other acts may defeat any defence of limitation.

It is possible that MGN may seek to appeal the decision but any appeal is unlikely to succeed.

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