Neutral Citation Number: [2021] EWHC 641 (QB)

Case No: QB-2019-003661

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 March 2021

Before :

THE HONOURABLE MR JUSTICE NICKLIN

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Between :

Michael Ward	**Claimant**
- and -	
Associated Newspapers Ltd	**Defendant**

- -
- -

The Claimant appeared in person
Andrew Caldecott QC and Clara Hamer (instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendant**

Hearing date: 18 December 2020
Further written submissions: 21 December 2020, 13 January 2021 and 2-3 February 2021

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Covid-19 Protocol: This judgment was handed down by the judges remotely by circulation to the parties' representatives and BAILII by email. The date of hand-down is deemed to be as shown above.

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Approved Judgment

The Honourable Mr Justice Nicklin :

1. This is the second substantial interim application with which the Court has had to deal in this case before even a Defence has been served. The hearing took almost a day, and further written submissions were submitted after the hearing. Mr Ward, the Claimant, is acting in person. He has dealt, admirably, with a further comprehensive attack on his statement of case, renewed by a new Leading Counsel instructed by the Defendant. Save in the limited respects identified below, this further attack has been unsuccessful.

History

2. The nature of Mr Ward's claim, the statement upon which he sues, and the history to the litigation is set out in the judgment given on 5 October 2020 **[2020] EWHC 2797 (QB)** ("the First Judgment"). I will adopt the same definitions in this judgment. I dismissed the Defendant's application to strike out Mr Ward's claim and for summary judgment against him. I described this as a "*comprehensive and wide-ranging attack*" on Mr Ward's claim [10]. I refused permission to appeal and no renewed application for permission to appeal was made to the Court of Appeal.

3. One of the complaints made by the Defendant was that, in his case of malice, Mr Ward had failed to identify, clearly, the particular individuals at the Defendant whom he contended acted with malice in publishing the Mail on Sunday Statement to be included in the Byline Article (see [46]). At the first hearing, no application was made to dismiss Mr Ward's plea of malice on this basis. By the time of the first hearing, Mr Ward had filed a witness statement which identified that the two key individuals against whom he alleged malice were John Wellington and Peter Wright. They were the individuals who had composed and sent the Mail on Sunday Statement for publication in the Byline Article (that ultimately appeared in paragraph 49) (see [47]-[54] of the First Judgment). I did, however, direct that Mr Ward was to make clear in an Amended Particulars of Claim the individuals against whom he alleged malice and the facts relied on: [55].

4. Anticipating that amendments that Mr Ward made to his Particulars of Claim might prove to be contentious, the directions provided that Mr Ward was to provide a draft Amended Particulars of Claim to the Defendant and the Defendant was given 14 days to indicate whether it consented or objected to the amendments. The process took rather longer than expected because, unfamiliar with conventions of litigation, Mr Ward did not initially identify the amendments he was seeking by application of the typical redline method to pleadings. Even when this was corrected by Mr Ward, there remained some unidentified amendments to the text. Finally, on 9 December 2020, Mr Ward served a draft amended statement of case that he suggested fully identified the amendments he was seeking. On 11 December 2020, the Defendant's solicitors sent a letter to Mr Ward identifying the amendments to which objection was taken. A hearing had been fixed for 18 December 2020. On 15 December 2020, Mr Ward served a further draft amended statement of case in response to the objections raised by the Defendant.

5. Although I accept that the Defendant (and its solicitors) has sought to adopt a constructive approach to the amendments sought by Mr Ward, taking what amount to 'pleading points' with litigants in person can be counter-productive. It will be a rare case in which a legally trained and skilled opponent, acting for a well-resourced client, will be unable to pick holes in a litigant in person's statement of case. The question is whether this serves any real purpose. Unless there is some fundamental defect in the

litigant in person's case, little is achieved by such skirmishing beyond (usually) the production of ever more lengthy statements of case (as the litigant attempts to meet the objections raised against him/her), delay and depletion of resources (those of the litigant, the opponent and the Court). This case might be thought to be a paradigm example of this phenomenon. The final version of the draft Amended Particulars of Claim now runs to over 100 pages (almost double the page count of his original Particulars of Claim). In the light of that, it is not without irony that the first complaint advanced by the Defendant against Mr Ward was that his statement of case was not a "*concise statement of the facts on which the Claimant relies*": CPR 16.4(1)(a).

6. Since the hearing, I have also received well over 100 further pages of material. I do not criticise Mr Ward for this. Naturally, he feels under attack and the need to answer the Defendant's objections and demonstrate why, in his view, he has a valid claim that he can support with evidence. Nevertheless, objectively judged, and as will be demonstrated below, very little has been achieved by this exercise. Measured in terms of resources, it is simply disproportionate. Having spent what must be a very considerable sum in costs at two substantial hearings, what of any real value has been achieved by the Defendant by this exercise, and which could not have been achieved, instead, by pleading a Defence that set out clearly the parameters of the litigation, is difficult to identify.

The challenges to the draft Amended Particulars of Claim

Paragraphs 44-46, 48, 64-65, 189-190, 196, 202, 236, 272-273

7. In these paragraphs of his draft Amended Particulars of Claim, Mr Ward advances his case that, in publishing the statement for publication in the Byline Article, Messrs Wright and Wellington were actuated by malice. Mr Ward advances his plea of malice on the basis of both knowledge of falsity and that Mr Wright and Mr Wellington had a dominant improper motive. The plea of malice is advanced in the Particulars of Claim as part of Mr Ward's claim for malicious falsehood. Malice is also likely to feature as an issue in the case because, on the basis of indications given previously (see [43] in the First Judgment), the Defendant intends to rely upon a defence of qualified privilege in respect of Mr Ward's defamation claim and malice, if proved, can defeat that defence.

8. It has been held that malice is the same whether it is advanced as an element of a claim for malicious falsehood or to defeat a defence of qualified privilege: ***Spring -v- Guardian Assurance plc*** **[1993] 2 All ER 273**. Proof of a dominant improper motive on the part of the defendant is one of the bases on which malice can be demonstrated in publication claims: ***Horrocks -v- Lowe*** **[1975] AC 135, 149F-G** *per* Lord Diplock. It is, however, very much the poor relation of the other basis on which malice can be established: proof that the individual knew that the allegation s/he made was false (or was reckless to such a degree that he is, in law, equated as having this dishonest state of mind). In most cases, at least evidentially, the two states of mind tend to go hand-in-hand; the claimant alleges that the defendant did not believe what s/he published and did so because s/he wanted to damage the claimant or for some other advantage. On the basis of the authorities, there remains, perhaps, a theoretical possibility of malice being found against a defendant who, although s/he believed that what was published was true, was nevertheless actuated by a dominant improper motive. However, as I observed in ***Huda -v- Wells*** **[2018] EMLR 7** [71]:

> "… This species of malice may still have a legitimate role in malicious falsehood claims (particularly trade libel) but it has a dubious justification when advanced in answer to a well-founded plea of qualified privilege. It has been expressly excluded as a basis for proving malice in answer to a fair comment/honest opinion defence: ***Tse Wai Chun Paul -v- Albert Cheng*** **[2001] EMLR 31**. In 2002, Eady J noted that he could not recall an instance of 'dominant intention' malice having been proved and described this form of malice as an 'endangered species' in relation to qualified privilege: ***Lillie & Reed -v- Newcastle City Council*** **[2002] EWHC 1600 (QB)** [1093]. I am not aware of any such case in the 15 years since."

9. In their letter of 11 December 2020, the Defendant's solicitors objected to the paragraphs of the draft Amended Particulars of Claim that advanced a plea of dominant improper motive as follows:

> "We do not accept that you have pleaded a viable case on malice by way of 'dominant improper motive' which could succeed if the Court at trial were to accept that Mr Wright and Mr Wellington believed in the truth of the statement and were not reckless, and the matters on which you rely in this context are just as consistent with the absence of malice as the presence of malice.
>
> We accept that generally the plea of knowledge of falsity or recklessness is proper and remains. If that were established, a finding of malice would ordinarily follow.
>
> It is material context that this is a reply to attack case where the reply is directed only at the attack. In such a context knowledge of falsity or recklessness would seem to be the key issue.
>
> We accept that the motive of Mr Wellington and Mr Wright in publishing the statement may arguably be relevant to what they intended to convey, which arguably can have a bearing on malice. A deletion of references to a 'dominant improper motive' or 'dominant improper purpose' and a succinct statement to the effect that the Defendants through Mr Wellington and Mr Wright were concerned not to harm the Defendant's case for self-regulation before Leveson would be proportionate and not subject to the objections above.
>
> In this context it will be noted that that Defendants do not object to paragraphs 84 to 89 [of the draft Amended Particulars of Claim]."

10. Mr Caldecott QC had to acknowledge, and frankly did so, that the plea of dominant improper motive had been included in Mr Ward's original Particulars of Claim. Paragraphs 189-190, to which objection is now taken, are not the subject of any amendment by Mr Ward and appeared as paragraphs 90-91 in the original Particulars of Claim. As such, the Defendant is not on particularly strong ground. Not only is it resisting the amendments that seek to expand a case that was already pleaded, it is also seeking to strike out existing paragraphs of the Particulars of Claim. That might be thought to be particularly ambitious given that the Defendant (a) has not issued an Application Notice seeking to strike out existing paragraphs of the Particulars of Claim, and (b) had not sought to strike out this case in its first comprehensive assault on Mr Ward's statement of case at the beginning of October 2020, which had included an attack on the whole malice plea.

11. Nevertheless, if I was satisfied that there was a well-founded objection to this part of Mr Ward's case, I would not have rejected the Defendant's case on these grounds. That would be to elevate form over substance. But in my judgment, there is no real substance to the Defendant's objections. Mr Ward's case could not really be clearer. Mr Caldecott QC is certainly not struggling to understand the pleaded case. In his skeleton argument for the hearing, he summarised the particulars as amounting to a plea "*that Mr Wright and Mr Wellington published the statement with the purpose of discrediting the Claimant's allegations in order to protect the reputation of the Defendants or their executives and to safeguard the continuing 'battle' for self-regulation*". The Defendant's case is not that, at the pleading stage, Mr Ward's statement of case (whether as originally pleaded or as amended) does not advance a case that discloses a proper case of malice or one that does not have a real prospect of success. The argument is that, if Mr Wright and Mr Wellington believed the Mail on Sunday Statement was true, Mr Ward's case on dominant improper motive would not be sufficient to sustain a malice plea.

12. I have recognised, above, that a finding of dominant improper motive against a defendant who is found to have believed that what s/he published was true is somewhat theoretical. But that does not mean that, at the pleading stage, the Court should set about attempting to isolate and exclude a pleaded case of dominant improper motive. The decision as to whether a defendant was malicious is an assessment of his/her state of mind at the time of publication. Ultimately, that depends upon an assessment of evidence. I do not think it is possible, as this case demonstrates, neatly to compartmentalise the evidence into the jurisprudential boxes of "*knowledge of falsity*" and "*dominant improper motive*"; permitting the former but excluding the latter. Such an exercise is unreal, at least on the facts of this case. Whether someone has, in fact, published something s/he knew (or believed) to be false is, in reality, likely to be bound up with the person's motivation for publication. A person's motivation may be a particularly powerful piece of evidence if the Court is required to consider whether s/he was reckless to the level of complete indifference to whether what s/he published was true or false. Whilst it may be possible, jurisprudentially, to separate the concepts of "*knowledge of falsity*" from "*dominant improper motive*", as a matter of evidence, in many cases and particularly this case, the evidence as to state of mind will either be inseparable or will substantially overlap.

13. The point can be demonstrated, shortly, by quoting paragraph 64 of the draft Amended Particulars of Claim:

> "Instead of acknowledging the truth of the Claimant's claims and allegations (or, self-servingly, staying silent or putting out a Statement that was accurate but neutral) [Mr Wright and Mr Wellington] sought to destroy the credibility of a story which they well knew to be true, being published by a website with which Associated Newspapers was itself by now 'at war', a story which they greatly feared could become widely exposed with potentially devastating consequences for Associated Newspapers itself, for a number of its existing and former top executives, as well as risking undermining the Group's continued battle for self-regulation".

14. This paragraph synthesises both bases on which Mr Ward alleges malice against Mr Wright and Mr Wellington. I can see no principled basis on which to exclude Mr Ward's case on "*dominant improper motive*". If, ultimately, Mr Ward fails to

demonstrate that Mr Wellington and/or Mr Wright knew that the statement given to Byline for publication in the Article was false (or that they were reckless as to the truth or falsity), he may struggle to succeed with a malice plea based on an alleged dominant improper motive. If that point is reached, the Defendant will be able to argue that there is no scope for this type of malice, but that is not something that can be resolved at the pleading stage. The Defendant's argument can only be resolved once the relevant facts have been determined. For now, Mr Ward has advanced a viable case upon which to allege malice on both limbs. In this case, at least, the case of dominant improper motive is inextricably bound up with Mr Ward's case on knowledge of falsity. I reject the Defendant's objections. I grant permission for the amendments to these paragraphs.

15. I should state expressly that these are, of course, Mr Ward's claims in this action. Whether there is any substance to them could only be determined after consideration of evidence at a trial.

Paragraphs 58-59

16. In these paragraphs, Mr Ward seeks permission to insert allegations that Mr Wright and Mr Wellington "*are not the only senior executives of Associated Newspapers who acted with malice towards the Claimant*". Mr Ward also acknowledges in the draft amendments, frankly, that he "*possesses no direct evidence that these persons played a part in drafting, authorising and publishing the Statement [to Byline]*".

17. The Defendant has objected to these amendments on the grounds of relevance. That objection is well-founded. Mr Ward has limited his case of malice to Mr Wellington and Mr Wright. A plea of malice alleged against others not involved in the publication of the Mail on Sunday Statement to Byline is irrelevant. By so holding, I am not determining any issue of admissibility of evidence of the involvement of other third parties that have been named by Mr Ward in these paragraphs. For example, if a person, "B", knew that Mr Ward's allegations, as reported in the Byline Article, were true and Mr Ward could demonstrate that Mr Wellington and/or Mr Wright had been advised by "B", prior to publication of the Mail on Sunday Statement to Byline, that it was untrue, that could potentially be powerful evidence upon which Mr Ward would be able to rely in respect of the state of mind of Mr Wellington and/or Mr Wright. What is not permissible is for Mr Ward to make independent allegations of malice in his statement of case against persons whom he does not contend were involved in publication of the Mail on Sunday Statement. Permission to amend is therefore refused for these paragraphs.

Paragraphs 61-62 and Paragraphs 67-83

18. These objections can be taken together.

19. In the draft Amended Particulars of Claim, Mr Ward seeks to insert the following paragraphs:

> "60. John Wellington and Peter Wright published the Statement via Byline.com on 5 March 2019 with malice and in full knowledge that [the] contents of its Statement were false.

> 61. They did so in order to maintain a knowingly dishonest approach towards the Claimant's complaints which both John Wellington and Peter Wright had first adopted in 2011-2012 in pursuance of a broader strategy laid down by Paul Dacre, the then Editor of the Mail, in the context of the Leveson inquiry.
>
> 62. The imperative in 2011-2012 was to be able at the Leveson Inquiry (a) to deny that Associated Newspapers title or journalist had perpetrated past criminal misconduct (b) to characterise Associated Newspapers as holding to higher ethical standards and operating stricter controls than other newspaper groups and (c) to justify the maintenance of self-regulation."

20. The Defendant objects to the reference to the "*broader strategy laid down by Paul Dacre*" in paragraph 61 and the whole of paragraph 62. Mr Caldecott QC acknowledged that, in his original Particulars of Claim, Mr Ward had pleaded (in the original paragraph 103) that the Mail on Sunday Statement, sent to Byline, was published in order "*to conceal the fact that the former Editor, Paul Dacre, lied in his evidence to the Leveson Inquiry when asserting that Associated Newspapers had never broken the law*". I deal with the Defendant's complaint about this paragraph below (see [64]-[68]). Nevertheless, Mr Caldecott QC contends that paragraphs 61 and 62 are new and advance a case that features heavily throughout the amendments for which Mr Ward seeks permission.

21. In the letter of 11 December 2020, the Defendant's solicitors objected to the amendments on the grounds that they were irrelevant and disproportionate. Mr Dacre was not someone whom Mr Ward contended was responsible for publication of the statement to Byline and so allegations against him were irrelevant. They continued:

> "Your allegations of (a) the existence of the 'strategy', (b) that Mr Wright and/or Mr Wellington knew about the 'strategy', (c) that the 'strategy' was material to the response to your complaints in 2011-2012, and (d) that the 'strategy' was material to the publication of the words complained of in 2019, rest on the premise that Mr Dacre denied at the Inquiry that any ANL title had ever perpetrated criminal conduct or 'wrongdoing' (see [78]), but that is not what the statements relied on at [81]-[82] say. Further, for the Court to explore ANL's general stance before Leveson in 2011-2012 is in any event disproportionate."

22. As became apparent at the hearing, there is an element of shadow boxing in relation to this area of the case. The objection is not that Mr Ward's pleading is unclear. Nor is it that the 'strategy' (if one existed) could have no bearing on Mr Ward's case against Mr Wellington and/or Mr Wright. The objection is that Mr Ward's premise, that the Defendant had denied criminal conduct or 'wrongdoing' at the Leveson inquiry, is wrong. It might be thought that the proportionate response – if that is the complaint – would simply be to file a Defence that denies the advanced premise on the grounds that the facts upon which it is based are incorrect, rather than to attack the pleading.

23. Further, in this respect, paragraphs 60-62 cannot be seen in isolation.

24. Paragraph 66, to which no objection is taken, is in the following terms:

"The Claimant contends that Peter Wright and John Wellington intended for the public to regard the Claimant as a liar in order to mislead the public into believing Mail on Sunday journalists had not committed the serious catalog (sic) of misconduct set out in the Byline.com article, when they well knew these journalists had committed this serious misconduct."

25. Then, paragraphs 67-83, to which the Defendant objects in part, are in the following terms:

"67. There now follows a more detailed explanation of how and why this Malice evolved.

2011-2012

68. The key to understanding the malicious purpose which Peter Wright and John Wellington had in mind when drafting the Mail on Sunday's Statement on 26 February 2019, and publishing it on 5 March 2019, is to recognise that the seeds of this malicious purpose were first sown in 2011 when top Associated Newspapers executives drew up a strategy to deal with the Leveson Inquiry.

69. It was this strategy, a self-serving narrative, architected by Paul Dacre (the long-serving former Editor of the Daily Mail and senior Director of Associated Newspapers), and aimed at distinguishing Associated Newspapers titles from other newspaper groups in evidence given to the 2011-2012 Leveson Inquiry, which compelled Peter Wright and John Wellington to publish what they knew was a false Statement eight years later via Byline.com.

70. Since the calling of the Leveson Inquiry by Prime Minister, David Cameron in the summer of 2011, Peter Wright and John Wellington (as well as other senior executives of Associated Newspapers) have been fighting a campaign which they regard as fundamental to the success of, and even to the survival of, the Associated Newspaper Group's titles.

71. This campaign, akin to a 'war", continues right up to today.

72. Among the parties the Mail on Sunday has been fighting for several years is Byline.com.

73. The relevant background is as follows.

74. On 21 November 2011, the Leveson Inquiry started to hear evidence from Core Participants. A number of high profile celebrities as well as ordinary members of the public who had been mistreated by newspapers, gave evidence. They were arguing for the ending of "Self Regulation"and for the introduction of a new system of Press Regulation with statutory underpinning in one form or another.

75. A few weeks earlier, the News of the World, one of Britain's most popular newspapers had been forced to close as a consequence of admissions of widespread wrongdoing in the form of phone hacking, including of the murdered schoolgirl Milly Dowler whose parents had been given false hope

of her being alive when they discovered her voicemail had been activated. There was momentous public disgust at this and at other newspaper outrages. The newspaper's owner, News International, had suffered huge monetary loss as well as damage to reputation.

76. The top Management of Associated Newspapers, including Peter Wright and John Wellington, worried that Associated Newspapers titles could suffer similar damage if their titles were revealed to have acted unlawfully in similar ways to the News of the World.

77. Also posing a serious existential threat to Associated Newspapers in the opinion of Peter Wright and John Wellington, and to other senior Associated Newspapers executives, was the widespread public clamour for the ending of newspaper self-regulation. In the view of top Associated Newspapers Management, self-regulation was not merely essential in terms of the ability to hold Power to account without Government interference. It was fundamental to the financial health, and even viability, of newspapers

78. A strategy was drawn up by Associated Newspapers top Management to deal with these existential risks presented by the recent events including the Leveson Inquiry. The strategy involved wholesale denials by top Associated Newspapers Management of wrongdoing by Associated Newspapers titles and journalists. Allied to these denials of wrongdoing was to portray Associated Newspapers titles as having stricter ethical standards and controls than other newspapers which had been exposed as having engaged in unlawful conduct. It is important to note that, although these denials of unlawful conduct having been perpetrated by the Defendant's journalists were given in the context of allegations of hacking and payments to the police, the oral and written evidence given to the Leveson Inquiry by Lord Rothermere, Paul Dacre, and Peter Wright made clear that they were denying all types of illegality and not just those being discussed at that time. *As Lady Rothermere herself told persons at the time "We didn't break the Law" (Guardian 19 July 2011). Lord Rothermere was reported as having been "appalled" at hacking (Guardian, 5 July 2011). He spoke frequently, and emotionally, of how important ethics and obedience to the Law were to him and to his forefathers. Is it not credible to suggest that these references, coded and overt, were that he was appalled at hacking – but relaxed at stealing, bribing and falsifying evidence.* The message given to the public was clear: Associated Newspapers journalists did not break the Law. The Group held to higher ethical and legal standards and ran a tighter ship.

79. In short, Associated Newspapers was to be characterised as different to other newspapers. The public would be led to understand that Associated Newspapers journalists did not break the law. The public would be told that Associated Newspapers had strict procedures to ensure this did not happen.

80. At the level of Group Chairman, Lord Rothermere (and even Lady Rothermere) adopted this line in their public commentary.

81. The strategy was given its first airing on 12 December 2011 in a speech given by Paul Dacre to the Leveson seminar. Paul Dacre started his speech by emphasising his disgust at breaches of the criminal law by other newspapers (doing so, for the deliberate purpose of portraying his titles as

operating to higher ethical standards and with tighter systems of editorial control):

> "Thank you for inviting me to speak to you today. Let me start by making it clear that I unequivocally condemn phone hacking and payments to the police. Such practices are a disgrace and have shocked and shamed us all. They need to be purged from journalism and reforms instigated to prevent such criminal activities ever happening again."

82. After then attacking what he regarded as the hypocrisy of the political class, Dacre went on to argue the necessity of maintaining self-regulation and, at the same time, reinforcing his contempt for illegal activity by newspapers:

> "...Indeed, am I alone in detecting the rank smells of hypocrisy and revenge in the political class's current moral indignation over a British press that dared to expose their greed and corruption – the same political class, incidentally, that, until a few weeks ago, had spent years indulging in sickening genuflection to the Murdoch press.
>
> "Which is why today, I'd like to try to persuade this inquiry that self-regulation – albeit in a considerably beefed up form – is, in a country that regards itself as truly democratic, the only viable way of policing a genuinely free press.
>
> "Myth Two is that the phone hacking scandal means that self-regulation doesn't work. I think that's very unfair. Yes, the PCC was naïve but its main mistake was failing to communicate the fact that phone hacking is blatantly illegal. It is against the law and no regulator can set itself above the law. The truth is the police should have investigated this crime properly and prosecuted the perpetrators. If phone hacking results in the abolition of the PCC, then logically it should result in the abolition of the police and the CPS. Should we end the jury system because of major miscarriages of justice?"

83. Then came what must have amounted to a shock to Paul Dacre and his senior colleagues."

26. It became clear during the hearing that the substance of the Defendant's objection to these paragraphs was the risk that they could open up an investigation as to whether the Defendant adopted a "strategy" in its approach and response to the Leveson Inquiry. Although Mr Caldecott QC was prepared to accept that the public position adopted by the Defendant to the Leveson Inquiry was a matter that could be relevant to the states of mind of Mr Wellington and Mr Wright, what was not relevant was any investigation as to why the Defendant had adopted the position it did in relation to the Leveson Inquiry. As I indicated during the hearing, I regard that submission as basically well-founded. Mr Ward's case, in summary, is that the position adopted by the Defendant at the Leveson Inquiry was that there was no compelling case to justify departing from the model of 'self-regulation' for the print media. Whatever criminality had been demonstrated in relation to certain activities of some newspapers, for example phone-hacking, was not something in which the Defendant had been involved, the Defendant claimed. Mr Ward contends that the activities of journalists employed by the Defendant in his case, which he says were criminal, demonstrated that any claims made

by the Defendant to the Leveson Inquiry that its employees were not engaged in criminal activity, were not true. As a result of that, Mr Ward contends that Mr Wellington and Mr Wright were forced – he says falsely – to deny the claims of criminality that he had made, and which were reported in the Byline Article. In colloquial terms, Mr Wellington and Mr Wright needed to 'rubbish' Mr Ward and his claims, in part because they needed to defend the position the Defendant had taken in the Leveson Inquiry.

27. Mr Caldecott QC submitted that material relied upon in paragraphs 81 and 82 is incapable of supporting a case that the Defendant had stated that it had never acted unlawfully. However, given that these paragraphs are only part of Mr Ward's overall case, it does not appear to me that I should refuse permission to add them by way of amendment simply because, read on their own, they do not demonstrate that the Defendant had made statements that it had never acted unlawfully. Mr Ward is entitled to ask the Court to consider the whole picture. Since the hearing (and dealt with further below – see [34]-[35]), Mr Ward has provided further particulars of his case that Mr Wright told the Leveson Inquiry that the Defendant's journalists did not act unlawfully.

28. There is nothing objectionable in Mr Ward being permitted to advance that case as part of his case on malice against Mr Wellington and Mr Wright. The factual inquiry that it requires is limited. The objective position adopted by the Defendant in the Leveson Inquiry will be a matter of record. What is not permissible, at least at this stage, is for Mr Ward to seek to go behind the stated position of the Defendant at the Leveson Inquiry and to seek to investigate why the Defendant adopted the position it did.

29. In my judgment, this clearly sets the legitimate parameters of Mr Ward's case. I am not going to embark upon the task of trying to edit Mr Ward's pleading – or requiring him to do so. That step is only likely to prolong further what has already become a disproportionate exercise. I am quite satisfied that the Defendant fully understands Mr Ward's case. At the hearing, Mr Caldecott QC summarised it neatly as being that it was important for the Defendant (acting by Messrs Wright and Wellington) not to 'fess-up' to the misconduct in 1995 alleged by Mr Ward against two *Mail on Sunday* journalists because that might have been embarrassing or damaging to the case the Defendant was advancing before the Leveson Inquiry. The Defendant is perfectly able to plead a Defence which can identify, clearly, what the Defendant admits or denies about the public position adopted by the Defendant at the Leveson Inquiry. That is all that is required. With the important parameters that I have set, there is no unfairness or prejudice occasioned to the Defendant in responding to Mr Ward's Amended Particulars of Claim.

30. I am satisfied, however, that Mr Caldecott QC has raised a well-founded objection to the italicised sentences of paragraph 78. During the hearing, I was shown a copy of the *Guardian* article upon which Mr Ward has relied. It was published on 19 July 2011, under the headline "*Phone-hacking scandal: Dacre v Brooks*", in the following terms:

> "Paul Dacre, editor of the Daily Mail, told senior managers he had received reports from PR agencies, footballers and others that News International executives had encouraged them to investigate whether their phones had ever been hacked by Mail group newspapers, according to the New York Times.

> Based on interviews said to have been carried out with former News International staff, the New York Times also claimed Rebekah Brooks had spearheaded a strategy in recent months that appeared designed to spread the blame for hacking across Fleet Street. Several former NoW journalists claimed she asked them to dig up evidence of hacking by others, while one said Brooks's target was not her own newspapers, but those of her rivals.
>
> In an account relayed to his management team, Dacre, below, confronted Brooks at a hotel, telling her: 'You are trying to tear down the entire industry.'
>
> Lady Claudia Rothermere, wife of the owner of the Mail, was said to have overheard Brooks say at a dinner party that the Mail was just as culpable as the NoW.
>
> 'We didn't break the law,' Lady Rothermere said, according to two sources. Brooks was said to have asked who Rothermere thought she was – 'Mother Teresa?'"

31. A newspaper report of an alleged overheard aside at a dinner party made by the wife of the owner of the Defendant is not a sufficient basis upon which to allege that the Defendant denied breaking the law. Mr Ward's amendment to add these sentences is refused.

32. I will, however, give permission to amend the Particulars of Claim to add paragraphs 60-62 and 67-83, but with the italicised passage of paragraph 78 removed.

Paragraphs 90-93

33. Having set the parameters of the relevance of the Defendant's position at the Leveson Inquiry, I do not consider that the objections to these paragraphs have any remaining force. I will grant permission for the amendments to these paragraphs.

Paragraph 96

34. Mr Ward originally sought permission to add the following paragraph:

> "On 11 January 2012, Peter Wright gave evidence to the Leveson Inquiry. He told the Inquiry that the Mail on Sunday had not acted unlawfully".

35. The Defendant objected to this paragraph on the grounds that Mr Ward had not identified the statement(s) relied upon to support this allegation. That might be thought to have been a candidate for a request for further information, as was accepted by Mr Caldecott QC at the hearing. Following the hearing, Mr Ward identified the statements of Mr Wright upon which he relied. In consequence, the parties have now reached agreement that Mr Ward should have permission to amend Paragraph 96 in the following terms:

> "On 11 January 2012, Peter Wright gave evidence to the Leveson Inquiry. He told the Inquiry as follows:
>
> - 'All our journalists adhere to the letter and spirit of the Editors' Code' (para 2);

- 'It is against our policy to publish stories that… involve any breach of the law' (para 2);
- 'The Editors' Code and the Company's policies are adhered to in practice' (para 6);
- 'We do not make payments to people who are reasonably expected to be witnesses in criminal trials' (para 12);
- 'To the best of my knowledge we have never paid a police officer' (para 15); and
- 'To the best of my knowledge we have never hacked into voicemail messages or intercepted phones or used computer hackers' (para 16)."

36. The parties now being agreed, I will grant permission to amend Paragraph 96 in these terms.

Paragraph 103

37. Mr Ward has sought to introduce paragraph 103 in the following terms:

> "Significantly, Wellington made no internal note of the conversation (it was acknowledged at the Leveson Inquiry that, on an unrelated matter, Wellington had concealed evidence of Mail on Sunday misconduct and had been 'rebuked')."

38. The Defendant opposed the grant of permission on the basis that the proposed amendment was irrelevant.

39. I will grant permission for paragraph 103 to be added by amendment, with the words in parenthesis removed. They are unparticularised, prejudicial and irrelevant.

Paragraph 108

40. Mr Ward seeks permission to introduce paragraph 108 in the following terms:

> "In the years which followed, as the Claimant continued to complain, the Mail on Sunday quietly shifted its position from asserting (as they had done in 2011-2012) that the claimant's allegations had been dealt with at prior stages, to issuing flat-out denials that any of its journalists had ever acted unlawfully in any manner (e.g. Sophie Teschmacher, 19 April 2018)."

41. Sophie Teschmacher was, at the material time, a lawyer in the Defendant's Editorial Legal Department. She had written a letter, dated 19 April 2018, in response to a letter from the Claimant. The material part of the letter stated:

> "… the suggestion of any criminal behaviour on the part of The Mail on Sunday is unfounded. It follows that any allegation that Associated Newspapers Limited and/or any of its representatives committed perjury at the Leveson Inquiry is denied."

42. The objection to this paragraph is that Mr Ward is not alleging malice against Ms Teschmacher (or anyone other than Mr Wellington and Mr Wright) and the details

relating to this letter are irrelevant. As became clear at the hearing, this is something of a sterile pleading point. Mr Caldecott QC accepted that Mr Ward would be entitled to cross-examine Mr Wright and Mr Wellington on Ms Teschmacher's letter. How far Mr Ward got with such cross-examination might depend on their answers. Picking through a pleading to remove the words in brackets in paragraph 108 might be thought to be of extremely limited value given Mr Caldecott QC's concession. The danger, which I put to Mr Caldecott QC, is that, if I refused permission to introduce the Teschmacher letter into the pleading, it would subsequently be argued that I had ruled out the letter from appearing in the case ever again. Mr Caldecott QC's helpful clarification means that no such argument is likely to be advanced later in the proceedings. Nevertheless, on the principled ground that it is not strictly relevant to the pleaded case of malice against Messrs Wright and Wellington, I will exclude the reference to Ms Teschmacher's letter in the parentheses from the permission I give to Mr Ward otherwise to amend to add paragraph 108.

Paragraphs 109-121

43. The Defendant's objections to these paragraphs have more substance. Mr Ward seeks to add the following paragraphs by amendment:

> "109. By 5 March 2019, when they published the Mail on Sunday's Statement via Byline.com, Peter Wright and John Wellington, as well as other senior Group executives, had been denying criminal misconduct by Associated Newspapers journalists for eight years.
>
> 110. Yet, by 5 March 2019, the Group's denial of illegal conduct had become widely derided. In particular, organisations had sprung up with a mission to expose what they contended had been Paul Dacre's lies to the Leveson Inquiry.
>
> 111. Among these organisations was the website Bylineinvestigates.com (part of Byline.com and referred to in this document as Byline.com). Led by Graham Johnson, a former Sunday Mirror journalist who had narrowly escaped a jail sentence for phone hacking and who had become a 'whistleblower', Byline.com had dedicated itself to exposing the much wider newspaper corruption which the Leveson Inquiry had not focused upon or which the perpetrators had denied under oath at the Inquiry.
>
> 112. As part of his work, Graham Johnson had been targeting Associated Newspapers and, in particular, Paul Dacre's purportedly false denials of illegal conduct by Associated Newspapers journalists, given under oath to the Leveson Inquiry.
>
> 113. Graham Johnson has recently published a summary of his campaign against the Mail on Sunday and Paul Dacre. The summary explains the background. It is instructive:
>
> > '...In 2015, I got a tip that the Mail had phone hacked and "blagged" just like its rivals at the News of The World, The Sun and the Mirror titles. I spent a couple of years tracking down whistleblowers who'd worked at the Mail, private investigators and going through documents.

> 'In March 2017, I started publishing the results of these investigations exclusively on Byline.com, the crowdfunded website which eventually gave rise to bylineinvestigates.com – a news site specifically dedicated to unearthing corrupt practices in Britain's corporate media.
>
> 'To be honest, our readers weren't that surprised that the Mail had been involved in unlawful information gathering. Many assumed, rightly or wrongly, that the paper was no different, if not worse, than its Fleet Street rivals. However, what was significant, was that the group's controversial Editor-in-Chief Paul Dacre had given categorial denials to the Leveson Inquiry that phone hacking had NEVER taken place at his papers.
>
> 'Our stories revealed that his evidence was wrong.
>
> 'Outraged by this state-of-affairs, Mr Dacre tried to personally sue us in 2017.
>
> 'The big problem for Mr Dacre is that giving the wrong evidence to a public inquiry – especially under oath – is a straight-forward criminal offence under the Inquiries Act 2005. Which is the real reason why the full list of our 53 stories below is important. That means, that if Byline Investigates is right, and Paul Dacre is wrong, he faces up to 51 weeks in jail. And it's much easier to prove than, say, perjury, by the way.
>
> 'Outraged by this state-of-affairs, Mr Dacre tried to personally sue us in 2017. However, armed with the facts from our stories, a strong public interest defence – and some pro-bono help from a couple of top media lawyers – we batted him off. In the meantime, our generous readers crowdfunded us to £15,000 which we ploughed straight into paying for more stories about the Mail.
>
> 'We started making short videos on Twitter, which clocked-up hundreds of thousands of views. And last year, we branched out into other controversies involving the Mail. For example, one of my colleagues began writing stories about Meghan Markle's libel case against the Mail on Sunday.
>
> 'Meanwhile, the Daily Mail and the Mail on Sunday continue to deny that they were involved in phone hacking, and Paul Dacre says he still stands by everything he said at the Leveson Inquiry.
>
> 'Today, you can decide who's right by clicking on the links below and making your own mind up.
>
> 'If you wish to support our ongoing investigation into crime and malpractice at the Daily Mail and Mail on Sunday, you can donate to our crowdfunder. Last, but certainly not least, if you have a tip, or any information you think might be useful to us, please email us at bylineinvestigates@gmail.com...'.

114. On 1 January 2019 (a mere few weeks before 26 February 2019 when Peter Wright and John Wellington would draft their Statement) a different website

with a similar name, and called Byline Times, published the following article about Paul Dacre's purported lies:

> '...Mail on Sunday Phone Hacking – "SmokingGun" Emails Quoted Messages to Top Editor
>
> '...After six years of phone hacking denials, damaging emails cast serious doubt on the Mail on Sunday's claims of innocence
>
> 'The Mail on Sunday is embroiled in a growing phone hacking crisis after explosive emails obtained by Byline Investigates revealed one of the newspaper's top editors received transcripts of actor Sadie Frost's voicemails.
>
> 'The new evidence – a series of messages between convicted Fleet Street phone hacker Greg Miskiw and former MoS "number three" Chris Anderson – casts serious doubt on six years of hacking denials from Britain's biggest mid-market weekend publication...
>
> '...The emails implicate the Mail on Sunday in a practice of which it has pleaded ignorance – both at the Leveson Inquiry and in response to a series of Byline articles.
>
> 'In one of the denials, on December 11, 2018, the paper's managing editor John Wellington insisted: "Neither Chris Anderson nor the Mail on Sunday have ever knowingly used information that was illegally acquired by Greg Miskiw."
>
> 'Byline Investigates, however, can now publish the emails – redacted to protect the victims' privacy – sent between Miskiw and Anderson that leave the million-a-week selling newspaper's claims of innocence facing a widening credibility gap...
>
> '...Byline Investigates has now identified at least six victims targeted by the phone hacking conspiracy linked to the Mail on Sunday...
>
> '...The Daily Mail and the Mail on Sunday have always denied participating in phone hacking for stories.
>
> 'The papers' Editor-in-Chief Paul Dacre made a statement under oath to the Leveson Inquiry claiming an exhaustive internal investigation had been carried out to prove there was none of the hacking that forced the News of the World to close down in 2011 after 168 years in print...
>
> 'Challenged on this at the Inquiry, Mr Dacre said in 2012:
>
> "I can be as confident as any editor, having made extensive enquiries into the newspapers' practices – and held an inquiry – that phone hacking was not practiced (sic) by the Mail on Sunday or the Daily Mail. You know that because I gave this inquiry my unequivocal assurances."'

115. When, on 26 February 2019, Peter Wright and John Wellington drafted their Statement, they had no interest in publishing the truth.

116. For eight years thus far, in pursuance of an agreed corporate strategy, they had been maintaining a fiction that Mail on Sunday journalists had never broken the law.

117. By 26 February 2019, they were battling websites dedicated to proving that Paul Dacre had lied to the Leveson Inquiry. In this context, although the focus of these websites was upon lies allegedly told by Paul Dacre about phone hacking and payments to the police, Peter Wright and John Wellington knew from documents they read that Paul Dacre's Leveson witness statement which he swore into evidence before Lord Leveson on 6 February 2012 contained another falsehood, unrelated to hacking and payments to the police, which flowed from his knowledge of the Claimant's complaints.

118. The risks of exposure had grown and grown.

119. They were desperate to hold to the line they had taken from the outset.

120. Their frame of mind was to deny that any Mail on Sunday journalists had ever broken the law.

121. And, by way of their published Statement via Byline.com, that is what they did."

44. In the Defendant's solicitors' letter of 11 December 2020, the following objection was taken to these paragraphs:

> "Same reasons as paragraphs 61-62. The alleged 'mission' to expose Mr Dacre's 'lies' to the Leveson Inquiry appears to refer to allegations of phone-hacking made by Byline against [The Mail on Sunday] and the Daily Mail, which are irrelevant to your claim.
>
> It would also be quite wrong to allow a statement of case to repeat at length grave allegations (not in issue on this action) made by By-Line as [113] and [114] in particular seek to do.
>
> The plea as to recklessness in [115] is not in itself objectionable but made at great length elsewhere."

45. Paragraph 109 is a summary of Mr Ward's case, and will be allowed. However, I am satisfied that Mr Ward should not be granted permission to amend to insert Paragraphs 110-121. Paragraphs 110-114 consist almost entirely of setting out the allegations of wrongdoing against the Defendant made by others, including Byline. The remaining paragraphs merely repeat a theme that is already pleaded, and the final paragraphs are mere rhetoric. It may be that Mr Ward can rely upon some of this pleaded material in cross-examination of Mr Wright and Mr Wellington, if that stage is reached, to suggest that in the years since 2012, it had become more important for the Defendant publicly to deny that it had broken the law in its operations, but it is neither necessary nor appropriate for this material to be pleaded in a statement of case.

Paragraph 123

46. Paragraph 122 is the first paragraph under a heading "*Knowledge of Falsity*". The Defendant objects to certain amendments that Mr Ward wishes to make to Paragraph 123. To understand this, I need to set out paragraph 122 (to which no objection is taken) and then paragraph 123 (using the conventional underlining and striking out):

> "122. Substantial evidence exists ~~from multiple sources~~ which considered holistically, with all components together, make it abundantly clear that ~~the Mail on Sunday~~ Peter Wright and John Wellington knew at the time of publication that the contents of ~~its~~ their Statement to Byline.com were false in all material respects. ~~These sources include:~~
>
> 123. This evidence includes:
>
> - Analysis of a single example illustrating ~~the Defendant's~~ Peter Wright's and John Wellington's mendacious approach when preparing the Statement
> - The extensive information and evidence supplied by the Claimant to the Defendants in 2011-2012 as well as in subsequent years;
> - Additional important forensic points communicated by the Claimant to the Defendants in 2011-2012
> - The ignoring of letters sent by the Claimant to Lord Rothermere, the Chairman of Associated Newspapers Group,
> - Acknowledgement of the true facts by the newspaper's own journalists;
> - The Defendant's subsequent admissions of knowledge of the underlying facts
> - The ignoring of the Claimant's explicit warnings to the Editor of the Daily Mail, Geordie Greig, prior to the Hearing in front of Mrs Justice May
> - Peter Wright's and John Wellington provable disinterest in the truth when drafting and publishing the Statement
> - Peter Wright's and John Wellington's provable lack of honesty when drafting and publishing the Statement
> - Peter Wright's and John Wellington's persisting with their false Statement despite being informed of its falsity
> - Peter Wright's and John Wellington's giving of false and/or misleading explanations about their drafting of the Statement

> • The lack of objections by the Mail on Sunday to the Claimant's publication and widespread circulation of these same claims and allegations over the previous eight years."

47. The Defendant objects to the two bullet paragraphs under paragraph 123 which start "*The ignoring of…*". The nature of the objection is that Mr Ward is not alleging malice against any other individual and that Mr Ward has not pleaded, expressly, that the letters to Lord Rothermere were known to Mr Wellington and Mr Wright. In relation to the email to Mr Greig, the objections are the same as are advanced by the Defendant in relation to paragraphs 163-166 (see [56]-[60] below).

48. In the light of further amendments made by Mr Ward (in paragraph 137 – see [50]-[52] below) which make clear that Mr Wellington and Mr Wright were responsible for dealing with Mr Ward's complaints and correspondence, Mr Caldecott QC did not address argument to this paragraph in his oral submissions.

49. Mr Ward's case on knowledge of falsity is clear. It is made up of various pieces of evidence. Insofar as the Defendant denies that the letters sent by Mr Ward to Lord Rothermere (or their contents) came to the attention of Mr Wellington and/or Mr Wright, then this could have been dealt with simply in a single paragraph (possibly a single sentence) in a Defence. What was nothing more than a pleading point has now been dealt with in the amendment to paragraph 137. Subject to a separate objection to the final bullet point in paragraph 123 (permission for which amendment is refused – see [62] below) formally, I will permit the amendment.

Paragraph 137

50. The amendments that Mr Ward seeks to make to paragraph 137 are shown using underlining in the following passage:

> "The documents the Claimant attached, all from respected independent bodies, testified to the truth of claims and allegations the Claimant was advancing against the Mail on Sunday. In the years December 2011 – February 2019, the Claimant sent into the Mail on Sunday, or otherwise pointed to, independent evidence upon each of the matters which he would later recite before Mrs Justice May and which Byline.com published. Peter Wright and John Wellington, when dealing with the Claimant's complaints, received and read correspondence sent by the Claimant e.g. Lord Rothermere and Paul Dacre."

51. In the Defendant's skeleton argument, the nature of the objection was stated as follows:

> "The 'e.g.' is vague and is objected to on that basis."

52. I will permit the amendments to the paragraph with the "e.g." removed.

Paragraphs 161-162

53. This section of the Particulars of Claim is headed: "*F. The Defendant's Admissions of Knowledge of the Facts*". Paragraphs 161-162 are in the following terms (using underlining to show the amendments for which permission is sought):

> "161. The Defendants have long known from their own internal inquiries of some, at least, of the acts of misconduct perpetrated by the Mail on Sunday. Peter Wright and John Wellington had access to the same internal records as Ms Elizabeth Hartley, Head of Legal Services.
>
> 162. In a letter to the Claimant dated 10 April 2019 from the Defendants' Head of Legal Services, Ms Elizabeth Hartley, the Defendants explicitly acknowledge knowing of the Mail on Sunday's theft of documents and its bribing of witnesses writing as follows:
>
> > 'The then editor of the financial pages of the Mail on Sunday gave evidence under oath in court and was extensively cross-examined on the issues you have raised, including the circumstances in which documents were obtained by the Mail on Sunday and the payment of money by the newspaper to a Mr Anderson…'."

54. The Defendant objects to the amendment sought to be made to paragraph 161 (and also the whole of paragraph 162) on the grounds that Mr Ward does not allege malice against Ms Hartley and the quotation cannot reasonably amount to an admission of knowledge of theft or bribery.

55. I will permit the amendment sought. Paragraph 162 was in the original pleading and no application has been made to strike it out, despite this being the second occasion on which Mr Ward's pleading has been made the subject of intense scrutiny and challenge. The sentence added to paragraph 161 is not an allegation of malice against Ms Hartley, it is an averment of material available to Messrs Wellington and Wright, which is relevant (at least potentially) to their states of mind and what they knew.

Paragraphs 163-166 and paragraph 48

56. Paragraphs 163-166 are in a section of Mr Ward's Particulars of Claim headed: "*G. The Ignoring of the Claimant's Explicit Warnings to the Editor of the Daily Mail, Geordie Greig, prior to the Hearing before Mrs Justice May*", and are in the following terms (with underlining showing the amendments that are sought):

> 163. In the quoted Extracts set out above, the Claimant has given examples of the warnings he gave to the Mail on Sunday in 2011- 2012 of the risks it might face if it continued to lie and obfuscate in the face of the evidence sent to it about its misconduct.
>
> 164. In the lead up to the Permission Hearing, by way of an email dated 12 January 2019, the Claimant took the unusual step of forewarning the newly-appointed Editor of The Daily Mail, Mr Geordie Greig, who also has special oversight responsibility for the Mail on Sunday, that the Claimant would be making extremely serious assertions about the Mail on Sunday at the forthcoming Permission Hearing. He explained to the new Editor that the newspaper had shown no interest in the evidence. It was the Claimant's hope that someone very senior, but yet new to the case, might intervene. The Claimant did not receive a reply to this email. It is a pity the Editor ignored the Claimant's email because, at that date, there remained plenty of time for the Mail on Sunday to investigate the misconduct being alleged by the Claimant and avoid the need for the Claimant to address the Divisional Court as he did or at all.

> 165. [this paragraph sets out the terms of an email sent by Mr Ward to Mr Greig on 12 January 2019]
>
> 166. It appears as if Peter Wright and John Wellington deny having read this letter or knowing about it. This email, which the Mail on Sunday does not deny having received, was mysteriously not read by anyone.

57. In paragraph 48, Mr Ward set out a list of headings to sections of his statement of case, which then followed. One of those headings, which was in his original Particulars of Claim, was "*The ignoring of explicit warnings*".

58. The Defendant has advanced the following objections to these sections of the draft Amended Particulars of Claim:

> "While aspects of this plea in relation to the Claimant's correspondence to Mr Greig were present in the original Particulars of Claim…, it has now become apparent that the Claimant does not allege malice against Mr Greig, and does not allege that Mr Wright or Mr Wellington read his email to Mr Greig."

It was contended that there was therefore no connection between this email and Mr Ward's case of malice.

59. Paragraph 166 anticipates a denial which, in fact, has not yet been made. It is tolerably clear from the language used that Mr Ward does not accept that his email to Mr Greig was not seen by Mr Wellington and Mr Wright. If that is his case, then if the current sarcasm were to be replaced by an inferential case, there could be no objection to the amendment sought. If this is Mr Ward's case, then I would permit an amendment to paragraph 166 to read:

> "It is to be inferred that Peter Wright and John Wellington read the email to Mr Greig or were made aware of its contents".

60. It may be, having excised the "e.g." from paragraph 137, that Mr Ward would want to add Mr Greig to the list the individuals who "*received and read correspondence sent by the Claimant*" in that paragraph. If he does, I would permit such an amendment.

Paragraph 188A and final bullet point of paragraph 123

61. Under a heading "*L. Lack of Objections to Publication of the same allegations on earlier occasions in 2012-2019*", Mr Ward seeks to add paragraph 188A in the following form:

> "In the years 2012-2019, to the knowledge of the Defendant who was given prior notice on each occasion, the Claimant published and widely circulated to the public a number of letters and other documents containing the same claims and allegations as featured in the Byline article. Among these is a campaign website called www.integrityandjustice.org which was launched in 2015 and has been online for 5 years. Despite knowing of these publications, the Defendant has not complained or written warning letters to the Claimant – nothing. Given the wide publicity afforded to these same claims and allegations over many prior years which the Defendant has not objected to in the remotest degree, it is difficult to justify its decision on this occasion to respond publicly as it did."

62. The final bullet point in paragraph 123 (set out in [46] above) simply serves as a summary of paragraph 188A.

63. The Defendant has raised several objections to these amendments, including that an alleged failure to object to unrelated publications is not relevant to, or probative of, Mr Ward's case of malice against Messrs Wellington and Wright in relation to the Byline Statement. On that ground, at least, I refuse permission to add these passages.

Paragraph 202

64. In his existing Particulars of Claim, Mr Ward had included the following paragraph under a heading, "*Malice – Aggravating Factors*":

> "Exacerbating the 'malice' already demonstrated, were additional improper purposes. These include, but are not limited to, seeking to deny the truth as a means of deterring criminal inquiries; seeking to undermine the Claimant's legitimate fact-based attempt to bring about the re-instatement of Leveson 2 or a process akin to it; *and seeking to conceal the fact that the former Editor, Paul Dacre, lied in his evidence to the Leveson Inquiry when asserting that Associated Newspapers had never broken the law*".

65. Although this is not a paragraph sought to be added by amendment, Mr Caldecott QC has objected to the words in italics. On this occasion, given the refocusing of the plea of malice that has now taken place, I am satisfied that the Court can, and should, consider whether, as part of the assessment of the amended pleading as a whole, the Defendant's objections should be upheld. The authority for this approach is ***Tinkler -v- Ferguson*** **[2019] EWHC 1501 (QB)** [26(iv)]. This principle cannot be taken too far. In many cases, fundamental fairness will usually require a properly issued Application Notice before a Court will entertain what is, in effect, an application to strike out parts of an existing statement of case. Nevertheless, in relation to this discrete point, I am satisfied that it will not cause unfairness to Mr Ward for the Court to consider the objection.

66. The starting point of the Defendant's objection is that Mr Dacre is not someone against whom Mr Ward is maintaining an allegation of malice. Further, Mr Caldecott QC submits that the entire premise of Mr Ward's allegation is incorrect. First, Mr Dacre never did assert in his evidence to the Leveson Inquiry that the Defendant had never broken the law. Second, to establish the alleged "lie", Mr Ward would have to establish that he did and that, when he stated so in his evidence, he knew that his statement was false. This would potentially open up a very significant area of factual investigation, but even if established it would not be relevant because it cannot be probative of malice against Messrs Wright and Wellington.

67. For the reasons I have already explained, the fact that Mr Ward is not making an allegation of malice against Mr Dacre does not mean that he disappears from the picture entirely, but it does mean that allegations, particularly allegations as serious as contained in this paragraph, must be justified as being clearly relevant and probative of an issue in the case. I am not satisfied that they are.

68. As discussed already, an important plank of Mr Ward's case on malice is that Mr Wright and Mr Wellington had a very clear interest in defending the position that had been

adopted by the Defendant at the Leveson Inquiry. That is legitimate. What is illegitimate, is making an allegation that Mr Dacre lied in his evidence to the Leveson Inquiry. Such an allegation is not relevant to or probative of any legitimate issue in Mr Ward's claim. Mr Caldecott QC indicated during the hearing that he would not oppose the words in italics being replaced with words that captured Mr Ward's legitimate case as to the Defendant's position at the Leveson Inquiry. I will strike out the words in italics. Mr Ward can, if he wishes, have permission to replace those words with the following (or something similar):

> "… and seeking to maintain the position advanced by the Defendant at the Leveson Inquiry that Associated Newspapers had never broken the law."

Claim for damages

69. The Defendant objected to Paragraphs 265-268 on the basis that they did not amount to a proper pleading of a claim for special damages. At the hearing, Mr Ward frankly accepted that he would not be able to prove that he had lost a particular speaking engagement as a result of the publication of the Byline Article, but that he was of course hopeful that it might have been a potential stream of revenue, together with the book project. At the hearing, Mr Caldecott QC helpfully indicated that the Defendant would not object to Mr Ward's claim for damages being advanced in the following form:

> "In support of his claim for general damages and/or in support of his claim for general damages under s.3 Defamation Act 1952, the claimant will rely on a loss of income from (a) his reasonable expectation that he would receive public engagements to speak and/or (b) his reasonable expectation that his book might be accepted for publication."

70. I will therefore refuse Mr Ward permission to amend to add paragraphs 265-268. Instead, I will grant permission for him to amend to add this wording. If Mr Ward discovers that he has been caused a particular loss which he believes he can attribute to publication of the Byline Article, then he can apply to add such a claim by amendment.

Reservation of rights in respect of future proceedings

71. The final issue relates to three paragraphs (now numbered 277-279) that were originally included in Mr Ward's Particulars of Claim. In paragraph 277, Mr Ward states: "*it may come to pass, at some time in the future, that a separate and different set of proceedings will be necessary in order to deal with the damage inflicted on the Claimant by the Defendants arising from their commission of misconduct against the Claimant in the years 1991-1997…*". The paragraphs go little further than to identify the possibility of future claims, and give no details. No objection was raised to them back in October 2020, and no Application Notice has been issued seeking to strike them out. Nevertheless, they seem to serve no legitimate purpose in a statement of case. Whether Mr Ward were able to bring further proceedings subsequently against the Defendant would be a question of applying the relevant legal rules, in particular ***Henderson -v- Henderson*** **(1843) 3 Hare 100**. To the extent that it is of any assistance to him subsequently, he has given notice to the Defendant of the possibility of future claims. This notice does not need to remain in the statement of case. It is not relevant to his current claim and the Defendant cannot be expected to plead to it. Paragraphs 277-279 must be removed from Mr Ward's draft Amended Particulars of Claim.

The proper defendant to the claim

72. Mr Ward has sued two defendants: Associated Newspapers and the Mail on Sunday. The second defendant is not an entity; it is a newspaper title. The correct defendant to the proceedings is Associated Newspapers Limited. As Mr Ward is going to be amending his claim, it is an opportunity for this small detail to be corrected.