[GB] Gulati v. MGN Ltd: High Court awards damages in phone-hacking cases

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The cases concerned claims based on infringements of privacy rights as a result of the unauthorised access by one person of another's voicemail/answering machine (phone hacking). The defendant was the proprietor of three newspapers - the Daily Mirror, the Sunday Mirror and The People. The claimants were eight persons in the public eye, such as actors, sportsmen or people with an association with such people. The claimants argued that journalists listened to messages left on the claimants' respective voicemail services and also listened to the voicemail messages left by the claimants on the phones of others. The journalists thereby became privy to private information about the personal affairs of the claimants and were able to write stories and publish photographs that the newspapers would not otherwise have been able to use.

As far as liability was conceded, the cases concerned the assessment of damages. There were two main points of disagreement between the parties. First, although liability in respect of certain instances of phone hacking and certain stories were admitted, the scale of the phone hacking was not. This is important because the infringements of privacy to be compensated were not limited to those which resulted in published articles. Secondly, there was disagreement as to the sorts of injury for which compensation can and should be paid.

Looking at this point first, the defendant argued that damages should relate to "distress or injury to feeling" (paragraph 108), which if accepted would have limited the amount payable. By contrast the claimants argued there were threefold aspects to the damage: (a) loss of privacy or autonomy from the hacking that went on; (b) injury to feelings/distress; and (c) injury to dignity or standing (paragraph 108).

Referring to Campbell v. MGN [2004] 2 AC 457, the judge accepted that the interests protected are not limited to distress or injury to feelings and to hold so would make the rights protected to a large degree illusory. While the court noted that the precedent set by R (Lumba) v. Secretary of State for the Home Department [2012] 1 AC 245 meant that there should be no vindicatory damages, that case did not rule out "compensation for the act of misuse itself" (paragraph 132). In reaching this conclusion, the court argued the following: "the defendant will have helped itself, over an extended period of time, to large amounts of

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personal and private information and treated it as its own to deal with as it thought fit. There is an infringement of a right which is sustained and serious" (paragraph 132).

The parties disagreed as to whether damages should be calculated as an overall sum or in relation to each incident. The judge opted for the latter approach, but commented that the overall sum should be proportionate (paragraph 157).

Finally, as regards quantum, the court looked to comparator cases from Cornelius v De Taranto [2001] EMLR 329) to Weller v Associated Newspapers ([2014] EMLR 24) and drew three broad points from them: (a) an increasing tendency to appreciate and give effect to the seriousness of invasions of privacy; (b) the judges in these cases did not seek guidance from other areas of law, such as libel (or harassment claims); and (c) all involved much smaller amounts of damages, even in cases which were expressed to be very serious cases.

The scale of the invasion of privacy by the phone hacking was very much greater than in any of the previous cases. It took place on a daily basis, resulting in many articles which, although they may have had a commonality of type of subject matter, did not equate to a single story repeated in several articles over a period. Phone hacking also included invasions of privacy on a grand scale which did not result in any form of publication. The scale of the hacking seems to have had an impact on the level of damages, as did the deliberate attempts to hide that it had been taking place. The judge awarded sums ranging from £85 000 to £260 250. The previous highest damages amount was £60 000, awarded to Max Mosley (see IRIS 2011-7/1). Other previous high profile examples include Campbell, awarded £4 000 for being photographed after drug therapy sessions and the publication of the wedding photographs of Douglas/Zeta-Jones in Hello!, which resulted in an award of £3 750. The awards here seem more akin to sums awarded in defamation actions. The judgment will be a guide to the award of damages in other pending phone hacking cases, as well as any other future similar actions. Whether the comparative generosity of the court is felt elsewhere in privacy and data protection cases absent this degree of wrong-doing remains to be seen.

Gulati & Ors v MGN Limited [2015] EWHC 1482 (Ch)

http://www.bailii.org/ew/cases/EWHC/Ch/2015/1482.html

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