[GB] Court of Appeal upholds damages awards in phone-hacking cases

IRIS 2016-3:1/17

Julian Wilkins
Wordley Partnership

The Court of Appeal determined Mr Justice Mann's damages awards in the High Court judgment of Gulati and Others v MGN Limited for invasion of privacy, including phone hacking, were justifiable and reasonable (see IRIS 2015-7/18). The defendant newspaper proprietor, MGN Limited (MGN) appealed to the Court of Appeal on four grounds arguing the awarded damages were excessive. MGN's grounds for appeal were as follows: (a) the award should have been limited to damages for distress; (b) the awards were disproportionate when compared with personal injury awards (general damages); (c) the awards were disproportionate when compared with the less generous approach adopted by the European Court of Human Rights (ECtHR); and (d) the awards involved double counting.

The claim for damages arose from MGN's journalists accessing records and voicemails of well-known people, thus acquiring personal and confidential information known only to trusted people, with the consequential effect upon their relationships with friends and family being some of the victims believing that those close to them had made the disclosure.

MGN contended damages should be for distress caused and not for any intrusion. Whilst previous decisions restricted damages to distress, as for example in Vidal-Hall v Google Inc, the Court of Appeal considered the courts should be unfettered in determining the basis of the damages so that damages could be for compensatory reasons and distress.

Secondly MGN contended scales used for personal injury damages should be used for misuse of private information or breach of privacy. This was rejected by the Court of Appeal who stated that each case should be considered on its own facts and merits - including taking each victim as you found them - because disclosing private and sensitive information had had more impact on some of the Claimants than others.

The High Court considered that £10,000 should be a starting point for general hacking, but not to be applied in a slavish way, as in some instances there had been persistent hacking and invasion of privacy which justified a higher award; in other situations newspaper articles were repeated with or without new details. The Court of Appeal considered there was no obligation for an exact correlation

© European Audiovisual Observatory (Council of Europe) 2026

between general damages for personal injury and hacking claims. The personal injury tariff acted as a guide, with individual judges having discretion to deviate from the guidelines; including in deciding whether to award damages for each breach or apply moderation. Damages had to be flexible to reflect the particular circumstances of each case.

On the third point of appeal, the Court held that the English courts have only recently recognised a civil wrong for intrusion of privacy and misuse of information and it would not be appropriate to impose limits. There was no evidence to support or justify creating a fixed tariff linked to the awards of the European Court. The Court of Appeal considered the misuse of private information was for English domestic law to address. The English courts were in a better position to assess the appropriate measure of damages. There are enough checks and balances in the court system to moderate damages, or even appeal to a superior court if a party considered the damages award inappropriate. The Court considered that the domestic court was better placed than an international body to evaluate the impact of a particular hacking case on an individual.

With regard to the fourth ground of appeal, double counting, the High Court judge clearly denoted in his judgment that he had allowed for repetition of a published article and the impact of some revelations on some claimants was not as adverse as the original publication.

The High Court judge was conscious not to double count and not every hacking incident led to an award of damages. The test was not whether the Court of Appeal would have awarded exactly the same award as the trial judge, as the assessment for general damages is not an exact science, but whether the trial judge determining the facts was entitled to make the award he did. The Court of Appeal saw no evidence suggesting that the Judge’s awards of damages were excessive or unreasonable. When appealing MGN did not cite any particular damages award made by the trial judge as being excessive nor did they propose an alternative sum.

Representative Claimants v MGN Ltd [2015] EWCA Civ 1291

http://www.bailii.org/ew/cases/EWCA/Civ/2015/1291.html

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

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

Google Inc v Vidal-Hall & Ors [2015] EWCA Civ 311

http://www.bailii.org/ew/cases/EWCA/Civ/2015/311.html

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026