

throw that acceptance into considerable doubt: if the trial proceeds, there would seem to be little doubt that Mr Taylor's case will be advanced on the basis that Mr Mulcaire was specifically employed by NGN to engage in illegal information gathering to provide the basis for stories to appear in NGN's newspapers. I would not imagine that NGN wishes this kind of allegation to be given any more publicity than is inevitable from the bringing of the claim.

8 In these circumstances I have been asked to provide advice on the likely quantum of damages and on tactics for dealing with Mr Taylor's claim.

Quantum

9 Mr Taylor claims both aggravated and exemplary damages for the torts of which he complains. The pleadings set out in some detail the basis for these claims. They include the sensitive private nature of the information on his voicemails, the fact that his work requires that many well-known individuals and people in positions of influence and power are able to trust him and treat his voicemail as entirely confidential, the hurt to his family and friends on discovering that their private words have been accessed, the increased difficulty Mr Taylor has experienced in doing his job now that his voicemail is not trusted and other similar matters.

10 To support the claim for exemplary damages, it is expressly pleaded that NGN calculated that the profits to be obtained from illegal access to voicemails outweighed any loss and damage that Mr Taylor might recover and that NGN ought accordingly to be "financially punished for the improper and grossly offensive acts of its journalists and persons that it engages to carry out such acts" (Amended Particulars of Claim paragraph 50(8)).

11 It seems to me to be clear, first, that on the current state of the authorities, both aggravated and exemplary damages are available to Mr Taylor. Reference to the speeches in the House of Lords in *Rookes v Barnard* ([1964] AC 1129) and the subsequent consideration of that case in more recent authorities such as *Kuddus v Chief Constable of Leicestershire* ([2002] 2 AC 122) makes it plain that both kinds of damages are in principle capable of being awarded in appropriate circumstances in a claim for breach of confidence. Exemplary damages are only available where "the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff" (per Devlin J in *Rookes v Barnard* at 1226).

12 It also seems clear that the nature of the wrongs complained of by Mr Taylor and the conduct by NGN's journalists makes it almost inevitable that the court will wish to mark its disapproval of their activities by awarding an enhanced level of damages. The accessing of Mr Taylor's and [redacted] voicemails was not only illegal but will be seen as immoral and repugnant by any judge who is likely to hear the action. Gross J, who sentenced Mr Mulcaire, described it as "the lowest of the low" and his reaction may be considered typical.

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