

SECOND WITNESS STATEMENT OF JOANNE KATHLEEN ROWLING

I, **JOANNE KATHLEEN ROWLING**, of Schillings 41 Bedford Square, London, WC1B 3HX **WILL SAY** as follows:-

1. I make this statement as a Core Participant in the Leveson Inquiry as chaired by the Rt.Hon Lord Justice Leveson ("the Inquiry").
2. On 9 February 2012, Darryn Lyons of the picture agency Big Pictures gave oral evidence to the Inquiry, following the submission of a prior written statement. Part of Mr Lyons' evidence concerned a claim for misuse of private information ("the Privacy Claim") which was brought on behalf of my son against Big Pictures in June 2005, concerning photographs that Big Pictures were responsible for taking and selling to newspapers for publication ("the Photographs").
3. Mr Lyons' evidence contained a number of factual inaccuracies, which I believe could result in the Inquiry being substantially misled. I wish to address those factual inaccuracies and ensure that the Inquiry is apprised of the correct factual position.

Mr Lyons' Evidence

4. Mr Lyons' written evidence said the following:

"JK Rowling – The photographer who took the pictures of Ms Rowling and her son was a freelance photographer who worked for a Scottish based agency Big Scotland which was a subsidiary company. At the time the photographer, working to supply the agency, certainly wasn't approached by Ms Rowling expressing her concern as to any problem with the photograph being taken in a public park; it was a good set of photographs in a pleasant family situation.

First of all the photographs were never offered to be sold. Stock images are put on a data base, roughly 3.5m images, and to our knowledge it was 6-12 months before they were downloaded as a stock picture of Ms Rowling as a stock library image which was used to illustrate a story in the Sunday Express. The pictures were never sold; they were downloaded for a new story".

5. Mr Lyons said the following in oral evidence (at pages 31 and 32 of the transcript):

Q. All right. Then we have the JK Rowling photographs which resulted in a court judgment, tab 3, sir. Photographs taken of her child in 2004.

A. Yes.

Q. Do you remember that? I don't want to go through it in detail.

A. I do recall it, of course I recall it. I didn't deal with the particular situation at the time, but I'm very happy to take questions on it.

Q. I simply want to understand --

A. The ones I can answer I will.

Q. Of course. As a result -- you may again not be able to answer this, but as a result of the JK Rowling case, the Grant and Hurley case, the Miller case, where there were invasions of privacy in each case, are you aware of any disciplinary action taken or guidance given to your photographers?

A. In the case of the JK Rowling case, certainly this was the first legal situation that we had ever had, and it took -- I think it was two or three years after the pictures were taken, when anything actually happened with regard to privacy. Those pictures were on our website -- the pictures actually were taken, from what we thought, the photographer took a picture of her walking down a public street in Scotland. There was no problem that we felt that she had at the particular time of the picture. The picture was posted in our archive, which is a library, and it was downloaded several years later and used by a story about famous mums' families for £75. It was just a stock image that was downloaded by the Sunday Express. We didn't feel, certainly at the time, that there was any privacy invaded at the time. It was not common knowledge in the industry that any case had been brought against any picture agency.

Consent

6. Mr Lyons has stated that I did not approach the photographer in question to raise my concerns over the Photographs being taken and implies that because I had not raised any concerns at the time of the Photographs being taken, that I would have "*no problem*" with them.
7. It is true that I did not raise any concerns at the time the Photographs were taken, but for the reasons set out below – reasons which Mr Lyons should have been well aware of – it would have been impossible for me to have done so.
8. The primary reason that I was not able to voice my concerns about the taking of the Photographs was because I was unaware that Photographs were being taken. The Photograph that was the subject of the Privacy Claim was taken without our knowledge. The High Court and Court of Appeal judgments given in the proceedings recognise this fact: "*It [the Photograph] was taken covertly by a photographer using a long range lens. The Claimant and his parents were unaware that the photograph was being taken and did not give their consent*"¹ and "*Neither David...nor his parents were aware that the photograph was being taken. His parents were not asked for their consent to any of the photographs being taken*"².

¹ [2007] EWHC 1908 (Ch) at paragraph 3

² [2008] EWCA Civ 446 at paragraph 6

9. The first time that I became aware that we might be being photographed was when we were walking back towards our home from the café we had visited. We became aware that a photographer appeared to be pointing a camera in our direction. As I have explained in my first witness statement, whenever my husband and I spot a long lens camera apparently pointed in our direction when we are out and about with the children, we take immediate steps to shield them or move them out of the way. This is what my husband did when we became aware of this photographer. This was the first time that we were aware that there was a possibility we were being photographed. Prior to this point, we simply had no idea that somebody may have been following and photographing us and the children. In any event, as it turns out, the photograph that was the subject of the proceedings against Big Pictures was taken earlier that morning whilst we were on our way to the café, at which point we were not aware that we were being photographed.

10. Even after my husband had shielded our son from the photographer, I was still not sure whether they had attempted or succeeded in taking any photographs of our son. All I knew was that there was a photographer some distance away who appeared to be taking photographs of us. I did not know, and there was no way of knowing, who the photographer was, whether they had obtained any photographs and if so, of whom and also who they worked for. Without knowing anything about the photographer, it was impossible for me to know who to complain to or make my concerns known to.

11. Mr Lyons' implication that my husband and I acquiesced to the taking or publication of the Photographs is incorrect. In any event, it should have been clear to Big Pictures that we would have objected to the taking of such photographs.

12. The fact that the photographer also had to use a long range lens to obtain the photographs covertly suggests that he knew that our consent would not be given.

13. Mr Lyons and Big Pictures should also have been well aware that I am fiercely protective of my children's privacy. As detailed in my first witness statement, on every occasion that we have become aware of a photograph of one of our children appearing in the press, we take all available steps to make our objections to publication clear and to prevent that photograph and other photographs being published again. We have had recourse to the PCC and the law on a number of occasions and, I believe, that through these actions our stance on our children's privacy is well known throughout the media. Our stance has been widely reported on many occasions.

Timing of the Privacy Claim

14. Mr Lyons' oral evidence states that he thought the Privacy Claim had been brought against Big Pictures "*two or three years after the pictures were taken when anything actually happened with regard to privacy*". This is simply wrong; action was taken at the earliest opportunity. The Photographs were taken on 8 November 2004. The Photographs were first published in January 2005. I immediately complained to the newspapers concerned and to Big Pictures, who agreed to take steps to prevent further publication of the Photographs. Despite this, one of the Photographs was re-published in the Sunday Express on 3 April 2005. Proceedings were issued on 24 June 2005.

Big Pictures sale/distribution of the Photographs

15. Mr Lyons' written evidence states categorically that "*the photographs were never offered to be sold...The pictures were never sold...*". I found this very surprising given Big Pictures' pleaded case in the Privacy Claim.

16. In Big Pictures' Defence in the Privacy Claim, they make the following statements, supported by a sworn statement of truth:

- a. **"[Big Pictures] is a photographic agency, which maintains a catalogue of images for sale"**

- b. "On 12th November 2004 [Big Pictures] licensed an exclusive right to publish the Photograph (and any of five other digital images that had been taken at the same time) on one occasion only to The Mail on Sunday"
- c. "In early January 2005 and The Mail on Sunday having elected not to exercise the said right [Big Pictures] requested The Mail on Sunday to release and The Mail on Sunday did so release the said right"
- d. **"Subsequently on 11th January 2005, [Big Pictures] offered the said digital images for sale** by way of non-exclusive single use syndication to a number of media outlets and media photograph libraries as clients"
- e. "At the same time the said digital images were also made available (subject to password login) by [Big Pictures] at its website..."

[My emphasis added.]

17. Mr Lyons' suggestion that the Photographs were simply placed in Big Pictures' image library and then downloaded some time later for publication is, I believe, a misleading characterisation of what in fact happened. The Photographs were clearly recognised as being commercially valuable and were offered for sale to one or more publications before being exclusively licensed to The Mail on Sunday. I believe that Big Pictures received a four-figure sum from The Mail on Sunday for an exclusive license period and that further licence fees were paid by other newspapers including the Sunday Express.

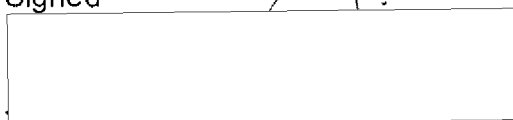
18. I read with interest Mr Lyons' reference to a "no shoot list". Until I read his evidence I was not aware of the existence of such a list, whether it has been strictly followed by Big Pictures, or how effective it has been. I would be very interested in knowing more, such as who is on it, and how one gets on it.

19. If such a system were to prove effective and were to be put more widely into operation across the industry I would certainly want my family to be placed on it. There would however need to be suitable sanction for anyone unjustifiably disregarding it, otherwise it will fail.

20. I have asked my solicitors to write Big Pictures to ask for my family to be placed on their list forthwith.

I believe that the facts stated in this witness statement are true.

Signed



JOANNE KATHLEEN ROWLING

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