IN THE COUNTY COURT AT CENTRAL LONDON

BEFORE HHJ LUBA QC

7 October 2016

Hearing dates: 11 – 13 July 2016

Claim No: 3YM 09078

ANDREA BROWN

Claimant

- and –

THE COMMISSIONER OF POLICE OF THE METROPOLIS

Defendant

heard together with

Claim No: A53YP250

ANDREA BROWN

Claimant

- and -

THE CHIEF CONSTABLE OF GREATER MANCHESTER POLICE

Defendant

JUDGMENT ON REMEDY

For the Claimant: Ms Claire Darwin, Counsel

For Metropolitan Police: Mr Adam Clemens, Counsel

For Greater Manchester Police: Miss Charlotte Ventham, Counsel

Introduction

1. These two claims are concerned with the obtaining, disclosure and use of personal information about the Claimant.

2. I heard them together in a trial commencing on 11 July 2016. At the invitation of the parties, the issues of liability and remedy were addressed separately. I heard the oral evidence - and the submissions of counsel on liability - over 11 and 12 July 2016. I gave judgment on the issues relating to liability on 13 July 2016 and heard submissions on remedy immediately thereafter. The hearing concluded at 5.20pm on that day and I reserved judgment on remedy.

3. I invited the parties to identify a date, convenient to them all, for a further hearing before the Long Vacation at which judgment might be handed-down and consequential issues addressed. Unhappily, the Court did not have available time on any of the dates proposed and in those circumstances I decided to deliver a written judgment on remedy. This is that judgment.

The Factual Background

4. Having addressed the facts in some detail in my judgment on liability, I return to them here only briefly by way of introduction to my conclusions on remedy.

5. The claimant was a serving officer of the Metropolitan Police Service (MPS) until she resigned in November 2013. During her employment, in December 2011, she had – while on sick leave absence – travelled to Barbados with her daughter, without notifying her line manager of her whereabouts. That was in breach of police service procedures as to absence management.

6. Upon her return, and as part of an exercise to gather material for a potential disciplinary process, a senior MPS officer submitted a request for information to the National Border Targeting Centre (NBTC), previously known as the Joint Border Operations Centre. The NBTC database contains information provided by airlines in

relation to passengers travelling on flights to and from the UK. Police operations at the NBTC are managed by the Greater Manchester Police (GMP).

7. An officer employed by GMP provided the information requested. He did so by an Email response in these terms:

> *"Please see the attached search result. I have included the subject's passport photograph to ensure we are dealing with the correct person. It would appear from page 1 that on 13/12/2011 the subject travelled on board Virgin flight VS 0029 from Gatwick to Barbados in company with Ms [name redacted]. Page 5 indicates that the pair made the return journey on board Virgin flight VS 0030 on 27/12/2011."*

8. An attachment to the Email contained a copy of the passport photograph of the Claimant and an 8 page print-out entitled "Passenger Search Results". That contained the details of: the Claimant's name and date of birth; her nationality; her passport number; the country which had issued that passport; the expiry date of that passport; details of 15 flights taken by the Claimant between 2005 and 2011; and details of the family member who accompanied the Claimant to Barbados on 13 December 2011, and with whom she returned on 27 December 2011.

9. Upon receiving that information, a MPS officer made a further enquiry to obtain information about the Claimant's overseas travel arrangements to Barbados. This time the enquiry was directed to the airline with which she had travelled. The request was made on a MPS "Personal Data Request Form".

10. The Email response from the airline contained the following details: confirmation of the dates and flight numbers of the inbound and outbound flights; the names of the Claimant and her daughter; the name of the travel agency through which the Claimant had booked the flights; and the date the flights had been booked. It attached a copy of the booking form which included the name and contact details of the travel agency and the booking reference number.

11. The material obtained then informed the police disciplinary process in relation to the Claimant's absence abroad. That culminated in a finding that the Claimant had a "case to answer" but that a sufficient sanction would be the taking of "informal management action" *viz* a requirement that she ensure that she was aware of the

attendance management standard operating procedures and complied with them in future.

12. The Claimant's case, in short, was that the data and information gathering facilities used by the MPS are made available to the police to use, inter alia, in the detection or prevention of crime and for like purposes only. Not for the purpose for which they were deployed here. Likewise, that it was wrong for GMP to have provided the data it did, given the purpose for which it had been sought.

Liability

13. To put this judgment into context it is important to start by shortly re-stating the position on liability. The Claimant pursued separate claims against the two Defendants but in each case advanced the same causes of action.

14. As to her claims that the unauthorised disclosure and use of her personal data, and of information concerning her, amounted to breaches of the Data Protection Act 1998 (DPA) and the Human Rights Act (HRA) 1998, each of the Defendants conceded liability.

15. The GMP admits that the disclosure of material from the NBTC to the MPS amounted to the processing of the Claimant's personal data. It accepts that the provision of details of all flights taken by the Claimant over the previous 6 years together with the details of her travelling companion (her 14 year old daughter) on the trip to Barbados engaged the Claimant's Article 8 rights.

16. The GMP was unable to advance a positive case that the processing of the Claimant's personal data complied with the first data protection principle in Data Protection Act section 4(4) and/or that the interference with the Claimant's Article 8 rights was justified in accordance with Article 8(2). Accordingly, liability was admitted in those respects by the GMP.

17. For its part, the MPS concedes that neither the request to the NBTC nor to the airline ought to have been made in the circumstances of this case. Save that the Claimant abandoned at trial her claim that the MPS had, by these processes, secured or distributed any CCTV images or video material, it admits liability for breach of the

Data Protection Act and Human Rights Act in essentially the same terms as the GMP has done.

18. As to the Claimant's claims that the unauthorised disclosure and use of her personal data, and of information concerning her, amounted to misfeasance in public office on the part of officers employed by either or both of the Defendants, I rejected them for the reasons that I gave in my judgment on liability. The necessary ingredients of that tort were not made out.

19. As to her further claims that the unauthorised disclosure and use of her personal data, and of information concerning her, amounted to a tortious invasion of her privacy (i.e. the modern tort of misuse of private information), the Defendants contended that the tort led to no greater remedy than that otherwise available for breach of the Data Protection Act and Human Rights Act. In my judgment on liability, I ruled that - whether or not that be the case - the ingredients of that tort were made out on the facts.

20. It follows that I am considering potential remedies for breaches of the Data Protection Act and the Human Rights Act and for a tortious interference with the right to privacy, in both cases.

Remedies under the Human Rights Act 1998

21. Both Defendants admit unlawful interference with the Claimant's right to respect for her private life (in the sense of an intrusion into her privacy) in contravention of Article 8 of the Convention Rights listed in Human Rights Act 1998 Schedule 1.

22. But it does not follow that an admission (or finding) of unlawful infringement must lead to the grant of a remedy. The admission (or finding) of an infringement may itself provide "just satisfaction" to a victim. Thus it is that Human Rights Act 1998 section 8 provides that:

> (1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

(2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.

(3) No award of damages is to be made unless, taking account of all the circumstances of the case, including—

(a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and

(b) the consequences of any decision (of that or any other court) in respect of that act,

the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

(4) In determining—

(a) whether to award damages, or

(b) the amount of an award,

the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.

23. In my judgment, this is a class of case in which the Court should exercise its discretion to grant a remedy. The breach of human rights by the MPS occurred twice. The breach by the GMP ought never to have occurred. It is important that police forces should be especially concerned to protect, not infringe, the human rights of individuals.

24. There can be no doubt – and I find – that the breaches caused upset to the Claimant when she learned that they had occurred. Both additionally involved the identification, and disclosure of information about, a child member of her family.

25. This was no technical or inadvertent infringement of the important right to privacy. The information was sought and provided in the knowledge that what was being asked for and obtained was personal data. I am not prepared to hold that the admission of the breaches amounts to just satisfaction or that no further remedy should be available.

26. Ms Darwin seeks declarations that the Human Rights Act has been infringed by both Defendants and that the terms of the declarations should particularise those breaches.

27. I see no warrant for declaratory relief. The admissions made are important and are in the public domain, both through the pleadings and through the judgments I have delivered. The Claimant has herself taken steps to publicise the admissions. I consider no further purpose would be served by granting declaratory relief.

28. Ms Darwin next seeks damages. As indicated, I *am* satisfied that the breaches should be met by awards of damages. In so concluding I have had regard to all the circumstances of the case, including the two particular matters set out in section 8(3). However, in line with the intent of section 8(3)(a), and with a view to ensuring that there is no 'double-counting' or overlap of Human Rights Act damages with awards of damages made under different causes of action, I shall address the *quantum* of damages discretely later in this judgment.

29. I record that Ms Darwin sensibly and correctly conceded that damages awards under the Human Rights Act, if taken alone, tend to be relatively modest not least by reason of the obligation imposed on the court in section 8(4): see, by way of example, the modest award in *Campbell v Mirror Group Newspapers* [2002] EWHC 499 (QB), [2002] H.R.L.R. 28.

Remedies under the Data Protection Act 1998

30. As already explained, both Defendants admit the pleaded breaches of the Data Protection Act 1998. In the case of MPS, that admission does not extend to requesting, obtaining or possessing CCTV material (the claim in respect of that having been abandoned). In the case of GMP, the admission extends to all matters save the pleaded claim of indefinite retention of the data (which was not pursued).

31. The range of remedies for breach of data protection principles is identified in Data Protection Act 1998 section 13 which provides:

> (1) An individual who suffers damage by reason of any contravention by a data controller of any of the requirements of this Act is entitled to compensation from the data controller for that damage.
>
> (2) An individual who suffers distress by reason of any contravention by a data controller of any of the requirements of this Act is entitled to compensation from the data controller for that distress if—

(a) the individual also suffers damage by reason of the contravention, or

(b) the contravention relates to the processing of personal data for the special purposes.

(3) In proceedings brought against a person by virtue of this section it is a defence to prove that he had taken such care as in all the circumstances was reasonably required to comply with the requirement concerned.

32. Neither Defendant seeks to rely on section 13(3). The Claimant did advance a claim of "damage" for the purposes of section 13(1). It was her pleaded case that she had (as a result of the acts complained of) suffered depression i.e. 'damage' in the sense of suffering a personal injury. Having considered the medical evidence, and for reasons more fully explained in my judgment on liability, I was not satisfied that any such personal injury - in the sense of any suffering from a recognised psychiatric condition attributable to the acts complained of - had been established. I do not find that the Claimant's depression was caused by or materially contributed to by the breaches of the Data Protection Act 1998.

33. I consider that the Claimant's evidence that "the whole situation has had a hugely adverse effect on my health" (Witness Statement para [66]) is not only inaccurate but a gross exaggeration. But I do accept that she was "totally shocked", "upset" and "angry" (ibid) as a result of learning of the actions of the MPS and that she was (although to a lesser extent and at a much later stage) "very upset and angry" and "distressed" (Witness Statement para [68]) about the data protection breach by the GMP.

34. It follows, and the Defendants did not strenuously contend otherwise, that the Claimant has suffered "distress" and that the other requirements of section 13(2) are satisfied so as to entitle the Claimant to compensation. Indeed, on the current understanding of the law (as it binds me), damages for distress - without proof of any pecuniary damage or personal injury - are recoverable in any event under the Data Protection Act, even if the requirements of section 13(2) are not strictly met: see *Vidal-Hall & others v Google Inc* [2015] 3 WLR 409 at [105].

35. So there will be an award of damages against both Defendants for their admitted breaches of the Data Protection Act 1998. Again, I consider that the question of the appropriate amount should be addressed separately. I return to 'quantum' below.

36. Ms Darwin again seeks declarations that the Act has been infringed by both Defendants and that the terms of the declarations should particularise those breaches.

37. Again, I see no warrant for declaratory relief. The admissions made are important and are in the public domain both through the pleadings and through the judgments I have delivered. The Claimant has herself taken steps to publicise the admissions. I consider no further purpose would be served by granting declaratory relief.

38. Ms Darwin further seeks an order against both Defendants for the "blocking and/or erasure and/or destruction" of the relevant information in so far as still held by the Defendants. That relief is sought pursuant to Data Protection Act 1998 section 14(4) which provides:

> (4) If a court is satisfied on the application of a data subject—
>
> (a) that he has suffered damage by reason of any contravention by a data controller of any of the requirements of this Act in respect of any personal data, in circumstances entitling him to compensation under section 13, and
>
> (b) that there is a substantial risk of further contravention in respect of those data in such circumstances,
>
> the court may order the rectification, blocking, erasure or destruction of any of those data.

39. The two pre-requisites for the operation of the sub-section are that: (1) the Claimant suffered "damage"; and (2) the Court is satisfied that there is a "substantial risk of further contravention".

40. As to the former, the requirement may need to be approached through the modified prism of *Vidal-Hall* and, possibly, be treated as satisfied even absent monetary damage or damage to health. But even if that first condition is satisfied, I accept the submission made by Mr Clemens that the Claimant has not made out a case that there is a risk, let alone a 'substantial' one, that there will be a further contravention.

41. True it is that all the witnesses called for the Defendants displayed a troubling lack of insight, contrition or, indeed, *any* understanding that they or their Force had done anything wrong in 'data protection' terms. But I am satisfied that they have personally learned a lesson from the proceedings - to be much more cautious and careful in future. As, I trust, have their seniors and their legal advisers. In those circumstances,

the likelihood of any repetition, especially given the obvious need for dissemination of appropriate information and proper training which I am assured is recognised, is remote. Accordingly, I decline to make any order under section 14(4).

Remedy for the tort of misuse of private information

42. On essentially the same facts that gave rise to the admissions of breach of the two statutory provisions discussed above, I have found that the ingredients of the relatively modern tort of misuse of private information are made out.

43. In terms of remedy, I do not accept the submissions of Mr Clemens that compensation for the tort of misuse of private information takes the claim for damages no further than the parameters of the award of damages for breach of the statutory provisions. Although the same facts - and consequences for the Claimant - are in play, the remedies for the tort operate without the inhibitions imposed by the two statutes. Indeed, it seems that it is the practice of the courts to award damages for distress, hurt feelings, and loss of dignity in such privacy cases (Tugendhat & Christie *The Law of Privacy & the Media* at 12.104) and to include an element reflecting the very fact that control of personal information has been lost such that it is no longer 'private information'.

44. In her skeleton argument, Miss Ventham helpfully and accurately distilled the learning to be gleaned from the leading case on the subject, *Gulati and Representative Claimants v MGN Ltd* [2015] EWCA Civ 1291, [2016] 2 WLR 1217, as follows:

    a. Victims are entitled to be compensated for the loss of control over their use of their own private information as well as for any distress caused thereby, although the amount of compensation might be affected if the information would have become public knowledge anyway ([45] and [48]);

    b. There should be some reasonable relationship between awards in defamation or privacy cases and awards in personal injury cases, but taking account of personal injury compensation did not mean that the outcome had to be exactly the same ([61] – [62]);

c. In making an award for misuse of private information, the court was not proceeding under the Human Rights Act. The measure of damages was more naturally a matter of domestic law ([89]).

d. As set out by Mann J at first instance in that case, and approved by the Court (at [32]), certain types of information (e.g. medical information, financial matters, information about relationships) are likely to be considered more significant than others and that there may, at the other end of the spectrum, be cases involving only a trivial disclosure of private information.

45. It is on that broader footing in relation to the claim in tort, and pursuant to the guidance given in that judgment, that I shall shortly come to consider the quantum of damages. Of course, in doing so, it is important to remember that the guidance was proffered in the context of particularly unpleasant and deliberately undertaken "hacking" of confidential information.

46. In addition to considering the claim fit for damages in respect of this tort, I have considered Ms Darwin's further submission that I ought to grant some form of declaration that the Defendants have committed this tort. I can perceive no benefit to be derived from the making of such a declaration and accordingly I decline to make one.

Aggravated damages

47. The Claimant seeks - against both Defendants - aggravated and/or exemplary damages, in combination or in the alternative to each other, as aspects of damages for *"misuse of private information; misfeasance in public office; breach of contract; and personal injury"* (those words being taken from the Amended Particulars of Claim against the MPS). Such damages are sought only in respect of the first and last of those causes of action against the GMP.

48. As to those, only the first-mentioned cause of action has been made out. Moreover, in the List of Issues prepared by Ms Darwin for the trial, the case for *exemplary* damages is cast as one advanced in the context only of liability for misfeasance in public office. The List includes this:

22. Should the Claimant be awarded exemplary damages against the Met and/or GMP *in relation to her claim for misfeasance in public office?*

49. The claim in respect of that tort having failed, in her oral argument Ms Darwin properly confined herself to submissions for *aggravated* damages in respect of the claim in the tort of misuse of private information.

50. It follows that, on reviewing (as I have) the formidable particulars of matters advanced in the "Claimant's List of Issues" as to aggravated damages, I have confined myself to the context of the tort of misuse of private information although my consideration has been infused by the knowledge that the acts and matters constituting satisfaction of that tort in this case also involves breach of two important statutory codes (the Human Rights Act 1998 and Data Protection Act 1998).

51. As is well known, *"[A]ggravated damages are awarded to compensate the plaintiff for injury to his proper feelings of dignity and pride and for aggravation generally"*: (1993) 25 H.L.R. 273 at 279 per Nourse LJ. Essentially, they are designed to reflect the particular manner in which, and context in which, the tort was carried out.

52. A good number of the matters advanced by Ms Darwin - as informing her claim for aggravated damages - stretch the permissible margins and embrace matters such as: the subsequent conduct of the proceedings and the trial; the handling of an internal complaint about the disclosures; the absence of disciplinary proceedings against the staff involved; and much more besides. Her particulars in the List of Issues relating to the claim against MPS are preceded by an invitation to the Court to answer this question:

> "Was the following conduct by the [MPS] aggravating conduct i.e. has [it] behaved in a high-handed, malicious, insulting or oppressive way and/or has conducted itself in an unnecessarily offensive manner during the course of the litigation and/or has [it] not taken the Claimant's complaint seriously and failed to apologise?"

53. In relation to the GMP, I am invited to ask myself "Was the following conduct by GMP aggravating conduct…?" by reference to a set of particulars.

54. In the event, I have 'shut out' none of the matters relied upon and have sought to weigh them all appropriately. It would not be proportionate to work through each

matter in turn. I intend no disrespect to Ms Darwin in suggesting that cases warranting 'aggravated' damages are usually readily identified from the 'feel' or 'flavour' that the Court takes from a particular set of facts in a particular case relating to the way in which the tort has occurred.

55. Certainly, aspects of the conduct of the litigation (and pre-litigation conduct) by both Defendants leave something to be desired but, as against that, good sense was shown by the plain admissions that have been made. I am not satisfied that there has been anything in the nature of a deliberate "cover-up" of the acts of the officers of the Defendants, despite an initial lack of transparency and candour.

56. Most centrally, I am not satisfied that any of the officers of either Defendant were engaged in a flagrant intrusion into the private life of the Claimant or in the broadcasting or wide dissemination of private information about her. True it is that procedures never designed for the purpose were wrongly deployed to garner material that officers believed they were entitled to request/require and provide. True it also is that whatever checks or safeguards that should have been in place failed to prevent what occurred. However frustrating it may be to the Claimant, or even to the Court, that police officers - and the lay staff employed by the police - apparently have so little training and supervision that what occurred in this case did occur, aggravated damages are not an appropriate tool to use to achieve service-improvements and better respect for the protection of personal data.

57. Approaching the matter in the round, and giving due weight to all that Ms Darwin has urged upon me, I do not consider this a fit case for the award of aggravated damages against either Defendant. At the height of her oral submissions, Ms Darwin invited me to accept this case as one amounting to a "gross violation of police powers". In my judgment, that overeggs the pudding by some distance on the facts of this case.

General Damages

58. In the absence of enhancement by aggravated damages or exemplary damages, the function of general damages is compensatory i.e. to put the Claimant back, so far as money can, into the position she would have been had she not been wronged.

Global or Separate Assessment?

59. Here, essentially the same facts and matters sustain the claims in each of the respects on which they have succeeded (breach of the Data Protection Act, the Human Rights Act, and the tort of misuse of private information). I have considered whether, in those circumstances, it would be right to seek to assess separately damages under each head of liability. I reject that course. This seems to me a plain case for the making of a single global award.

60. Likewise, I see nothing to be gained by seeking to separately assess damages for each of the two wrongful acts of the MPS (in seeking information from the NBTC and then the airline and obtaining material from both which was then distributed internally). The two acts were linked consecutively to each other and the information each produced was essentially used in the same way to the same effect.

61. Nor do I consider that the damages consequent on the GMP worker at NBTC wrongfully acceding to the first request can be separated-out and discretely assessed. As the Claimant made clear in evidence, the upset she experienced was both in the making and the meeting of the request. They are two sides of the same coin. It seems to me that I must make, in this particular case, what is known as a 'global' award and then must seek to broadly apportion liability for it between the two Defendants.

The Amount

62. Compensating for the shock, distress and upset caused by the discovery that a person's personal information or data (and some material relating to their child) has been wrongly accessed and disseminated cannot be an exact science. The Court must do the best it can to place a monetary value on the harm or loss suffered. Further, as *Gulati* makes clear, in addition to compensating for distress, the award of general damages should embrace compensation for the fact that the Claimant has lost control of personal information. As LJ Arden said in that case (at [45]-[46]):

> "...the judge was correct to conclude that the power of the court to grant general damages was not limited to distress and could be exercised to compensate the respondents also for the

misuse of their private information. The essential principle is that, by misusing their private information, [the defendants] deprived the respondents of their right to control the use of private information…Privacy is a fundamental right."

63. In this case, on the one hand, there is the particular feature that of the two Defendants - who caused this injury to the Claimant's feelings and the loss of control of her personal information - one was the Claimant's own employer (an employer who knew that there were already particular personal and health difficulties being experienced by the Claimant) and both were police forces which might have been expected to know and obey relevant legal requirements rather than transgress them. The requests made by the MPS were pursued cavalierly and the response was given by GMP almost casually (not least, by default, in providing even more information than that sought).

64. In this case, on the other hand, the Court is not dealing with the wide dissemination of highly sensitive or highly personal information for profit or gain. The context is one in which, had the Claimant been asked for some of the information (when and where did she book her travel arrangements, when did she leave, when did she return, and where did she go) the likelihood is that she would have readily provided it: see *Gulati* at [45] for the import of the fact that material may "have become public knowledge anyway".

65. It was almost by happenchance that the response from GMP included a personal photo, passport details, the name of her daughter, details of previous flights, etc etc. True it is that some or all of that information may have been cascaded to one or two officers with a line-management or disciplinary connection with the Claimant and it may have remained "on her personnel file" but that is the limit of it. This limited scale or extent of disclosure plainly goes to the assessment of damages.

66. All counsel urged upon me, in their oral submissions, further particular features or aspects of the facts and the history (in the case of each of the Defendants this was in support of their helpful skeleton arguments). Nothing would be gained by my setting them all out. Reserving the judgment has enabled me to re-visit them more than once. I have done my best to weigh them all appropriately in making what must necessarily be an inexact and non-scientific assessment.

67. I was taken to a good deal of caselaw indicative of awards of damages in privacy cases. But as Miss Ventham correctly submitted in introducing her own list "the majority relate to the publication of sensitive personal information (often about celebrities or those in public life) in the national press". The cases I was shown, or had summarised for me, included: *Cornelius v De Taranto* [2001] EWCA 1511, [2002] E.M.L.R. 6; *Campbell v Mirror Group Newspapers* [2002] EWHC 499 (QB); *Douglas v Hello Ltd* [2003] EWHC 2629 (Ch); *Archer v Williams* [2003] EWHC 1670 (QB) *McKennitt v Ash* [2005] EWHC 3003 (QB); *Weller v Associated Newspapers Ltd* [2014] EWHC 1163 (QB), [2014] EMLR 24. Counsel for the Defendants relied particularly on *Weller*, a case in which taking and use of photographs of the claimant's children led to a relatively modest award.

68. Ms Darwin took me, in particular, to: *Mosley v NGN Ltd* [2008] EWHC 1777 (QB), [2008] EMLR 20; *Cooper v Turrell* [2011] EWHC 3269 (QB); *AAA v AN Ltd* [2012] EWHC 2103 (QB), [2013] EMLR 2; and *WXY v Gewanter* [2013] EWHC 589 (QB). She correctly submitted that the modern trend was for higher or more significant awards. That reflected the position recognised by Arden LJ in *Gulati*, where, in summarising the approach Mann J had taken to the award of damages at first instance, she said (at [26]):

> "Moreover, he found that while it was "relatively early days" in claims for compensation for breach of privacy, the size of awards was increasing. He took a number of comparables, all of which involved sums of £5,000 or less. The exception was *Mosley v News Group Newspapers Ltd* [2008] EMLR 20, where £60,000 was awarded. In addition, in *Cooper v Tyrrell* [2011] EWHC 3269 (QB), Tugendhat J awarded £30,000 for damages for misuse of private information in addition to damages of £50,000 for libel. He held that, had the claim been for damages for misuse of private information alone, he would have awarded £40,000. The case concerned the disclosure of private health information. In *WXY v Gewanter* [2013] EWHC 589, Tugendhat J awarded general damages of £19,950 for breach of privacy consisting of the publication on a website of various private details. In *AAA*, the judge awarded £15,000."

69. Ms Darwin sought to persuade me that comparables which "...involved sums of £5000 or less..." no longer provided accurate guidance. Things had moved onwards and upwards. She based herself on *Gulati* for the bold submission that in this class of case assessment of damages essentially started at a minimum threshold level of £10,000.

70. The latter submission I entirely reject. *Gulati* was concerned with carefully organised and frequently repeated hacking of highly personal and sensitive information for gain. It unsurprisingly produced "the largest awards of damages yet made by our courts for breach of a person's privacy" (at [2]). The figure of £10,000 was introduced in this way (at [33]):

> "The judge held that the starting point for general hacking was £10,000 for each year of serious levels of hacking. By "serious", the judge stated that he meant hacking every few days, if not daily, as a matter of routine."

71. That is light years away from the context of the present case. Here I am concerned with misuse of private information in the factual context of pursuit of an employer's disciplinary procedure (which ultimately resulted in the complaint against the employee being upheld). The material was not sought for gain, was not widely disseminated and was not of the sensitive nature of being concerned with medical matters, financial matters or personal relationships.

72. The absence of any authority on damages anywhere close to the factual circumstances of this case led to a very wide range in the suggested figures between parties. For the Defendants, it was said that the award should not amount to more than, at most, a few thousand pounds. For the Claimant, I was asked to think in terms of a global award of £30,000 against the Defendants jointly.

73. In my judgment, the award made must be substantial. The personal information disclosed was not of the highest order of sensitivity but it was wrongly sought, obtained and disclosed by state authorities by their accessing of data initially obtained and held so as to be available for quite different and limited purposes, and by purported use of statutory powers to secure information. The Claimant did 'lose control' over the privacy of her personal information even if she would have been prepared to volunteer much of it to her line managers had she been asked.

74. But this was not repeated misuse or abuse of personal data, nor the disclosure of highly personal material for gain, for wide distribution or with the intent to injure or embarrass. It does not reach the order of magnitude of the abuse justifying the £10,000 'starting point' in *Gulati.*

75. Doing the best I can, I fix the global sum of damages at £9000 (nine thousand pounds). I believe that reflects not only the distress experienced by the Claimant but also compensates for the extent to which she ceased to be in control of her personal information.

76. I consider that it is right to 'apportion' liability for that sum as between the Defendants. Miss Ventham urged upon me that her client was only 25% responsible for whatever sum of damages was awarded. It had not initiated the NBTC disclosure, it had nothing to do with the request made to the airline, and if MPS had not made the request it had wrongly made, GMP would not have been involved at all.

77. I consider that the right apportionment is two-thirds/one-third. That reflects the primary responsibility as laying with the MPS and the fact that it made two disclosure requests, only one of which concerned GMP. However, it more accurately apportions - than an assessment of 25% would – responsibility to GMP for the fact that the bulk of the total personal data was data that it disclosed and that itself went well beyond what had been sought from it.

78. Finally, I should add that Ms Darwin invited me to make a "general damages 10% uplift" applying *Simmons v Castle* [2013] 1 All ER 334. In my judgment, the case for that approach was not made out. My award reflects what I take to be a modern up-to-date assessment of global general damages in this class of case. No further uplift is required

79. If the parties are unable to agree an appropriate figure for interest, I shall receive further submissions as to that.

Order

80. Subject to the question of interest, my order will be that there will be judgment against the MPS for £6000 and against GMP for £3000.

81. I invite the parties to draw a Minute, agreed so far as possible, reflecting that Order and including any other provisions arising from my earlier directions and judgments

in this case. The Minute should likewise cover consequential orders in relation to such matters as costs.

HHJ Luba QC

7 October 2016