

## Court of Appeal dismisses MGN's phone hacking appeal

The Court of Appeal has, today, dismissed MGN's phone hacking appeal on the quantum of damage for misuse of private information. See [Representative Claimants v. MGN Limited \[2015\] EWCA Civ 1291](#).

In May 2015 Mr Justice Mann awarded the Claimants in the 8 test cases substantial damages for misuse of their private information, as a result of MGN's phone hacking and other unlawful private information gathering ([\[2015\] EWHC 1482 \(Ch\)](#)). The following damages were awarded:

SADIE FROST	£260,250
ROBERT ASHWORTH	£201,250
PAUL GASCOIGNE	£188,250
LUCY TAGGART	£157,250
SHANE ROCHE	£155,000
SHOBNA GULATI	£117,500
ALAN YENTOB	£85,000
LAUREN ALCORN	£72,500

The judge's awards were multi-layered and structured (or 'atomised' as described to the Court of Appeal). MGN argued for a single global award for each claimant, contending that the judge's 'atomised' approach had led to disproportionate and excessive awards.

MGN took four points on appeal:

1. Damages for misuse of private information should be limited to distress, and should not encompass any damage to the right itself (e.g. the loss of control of the private

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Briget Harrison, Chambers' Director: [bharrison@hogarthchambers.com](mailto:bharrison@hogarthchambers.com)

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information) as such would amount to vindictory damages which are precluded by [Lumba](#).

2. The damages were out of proportion to awards for other torts such as personal injury and workplace discrimination (see [Vento](#)).
3. The damages were out of proportion to awards made by the European Court of Human Rights in privacy cases.
4. The judge had double-counted in various respects.

The Court of Appeal dismissed all four grounds, the leading judgment being given by Lady Justice Arden, with whom Rafferty and Kitchin LJ agreed. The Court of Appeal paid tribute to the “careful and comprehensive” judgment of Mr Justice Mann, and did not fault it.

In addition to considering (and rejecting) the four grounds taken by MGN, Arden LJ explained that she had analysed carefully the detail of all the elements which made up the judge’s total awards, and could not fault any of those elements as a matter of law. Moreover, Arden LJ expressly endorsed Mann J’s overall approach to quantum as set out in the first instance judgment at [229].

The Court of Appeal held that there were no mitigating circumstances, and stated that:

*“The employees of MGN instead repeatedly engaged in disgraceful actions and ransacked the respondents’ voicemail to produce in many cases demeaning articles about wholly innocent members of the public in order to create stories for MGN’s newspapers. They appear to have been totally uncaring about the real distress and damage to relationships caused by their callous actions. ... The disclosures were strikingly distressing to the respondents involved.”*

*“MGN cannot expect this court to come to its rescue and find some way of finding the awards to be excessive when its staff have been responsible for disgraceful conduct with such distressing consequences... There were misuses of private information beyond our ability to know and count. So it is wrong to look at the global sums...which each respondent has been awarded without remembering that fact.”*

The methodology adopted by Mr Justice Mann for the quantification of damages in these kind of privacy claims has now been approved by the Court of Appeal, and provides a sound basis for the assessment of damages in similar future cases.

The Claimants were represented by **Jeremy Reed** of Hogarth Chambers (led by David Sherborne), instructed by Atkins Thomson as Lead Solicitor, and also by Atkins Thomson, Clintons, Hamlins, Steel & Shamash, and Taylor Hampton for the individual Representative Claimants.