

**Phone hacking is illegal – but
just how much money will
News of the World have to
cough up?**

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Overview

The current scandal engulfing the News of the World raises interesting legal questions. The scandal arose from a criminal investigation into the phone-hacking activities of Glenn Mulcaire and Clive Goodman. During this investigation Mr Mulcaire admitted to hacking the phones of a small number of individuals. This led to Gordon Taylor and a number of other celebrities bringing civil actions.

The criminal and civil actions are obviously separate. However, evidence from the criminal investigation can be and has been used in the civil cases. Indeed it was arguably the momentum of the civil cases forcing disclosure from the Metropolitan Police that caused the recent collapse of the News of the World.

Why is phone-hacking illegal?

Under the Regulation of Investigatory Powers Act 2000 (“RIPA 2000”) the interception of phone calls is a criminal offence unless carried out by the police or intelligence services with a warrant and in order to prevent serious crime or to safeguard the economic wellbeing of the UK. Other offences may also be involved if national security is compromised by, for example, the hacking of the prime minister’s phone. Regardless of whether the phone belonged to a celebrity, a politician or Milly Dowler, phone-hacking without a warrant is criminal.

Civil remedies

However, criminal liability is of little use to a victim who wants compensation. This is where the civil cases arise. The RIPA 2000 may not give rise to a claim for breach of statutory duty. However, it is clear that the misappropriation of confidential or private information can give rise to a privacy claim, particularly bearing in mind that Article 8 of the European Convention on Human Rights protects an individual's reasonable expectation of privacy. It is hard to see how a newspaper could trump this with any public interest defence - especially in cases such as that of Milly Dowler. There is also a probable claim for breach of confidence and, depending on the precise facts, there may even be a claim for harassment under the Protection from Harassment Act 1997.

Although, in view of the Max Mosley case, damages have clearly been available in previous privacy cases, it is not at all clear what measure of damages can be claimed by a victim of hacking or whether a different High Court judge would follow the decision in Mosley by refusing exemplary damages - particularly in view of the scale of the News of the World's hacking activity and its apparent cover up in that regard. These are issues that will have to be considered in the five test cases to be heard in January 2012 – including, amongst others, those of Paul Gascoigne and Jude Law.

Gordon Taylor, Sienna Miller and Andy Gray have all been reported as settling for different sums of money. Moreover, as the terms of settlement are confidential, these cases are not necessarily indicative of what a court may award. Ultimately, the measure will have to depend on what and how much information was taken and what it was used for. In essence the damages will be for distress, hurt feelings and loss of dignity. Often, where private information with commercial elements has been taken and used, the level of damages awarded will be higher than in a case where, for example, the information taken and used is merely that a celebrity had a row with his or her partner. Even so, the damages for distress in a case such as that of Milly Dowler could well be vast.

In some cases, it might be appropriate to consider seeking an account of profits, since good front page stories do sell extra copies of newspapers.

What is Parliament doing?

David Cameron has recently announced a two phase public inquiry – to be headed by Lord Justice Leveson assisted by a panel of senior independent figures. The inquiry will look into the culture and practice of the press, its relationship with police and politicians, the failure of the current system of regulation and what would be a better system of regulation. The intention is that it will report within 12 months on the future conduct of relations between press and politicians and that it will report sometime after that regarding the extent of the unlawful conduct at the News of the World and elsewhere, the shortcomings of the original police investigation and the payments made to police officers. These inquiries are a welcome development. However, they are unlikely to lead to any change in the law in the foreseeable future and they should not impact upon the current cases.

Conclusion

In the meantime, it is clear that the law as it stands does allow the victims a legal route to obtain compensation. The question on every litigant's lips will be, 'How much?'

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