Neutral Citation Number: [2007] EWHC 2375 (QB)

Case No: HQ07X03169

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/10/2007

Before :

RICHARD PARKES QC
SITTING AS A DEPUTY JUDGE OF THE QUEEN'S BENCH DIVISION

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Between :

Sheffield Wednesday Football Club Ltd	**Claimants**
2. Dave Allen	
3. Keith Addy	
4. Ashley Carson	
5. Kenneth Cooke	
6. Robert Grierson	
7. Geoffrey Hulley	
8. Kaven Walker	
- and -	
Neil Hargreaves	**Defendant**

Aidan Eardley (instructed by **Kirkpatrick & Lockhart Preston Gates Ellis**) for the Claimants
Caroline Addy (instructed by **George Davies**) for the Defendant

Hearing date: 2nd October 2007

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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RICHARD PARKES QC

Richard Parkes QC :

1. This is a part 8 claim brought by eight Claimants, the first of which is Sheffield Wednesday Football Club Ltd. The second is Dave Allen, the chairman of Sheffield Wednesday PLC, a company which owns 100% of the shares in the first Claimant. He and the third to seventh Claimants are directors of the first Claimant and (except for the

fourth Claimant) they are also directors of Sheffield Wednesday PLC. The eighth Claimant is the chief executive of Sheffield Wednesday Football Club Ltd.

2. The Claimants seek *Norwich Pharmacal* relief against the defendant Neil Hargreaves, who owns and operates a web site, www.owlstalk.co.uk, on which fans of Sheffield Wednesday football club can post messages on matters relating to their club.

3. It is the Claimants' case that the Defendant has permitted some users to pursue a sustained campaign of vilification against the Claimants, in the course of which users have posted false and defamatory messages on the website. They say therefore that the Defendant has facilitated and become mixed up in the wrongdoing of these users.

4. Because, ultimately, the position of the Defendant is that he does not oppose the making of what he calls a "proper" Norwich Pharmacal order, I need not refer at any great length to the facts relied on by the Claimants, which are not substantially in dispute. Mr Hargreaves' website appears to be freely accessible to anyone with access to the internet. Once users have registered as members by providing an e-mail address and password, they are required to provide the user name, invariably a pseudonym, by which they identify themselves when they make a posting. When a member registers for the website he agrees that he will not use the bulletin board to post any material which is inter alia knowingly false and/or defamatory. Members are warned that the operators of the website have the ability to remove objectionable messages and that they will make every effort to do so within a reasonable time frame if they determine that removal is necessary.

5. The Claimants wish to bring libel proceedings against the individuals who posted certain messages concerning one or more of the Claimants on the website between 24th July and 3rd August 2007. Mr Dominic Bray of the Claimants' solicitors sets out in his witness statement the allegedly defamatory passages in some 14 messages. A 15th message, posted by a member with the username "Shezza", is no longer in point because it refers only to the ninth Claimant who is no longer a party to the action. In addition the Claimants no longer seek relief in respect of the postings by the member with the username "Gamrie Owl". That leaves 11 members whose identities are sought, in relation to some 14 postings.

6. Mr Aidan Eardley, who represented the Claimants, took me through the postings which concern his clients. They are as follows:

   (i) The first posting was made by a user called "Halfpint" on 24th July 2007, and was to this effect:

   > "I would like to know what these loans plus the added interest amounts (sic) to at present. How easy it was for Allen to call us Wednesdayites SCUM and put the blame on us when what it seems like that (sic) scuppered the Gregg buy out was the greedy demands of 3 directors."

Mr Eardley explained that the reference to "Allen" is a reference to the second Claimant, and that the reference to three directors will have been understood as a reference to the second, third and fourth Claimants, all of whom are known to have substantial shareholdings in the club. The suggestion was, he said, that the three directors greedily sought too much for themselves and thereby wrecked the proposed buyout, and that Mr Allen wrongly blamed the fans when in fact the fault lay with him and his two shareholding colleagues.

(ii) The second posting was made on July 26 by a user called "DJ Mortimer". It referred to the previous posting, which described the amounts spent by the club between January and June 2007 and observed that promoted sides spent on average 8 times more than Sheffield Wednesday did. The posting reads as follows:

> "Is this more evidence that Dave Allen is nothing more than a skinflint? Even the agents can't get anything worthwhile out of him".

Mr Eardley explained that the previous posting was reporting on how much various clubs spend on agents. The meaning of this posting, he submitted, was that the second Claimant is someone who is mean with the club's money and does not spend what is necessary to allow it to compete.

(iii) The third posting was by the same user, "DJ Mortimer", one hour and 17 minutes later. After giving the reference to a piece of news on the BBC website, the posting read as follows:

> "If this is confirmed by someone from outside the SWFC boardroom I'll happily accept it. Kaven Walker is not my idea of a model witness. Ask Nathan Tyson what he thinks of SWFC's trustworthiness".

Kaven Walker is the eighth Claimant. Mr Eardley submitted that the allegation here was that none of the Claimants could be trusted to make honest statements.

(iv) The next posting was by a user who called himself "xdanielx". It read:

> "Why bother? We won't sign anyone. We will create some new BBC stories that won't go anywhere. Whenever we are linked with signing anyone remotely good/expensive we just create paper talk for a few days then repeat numerous times until getting someone in on a loan".

This, Mr Eardley explained, meant that the club was not prepared to spend money on players, and that it would dishonestly foster speculation about buying players without any intention of doing so.

(v) The fifth posting complained of by the Claimants was by a user called "Ian". The relevant part of it read:

> "So Allen's decided to f*ck off, but because that would please too many he's going to be spiteful and make sure he doesn't leave anything behind. So Brunt's going to be sold, the Bougherra money is staying where it is, Whelan may be next, there's no chance of getting anyone in. He's going to make sure we have a sh*t start to the season, get out whatever money he can, and then go."

This meant, according to Mr Eardley, that the Second Claimant would leave the club and destroy it vindictively when he left, putting his own personal interests before the interests of the club.

(vi) The next posting was by a user called "Auckland Owl". It read, so far as relevant:

> "If I were Brian Laws I'd walk away from it before the season starts. I wonder how long it took, after getting the job, before he thought to himself "What the absolute fook (sic) have I let myself in for?" The club's best players being given away, endless broken promises and the chairman with the most acute Napoleon complex *allegedly* that I've personally ever seen."

Mr Eardley submitted that this meant that the second Claimant was guilty of mismanagement by getting rid of players, making promises and breaking them, and being an egotist driven by an inferiority complex about his height.

(vii) Next was a posting by a user called "Foot 04". He wrote:

> "When will there be some good news? All this transfer rumour is just pathetic. We all know this is made to take some pressure off "u know who" after the stupid comments he made."

This meant, Mr Eardley explained, that the second Claimant was knowingly putting out false rumours. The reference to "you know who" would have been understood by readers of the site to point to the second Claimant who gave a press conference at which he was critical of fans. The transfer rumour would have been understood to be a false rumour designed to take the pressure off the second Claimant.

(viii) The eighth posting was by a user called "Southy". He listed the main reasons for his regret at buying a new season ticket and the third reason was this: "increased ticket prices, where the fook (sic) has this money gone (ohh BTW I saw Dave Allen getting measured up for a new suit the other day, he specifically

requested bigger pockets)".

This, Mr Eardley submitted, was a serious message conveyed in a light-hearted way. The ticket prices had increased and there was nothing to show for it, therefore the second Claimant had pocketed the proceeds. In his submission the words were capable of meaning that the directors had squandered the club's money and the second Claimant had pocketed it.

(ix) Next came a posting by a user called Vaughan. In context, I understand, it referred to the possible acquisition by the club of a Southampton player called Rasiak. It read: "Because we never had any intention of buying him, and you could hear the collective puckering of sphincters in the Wednesday board room from when Southampton said okay, let's talk? We then offer a ridiculous wage to ensure Rasiak would never be interested."

The meaning put on this was that the Claimants had been pursuing negotiations on the false basis that they would buy a player without having any intention of doing so. Then, when Southampton seemed interested, they deliberately scuppered the deal by offering a ridiculous wage which the player would never accept. They were thereby damaging the reputation of the club as a serious negotiator, and acting in a manner which was damaging to the club's best interests.

(x) The 10th posting was by the user called "paulrs". This was his contribution, which was headed "Absolute sheer incompetence, Kaven Walker":

> "I still can't believe the way the Brunt situation has been handled by the numpties at our club. Basically they are saying that Brunt will be on his way out of the club next summer for a tribunal-set fee, but might decide to stay if we get promoted to the Premiership (please understand that KW is talking like promotion is a strong possibility!!!!). Consider Brunt is, conservatively, worth £4m in the current market. Next summer, when out of contract, any tribunal fee is unlikely to be any higher than £1.5m. So in effect, the club is gambling at least £2.5m in Brunt's value on us getting promoted to the Premiership this season. So WHY, last January and again during this summer, have they steadfastly refused to gamble on reaching the Premiership by putting that same £2.5m into a transfer kitty for the manager? If someone can come on here and explain why this is anything other than crass incompetence I'd like to hear it."

This, Mr Eardley explained, was an allegation of incompetence by the Claimants. Even if on the face of it the user's contribution was comment, he explained that the underlying factual basis of it was untrue and disputed by the Claimants.

(xi) The 11th posting was by the same user, "paulrs". This time, he said:

> "Whatever happens, we'll get but a small fraction of what he's worth. Right, well bowing to everyone's greater knowledge of tribunal fees that makes it even worse. Seems we're gambling away £3-3.5m in potential revenue on the premise that we'll go up this season. Another day, another blunder. I doubt even Leeds were in such a mess this time last summer, and look what happened to them."

This, Mr Eardley explained, was a repetition of the 10th posting, and amounted to an allegation of crass incompetence. He added that Leeds football club went into administration, and that the posting had to be understood in that context.

(xii) The next posting complained of was by a user called "danksy". His contribution was as follows: "This club is a disgrace at the moment, off the pitch not on it. It all started last January when we sold one of our best talents for a long time (Bougherra) and didn't replace him. Then in the summer release our joint op (sic) scorer, because we couldn't afford an extra couple of grand a week. He also doesn't look like he is going to be replaced and every striker we are linked with either doesn't want to come or we can't afford the transfer fee or wages. Now it looks like Brunt and Whelen with leave (sic) now or next summer n (sic) because the board won't give them the improved contracts that they rightfully deserve. 4 players have joined this season, all on free's (sic) and none of them, except Watson are good enough at this level. SWFC is a massive club but we aren't going to achieve anything with these "cretins" that are the board running the club."

Mr Eardley argued that the meaning of this posting was that the directors managed the club incompetently and refused to give the best players the contracts they deserved. He explained that because the Defendant's bulletin board had in effect become a forum for defamatory abuse, his clients were particularly sensitive about it.

(xiii) The 13th posting was again by "halfpint". It read as follows: "The club is ours. Allen is very much a minority shareholder. What HE wants and what is best for the CLUB are two different things, and while people like you support him without good reason he is laughing his bollocks off. Support t he club, not Allen's bank account. Exactly the point and well said. With Allen it is all about me - myself and I & profit. He disgusts me."

The meaning put on this by the Claimants was that the second Claimant was involved in the club for his own interests and not in the interests of the club or the players.

(xiv) The final posting which concerns the Claimants was by a user called "cbr bob". His contributions followed a posting by the user known as Gamrie

> Owl, which referred to a trip abroad made by "the Chuckle Brothers" to watch players with a view to making a signing. I gather that the "Chuckle Brothers" was a reference, which would have been understood by users of the website, to the eighth Claimant, and to Mr Laws, the manager of the club, who was originally (but is no longer) the ninth Claimant. In response to that posting, "cbrbob" replied "they blew all the money on hookers". Another user then interjected "it's not a hooker we need, it's a striker", to which "cbrbob" responded "they wouldn't know the difference".

The Claimants are not, it appears, concerned about the suggestion that they spent the club's money on prostitutes, which I presume they accept might have been unlikely to be taken seriously, but with the suggestion that the eighth Claimant would not have known the difference between a hooker in rugby and a striker in football, which would have been understood to mean that the eighth Claimant, though he was the chief executive of the football club, would not have been capable of spotting a competent player.

7. It is the unchallenged evidence of Mr Bray that the Claimants are unaware of the true identities of the individuals who have posted the allegedly defamatory material, and that they have no means of discovering their identities other than by obtaining the information from the defendant.

8. The position of the Defendant, represented by Miss Caroline Addy, is that there is no live issue between the parties as to the content or propriety of the order now sought. The Defendant does not oppose the order sought: nor does he consent to it, as he regards it as inappropriate for him to do so. He leaves it to the court to decide whether and on what terms to grant relief. Miss Addy describes that as being a necessary and proper stance for him to take having regard to the reasonable expectation of site users that their personal details will not be divulged save when required by law or an order of the court.

9. However, I must satisfy myself that the order sought is indeed a proper order to make. The proposed order will, if granted, disclose to the Claimants the identities, or at least the e-mail addresses, of users of the Defendant's website who must have expected, given their use of anonymous pseudonyms, that their privacy would be respected. As the Court of Appeal observed in *Totalise PLC v The Motley Fool Ltd* [2002] EWCA Civ 365, [2002] 1 WLR 2450 at paragraph 25, in a case where the proposed order will result in the identification of website users who expected their identities to be kept hidden, the court must be careful not to make an order which unjustifiably invades the right of an individual to respect for his private life, especially when that individual is in the nature of things not before the court. Equally, it is clear that no order should be made for the disclosure of the identity of a data subject, whether under the *Norwich Pharmacal* doctrine or otherwise, unless the court has first considered whether the disclosure is warranted having regard to the rights and freedoms or the legitimate interests of the data subject (see paragraph 6 of schedule 2 of the Data Protection Act 1998). As the Court of Appeal pointed out (at paragraph 26 of the judgment) it is difficult for the court to carry out this task if it is refereeing a contest between two parties neither of whom is the person most concerned, that is to say the data subject. This is not a case, as I understand it, where the website operator has informed the

relevant website users of what is going on or offered to pass to the court any particular reason why the users should not want their identities revealed. It did not seem to me that this was a case where I should require that the website users be contacted before making an order.

10. The jurisdiction to make such an order was first established by the case of *Norwich Pharmacal v Customs & Excise Commissioners* [1974] AC 133. Lord Reid described the principle as follows (p175): "....if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrongdoing, he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him information and disclosing the identity of the wrongdoers. I do not think that it matters whether he became so mixed up by voluntary action on his part or because it was his duty to do what he did. It may be that if this causes him expense the person seeking the information ought to reimburse him. But justice requires that he should co-operate in righting the wrong if he unwittingly facilitated its perpetration".

11. In *Mitsui Ltd v Nexen Petroleum UK Ltd* [2005] EWHC 625 (Ch) at [21], Mr Justice Lightman set out the three conditions which must be satisfied for the court to exercise the power to order *Norwich Pharmacal* relief. He stated them as follows:

    i) A wrong must have been carried out or arguably carried out by an ultimate wrongdoer;

    ii) there must be the need for an order to enable action to be brought against the ultimate wrongdoer; and

    iii) the person against whom the order is sought must (a) be mixed up in the wrongdoing so as to have facilitated it; and (b) be able or likely to be able to provide the information necessary to enable the ultimate wrongdoer to be sued.

12. It is clear that even if these conditions are satisfied, the court retains a discretion whether or not to make the order. In *Totalise PLC v The Motley Fool Ltd* [2001] EMLR 750, Owen J at [27] identified the following matters as relevant to the exercise of the discretion: the strength of the Claimant's prima facie case against the wrongdoer, the gravity of the defamatory allegations, whether the wrongdoer was waging a concerted campaign against the Claimant, the size and extent of the potential readership, the fact that the wrongdoer was hiding behind the anonymity which the website allowed, whether the Claimant had any other practical means of identifying the wrongdoer, and whether the Defendant had a policy of confidentiality for users of the website. The case went to the Court of Appeal on the question of costs alone, but I note that the court envisaged at [27] that a judge might refuse disclosure of the identity of an alleged wrongdoer whose attacks, though legally defamatory, were so obviously designed merely to insult as not to carry a realistic risk of doing the claimant quantifiable harm. In other words, it is relevant to the exercise of the discretion to consider whether the words complained of were, even if strictly defamatory, more than a trivial attack which would not be taken seriously.

13. As to the threshold requirements which must be satisfied before the Norwich Pharmacal jurisdiction can be exercised, Mr Eardley submitted that all the postings were arguably defamatory, so that wrongs had arguably been committed; that the Claimants had no other way of finding out who the authors of the words were; and that the Defendant plainly facilitated the alleged wrongdoing by giving users the means to address other users, and has access at least to the users' email addresses, and possibly to their postal addresses as well. Even if he has access to email addresses alone, that would be sufficient for the Claimants, who could then make a further application or applications against the users' internet service providers.

14. If condition (1) is satisfied, I accept Mr Eardley's submissions as to conditions (2) or (3). Plainly, there is a need for an order to enable action to be brought against the ultimate wrongdoer, if wrongdoing there has been, because there is no other possible means by which the Claimants could identify them. Equally, there is no doubt that the Defendant facilitated any wrongdoing, because he provided the means for the users to post their messages. Moreover, he is likely to be able to provide the information necessary to enable any wrongdoers to be sued.

15. I have not found condition (1) as easy as Mr Eardley suggested that I should find it, because I do not accept his categorisation of all the postings as containing 'very serious defamatory allegations'. In some cases, they are far from serious. However, I accept his submission that the threshold test is that the words complained of should be arguably defamatory of the Claimants, and this I have concluded that they are. In addition, I think that they must be at least arguably false, because there is no wrong done by the publication of words which are defamatory and true; but their falsity is deposed to by Mr Bray. So I find that the threshold tests are met.

16. As far as discretion is concerned, Mr Eardley submitted that there was a strong *prima facie* case against all the relevant users, although he accepted it was stronger in some cases than in others. He described the allegations as being very serious, although he accepted that there was a range of seriousness. He relied on the persistence of the campaign against the Claimants, and referred to other postings in the bundle. Some offenders were repeat offenders: "halfpint" and "paulrs" fell into this category. He claimed that the users had breached the rules of the website, and referred me to the Owlstalk registration form, which requires the prospective user's agreement not to use the bulletin board to post any material which was (among other descriptions) knowingly false and/or defamatory, inaccurate or abusive. Moreover, users were told that they could not post defamatory material, and knew that if they did so they risked being barred from the site. This, Mr Eardley argued, was a relevant consideration on the question of proportionality and the degree of interference which an order would make with their rights of privacy and freedom of expression.

17. It seems to me that some of the postings which concern the Claimants border on the trivial, and I do not think that it would be right to make an order for the disclosure of the identities of users who have posted messages which are barely defamatory or little more than abusive or likely to be understood as jokes. That, it seems to me, would be disproportionate and unjustifiably intrusive. The postings which in my judgment fall into this category are those numbered 4 ("xdanielx"), which is only capable of being argued to be defamatory by devising a frankly implausible meaning, 7 ("Foot04"),

which is barely if at all defamatory of the Second Claimant, 8 ("southy") and 14 ("cbrbob"), both which in my view are plainly intended as jokes and would have been unlikely to be taken seriously, let alone understood in the senses for which Mr Eardley argued, and 10 and 11 ("paulrs") which I regard as no more than saloon-bar moanings about the way in which the club is managed, rather than a serious indictment of grave mismanagement. In my view the same is true of 6 ("Auckland Owl") and 12 ("danksy"), which add to the mix a smidgeon of personal abuse of a kind which I would have thought most unlikely to be taken seriously. I take a similar view of the posting numbered 2 ("DJ Mortimer"), which is no more than mildly abusive and is fairly plainly comment.

18. The postings which I regard as more serious are those which may reasonably be understood to allege greed, selfishness, untrustworthiness and dishonest behaviour on the part of the Claimants. In the case of those postings, the Claimants' entitlement to take action to protect their right to reputation outweighs, in my judgment, the right of the authors to maintain their anonymity and their right to express themselves freely, and I take into account in this context the restrictions on the use of defamatory language which the rules of the Defendant's bulletin board impose, restrictions which in the case of these postings appear to have been breached. I take into account also that the Defendant does not appear to have had any policy of confidentiality for the benefit of his users.

19. The postings which I regard as falling within this category are those by "halfpint" (1, which arguably accuses the Second Claimant and two other directors having allowed their personal greed to come in the way of the interests of the club; and 13, which may suggest that the Second Claimant is concerned only with his own profit, and not with the interests of the club); "Ian" (5, which may be argued to suggest that the Second Claimant plans to damage the club by taking as much out of it as he can and then leave it in the lurch); and "Vaughan" (9, which arguably suggests that the directors have shown bad faith in negotiations for new players and damaged the club's reputation in consequence). I had some doubt about the second posting by "DJ Mortimer" (3), which may well suggest that the Eighth Claimant (and probably the directors) is not to be trusted to tell the truth, but in the end I reached the conclusion that it is sufficiently serious to merit inclusion.

20. I therefore make the order sought, but only in respect of the users responsible for the postings referred to in paragraph 19 above.

21. It has been agreed that the Claimants will pay the Defendant's reasonable costs of the application and of compliance with this order, so I make that order also.

22. Having informed the parties that although I would hand down a written judgment, I intended to make an order in respect of some at least of the postings complained of by the Claimants, I went on to hear argument on the summary assessment of the Defendant's costs.

23. The Defendant has put in a Statement of Costs. The grand total is the remarkable sum

of £22,926.89.

24. Miss Addy correctly explained that the Defendant was originally faced with a letter before action from the Claimants dated 2nd August 2007 which demanded substantive remedies, including damages and indemnity costs (on the footing that the Defendant was the publisher of the postings complained of) as well as making wide-ranging requests for extensive *Norwich Pharmacal* relief by way of identification of 27 users of the bulletin board and for pre-action disclosure of all postings by those users over the past 12 months. Moreover, the Claimants were not properly identified, and the schedule of 19 postings complained of did not spell out the defamatory meanings which were put on the words. Nor, as far as I can see, did the schedule include postings by all the users whose identity was sought. That letter was followed by a letter of 7th August demanding *Norwich Pharmacal* relief against a further four users and complaining of seven defamatory postings by those users. Ms Addy submitted that the Defendant's solicitors had to expend a considerable amount of effort to find out who the prospective Claimants were and what exactly was complained of, since it was important for them to be able to assess the true force of the complaint before being in a position to decide whether or not to accede to the demand for *Norwich Pharmacal* relief. That is a reasonable point. She pointed out that partly as a result of her solicitors' efforts the Claimants' demands were very considerably toned down as the correspondence continued. For example, the proposed ninth Claimant, Mr Brian Laws, dropped out, and on the final application the Claimants sought relief in respect of only 11 users and 14 postings. Ms Addy urged me not to take what she called a reductionist approach to the correspondence: there was a substantial overlap between the substantive claim and the Norwich Pharmacal claim, such that the costs incurred were relevant to both issues.

25. Mr Eardley described the global costs claimed as grossly disproportionate for an application on which the Defendant should have taken a neutral stance. Taking a step back in accordance with the guidance in *Home Office v Lownds* [2002] EWCA Civ 365, [2002] 1 WLR 2450, it does seem to me that Mr Eardley is correct. The overall costs claimed are plainly disproportionate, given in particular the nature of this application and its essentially non-adversarial character. That being so, I must be satisfied that the work done in relation to each item claimed was necessary and, if necessary, that the cost of it was reasonable.

26. Mr Eardley submitted also that it was necessary to disentangle the substantive claim from the Norwich Pharmacal claim, and that as far as the latter was concerned there was a limit to what it was reasonable for a respondent to do, once it was conceded (as the Defendant did concede by letter dated 9th August 2007) that he would not oppose a proper application subject to payment of his reasonable costs of compliance. He suggested that the proper course for a *Norwich Pharmacal* respondent is to set out any concerns about the relief sought in a letter and ask that it be placed before the court, and that after the relief has been conceded in principle, there is a heavy burden on the Defendant to justify any further expenditure. He conceded that the scope of the relief sought had been reduced, although he pointed out that the Defendant raised the issue of scope only once: the application notice sought more limited relief not because of the Defendant's efforts but because the claim was reviewed before issue. However, he accepted that the Defendant had raised the question of Mr Laws, and the appropriateness of one posting, after the issue of the application notice, and that the claim had to that extent been narrowed in consequence.

27. He pointed out that the witness statement of Miss Harris was served on the Friday before the application was heard, at a point when there was almost nothing in dispute (and of which it might fairly be said that it amounts to nothing more than a commentary on the correspondence which would in any event have been before the court); and he questioned the claim for 'Other work, not covered above', totalling £2215.75 (of which Ms Addy was only able to say, not having anyone from whom to take instructions, that it included issuing press releases, which on any view cannot have been necessary to deal with this application). There is force in all those points, and in his submissions that it cannot have been necessary to spend 18.95 hours of work on the documents in the case, still less when 17 of those hours were partner's time, nor to spend over 28 hours on correspondence with the Claimants' solicitors, 21.5 hours of which was partner's time. Much of that time was undoubtedly spent on preparation by Mr Lewis of the 'defence' to the substantive claims to which I refer at paragraph 29 below. Mr Eardley also submitted that while he did not criticise the claim for Ms Addy's work before the hearing, it was not necessary for a senior specialist junior to appear to argue a summary assessment of costs. I am inclined to agree, but it is questionable whether bringing in another junior who knew nothing of the case and bringing him or her up to speed would in fact have saved more than a very small amount.

28. Mr Eardley also pointed out (this was not contested by Ms Addy) that the recommended grade A rate for inner Manchester, where the Defendant's solicitors practise, is £195 per hour (by contrast with the £275 claimed) and for a grade C solicitor it is £145 (by contrast with £190 claimed).

29. In my judgment it is difficult, although necessary, to disentangle the substantive from the Norwich Pharmacal claim. It is difficult because the two claims were coupled by the Claimants in correspondence, in terms which inevitably gave a sharply adversarial edge to the Claimants' demands, which in turn led the Defendants, not unreasonably at first, to adopt a more aggressive response than might otherwise have been the case. There is some justice in Ms Addy's criticism that the scope and nature of the claim was not explained as clearly as it might have been, and that it required some critical examination. However, much of the correspondence was in reality devoted to the substantive claim, and it seems to me that this applies in particular to the Defendant's highly elaborate response dated 21st August 2007 to the postings complained of. Prepared by Mark Lewis, a partner in the firm of George Davies, it amounts in effect to a defence, taking issue with the Claimants on meaning and publication and asserting substantive defences. It seems likely that a large amount of the 38.5 hours of partner's time claimed in the statement of costs for attendances on opponents and work done on documents (totalling £10587.50) is to be attributed to this document, and even if that is not the case, I think that Mr Eardley is right to submit that the *Norwich Pharmacal* application (as opposed to the substantive claim) did not merit anything like the degree of partner involvement as is claimed for here. That level of partner involvement was simply not necessary to deal with an application like this, although it may well have been necessary as a response to the substantive claim.

30. Doing my best to disentangle the work done on the substantive claim from that necessary and reasonably incurred for the *Norwich Pharmacal* application, taking into account the fact that the application was conceded in principle as early as 9th August 2007, and reducing the rates claimed to the recommended inner Manchester rates, in my judgment the right figure to allow for the Defendant's costs is £9000 before VAT, and

that is the figure which I assess as recoverable. I will explain that figure by reference to each head of the Statement of Costs:

(i) Attendances on client: these must in part have related to the substantive claim, and the partner rate claimed is substantially in excess of the recommended rate. I allow £300.

(ii) Attendances on opponents: I discount all but two hours of partner's time, as being unnecessary for this application. Had the partner not done the work, it would have been done by a grade C solicitor, but at £145 per hour. But it seems to me that much of this work plainly related to the substantive claim. I allow £2250.

(iii) Attendances on others: there was a need to contact Mr Laws, the proposed ninth Claimant, and also the eighth Claimant, who (there was some reason to suppose) might have been unwilling to be a party. But again, this relates in part to the substantive claim. I allow £350.

(iv) Other work not covered above: all that I know about this is that it related in part to press releases. I could not be satisfied that any of this work was necessary for the purposes of this application.

(v) Work done on documents: I discount all but one hour of partner's time. Much of this work must have involved the 'defence' which Mr Lewis produced, which can only be regarded as a response to the substantive claim. If that work is not included under this heading, then it is included under the heading of attendance on opponents. I will allow £2500.

(vi) I allow Ms Addy's fees at £3600.

(vii) On that basis, the total which I allow is £9000 before VAT.