Neutral Citation Number: [2021] EWHC 2020 (QB)

Case No: QB-2021-002557

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 July 2021

Before :

THE HONOURABLE MR JUSTICE NICKLIN

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Between :

Various Claimants	**Intended Claimants**
- and -	
Independent Parliamentary Standards Authority	**Intended Defendant**

- -

Jonathan Barnes QC (instructed by **JMW Solicitors LLP**) for the **Intended Claimants**
Zac Sammour (instructed by **DLA Piper UK LLP**) for the **Intended Defendants**

Hearing date: 16 July 2021

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Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives and BAILII by email. The date of hand-down is deemed to be as shown above.

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Approved Judgment

I direct that 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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THE HONOURABLE MR JUSTICE NICKLIN

The Honourable Mr Justice Nicklin :

1. The principal question I have to resolve is whether the Claimants, who wish to bring a claim against the Defendant for misuse of private information, breach of confidence and breach of the Data Protection Act 1998, should be granted anonymity and permitted to issue the Claim Form withholding their names and addresses.

The Proposed Claim

2. There are, in total, some 216 Claimants. In March 2017, they were all employees, or former employees of MPs. The Defendant was created by the Parliamentary Standards Act 2009. In its capacity as the regulator of MPs' business costs and expenses and as the body responsible for paying the salaries of MPs' staff, the Defendant held and processed confidential and personal information relating to the Claimants.

3. The Claimants allege that, at about 5pm on 30 March 2017, a member of the Defendant's staff uploaded to the Defendant's website several spreadsheets which contained private, confidential, and personal information of each Claimant. It remained accessible on the website for just over 4 hours. The publication of this information is alleged to amount to misuse of private information, breach of confidence and breach of the Data Protection Act 1998, for which the Claimants intend to claim damages.

The Application for anonymity

4. The Claim Form has not yet been issued by the Claimants. Under the CPR, the default position is that a claimant who wishes to issue a civil claim must provide in the Claim Form his/her full name and the address at which s/he resides or carries on business: CPR 16.2(1)(d), PD7A §4.1(3), PD16 §§2.2 and 2.6. A claimant can, nevertheless, make an application to the Court to dispense with this requirement, and the Court can make an order permitting him/her to be anonymised, typically by use of a three-letter cipher in place of his/her name in all statements of case and other court documents. Additionally, where the Court has directed that the name of the party should be withheld in the proceedings, the Court has power additionally to impose restrictions that prohibit the identification of the anonymised party: CPR 39.2(4) and s.11 Contempt of Court Act 1981.

5. On 1 July 2021, the Claimants filed an Application Notice seeking:

    i) an order dispensing with the requirements that they be required to provide their names and addresses on the Claim Form;

    ii) an order permitting them, instead, to issue the Claim Form using C0001-C0217 for the name of each Claimant and to provide their solicitors' address;

    iii) an order under CPR 5.4C and 5.4D "*sealing the Court file to prevent access to non-parties*" and that the "*entire Court file shall be marked as confidential*"; and

    iv) the imposition of reporting restrictions to prohibit identification of the Claimants.

The Claimants provided a draft of the order they sought and asked that the Application should be dealt with either on paper or at a hearing held in private. Although the Application Notice stated that it was made without notice to the Defendants, helpfully it was in fact served on the Defendant's solicitors on 2 July 2021.

6. The Claimants had previously notified the Defendants of their intention to apply for these orders, in a letter dated 15 June 2021, and asked the Defendant to consent to the proposed Application. The Defendant's solicitors replied on 22 June 2021:

> "… We take the view that the application is poorly framed/evidenced and does not on its face set out a coherent basis for departing from the open justice principle, or certainly not to the very wide extent suggested in your evidence and draft order.
>
> Nonetheless, … our client is content to adopt a neutral position on the anonymity provisions in the draft order…
>
> However, we are not remotely satisfied (and nor in our view would a court be) that the remainder of the provisions in your draft order can be regarded as justified in all the circumstances. Quite the contrary, it seems to us that your draft witness statement does not begin to justify the extensively withholding approach on the issue of access to documents on the court file."

The Defendant's solicitors referred to several authorities emphasising the importance that derogations from open justice can be justified only in exceptional circumstances and when they are strictly necessary as measures to secure the proper administration of justice.

7. The Application Notice was supported by a "confidential" witness statement from the Claimants' solicitor, Nick McAleenan, dated 30 June 2021. Mr McAleenan provided a copy of draft Particulars of Claim. The draft Particulars of Claim identify the following categories of "*private, confidential and personal data*" which it is alleged was wrongfully published by the Defendant on 30 March 2017: (1) name; (2) salary; (3) rewards; (4) working patterns; (5) holiday entitlements; (6) payroll number; (7) salary band; (8) employment start date; (9) whether s/he had an "IPSA contract"; (10) number of hours worked per week; (11) if s/he worked part time, what the full-time hours equivalent would be; (12) working pattern in terms of days worked; (13) employment status (i.e. whether s/he was a past or present employee); (14) the MP for whom s/he worked; (15) job title; and (16) job start date. The Particulars of Claim do not include information relating to any Claimant in these categories. The Particulars of Claim contain the following contention about loss and damage:

> "In consequence of the said disclosures of each Claimant's private, confidential and personal information and data and processing and breaches of the 1998 Act and [the First and Second Data Protection Principles] each Claimant has suffered considerable distress, anxiety and upset, damage and a loss of control over his or her private, confidential and personal information and data. Accordingly, each Claimant is entitled to compensation in respect of the resulting effects on him or her of:
>
> (1) Anger, distress, anxiety and upset at his or her loss of privacy and confidentiality in personal information and data and his or her loss of control over the same;

(2) Concerns for his or her personal safety and that of family members;

(3) Concern over possible damage to future career prospects;

(4) Concerns at his or her exposure to fraud and financial loss;

(5) Worry and embarrassment over the disclosure of private, confidential and personal information and data to colleagues, others working for MPs and in the media generally;

(6) Concerns in particular about the loss of control of private, confidential and personal information and data relating to:

a. Employment and employment conditions;

b. Personal finances including salary and rewards."

The draft Particulars of Claim state that "*illustrative summaries*" of the harm alleged to have been suffered by five Claimants would be provided separately in Confidential Schedules. Copies of these "*illustrative summaries*" were not included in the exhibit to Mr McAleenan's witness statement.

8. Mr McAleenan summarised the Defendant's position in response to the Claimants' claim, as stated in pre-action correspondence. The Defendant denied liability but contended that, even if the Claimants could establish liability, the breaches were "*technical contraventions*" that would not lead to the award of any substantial damages because the Claimants had suffered no damage.

9. As to the basis of the application to anonymise the Claimants, Mr McAleenan stated:

> "It is respectfully understood that there is no requirement, under s.12(2) [Human Rights Act] 1998 or Rule 23 of the CPR, to give notice to anyone else of this application. The claim engages the data protection rights and privacy rights of private individuals who happen to work for MPs and where their information would not otherwise enter the public domain. It is respectfully submitted that it does not engage any wider public interest arguments, nor that the balance of any such arguments would require that to enforce their data protection and privacy rights those individuals are required to be named and the information again made available to third parties to access. The disclosure of the proposed Claimants' identity would, it is respectfully submitted, undermine the purpose of the claim which is to protect the proposed Claimants' personal and private information and personal data, and to seek remedies for them arising from the loss of control and infringement of their data privacy rights. Their information has been exposed and identification of them would place them at further risk of suffering additional harm."

10. As to justification for the anonymisation order sought, he stated:

> "The proposed Claimants' claims concern the misuse of private and confidential information. The proposed Claimants are, or were at the material time, all employees of MPs. If their names or addresses were to be placed into the public domain, this may create a personal safety risk and expose them to the risk of harm. The purpose of the proceedings, to protect and vindicate the privacy,

> confidentiality and personal data rights, would be defeated if the information (and more information in the form of addresses) came into the public domain by virtue of these proceedings themselves.
>
> In consideration of the guidance at paragraph 39.2.14 of The White Book, the grant of anonymity is necessary as the proposed Claimants have a genuine and legitimate concern that information has been unlawfully disclosed. It is respectfully considered that steps should reasonably be taken to minimise any further risk to the private and confidential information of the proposed Claimants, and the consequential risks that may create including risks to personal safety. There can also be no public interest in this information becoming known through the Court proceedings, which is why there are safeguards in place to protect and limit the access to information that now forms the subject matter of these proceedings."

No evidence of a risk of specific harm was identified in respect of any individual Claimant by Mr McAleenan.

11. In support of the application that the hearing should take place in private, Mr McAleenan stated:

> "It is respectfully submitted that in weighing the principle of open justice, this favours the proposed Claimants. The proceedings will enable the proposed Claimants to enforce their legal rights, and if a proposed claimant was required to disclose their identity, given the nature of the information in question, it would likely interfere with their ability to enforce their legal rights through claim proceedings and interfere with the proper administration of justice.
>
> If the Court is satisfied that publicity would defeat the object of the hearing, which it is respectfully submitted is the purpose of a hearing to determine anonymisation and the sealing of the court file, that hearing must take place in private. I refer the Court to Rules 39.2(3)(a) (c) and (g)…"

12. On 7 July 2021, the Claimants' solicitors provided a revised form of order that they would seek from the Court. The main amendment was to seek a more limited restriction on non-party access to the Court File which, instead of seeking a direction that the entire Court File be marked "confidential", sought restrictions solely in relation to non-party access to the unanonymised Claim Form and other identified documents.

Directions that the Anonymity Application be served on the media

13. Having considered the Application Notice and evidence in support, I made an order, on 2 July 2021, directing that the Claimants' Application would be listed for a hearing. I directed that the Application Notice, draft order, and Mr McAleenan's witness statement should be served on the Press Association via the Injunction Applications Alert Service ("the Alerts Service").

14. The Alerts Service has, for many years, been a valuable facility that enables notification to be given to the Press Association's subscribing media organisations of an application to the High Court for an order that, if granted, would affect the media's rights under Article 10 by prohibiting or restricting reporting of court proceedings. The Alerts Service provides a simple and effective way of providing notice of such applications

made in all divisions of the High Court. It cannot be used to serve orders that have already been obtained.

15. As I explained in my reasons for granting the Order, the Claimants' Application sought several derogations from the principles of open justice, including reporting restrictions and that notice of the Application should therefore be given to the media. As the Claimants' Application does not seek relief against an identifiable respondent, s.12(2) Human Rights Act 1998 does not apply, and there is no obligation to notify media organisation. Nevertheless, when reporting restrictions are sought, such media organisations are entitled to be heard as a matter of fairness: ***A –v- BBC*** **[2015] AC 588** [66]-[67]. Sometimes, it is impracticable to give notice to media organisations before the order is made, in which case the Court will stand ready to hear an application to vary or discharge any order that has been made. Nevertheless, a party applying for reporting restrictions should consider carefully whether notice should nevertheless be given of the application to the media. Ultimately, as here, the Court may decide that advance notice should be given, and make directions accordingly.

16. I also expressed the provisional view that I considered it likely that the Application could be heard in open court. It did not seem to me that the matters that would be required to be canvassed during the hearing were such that it would be necessary to sit in private. That turned out to be correct. No application was made at the hearing for the Court to sit in private, and it was possible to deal with the application in open court.

17. In compliance with the Order of 2 July 2021, the Claimants' solicitors duly sent to the Alerts Service copies of (1) the Order of 2 July 2021; (2) the Application Notice and draft Order sought; and (3) the witness statement of Mr McAleenan and exhibit. These were sent by email at 11.01 on 5 July 2021. These documents were sufficient to enable a media organisation to understand the nature of the claim that the Claimants intended to bring, who the Claimants were (albeit without their names) and the derogations from open justice that were sought by the Claimants' Application.

18. At 11.11, the Alerts Service responded:

> "The attached schedule A has all the [Claimants'] names redacted.
>
> In order for us to notify that an application has been made, all the applicants must be named on the application (a separate document with their names may also be attached).
>
> We cannot notify the media without the applicants names."

19. The Claimants' Solicitors replied at 11.39:

> "We draw your attention to the terms of the Order of Mr Justice Nicklin and in particular the restriction on your use of the attached documentation stated at paragraph 2 of the Order.
>
> We note the contents of your email timed at 11.11. We confirm that we have served you with the documentation (including the anonymised Application Notice) in accordance with the terms of the Court Order."

20. At 11.58, the Alerts Service responded:

> "We cannot ask the media not to name applicants of an [reporting restriction order] when they do not know who to not name.
>
> In order for us to notify the media of this application the applicants must be named on the order.
>
> If you do not wish to name the applicants the application will not be distribute[d] to the media."

21. The Claimants' solicitors forwarded these email exchanges to my clerk. At 12.53, the following email was sent to the Alerts Service and the parties:

> "The Judge has been provided with the email exchange below. He is surprised to note the approach that is being adopted and thinks that there may be some misunderstanding. If the Alerts Service will not respond unless it is told the names of the applicant(s) (more than 100 individuals in this case), then the system will not work. Whilst the Court will always consider a request by media organisations to be told the identity of those seeking reporting restrictions, it is not reasonable to expect to be told them as a condition of notifying the media. As you will appreciate, the Court has to hold the ring prior to hearing the application."

22. The Alerts Service responded swiftly, at 12.57:

> "Please refer to the below link for advice on how the alert service works: https://www.medialawyer.press.net/courtapplications/index.jsp
>
> A Healthcare NHS Trust v P & another ([2015] EWCOP 15), a decision which was handed down on March 13, 2015.
>
> The draft order might show the parties listed as 'P, by his Litigation Friend, the Official Solicitor v an NHS Trust'.
>
> This is OK as long as the names of all the parties are included in the schedule at the end of the draft order, or are given in the claim form itself.
>
> A solicitor who refuses to give the names of the parties should be told that we will not distribute the notification, and that he/she should ensure that the fact that we have declined to do so is drawn to the attention of the court.
>
> You are very welcome to notify the media yourself. The Alert Service will not do this when then applicants have not been named."

23. On 13 July 2021, the Claimants' solicitors sent copies of the authorities to be relied upon at the hearing of the Claimants' application. Later that day, the Alerts Service sent an email to the Claimants' solicitor asking to be provided with various documents, including the Claim Form, and the names of the parties involved in the case, adding "*we require these documents before we can proceed further*." On 14 July 2021, the Claimants' solicitors responded. They pointed out that, as would have been apparent from the documents that had already been provided, a Claim Form had not yet been issued. They did not provide the names of the Claimants. On 15 July 2021, the Alerts Service responded:

> "I have advised on numerous occasions why the Alert Service will not send your application to the media. If you do not want to tell the media whom the claimants are then the alert service will not assist you in notifying them…
>
> We have assisted on how you can notify [the subscribers] yourself. We have provided the links to the guidance of our service. We have sent you case law on why the applicants should be named on the application…
>
> The Alert Service will no longer correspond on this matter."

24. I have considered Newton J's decision in ***A Healthcare NHS Trust -v- P*** **[2015] EWCOP 15** to which reference was made. This case deals with the procedure, governed by a Practice Direction, concerning applications for reporting restrictions, in the Family Division and Court of Protection. Further, in relation to several types of proceedings in those Courts, s.12 Administration of Justice Act 1960 provides that it is a contempt of court to publish information relating to proceedings of a court sitting in private where the proceedings: (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors; (ii) are brought under the Children Act 1989 or the Adoption and Children Act 2002; or (iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor. That important provision was one of the grounds relied upon by Newton J in support of his conclusion that, if the names of applicants for reporting restrictions were provided to the media in advance of the hearing of the application, publication of the names would be a contempt of court: see discussion in [51]-[59] and conclusion at [67].

25. The position is not the same here. The question whether the strict liability regime under Contempt of Court Act 1981 would apply to the Application made by the Claimants is uncertain and unexplored. No claim has been issued. s.12 Administration of Justice Act 1960 does not apply to these proceedings. Common law contempt requires demonstration, to the criminal standard of proof, that the relevant person intended to impede or prejudice the administration of justice. The mental element in common law contempt has been described as "*something of a minefield*": ***Attorney-General -v- Newspaper Publishing plc*** **[1988] Ch 333, 373H** *per* Sir John Donaldson MR. Perhaps for this reason, it is territory that is rarely explored. In short, most of the reasons that led Newton J to express the confidence he did that the media could be trusted not to misuse information provided via the Alerts Service do not apply to most applications for reporting restrictions or other injunctions affecting the Article 10 rights of the media in the Queen's Bench Division.

26. More fundamentally, however, where an application is made for an injunction or similar order to restrict use or publication of information, the Court must retain ultimate control over the information that is provided to third parties to enable them to decide whether they wish to make representations in relation to an application. In some cases, the name of the party or the information sought to be protected may be so sensitive that the Court would not permit or require it to be provided to third parties. A good recent example of that would be the names of the applicants in ***In re Winch*** **[2021] EWHC 1328 (QB)**. In the particular circumstances of that case, there would be no question of the Court requiring or directing provision of the names of the applicants to third party media organisations. That would be the very, highly sensitive, information that the applicants were seeking to protect. Its provision would simply not be necessary for an assessment

by the media organisation whether it wished to make submissions in relation to the application.

27. There may be other cases where the Court is satisfied that there are reasons why the name of the applicant (or other information about the application) should be provided to enable the media organisation properly to be able to consider and assess the application and decide whether it wished to make representations. A media organisation served with an application for a reporting restriction order can always ask to be provided with further information about the application. It may be possible for agreement to be reached with the applicant as to the terms on which the names/information are provided to the media organisation. In other cases, it may be necessary for the Court to determine what should be provided to the media organisation and on what terms.

28. There is already a well-established procedure in relation to the provision of such information to third parties served with interim non-disclosure orders. The model injunction order, that forms part of the Master of the Rolls' ***Practice Guidance (Interim Non-Disclosure Orders)*** **[2012] 1 WLR 1003**, contains a series of express restrictions upon use of documents and information provided for the purposes of the application, as follows:

> "PROTECTION OF HEARING PAPERS
>
> 10. The Defendants and any third party given advance notice of the Application, must not publish or communicate or disclose or copy or cause to be published or communicated or disclosed or copied any witness statements and any exhibits thereto and information contained therein that are made, or may subsequently be made, in support of the Application or the Claimant's solicitors' notes of the hearing of the Application ("the Hearing Papers"), provided that the Defendants, and any third party, shall be permitted to copy, disclose and deliver the Hearing Papers to the Defendants' and third party's/parties' legal advisers for the purpose of these proceedings.
>
> 11. The Hearing Papers must be preserved in a secure place by the Defendants' and third party's/parties' legal advisers on the Defendants' and third party's/parties' behalf.
>
> 12. The Defendants, and any third party given advance notice of the Application, shall be permitted to use the Hearing Papers for the purpose of these proceedings provided that the Defendants' or third party's/parties' legal advisers shall first inform anyone, to whom the said documents are disclosed, of the terms of this Order and, so far as is practicable, obtain their written confirmation that they understand and accept that they are bound by the same.
>
> PROVISION OF DOCUMENTS AND INFORMATION TO THIRD PARTIES
>
> 13. The Claimant shall be required to provide the legal advisers of any third party (or where unrepresented, the third party) served with advance notice of the application, or a copy of this Order promptly upon request, and receipt of their written irrevocable undertaking to the Court to use those documents and the information contained in those documents only for the purpose of these proceedings:

> (a) a copy of any material read by the Judge, including material read after the hearing at the direction of the Judge or in compliance with this Order; [save for the witness statements referred to in Confidential Schedule 1 at the end of this Order] [the witness statements]; and/or
>
> (b) a copy of the Hearing Papers."

29. The precise restrictions that the Court considers are necessary in any particular case will depend on the circumstances of each case and the sensitivity of the information sought to be protected. But the principle is clear: when dealing with applications for reporting restrictions and injunctions, and pending determination of the application, the Court must retain control of what information and/or documents are to be provided to third parties and any restrictions that are to be imposed on their use.

30. I hope that there has been a misunderstanding in this case that has led to the Press Association's refusal to distribute to its subscribers the Claimants' Application and supporting documentation. If not – and use of the Alerts Service to distribute notice of an application for reporting restrictions is conditional upon the Press Association being provided with the names of the applicants seeking the order – this risks undermining the utility of the Alerts Service. If there is no readily available, effective and practical method of serving on media organisations applications for reporting restrictions or other injunctions that, if granted, would restrict the media's right of freedom of expression, then applications will have to be made without notice being given in advance to the media. The Court is not going to order an applicant to serve the application on every media organisation in the country; that would be onerous, expensive, and wholly unworkable. The safeguard would come, as explained in ***A -v- BBC***, in the opportunity that a media organisation would have to apply to vary or discharge any order that has been made.

31. In this case, based on the emails from the Alerts Service, it appears that notice of the Claimants' Application has not been given to anyone other than the Press Association. It has not made any representations. The Claimants cannot be criticised. They have done what I ordered them to do to bring the Application to the attention of the media. If that has been ineffective, it is not for want of trying.

32. At the end of the hearing, Sam Tobin, one of the Law Reporters who regularly covers proceedings at the Royal Courts of Justice asked if he could address the Court. He told me that he thought that there may have been some misunderstanding in this case about the Alerts Service. As I say, I do hope that is the position. It would be very unfortunate if the Court could no longer rely upon the Alerts Service to discharge its very valuable function in providing an effective way of giving notice to the media of applications that, if granted, would affect the media's rights under Article 10 by prohibiting or restricting reporting of court proceedings.

Derogations from open justice: anonymity of a party or witness

33. CPR 39.2(4) provides:

> "The Court must order that the identity of any party or witness shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the

proper administration of justice and in order to protect the interests of that party or witness."

CPR 39.2 contains several provisions that reflect the fundamental rule of the common law that proceedings must he heard in public, subject to certain specified classes of exceptions: ***XXX -v- Camden LBC*** **[2020] 4 WLR 165** [17].

34. Orders that a party to a civil claim be anonymised in the proceedings and reporting restrictions prohibiting his/her identification are derogations from the principle of open justice. The principles to be applied are clearly set out in ***Practice Guidance (Interim Non-Disclosure Orders)*** (referred to in [28] above) under the heading "*Open Justice*":

> [9] Open justice is a fundamental principle. The general rule is that hearings are carried out in, and judgments and orders are, public: see article 6.1 of the Convention, CPR r 39.2 and ***Scott -v- Scott*** **[1913] AC 417**. This applies to applications for interim non-disclosure orders: ***Micallef -v- Malta*** **(2009) 50 EHRR 920** [75]; ***Donald -v- Ntuli (Guardian News & Media Ltd intervening)*** **[2011] 1 WLR 294** [50].
>
> [10] Derogations from the general principle can only be justified in exceptional circumstances, when they are strictly necessary as measures to secure the proper administration of justice. They are wholly exceptional: ***R -v- Chief Registrar of Friendly Societies, Ex p New Cross Building Society*** **[1984] QB 227, 235**; ***Donald -v- Ntuli*** [52]-[53]. Derogations should, where justified, be no more than strictly necessary to achieve their purpose.
>
> [11] The grant of derogations is not a question of discretion. It is a matter of obligation and the court is under a duty to either grant the derogation or refuse it when it has applied the relevant test: ***M -v- W*** **[2010] EWHC 2457 (QB)** [34].
>
> [12] There is no general exception to open justice where privacy or confidentiality is in issue. Applications will only be heard in private if and to the extent that the court is satisfied that by nothing short of the exclusion of the public can justice be done. Exclusions must be no more than the minimum strictly necessary to ensure justice is done and parties are expected to consider before applying for such an exclusion whether something short of exclusion can meet their concerns, as will normally be the case: ***Ambrosiadou -v- Coward*** **[2011] EMLR 419** [50]-[54]. Anonymity will only be granted where it is strictly necessary, and then only to that extent.
>
> [13] The burden of establishing any derogation from the general principle lies on the person seeking it. It must be established by clear and cogent evidence: ***Scott -v- Scott*** **[1913] AC 417, 438-439, 463, 477**; ***Lord Browne of Madingley -v- Associated Newspapers Ltd*** **[2008] QB 103** [2]-[3]; ***Secretary of State for the Home Department -v- AP (No.2)*** **[2010] 1 WLR 1652** [7]; ***Gray -v- W*** **[2010] EWHC 2367 (QB)** [6]-[8]; and ***JIH -v- News Group Newspapers Ltd (Practice Note)*** **[2011] 1 WLR 1645** [21].
>
> [14] When considering the imposition of any derogation from open justice, the court will have regard to the respective and sometimes competing Convention rights of the parties as well as the general public interest in open justice and in the public reporting of court proceedings. It will also adopt

procedures which seek to ensure that any ultimate vindication of article 8 of the Convention, where that is engaged, is not undermined by the way in which the court has processed an interim application. On the other hand, the principle of open justice requires that any restrictions are the least that can be imposed consistent with the protection to which the party relying on their article 8 Convention right is entitled. The proper approach is set out in ***JIH***.

35. In ***JIH -v- News Group Newspapers Ltd*** [21] the Court of Appeal summarised the principles as follows:

(1) The general rule is that the names of the parties to an action are included in orders and judgments of the court.

(2) There is no general exception for cases where private matters are in issue.

(3) An order for anonymity or any other order restraining the publication of the normally reportable details of a case is a derogation from the principle of open justice and an interference with the article 10 rights of the public at large.

(4) Accordingly, where the court is asked to make any such order, it should only do so after closely scrutinising the application, and considering whether a degree of restraint on publication is necessary, and, if it is, whether there is any less restrictive or more acceptable alternative than that which is sought.

(5) Where the court is asked to restrain the publication of the names of the parties and/or the subject matter of the claim, on the ground that such restraint is necessary under article 8, the question is whether there is sufficient general, public interest in publishing a report of the proceedings which identifies a party and/or the normally reportable details to justify any resulting curtailment of his right and his family's right to respect for their private and family life.

(6) On any such application, no special treatment should be accorded to public figures or celebrities: in principle, they are entitled to the same protection as others, no more and no less.

(7) An order for anonymity or for reporting restrictions should not be made simply because the parties consent: parties cannot waive the rights of the public.

(8) An anonymity order or any other order restraining publication made by a judge at an interlocutory stage of an injunction application does not last for the duration of the proceedings but must be reviewed at the return date.

(9) Whether or not an anonymity order or an order restraining publication of normally reportable details is made, then, at least where a judgment is or would normally be given, a publicly available judgment should normally be given, and a copy of the consequential court order should also be publicly available, although some editing of the judgment or order may be necessary.

(10) Notice of any hearing should be given to the defendant unless there is a good reason not to do so, in which case the court should be told of the absence of notice and the reason for it, and should be satisfied that the reason is a good one.

36. The authorities make clear, therefore, that derogations from open justice can be justified as necessary on two principal grounds: maintenance of the administration of justice and harm to other legitimate interests: ***R (Rai) -v- Crown Court at Winchester*** **[2021] EWHC 339 (Admin)** [39].

37. In the first category fall cases – such as claims for breach of confidence – in which, unless some derogation is made from the principles of open justice, the Court would, by its process, effectively destroy that which the claimant is seeking to protect. Depending upon the particular facts, the Court may need either to anonymise the party/parties, or (if the parties are named) withhold the private/confidential information from proceedings in open court and in any public judgment: see discussion in ***Khan -v- Khan*** **[2018] EWHC 241 (QB)** [81]-[93].

38. Save in that limited category of case, the names of the parties to litigation are important matters that should be available to the public and the media. Any interference with the public nature of court proceedings is to be avoided unless justice requires it: ***R -v- Legal Aid Board, ex parte Kaim Todner (A Firm)*** **[1999] QB 966, 978g**. No doubt there will be many litigants in the courts who would prefer that their names, addresses and details of their affairs were not made public in the course of proceedings. In ***Kaim Todner***, Lord Woolf MR explained (p.978):

> "It is not unreasonable to regard the person who initiates the proceedings as having accepted the normal incidence of the public nature of court proceedings. If you are a defendant you may have an interest equal to that of the plaintiff in the outcome of the proceedings but you have not chosen to initiate court proceedings which are normally conducted in public. A witness who has no interest in the proceedings has the strongest claim to be protected by the court if he or she will be prejudiced by publicity, since the courts and parties may depend on their co-operation. In general, however, parties and witnesses have to accept the embarrassment and damage to their reputation and the possible consequential loss which can be inherent in being involved in litigation. The protection to which they are entitled is normally provided by a judgment delivered in public which will refute unfounded allegations. Any other approach would result in wholly unacceptable inroads on the general rule…
>
> There can however be situations where a party or witness can reasonably require protection. In prosecutions for rape and blackmail, it is well established that the victim can be entitled to protection. Outside the well established cases where anonymity is provided, the reasonableness of the claim for protection is important. Although the foundation of the exceptions is the need to avoid frustrating the ability of the courts to do justice, a party cannot be allowed to achieve anonymity by insisting upon it as a condition for being involved in the proceedings irrespective of whether the demand is reasonable. There must be some objective foundation for the claim which is being made."

39. The same point was made by Lord Sumption in ***Khuja -v- Times Newspapers Ltd*** **[2019] AC 161**:

[29] In most of the recent decisions of this court the question has arisen whether the open justice principle may be satisfied without adversely affecting the claimant's Convention rights by permitting proceedings in court to be reported but without disclosing his name. The test which has been applied in answering it is whether the public interest served by publishing the facts extended to publishing the name. In practice, where the court is satisfied that there is a real public interest in publication, that interest has generally extended to publication of the name. This is because the anonymised reporting of issues of legitimate public concern are less likely to interest the public and therefore to provoke discussion. As Lord Steyn observed in ***In re S*** **[2005] 1 AC 593** [34]:

> "... from a newspaper's point of view a report of a sensational trial without revealing the identity of the defendant would be a very much disembodied trial. If the newspapers choose not to contest such an injunction, they are less likely to give prominence to reports of the trial. Certainly, readers will be less interested and editors will act accordingly. Informed debate about criminal justice will suffer."

"What's in a name?", Lord Rodger memorably asked in ***In re Guardian News and Media Ltd*** before answering his own question, at [63] ... The public interest in the administration of justice may be sufficiently served as far as lawyers are concerned by a discussion which focusses on the issues and ignores the personalities, but ([57]):

> "... the target audience of the press is likely to be different and to have a different interest in the proceedings, which will not be satisfied by an anonymised version of the judgment. In the general run of cases there is nothing to stop the press from supplying the more full-blooded account which their readers want".

cf. ***In re BBC***; ***In re Attorney General's Reference (No.3 of 1999)*** **[2010] 1 AC 145** [25]–[26] (Lord Hope of Craighead) and [56], [66] (Lord Brown of Eaton-under-Heywood).

[30] None of this means that if there is a sufficient public interest in reporting the proceedings there must necessarily be a sufficient public interest in identifying the individual involved. The identity of those involved may be wholly marginal to the public interest engaged. Thus Lord Reed JSC remarked of the Scottish case ***Devine -v- Secretary of State for Scotland*** (unreported) 22 January 1993, in which soldiers who had been deployed to end a prison siege were allowed to give evidence from behind a screen, that "*their appearance and identities were of such peripheral, if any, relevance to the judicial process that it would have been disproportionate to require their disclosure*": ***A -v- BBC*** [39]. In other cases, the identity of the person involved may be more central to the point of public interest, but outweighed by the public interest in the administration of justice. This was why publication of the name was prohibited in ***A -v- BBC***. Another example in a rather different context is ***R (C) -v- Secretary of State for Justice (Media Lawyers Association intervening)*** **[2016] 1 WLR 444**, a difficult case involving the disclosure via judicial proceedings of highly personal clinical data concerning psychiatric patients serving sentences of imprisonment,

> which would have undermined confidential clinical relationships and thereby reduced the efficacy of the system for judicial oversight of the Home Secretary's decisions.

40. Where a party to the litigation (or a witness) seeks an anonymity order (and reporting restrictions) on the grounds that identifying him/her will interfere with his/her Convention rights, then the Court will have to assess the engaged rights: see ***RXG -v- Ministry of Justice*** **[2020] QB 703** [25] and ***XXX -v- Camden LBC*** [20]-[21]. Under the CPR, the name and address of a party must be provided in the Claim Form (see [4] above) and, once an Acknowledgement of Service has been filed, the claim has been listed for a hearing or judgment has been entered, the Claim Form will be available for public inspection: CPR 5.4C(1) and (4). In any assessment of the Article 10 right reflected in open justice, the Courts will attach due weight to the default position that, without an anonymity order, the name and address of the party or witness will be available to be reported as part of the proceedings: ***R (Rai) -v- Crown Court at Winchester*** [47]-[48].

41. Media reports of proceedings may have an adverse impact on the rights and interests of others, but, ordinarily "*the collateral impact that this process has on those affected is part of the price to be paid for open justice and the freedom of the press to report fairly and accurately on judicial proceedings held in public*": ***Khuja*** [34(2)].

Submissions

42. Mr Sammour, on behalf of the Defendant, maintained the neutral stance to the Claimants' Application that had been adopted by the Defendant's solicitors in correspondence.

43. Mr Barnes QC submitted that an order anonymising the Claimants was justified and necessary on the two bases identified in Mr McAleenan's witness statement.

    i) First, without an order anonymising the Claimants, the purpose of bringing the claim to vindicate their rights of confidentiality/privacy and under the Data Protection Act 1998 would be defeated if the information the subject of the proceedings were to come into the public domain.

    ii) Second, as employees or former employees of MPs, if their names or addresses were placed into the public domain, this may create a personal safety risk and expose them to the risk of other harm.

44. In respect of the first point, Mr Barnes QC submitted that the Claimants wish to pursue claims that include a claim for damages based on the distress caused by the loss of autonomy over the information and concern that the breach of confidence/privacy would expose them to a risk of harm. In such circumstances, they should not be exposed to the risk of further harm by being named as Claimants in the proceedings and required to provide their addresses on the Claim Form.

45. Mr Barnes QC accepted that Mr McAleenan's witness statement dealt with the alleged threat posed to the Claimants in a very generalised way, but he submitted that the Claimants had adopted a proportionate and pragmatic approach to the Application. If

the Court considered that more detailed evidence was required, Mr Barnes QC sought an opportunity to obtain and put forward such evidence.

Decision

46. I refuse the Claimants' Application for anonymity (including being excused from the requirement to provide their addresses on the Claim Form) and reporting restrictions that would prevent their identification as Claimants in the action that they intend to bring. Neither of the reasons advanced in support of the application provides a sufficient basis for the grant of this derogation from the principle of open justice. The orders sought are not necessary either properly to maintain the administration of justice or to protect the legitimate interests of the Claimants. Less intrusive methods, that can be adopted in the proceedings, will properly protect those legitimate interests. The evidence in support of the Application is generalised, weak and falls a long way short of being clear and cogent.

47. In respect of the first ground, that anonymisation is necessary to ensure that the proceedings themselves will not destroy or undermine the rights that the Claimants are seeking to vindicate, I am satisfied that the Court will be able to fashion a procedure by using case management techniques and targeted orders that will properly protect the confidential/private information of each Claimant. The parties will be able to utilise confidential schedules to statements of case and witness statements to the extent that it proves necessary for information in the identified categories to be provided in respect of some or all of the Claimants. In my experience, Courts managing and trying actions in which these issues arise are well used to taking steps to ensure that confidential information is properly protected in the various phases of the litigation.

48. In some cases, the nature of the claim means that the Court has to anonymise the party because otherwise it will be impossible to explain the case and the issues that the Court has to determine: see ***Khan -v- Khan*** [88]-[89]. As the Claimants in this case intend to bring a claim over categories of information that they contend were wrongly published, it should be perfectly possible, using the measures I have identified, for the Claimants to be named, and for the proceedings to take place in open court, whilst at the same time safeguarding any confidential/private information of the Claimants. In short, it is not necessary in this proposed claim for the Claimants to be anonymised legitimately to protect the private/confidential information.

49. Mr Barnes QC's argument that, as the Claimants are claiming damages for the upset of loss of autonomy/control of the relevant information, they should be anonymised to spare them further upset or distress caused by bringing the proceedings, is a novel one, but it must be rejected. The implications of such an argument would be potentially far reaching. As most data protection claims include similar claims for damages based on loss of autonomy/control, the argument for anonymity would appear to be available in most if not all of these claims.

50. In my judgment the proper analysis is as follows. As I have noted, the Court will adopt measures, where justified, properly to protect confidential/private information of the Claimants in the proceedings. To the extent that the Claimants contend that their identification as claimants in the civil claim they intend to bring may cause them additional distress, then they are in no different (or better) position than any other claimant who wishes to pursue a civil claim. If these Claimants succeed in the claims

they intend to bring, and are awarded damages for the distress over loss of autonomy/control, then the Court will have granted the Claimants an appropriate remedy for the civil wrong that they have established. That remedy will not be harmed by the Claimants being identified in any reports of the proceedings. As I noted in ***Khan -v- Khan***, in the context of a claim for anonymity in a harassment claim [90]:

> "In most harassment claims, the disclosure of private information in open court is simply an incidence of the litigation and that is no different from any other civil case. But, unlike privacy claims, in most harassment claims there is normally no risk that the administration of justice will be frustrated by the proceedings being heard in open court. If a claimant succeeds in a harassment claim and obtains damages and/or an injunction, these fruits are not damaged in any way by publicity of the proceedings."

With necessary and appropriate safeguards to protect particular confidential/private information, the same will be true in any claim brought by the Claimants.

51. If the pursuit of a civil claim causes distress or upset to a claimant, the law does not usually provide an additional remedy for that. An exception to that rule is claims for defamation, in which, in some circumstances, the additional upset caused by the litigation can be taken into account in the assessment of damages. A claimant in a personal injury claim is not entitled to any additional damages as a result of being caused upset and suffering as a result having to relive a possibly traumatic injury in the course of litigation or by being publicly identified in the proceedings. Some litigants may face upsetting public hostility and criticism for the claims they bring or the defences they raise. As Lord Sumption noted, this collateral impact "*is part of the price to be paid for open justice and the freedom of the press to report fairly and accurately on judicial proceedings held in public*".

52. Finally, and as Mr Barnes QC frankly recognised, the evidence put forward by the Claimants falls a long way short of demonstrating a credible risk that if the Claimants were named (and their addresses provided) that they would be exposed to some risk of harm. There might exist a very small number of people whose attitude towards MPs (and those who work for them) is so hostile that they might conceivably be moved to offer some threat of physical violence to them, but this risk is remote. The Claimants have not put forward any credible and specific evidence that one or more Claimants is at particular risk of any such threat. The civil justice system and the principles of open justice cannot be calibrated upon the risk of irrational actions of a handful of people engaging in what would be likely to amount to criminal behaviour. If it did, most litigation in this country would have to be conducted behind closed doors and under a cloak of almost total anonymity. As a democracy, we put our faith and confidence in our belief that people will abide by the law. We deal with those who do not, not by cowering in the shadows, but by taking action against them as and when required.

53. I will grant orders restricting access by non-parties to documents on the Court File which contain the confidential and private information of the Claimants. The draft Particulars of Claim provided by the Claimants indicates an intention to file certain confidential schedules. If necessary, any Defence that is filed can also utilise such confidential schedules. Beyond that, the Claimants' Application is refused. As I indicated at the hearing, if the Claimants (or any of them) consider that they can provide clear and cogent evidence that inclusion of their name and/or address on the Claim

Form would expose them to a credible threat of physical or other harm, then they can issue a further Application Notice. On the evidence as it stands now, their current application must be refused.