Case No: T20207137

IN THE CROWN COURT
AT THE CENTRAL CRIMINAL COURT

Handed down remotely on the date opposite:

Date: 09/07/2020

Before:

MR JUSTICE WARBY

- -

Between:

The Queen
- and -
Nigel Wright **Defendant**

- -
- -

Julian Christopher QC and Teresa Hay (instructed by **Crown Prosecution Service**) for the **Prosecution**
John McNally (instructed by **Ringrose Law LLP**) for the **Defendant**
William Bennett QC and Gervase de Wilde (instructed by **Slateford Limited**) for the **Complainant**

Hearing date: 2 July 2020

- -

RULING ON ANONYMITY
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.

....

MR JUSTICE WARBY

Note: this ruling is subject to reporting restrictions as summarised in paragraphs 1, 3 and 4 of the judgment itself. A copy of the reporting restriction order can be obtained from the court.

Mr Justice Warby:

1. This case is listed for trial before me and a jury over 10-15 days, commencing on 10 August 2020. At the Pre-Trial Review, on 2 July 2020, I heard argument on the issue of whether I should make orders that the alleged victim of the crimes of which the defendant is accused be anonymised, and that reporting restrictions should be imposed. Anonymity and reporting restrictions had been in place until then. After argument I announced that, for reasons to be given in more detail later, I would continue anonymity and reporting restrictions until trial, but I would not grant anonymity or reporting restrictions at the trial.

2. I made clear that I considered that the way in which the prosecution and defence chose to conduct the case at trial should be left to them; I was not prepared to make any order that impeded them in doing so. Nor was I persuaded that it was necessary or appropriate to impose reporting restrictions, preventing the reporting of anything said in open court. These are my more detailed reasons.

3. The restrictions that were already in place continue until after these reasons have been delivered. They will remain in place until the parties have had an opportunity to assess the impact of my decision, and make representations upon it. As I made clear on 2 July, I propose to grant continued anonymity until the commencement of the trial either in the same terms as before, or with such modifications as the parties agree and/or I consider appropriate.

4. This ruling may not be reported until the conclusion of the trial: see s 41 of the Criminal Procedure and Investigations Act 1996.

The case in a nutshell

5. The defendant is charged with blackmailing a major supermarket chain and with contaminating food, which was later placed in its stores, with the intention of causing alarm, anxiety, or economic loss. The allegations of blackmail are that on three occasions - in May and June 2018, March 2019, and November 2019, - the defendant made written demands for money, accompanied by (a) the claim that contaminated food had been placed in stores, and (b) threats that if the money was not paid the locations would be kept secret, or further contaminated goods would be placed in stores, or both. The contamination charges relate to jars of baby food into which pieces of metal had been introduced, which were purchased by customers in two different stores. The prosecution case on Count 5 is that the contaminated food was bought in Lockerbie, Scotland.

6. The first "blackmail" letter was reported to the police by the supermarket company ("the Complainant"). An undercover investigation ensued. It culminated in the transfer by the undercover officers of 13.9 bitcoin into two different cryptocurrency wallets. The prosecution case is that the defendant made the threats, carried out the contamination, and took control of the money, and that nobody else was involved. The defendant has pleaded not guilty to all five counts. He has yet to serve a defence case statement, but he has indicated through Counsel that he will not dispute that it was he who made the demands and threats.

7. In a ruling made at the PTR, shortly before my decision on anonymity, I refused an application to dismiss Count 5 on the grounds (putting it shortly) that the conduct alleged could not amount to a crime because the location of the purchase was in Scotland. I have given my reasons for that decision today. It is possible that the Scottish aspect of the case may call for some further consideration, but it appears that the main issues for trial are likely to be (1) whether the defendant was acting under duress when he made the demands and threats, and (2) whether, assuming the contamination is proved as a fact, it was the defendant that carried it out, in England and Wales, with the intention alleged by the prosecution.

Relevant procedural history

8. The defendant was arrested on Tuesday 25 February 2020.

9. On the following day, Wednesday 26 February 2020, the Complainant began civil proceedings ("the Civil Action"). Counsel applied to Turner J, sitting in the Media and Communications List of the Queen's Bench Division of the High Court, for an injunction restraining the defendant, Mr Wright, from using, publishing, communicating or disclosing to any other person, the information that the Complainant "has been the victim of a blackmail attempt." That application was made without notice to the defendant, before the issue of proceedings. The Complainant was required to issue the proceedings the following day, but permitted to do anonymously, using cyphers in place of its name and that of the defendant.

10. The Civil Action was issued on Thursday 27 February 2020. That same day, the defendant made his first appearance before Magistrates at West and Central Hertfordshire Magistrates Court. The Magistrates sent him for trial in the Crown Court at St Albans, pursuant to s41 of the Crime and Disorder Act 1998. On the application of the prosecution the Magistrates made an order for information to be "withheld from the public … during all hearings in connection with *R v Nigel Wright*, including trial", and a reporting restriction order ("RRO") pursuant to s 11 of the Contempt of Court Act 1981, prohibiting the reporting of any of the information so withheld. The information subject to the RRO included, but was not limited to, the name and identifying details of the Complainant. The Magistrates further ordered that there be no reporting of the making or terms of these orders. That is a form of order - which not only prohibits publication of facts, but also prohibits the disclosure of the order itself - that became known in 2011 as a "superinjunction". The full terms of the Magistrates' Order are set out in Appendix A to this judgment.

11. On 11 March 2020, the Civil Action came before Nicklin J on the return date of the injunction application. The Judge made an order ("the Nicklin Order") by which he continued the injunction granted by Turner J until trial or further order, subject to some modifications. Paragraph 5 of the Nicklin Order contained a Public Domain proviso, making clear that it did not prevent the defendant from publishing any information that was already in or thereafter came into the public domain as a result of (1) publication in the national media which was not a breach of the Nicklin Order or a breach of confidence or privacy, or (2) "any proceedings that take place in open court and are not subject to any reporting restrictions." The Order further provided that the Civil Action be stayed until the conclusion of the present proceedings, but permitted the defendant and/or anyone affected by his Order to apply to vary or discharge it in the meantime. I

am told by Mr Bennett that only the prosecution and Twitter have been put on notice of the Nicklin Order.

12. Thereafter, the present case was assigned to me. A Plea and Trial Preparation Hearing ("PTPH") was fixed for hearing on 30 March 2020. On Thursday 19 March, I directed that the questions of continued anonymity and any reporting restrictions should be dealt with at the PTPH, with a deadline for written submissions from the prosecution, defence and Complainant of 27 March 2020. I directed that the submissions should address the following questions:

> "(a) whether it is necessary, practicable or desirable on the facts of this case to conduct the trial before a jury in public without identifying the victim, (b) whether anonymity would or might give rise to a risk of public concern about food safety which may be unwarranted, given the historic nature of the events; (c) whether it might be best for the identity of the victim to be the subject of managed disclosure, with accompanying reassurances (to the extent those can be provided); and (d) whether, if an anonymity order is continued pending trial it is appropriate to prohibit reporting of the fact of such an order."

I made clear that I was sympathetic to the continuation of anonymity and reporting restrictions pending trial, but queried whether the "superinjunction" aspect of the Magistrates' Order was justified. I also invited the parties to consider "whether corporate blackmail, at least of the kind alleged here, engages the same policy considerations as the more commonplace variety, where the threat is to disclose wrongdoing, or embarrassing facts, of a personal and private nature."

13. Written submissions were lodged by the prosecution, the defence and the Complainant pursuant to those directions. The Covid-19 emergency meant that the PTPH had to be adjourned. It was re-fixed, and took place on 13 May 2020. Another result of the emergency was that the defence position was still not clear at that time (there had been very little opportunity for the defendant to give instructions to his legal team). I therefore made an order, in more limited terms than the one made by the Magistrates, preserving the Complainant's anonymity, until the PTR when the merits of continuing anonymity throughout the trial would be reviewed. The precise terms of my Order are set out in Appendix B to this ruling.

14. At the PTR, I heard submissions from all parties on the merits of continued anonymity throughout the trial.

Submissions

15. The positions adopted by the parties in their written and oral submissions can be summarised as follows.

The prosecution

16. The prosecution did not seek to maintain the "superinjunction" aspect of the order made by the Magistrates. But at the PTPH it "supported" the application for continued anonymity. It did so on the basis of the "strong public interest in preserving the

anonymity of the victims of blackmail", given the grave difficulty that experience shows may be suffered in getting complainants to come forward unless they are given this kind of protection. Mr Christopher relied on the well-known words of Lord Widgery CJ in *R. v. Socialist Worker Printers and Publishers Ltd, ex. parte Attorney-General* [1975] QB 637, 644F (to which I shall return). He argued that this public interest does not only apply where the threat is to reveal some discreditable conduct on the part of the victim, or where the information is personal and private, so that the victim's Article 8 rights are engaged; it applies in any case where the victim would prefer that which the blackmailer threatens to disclose not to be made public, since otherwise the prospect of exposure in subsequent criminal proceedings would be an incentive to comply with the blackmailer's demands and not to report the crime.

17. Even at the PTPH, however, Mr Christopher submitted that there would come a stage when it was no longer appropriate for there to be a restriction on the fact that the victim is a supermarket. Even if the defendant pleaded guilty, the requirements of open justice would require that the fact that the victim is a supermarket and the offending involved the contamination of baby food should be made public, and be reportable. If the defendant pleaded not guilty, as he has, there would be practical difficulties in conducting the trial without the victim being named in public. The factual situation here is very different from that in the *Socialist Worker* case, where there were two victims who could be and were referred to as Mr Y and Mr Z. Here, some 19 supermarket branches are involved; there are numerous employee witnesses; other witnesses include two mothers who bought baby food at different branches, the details of which purchases might have to be explored; there are numerous exhibits in which the Complainant is named; and other exhibits would be likely to feature prominently in the evidence, which name or otherwise identify the Complainant. As a result, submitted Mr Christopher, preventing reference to the victim's name in open court may well interfere with the presentation of the prosecution case and be a distraction for the jury. It might also interfere with the presentation of the defence case. It would be preferable for the victim to be named during the proceedings, and undesirable to conduct the trial in any other way.

18. As for an RRO, Mr Christopher recognised – as all Counsel have done – that s 11 of the Contempt of Court Act 1981 does not empower the Court to prohibit reporting of information that has been disclosed in open court. Mr Christopher identified two possible bases for the grant of an RRO in respect of information that is made public in open court:

(1) An order of the Crown Court pursuant to s 45(4) of the Senior Courts Act, on the basis that the grant of anonymity would be "incidental to" the jurisdiction of the Crown Court, and the reasoning to the contrary in *R (Trinity Mirror Plc) v Croydon Crown Court* [2008] EWCA Crim 50 [2008] QB 770 can be distinguished.

(2) Alternatively, and preferably, an injunction granted by the High Court, pursuant to its statutory power to grant an injunction "in all cases in which it appears to the court to be just and convenient to do so": s 37(1), Senior Courts Act 1981.

19. In response to my question (b) (see [12] above), the prosecution submitted that any public concern about food safety "would or should be allayed by the historic nature of events, and by other features of the case that do not depend upon the identification of

the victim", such as the fact of the recall of all relevant products and the arrest of the defendant.

20. At the PTR, by which time the likely issues had become clearer, Mr Christopher submitted that the Court should "grasp the nettle" and decide whether anonymity should continue throughout the trial. He argued, and it was not controversial, that the decision would have a significant impact on trial management. The prosecution position was that a restriction on identification of the Complainant to the jury would "get in the way", and if the jury were not told it would distract them from the case. In this case, unlike many blackmail cases, the identity of the Complainant is at the heart of what the defendant was doing.

The defence

21. The defence adopted a position what Mr McNally has aptly labelled as "studied neutrality" but Mr McNally helpfully made the following submissions on the law and its application to this case, to assist the Court.

(1) The principle of open justice should only be derogated from if, and to the extent that, this is strictly necessary in pursuit of an identified and soundly based public policy objective.

(2) Statute imposes or authorises restrictions to protect children or the victims of sexual crimes. But in general, being a victim of crime is not a sufficiently compelling reason to restrict identification. It would not justify anonymity if the only charges faced by this defendant were Counts 4 and 5, alleging the contamination of goods for sale.

(3) The well-established policy or practice of imposing restrictions on the identification of blackmail victims has been founded solely in the public policy justification that absent a restriction of identification, victims will be deterred from complaining since their reputation may be damaged through revelation of matters that can be identified with them at a public trial or sentencing hearing.

(4) The policy relates only to the identity of the victim, and not necessarily to the means by which the blackmail was carried out. It cannot extend to third-party manufacturers.

(5) In blackmail cases where the threat "does not impugn a reputation but in fact risks harm to others within society as a whole" it is difficult to see how the justification supports anonymity. It is harder still to see that anonymity is necessary to encourage a corporation such as the Complainant to report such a matter to the authorities, and the Complainant's own evidence is (as one would expect) that it would always do so.

(6) Consistently with this approach, there is a number of reported cases of "corporate" blackmail in which the "target" companies have been named. (I shall return to these).

22. Mr McNally's response to my question (a) was that it is difficult to see how conducting the trial before a jury without identifying the victim was necessary, practical or

desirable, though it might be that some reporting restriction could be imposed, in relation to identity only. In response to my question (b), he submitted that the public interest in a case of this type as well as the evidence would be likely to give rise to public concern about food safety.

The Complainant

23. The Complainant made clear, through Mr Bennett, that it was "implacably opposed" to being named in open court. Mr Bennett identified three policy reasons for granting a blackmail victim anonymity: (a) to prevent the court from making public the very information the complainant does not want made public, thereby enabling fulfilment of the blackmail threat; (b) to encourage the particular complainant to give evidence; and (c) to encourage future complainants to report to the police and to give evidence in future prosecutions.

24. The Complainant filed no evidence in relation to this issue, but as Mr McNally pointed out, a witness statement of one of its officers served by the prosecution stated that it would always report to the police. Mr Bennett did not suggest that the prospect of being identified had, or might have, or might in future have the effect of deterring his corporate client from reporting blackmail of the kind alleged against Mr Wright, or from giving evidence against such a blackmailer. On the contrary, Mr Bennett positively asserted that the Complainant "will assist and give evidence for the prosecution even if it is not granted anonymity". He relied on his third policy reason for granting anonymity.

25. In the written submissions lodged before the PTPH, Mr Bennett advanced two main submissions as to the need for anonymity: (1) the Complainant, as a victim of blackmail, is "entitled to anonymity and the Court is obliged to grant it anonymity", by reason of s 6 of the Human Rights Act 1998 ("HRA") and Article 6 of the Convention; (2) the grant of anonymity is "necessary for the broader purpose of protecting the administration of justice", to avoid future blackmail victims being deterred from reporting such crimes and "giving evidence against their tormentors".

26. In support of his submission that anonymity is necessary on the facts of this case, Mr Bennett argued that the Complainant depends upon having a good reputation for selling wholesome safe food. This reputation is fundamental to its existence and its prosperity. The defendant's acts inevitably involved publicity which would cause the Complainant's reputation for selling safe food to be "very seriously damaged" and its revenue to fall. The threat of tampering and the associated publicity that this would generate went hand in hand. Even after the defendant's arrest, the publication of information concerning the tampering would still cause the Complainant damage.

(1) Whilst objectively consumers ought not to be concerned over historical events, the fact is that the public's reaction would be to associate the Complainant's products with the dangerous substances that had been added to them. In particular, understandable subjective fears would be intensified because it was baby food that was tampered with.

(2) Furthermore, the defendant's case will be that he was being pressured by others to carry out the relevant acts. Therefore, the public will conclude that there may be

others still at large who are interfering, or causing others to interfere, with the Complainant's goods.

27. As to the method of preserving the Complainant's anonymity, Mr Bennett acknowledged that "restrictions on the reporting of proceedings in open court are particularly difficult to justify" (*Khuja v Times Newspapers Ltd* [2017] UKSC 49 [2019] AC 161 [35] (Lord Sumption)). He therefore submitted that the best and surest vehicle for achieving anonymity, and the order that should be made, would be the method adopted by the Magistrates: for the Complainant's name and any information which is likely to cause it to be identified to be withheld from the public, and not given in open court, with an accompanying RRO pursuant to s 11 of the Contempt of Court Act ("the s 11 route").

28. Mr Bennett argued that the Court could and should reinforce this approach by invoking, in addition, the powers provided by s 6 of the HRA and Article 6 of the Convention and s 45(4) of the Senior Courts Act. He advanced two fall-back arguments.

(1) If an absolute prohibition on the disclosure of identifying details was thought to go too far, or to be impracticable, the Court could order that they be withheld "so far as reasonably practicable", whilst imposing an unqualified RRO pursuant to s 11 and the other provisions mentioned above.

(2) If the Court concluded that the Complainant ought to be named in open court, it would be pointless to order that identifying information be withheld, and the s 11 route would be unavailable. Although it is unprecedented in criminal procedure for a complainant to be named in open court but a reporting restriction imposed or an injunction granted which prevented it being named outside court (outside the statutory provisions concerning victims of sexual assault) an RRO could and should be imposed pursuant to the Court's duty under HRA, s 6 and/or its powers under SCA, s 45(4). In relation to s 6, Mr Bennett relied on the "right to be forgotten" case of *NT1 v Google LLC,* where I made an RRO pursuant to s 6 and CPR 39.2(4), although the claimants' names and many identifying details were deployed in open court. I said this ([2018] EWHC 261 (QB) [24]):

> "The (*HRA*) implicitly confers a power to do what is necessary to comply with that duty, if and to the extent that such power is not otherwise available. Where s.11 cannot assist, and to the extent that such power is not otherwise available, the court may impose reporting restrictions if and to the extent (but only if and to the extent) that this is necessary to comply with its statutory duty under the HRA."

29. In supplemental written submissions for the PTR, Mr Bennett and Mr de Wilde advanced a third basis for contending that the Complainant is entitled to continued anonymity. Reliance was placed on the *Spycatcher* principle, that a third party on notice of an interim injunction that prevents a defendant from disclosing confidential information could commit the *actus reus* of the criminal offence of contempt, a "serious offence against justice": *A-G v Newspaper Publishing plc* [1988] 1 Ch 333. Mr Bennett and Mr de Wilde argued that this Court is on notice of the Nicklin Order, and knows that identification of the Complainant before judgment is given in the Civil Action would frustrate the purpose of that action. In substance, if not in terms, the argument

was that, unless I granted anonymity, I would be acting in contempt of the Nicklin Order.

30. In oral argument at the PTR, Mr Bennett added to his submissions on the mechanics of anonymity by drawing attention to the Court's power to allow or direct that evidence be given by writing information down on paper. He referred me to what Lord Scarman said in *Attorney General v Leveller Magazine Ltd* [1979] AC 440, 473G-H: "If a court is satisfied that for the protection of the administration of justice from interference it is necessary to order that evidence either be heard in private or be written down and not given in open court, it may so order." He invited me to reject the submission of Mr Christopher, that the conduct of the trial would be impeded if the name and any identifying information about the Complainant had to be kept from the public.

Reply

31. Mr Christopher did not adopt the *Spycatcher* line of argument. In reply, he made clear that the prosecution did not adopt or support Mr Bennett's human rights submissions, or assert that a blackmail victim has an absolute right to anonymity. Mr Christopher drew attention to the fact that Article 6 confers rights on those who are tried on criminal charges (or whose civil rights and obligations are being determined), and that the rights include a fair *and public* trial. The Complainant's Article 6 rights are not engaged, he submitted. He maintained his submission that a trial conducted without public disclosure of the Complainant's identity would be impracticable.

Discussion

32. The *Spycatcher* argument is an ill-judged afterthought. It is misconceived. It would be a remarkable step for a Judge in a civil claim to fetter the decisions of a criminal court at an early stage of proceedings of which the civil judge has (of necessity) relatively little knowledge. The Nicklin Order did not have that effect. I have read the order, and summarised its main components at [11] above. Identification of the Complainant at the trial of this case would not contravene that order, because of the public domain proviso in paragraph 5(2). The fact that this proviso was introduced makes clear that Nicklin J did not intend, by granting an order against a single defendant in civil proceedings, to foreclose the issue of whether anonymity should be conferred on the Complainant at the trial of these criminal proceedings (or otherwise to determine how the Court should exercise its powers in this case). His order left it to this Court to decide the issue.

33. Mr Bennett's human rights argument is, in summary, that a decision not to grant anonymity would be incompatible with Article 6, and hence a breach of the Court's duty under HRA s 6. Three reasons were initially advanced as to why this would be so:

(1) "Article 6 of the Convention concerns the administration of justice. It provides that information may be withheld from the public 'to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.' Any one of the three reasons for granting anonymity to the [Complainant] outlined above would satisfy this criterion."

(2) Where the Court concludes that anonymity is necessary in the interests of justice, Article 10 of the Convention is unlikely to require separate analysis. Even if it does,

Article 10(2) makes it legitimate to restrict freedom of expression where that is necessary for "the prevention of … crime… or for maintaining the authority and impartiality of the judiciary".

(3) The protection of the administration of justice also protects "the Article 6 rights of 'persons involved in the machinery of justice'", such as the Complainant. In support of the contention that such persons or entities have Article 6 rights, reliance was placed on a passage from the judgment of Lord Reed JSC in *A v BBC (Secretary of State for the Home Department Intervening)* [2014] UKSC 25 [2015] AC 588 [53]:

> "As the court explained in [S*unday Times v United Kingdom* (1979) 2 EHRR 245] para 56, it is unnecessary, where the aim of maintaining the authority and impartiality of the judiciary is engaged, to give separate consideration to the aim of 'protection of … the rights of others', so far as the rights of the litigants in that capacity are concerned:
>
> > "in so far as the law of contempt may serve to protect the rights of litigants, this purpose is already included in the phrase 'maintaining the authority and impartiality of the judiciary': the rights so protected are the rights of individuals in their capacity as litigants, that is, as persons involved in the machinery of justice, and the authority of that machinery will not be maintained unless protection is afforded to all those involved in or having recourse to it. It is therefore not necessary to consider as a separate issue whether the law of contempt has the further purpose of safeguarding 'the rights of others'."

34. It is the third limb of this argument that evidently founded the submission that the Complainant has a "right to anonymity". To rely on the passage cited is, however, muddled on two counts. First, as Mr Bennett conceded at the PTR, this passage is concerned with Article 10(2), and not with Article 6. Secondly, the passage is not authority for the proposition that all those "involved in the machinery of justice" have rights, let alone Article 6 rights. The Supreme Court gave no consideration to that issue. On the contrary, it held that where a court is deciding whether an interference with freedom of speech is justified, the "rights of others" do not require consideration, if the interference is justified in pursuit of the legitimate aim of maintaining the authority and impartiality of the judiciary.

35. In cases where disclosure of an individual's identity may engage the rights guaranteed by Articles 2, 3 or 8 of the Convention it may be possible to assert a "right to anonymity", and a corresponding duty to protect it. There may be other circumstances in which that language could properly be used, including cases engaging Article 6. But no adequate basis has been identified for asserting any such right on behalf of the Complainant in this case. It is not possible to spell out such a right from the fact that the Article 6 guarantee of a public trial of criminal charges is qualified by the proviso that the Court "may" withhold information from the public where "strictly necessary" in the interests of justice.

36. In any event, on analysis, Mr Bennett's elaborate human rights argument is not conceptually distinct from his more straightforward contention that anonymity is necessary as a matter of common law. At the core of both arguments is the proposition that, although anonymity is not required in order to motivate the Complainant to report events to the police or to support the prosecution of this (or any) defendant for blackmail, such anonymity is necessary in the interests of justice "*pour encourager les autres*"[1]. If that contention is made out, the Complainant has no need of the human rights argument. If the right conclusion is that anonymity is not necessary, the human rights argument cannot assist.

37. The conceptual framework for deciding this issue is relatively straightforward. Two main principles require consideration. The first is encapsulated in Part 1 of the Criminal Procedure Rules: the overriding objective "that criminal cases be dealt with justly". Rule 1.1(2) provides that this

> "… includes (a) acquitting the innocent and convicting the guilty; (b) dealing with the prosecution and the defence fairly; (c) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights…"

It also includes "(d) respecting the interests of witnesses [and] victims…", but plainly those interests cannot override the rights identified in paragraphs (a) to (c).

38. The second key principle is that of open justice. The principle is vividly described by Lord Atkinson in *Scott v Scott* [1913] AC 417, 463, in words that emphasise its rigour:

> "The hearing of a case in public may be, and often is, no doubt, painful, humiliating or deterrent both to parties and witnesses, …. But all this is tolerated and endured, because it is felt that in public trial is to be found, on the whole, the best security for the pure, impartial, and efficient administration of justice, the best means for winning for it public confidence and respect."

39. The principle applies equally to civil and criminal cases, albeit the way in which it is implemented may differ. Established features of the principle of open justice are that:-

(1) The general rule is that the identities of parties and witnesses are made public in open court: see *JIH v News Group Newspapers Ltd* [2011] EWCA Civ 42 [2011] 1 WLR 1645 [21(1)].

(2) The general rule is that everything that takes place in open court may be freely reported.

> "18 … the ordinary rule is that the press, as the watchdog of the public, may report everything that takes place in a criminal court. … in European jurisprudence and in domestic practice law this is a strong rule. It can only be displaced by unusual or exceptional circumstances…

---

[1] To encourage others: *Candide* by Voltaire - a reference to the execution of Admiral Byng in 1757). (This is my way of putting it, not Mr Bennett's.)

> 30 … Full contemporaneous reporting of criminal trials in progress promotes public confidence in the administration of justice. It promotes the values of the rule of law."

In re S (A Child) [2004] UKHL 47 [2005] 1 AC 593 (Lord Steyn).

(3) Exceptions to these principles may only be made by statute, or in a relatively few established categories of case, or in "the most compelling circumstances". Other than by statute, an exception can only be justified where it is necessary to make it, in order to secure the administration of justice. Earl Loreburn's words about excluding the public apply equally to anonymity:

> "It would be impossible to enumerate or anticipate all possible contingencies, but in all cases where the public has been excluded with admitted propriety the underlying principle … is that the administration of justice would be rendered impracticable by their presence, whether because the case could not be effectively tried, or the parties entitled to justice would be reasonably deterred from seeking it at the hands of the Court."

Scott v Scott, 446 (Earl Loreburn).

(4) Where a case does fall within a category where an exception has been recognised, it should only be granted

> "… 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":

The Master of the Rolls' *Practice Guidance (Interim Non-Disclosure Orders)* [2012] 1 WLR 1003 Paragraph 12.

40. Criminal Practice Direction I paragraph 6B contains provisions about reporting restrictions which are specific to the criminal jurisdiction, though they are no different in nature from those that apply in civil cases. Paragraph 6B.1 emphasises that open justice is an essential principle in the criminal courts. Paragraph 6B.4(b) identifies the need to keep in mind the fact that every RRO is a departure from that general principle.

41. Blackmail cases have long been recognised as a category of case in which an exception to the principle of open justice may need to be made, for the very purpose identified by Earl Loreburn in *Scott v Scott.* All Counsel recognise the *Socialist Worker* case as the leading authority on anonymity for that category of case. In my judgment, the case is authority for a general rule that the proper administration of justice will generally call for anonymity to be granted to the victim of a blackmail which involves a shameful secret or something to hide. It is not authority for an absolute or rigid rule that all complainants in all blackmail cases must always be granted anonymity. The passage cited above reads as follows:

> ". . . all of us concerned in the law know that for more years than any of us can remember it has been a commonplace in blackmail

> charges for the complainant to be allowed to give his evidence without disclosing his name. That is not out of any feelings of tenderness towards the victim of the blackmail, a man or woman very often who deserves no such consideration at all. The reason why the courts in the past have so often used this device *in this type of blackmail case where the complainant has something to hide*, is because there is a keen public interest in getting blackmailers convicted and sentenced, and experience shows that grave difficulty may be suffered in getting complainants to come forward unless they are given this kind of protection . . ."

Lord Widgery CJ went on to say this (at pp650A, 652E-F):

> " . . . it is quite evident that if witnesses in blackmail actions are not adequately protected, this could affect the readiness of others to come forward in other cases.
>
> . . . I think that there is a third course suitable and proper for this kind of case of blackmail *where the complainant has done something disreputable or discreditable, and has something to hide* and will not come forward unless thus protected."

I agree with Mr Bennett that Lord Widgery was identifying two distinct reasons for conferring anonymity on a complainant: encouraging the particular complainant to come forward and give evidence, and encouraging others in future cases. But as indicated by the words I have emphasised his remarks were confined to cases of the kind I have identified. Indeed, they were confined to cases involving an individual. That might be called the "classic" blackmail.

42. In cases of that kind, nowadays, resort to the principle discussed in the *Socialist Worker* case may well be unnecessary. The complainant's Article 8 rights will almost always be engaged, and these will provide the basis for a contention that the complainant has a "right to anonymity". The classic kind of blackmail is the one that comes most readily to mind when the word "blackmail" is used. But it is certainly not the only kind of blackmail, and cases of other kinds require to be tested against the general principles I have mentioned. (Indeed, even cases in the "classic" category must be examined on their particular facts).

43. This is plainly not a case in the classic mould. The Complainant is not an individual with Article 8 rights, but a substantial corporation. There is no question of its privacy being invaded. Nobody has suggested that the Complainant has done anything disreputable or discreditable, or has anything to hide. The threat was not to disclose any shameful or embarrassing secret about the Complainant. It was to disclose the fact that the Complainant had been the target and a victim of criminal acts, and might be the target and a victim of further such acts. There may be cases of that kind in which the interests of justice demand anonymity. But no case has been cited in which the complainant in a case of that kind has sought and been granted anonymity throughout.

44. In one recent civil case, *Clarkson v Persons Unknown,* the corporate complainant had been the victim of a cyber-attack. It applied for an injunction to restrain disclosure of the stolen information. It saw no need to seek anonymity: see [2018] EWHC 417 (QB).

Mr McNally has cited a series of criminal cases involving corporate bodies complaining of blackmail, in all of which the victims have been named: see *R v Witchelo (Rodney Francis)* (1992) 13 Cr. App. R. (S.) 371 (Safeway, Sainsbury, Tesco), *R v Telford (Robert George)* (Court of Appeal, Criminal Division, 9 March 1992) (Cadbury Schweppes), and *R v Taylor (Alexander Robertson)* (CACD, 16 May 1995) (Pedigree Petfoods, Heinz). Mr McNally has also identified a more recent case at this Court, in which the identities of the corporate victims of six blackmail offences were published by the CPS: *Daniel Kelley* (December 2016, details published June 2019). If Mr Bennett were right, all these cases would be in violation of the principle, that the administration of justice requires anonymity in such cases, to ensure that those who find themselves the victims of other kinds of blackmail should feel safe to report and support a prosecution.

45. I am not persuaded that the administration of justice does generally require anonymity in cases of this kind. In any event, I do not consider that it is necessary for anonymity to be conferred on this Complainant in this case, in order to motivate others to report and give evidence of other blackmails. An individual threatened with disclosure of an extra-marital affair or some other “classic” blackmail material is not likely to be deterred from reporting the matter or taking action by thinking that a major national supermarket chain was identified when it was threatened with contamination of its food products, and associated bad publicity, if it failed to pay up.

46. Mr Bennett’s reliance on the prospect of reputational harm does not assist his clients’ cause. First, as Mr Christopher argues and Mr Bennett accepts, it would not be rational for a member of the public, learning the facts of this case, to think the worse of the Complainant. The events are historic, the defendant is in custody, and there is no suggestion that the contamination was facilitated by any culpable act or omission of the Complainant. Nor would it be rational to shun the Complainant, on the basis that there might be someone out there putting pressure on others to contaminate foodstuffs and place them on the shelves of its stores. The Court will not generally make orders based on the assumption that members of the public will behave irrationally. Secondly, and even if that were wrong, the argument proves too much. If it be accepted, as (for reasons I give below) I do, that this case cannot fairly be conducted without identifying the Complainant as a supermarket company, anonymity would place all supermarket companies at the same risk as this one. The greater the extent of the anonymity restriction, the more widespread would be the collateral damage. Thirdly, if there is a risk of reputational harm, it can only be exacerbated by secrecy. It would be natural to infer that there is something embarrassing that the Court is keeping from the public, in order to protect the Complainant.

47. Having heard what the prosecution and defence have said about the evidence that is likely to be led at the trial of this case, I do not consider that it would be compatible with the overriding objective to require that the Complainant’s name and all identifying details be withheld from the public. The jury would have to know. Any other course would artificially restrict the way the case is put, as well as requiring the redaction or editing of a large number of documents. It would also be a distraction if they were kept in the dark. The Complainant’s half-way house proposal is highly unsatisfactory. It is too vague. If an identifying detail was not withheld, it would raise the question of whether it had been “reasonably practicable” to do so. Any order that prohibited the disclosure of identifying details in open court would call for the most careful

management. It is impracticable and would be unfair to both parties to require that any evidence given by witnesses who are employees of the Complainant, or customers of its stores, be reduced to writing and passed to the jury. The need to carry out such measures would interfere with the preparation and conduct of the trial. In my judgment, the parties should be allowed to prepare and conduct the case as they see fit, within the ordinary bounds of professional propriety.

48. If the Complainant is to be identified in open court, I can see no compelling justification for imposing any form of RRO, assuming I have jurisdiction to grant one. The justification required by *Khuja* is lacking. The general rules identified in *In re S* should apply.

49. I would add these observations:

(1) Where the Court is persuaded that a name should be withheld from the public, or that it should be the subject of an RRO, it is normally sufficient to prohibit the publication of the name or other information likely to lead to the identification of the person firm or company as being the complainant, defendant or witness, as the case may be. It may be convenient to include, in generic terms, a non-exhaustive list of characteristics that should not be published, such as age, gender, school, age, address etc. That is a typical form of order, where the court decides to prohibit identification of a child or young person concerned in proceedings. But it is not a necessary ingredient of such an order. It is not usually necessary, nor – for obvious reasons - is it usually convenient or appropriate to include in an order the specific details that would or might serve to identify the person, firm or company concerned, such as the actual age, gender, school etc. of a child.

(2) There may be exceptions to these general rules of practice, for instance, where the case involves so many names and details that the effective preservation of anonymity necessitates extensive pseudonymisation, and third parties may be unable to comply with the order unless they know what the cyphers or other pseudonyms stand for: see for instance *NT1 v Google LLC* (above) at [13]ff. But the circumstances of this case were not comparable. If anonymity was appropriate, it was sufficient to make an order in standard form, prohibiting the publication of a name, or other details likely to lead to identification, without more. The straightforward form of order on those lines which I made at the PTPH was not in the event controversial.

(3) That being so, the prosecution was right to concede that the prohibition on reporting the existence of the anonymity order should not continue. Practice Guidance issued long ago by the Master of the Rolls in relation to "superinjunctions" in civil cases makes clear that they should only be granted "in the rarest cases … on grounds of strict necessity": [2012] 1 WLR 1003 [15]. The submission made to the Magistrates was that a prohibition on disclosure of the fact of the order was justified pursuant to Criminal Practice Direction 6B.4(i), because publication of the fact of the orders to withhold and prohibit publication of information would "risk undermining the purpose of the order". That was an arguable proposition, so long as the order told the reader that the Complainant was a supermarket plc listed in the FTSE-100. But since the inclusion of those details was not necessary or appropriate, the "superinjunction" aspect was not "strictly necessary".

(4) The Magistrates were also asked to, and did, prohibit disclosure and reporting of the fact that the product was Heinz baby food, and that Hertfordshire police were investigating the matter. Those facts were listed as "information likely to lead to the identification of" the Complainant. The argument advanced to the Magistrates in support of those aspects of the Order was "the risk of jigsaw identification." This is hard to understand. The Claimant is, as will already be clear, one of the "big four" major national supermarket chains. It is not alone in selling Heinz baby food, which is a staple product. And as Mr McNally has pointed out, there is no separate policy justification for anonymizing Heinz. The events which are the subject of the charges took place in a variety of locations. Nobody has sought to sustain those aspects of the Magistrates' Order.

APPENDIX A

Order of West and Central Hertfordshire Magistrates Court

27 February 2020

It is ordered that

(1) the following information be withheld from the public, and not be disclosed by any party or witness or any other person, during all hearings in connection with the case of *R v Nigel Wright*, including trial:

(a) The name of the Company that is the complainant, being the subject of the alleged blackmail

(b) Any information likely to lead to the identification of the same, in particular but not limited to:

a. That the Company is a Publicly Limited Company

b. That the Company is listed in the FTSE-100

c. That the Company is a supermarket

d. That the offence is being investigated by Hertfordshire Constabulary

e. The name of any manufacturers of the any of the particular products concerned in the blackmail

f. The name or any description of the type of product concerned in the blackmail

(2) And it is Ordered, under s.11 Contempt of Court Act 1981, that there shall be a prohibition on publication of any of the information referred to in paragraphs (1)(a) and (b) above.

(3) And it is Ordered that there shall be no reporting of the making or terms of these Orders.

(4) These Orders are to last until further Order."

APPENDIX B

Order of the Crown Court at PTPH

13 May 2020

IT IS ORDERED THAT until after judgment has been given following the Pre-Trial Review ("PTR") provided for by the directions given at the PTPH, or further order in the meantime

1. pursuant to the Court's inherent jurisdiction and section 6 of the Human Rights Act 1998, the following information ("the Identifying Information") shall be withheld from the public:
   (1) the name of the company that was the target or subject of the alleged blackmail ("the Complainant"); and
   (2) any other information the publication of which would be likely to lead to the identification of the Complainant as the company that was the target or subject of the alleged blackmail;

2. pursuant to section 11 of the Contempt of Court Act 1981 and section 6 of the Human Rights Act 1998, the publication of any of the Identifying Information in connection with these proceedings is prohibited.

3. The provisions of paragraphs 1 and 2 above shall be reviewed at the PTR, when the Court will consider whether restrictions in those terms remain appropriate at and throughout the trial.