Neutral Citation Number: [2010] EWHC 2367 (QB)

Case No: HQ10X03949

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 21/10/10

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

- -

Between :

Bernard Gray	**Claimant**
- and -	
UVW	**Defendant**

- -
- -

Miss Caroline Addy (instructed by **JMW Solicitors**) for the Claimant
The Defendant appeared in person

Hearing dates: 15 October 2010

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Judgment

Mr Justice Tugendhat*:*

1. The general rule is that the names of the parties to an action should be included in the orders and judgments of the Court: *In re Guardian News and Media Ltd* [2010] 2 WLR 325; [2010] UKSC 1 para 22 ("*Guardian*"). There is no general exception for cases where private matters are in issue. Such matters are commonly litigated in public, for example in the employment tribunal, and in claims for personal injury and medical negligence, and in the criminal courts: *ibid* para [22] and *Re S (a child)* [2004] UKHL 47, [2005] 1 AC 593. Nor is there any general exception to this principle for claims for injunctions to restrain publication of private information: see eg *Argyll v Argyll* [1967] Ch 302, *Lord Browne of Madingley v Associated Newspapers Ltd* [2008] 1 QB 103, [2007] EWCA Civ 295, [2007] EMLR 538 at para [3] and *Commissioners for HMRC v Banerjee* [2009] EWHC 1229 (Ch).

2. When an application for an injunction is made before the issue of a claim form the applicant will be required to undertake to the court to issue a claim form immediately: CPR 25 PD25A para 4.4(1). It is of the utmost importance that applicants and their legal representatives ensure that such undertakings are complied with.

3. It is the duty of legal representatives, both counsel and solicitors, to see that correct legal procedures and forms are used. This principle is established in relation to applications made without notice (*Memory Corpn v Sidhu (No 2)* [2000] 1 WLR 1442, 1460). But it must apply equally in cases where the court is obliged to have regard not only to the interests of the parties, but also to the interests of the public. In

such cases the public are in a position analogous to a defendant against whom an order has been sought without notice.

4. An application for an order that the names of the parties or the subject matter of the action be not disclosed is a derogation from the principle of open justice and an interference with the rights of freedom of expression of the public at large. The jurisdiction of the court to restrain publication of names and the subject matter of the dispute is derived from the Human Rights Act 1998 ("HRA") s.6 (duty of the Court not to act in a way which is incompatible with Convention rights) and Arts 2, 3 and 8. Where the court is asked to restrain the publication of the names of the parties and the subject matter of a claim on the ground that restraint is necessary under Art 8, the question for the court is whether there is sufficient general, public interest in publishing a report of proceedings which identifies a party to justify any resulting curtailment of the right of the party (and members of that party's family) to respect for their private life. For these propositions see *Guardian* paras 27, 28, 30, 34-5 and 60.

5. This judgment requires consideration of each of these three principles.

6. The principle of open justice in English law long preceded the ECHR and the HRA. For its importance see *R v Legal Aid Board ex p Kaim Todner* [1999] 1 Q.B. 966 per Lord Woolf MR at 977 and *R (Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs* [2010] EWCA Civ 65 at [38]-[42]. So far as material to this case the relevant parts of arts 6 are:

> "Art 6: … Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial …where the protection of the private life of the parties so require[s], or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice".

7. Art 6 is similar in substance to the common law as summarised in *Guardian.* In *Scott v Scott* [1913] A.C. 417 at 438 and 463 Lords Haldane and Atkinson said:

> "(438) . . .unless it be strictly necessary for the attainment of justice, there can be no power in the Court to hear in camera either a matrimonial cause or any other where there is a contest between the parties. He who maintains that by no other means than by such a hearing can justice be done may apply for an unusual procedure. But he must make out his case strictly, and bring it up to the standard which the underlying principle requires. He may be able to show that the evidence can be effectively brought before the Court in no other fashion. He may even be able to establish that subsequent publication must be prohibited for a time or altogether. But this further conclusion he will find more difficult in a matrimonial case than in the case of the secret process, where the objection to publication is not confined to the mere difficulty of giving testimony in open Court. In either case he must satisfy the Court that by nothing short of the exclusion of the public can

> justice be done. The mere consideration that the evidence is of an unsavoury character is not enough, any more than it would be in a criminal Court, and still less is it enough that the parties agree in being reluctant to have their case tried with open doors… If the evidence to be given is of such a character that it would be impracticable to force an unwilling witness to give it in public, the case may come within the exception to the principle that in these proceedings, … a public hearing must be insisted on in accordance with the rules which govern the general procedure in English Courts of justice. A mere desire to consider feelings of delicacy or to exclude from publicity details which it would be desirable not to publish is not, I repeat, enough as the law now stands. I think that to justify an order for hearing in camera it must be shown that the paramount object of securing that justice is done would really be rendered doubtful of attainment if the order were not made.
>
> (463) … in public trial is to 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".

8. Art 6 also qualifies the word "necessary" with the word "strictly". It requires that an order be "strictly necessary" where the reason for making the order is that "publicity would prejudice the interests of justice".

9. The relevant parts of Arts 8 and 10 are:

> "Article 8 Right to respect for private and family life
>
> 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
>
> Article 10 Freedom of Expression
>
> 1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority …
> 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, ... for the prevention of disorder or crime, for the protection of health or morals, for the

> protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

THE FACTS GIVING RISE TO THE APPLICATION FOR AN INJUNCTION

10. A brief outline of the facts that can be disclosed in this judgment is as follows.

11. The Claimant is a businessman, writer and sometime adviser to the Ministry of Defence and other bodies. He is a well known figure within certain political, educational, business and publishing circles. Over one year ago, the Claimant communicated to the Defendant private information. On 12 October 2010 the Defendant made a communication to the Claimant, following which they exchanged a number of messages. The Claimant became concerned and instructed solicitors. Miss Harris, the solicitor, spoke to the Defendant. The Defendant expressed a willingness to sign an undertaking not to disclose information personal to the Claimant, but the Defendant also made conflicting statements.

12. On the evidence before me, there were two conversations between Miss Harris and the Defendant in the afternoon of 13 October. According to the evidence, in these conversations the statements of the Defendant were inconsistent, or at least unclear, as to whether there are one or more third persons who have come to know the information in question, and if so whether any such third person is a journalist who is threatening to publish the information more widely. Miss Harris did not receive answers to questions she asked about the third party, if there is one.

13. In a witness statement the Claimant said that without protection from the court he felt vulnerable to publication by the Defendant of private information. There is no suggestion of blackmail in the present case.

14. At 11pm on 13 October, before making the application to the duty Judge, but at his request, Miss Addy called the Defendant to ascertain the attitude that the Defendant was adopting to the application for an injunction. The Judge hearing applications made out of hours was Nicol J ("the Judge"). At that stage the Defendant had not seen the witness statements or other documents what were to be submitted to the Judge. The Judge and Miss Addy had in mind HRA s.12(2)(a) (notice to be given to the defendant before an application is made for an order that might interfere with the right of freedom of expression).

15. In speaking to Miss Addy the Defendant opposed the granting of an injunction, saying that the Claimant and the Defendant could sort it out by speaking directly. In that conversation the Defendant protested that s/he had not told anyone about it and was not going to tell it to anyone. The Defendant protested that s/he had made his/her position clear to Miss Harris, but that Miss Harris had not believed him/her. The Defendant admitted having made inconsistent statements, and repeated that s/he had no documents to disclose. The Defendant again gave explanations for the inconsistencies in what s/he had previously stated to Miss Harris.

THE HEARING BY TELEPHONE

16. This application was made on the basis of the evidence summarised above. Miss Addy has provided me with the note of the telephone hearing and a copy of the draft order that she submitted to the Judge. The hearing took 46 minutes. It is clear from the note that Miss Addy gave detailed disclosure to the Judge. There was a draft witness statement from the Claimant (which has since been signed) and a witness statement from Miss Harris. Miss Addy made submissions to the Judge on the balancing exercise that he was required to perform. She informed the Judge, as was the case, that the Defendant was not asserting a right to publish the information. She submitted that there was no public interest in the disclosure of the information. The information has no bearing on the Claimant's profession or public work.

17. During the telephone hearing Miss Addy referred the Judge to well known authorities where the court had granted injunctions protecting private and confidential information.

18. The Judge noted a reference in the evidence to the Claimant's clients and invited Miss Addy to address him as to whether the Claimant was simply seeking to an injunction to protect his reputation.

19. During the application to the Judge Miss Addy made clear that she was not seeking an order prohibiting the disclosure of the fact of the injunction (a so-called super-injunction).

20. Miss Addy asked the Judge to make an anonymity order, which he did. An anonymity order is may be made under CPR Part 39.2(4), or by the court's powers under HRA s.6. CPR Part 39.2(4) reads:

> "The court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness".

21. The grounds advanced for the making of an anonymity order are set out in the witness statement of the Claimant. They are as follows:

> "The Intended Claimant is concerned that if this action was reported, together with the names of the parties, this would fuel speculation in the media and on the internet as to what the injunction was designed to protect. This would inevitably cause further distress to the Intended Claimant and his family and defeat the intention of the injunction".

22. Between about 11.15 to 12pm the Judge heard the application and granted the injunction in the form sought by Miss Addy, subject to variations which are not material for the purposes of this judgment. The Order set a Return Date for Friday 15 October. The Order included:

> "1. The application be heard in private pursuant to CPR r 39.2(3)(a), (c) and (g).

> 2. Until further Order the Claimant and Defendant shall be anonymised in this Order, and in any statements of case or application documents, pursuant to CPR r 39.2(4).
>
> 3. Schedule 1 to this order be treated as confidential and not open to inspection pursuant to CPR r5.4C(4).
>
> 4. Anything which may reveal any information or purported information described in the Confidential Schedule at the end of this Order shall be excluded from statements of case served in this intended action, and included in a separate confidential schedule served with the statement of case.
>
> 5. Pursuant to CPR r5.4C(4) a person who is not a party to this intended action may not obtain from the court records any copy of the confidential schedule served with any statement of case. Any non party seeking access to or copies of any confidential schedule from the court file must make an application to the Court, having previously given at least 3 days notice of the application to the solicitors for all parties.
>
> 6. If any non party at any time makes an application to the Court under CPR r5.4C(2) for permission to obtain from the court records a copy of any other document, other than a statement of case, or of any communication, such non party must give at lease 3 days notice of the application to the solicitors for all parties."

23. Para 12 is an order prohibiting the reporting of the hearing. This is an order under HRA s.6, and not under the Administration Act 1960 or the Contempt of Court Act 1980, as mistakenly stated: *Guardian* para [31]. Nothing turns on that detail in this case, because the Judge is very experienced in this field of the law, as is Miss Addy. But in other cases the reference to a wrong basis of jurisdiction could mislead the court into omitting to carry out the balancing of the Convention rights in question.

24. By Sch 3, para 2 the Claimant undertook to the Court to issue a claim form by 4pm on Thursday 14th October, and to serve that, the witness statements, and a note of the hearing upon the Defendant. The Practice Direction 25A para 4.4 provides:

> "Applications made before the issue of a claim form:
>
> (1) in addition to the provisions set out at 4.3 above, unless the court orders otherwise, either the applicant must undertake to the court to issue a claim form immediately or the court will give directions for the commencement of the claim,
>
> (2) where possible the claim form should be served with the order for the injunction, …"

25. It follows that the effect of the Judge setting a time limit of 4pm was to define what was to be meant by "immediately" in the context of this case. The Judge did not add any requirement not already specified in the Practice Direction.

EVENTS AFTER THE HEARING BEFORE THE JUDGE

26. At 11.58 on 13th October the Defendant sent to Miss Harris an e-mail in which the Defendant gave an explanation for what s/he had said previously, agreed to sign "any form of agreements in writing to confirm … my promise not to disclose any of this private information", and confirmed that the Defendant did not retain any information in documentary form. By the time this was read, the Judge had granted the application.

27. There then occurred a serious failure on the part of the Claimant and his legal representatives. The Order and witness statements were duly served on the Defendant, but no Claim Form was issued. This omission was a breach of the undertaking to the Court.

28. Nevertheless, Miss Addy has informed me that the Order has been served on a number of newspaper publishers. None of these were notified in advance of the application. It is not necessary to serve newspaper publishers where none is known to a claimant to have shown any interest in the matter. There is no evidence before me that any newspaper publisher had any information about the matter prior to being served with the Order by the Claimant's solicitors.

29. On 14th October the Defendant signed a letter acknowledging service of the Judge's Order. The letter states that the Defendant has no intention of disclosing to anyone the Claimant's private information, and that the Defendant also regards the information as his/her own private information. The Defendant expresses deep sorrow for what had occurred.

30. Later on 14th October there was provided to the Court on behalf of the Claimant a form of consent order signed by the Defendant personally and by solicitors for the Claimant, together with the letter signed by the Defendant. This was submitted to the Court that day.

31. On the morning of 15th October there was an oral hearing attended by Miss Addy and his solicitors for the Claimant and by the Defendant in person.

THE NEED FOR A RETURN DATE AND AN ORAL HEARING

32. There were the following reasons why an oral hearing was necessary.

33. First, an order providing for anonymity and reporting restrictions cannot be made by the consent of the parties. "When both sides agree that information should kept from the public, that [is] when the court [has] to be most vigilant": *Guardian* para [2]. The Court has to consider the rights of the public under Arts 6 and 10, and not just the rights of the parties. Parties to civil litigation can waive or give up their own rights: they cannot waive or give up the rights of the public.

34. Second, an anonymity order made by a Judge out of hours cannot be interpreted as intended to last for the duration of the proceedings. A provision for anonymity and other provisions derogating from open justice must be reviewed at the Return Date, whether the original order provides for that or not. The Judge's Order granting anonymity was limited by the words "Until further Order". The court's obligation to ensure open justice is a continuing one, as is its obligations to comply with Arts 10 and 8. On the Return Date the court may, and in this case did, hear submissions from the defendant. And in the meantime a defendant may, as the Defendant did, make written statements which may be relevant to the continuation of the anonymity order.

35. The third reason why an oral hearing was necessary was that it became apparent that the undertaking to issue a claim form had not been complied with. Where an undertaking to the court is not complied with there must be an enquiry by the Court as to why that has happened and what, if any, sanction or consequential order should be imposed.

36. An undertaking to the court cannot be disregarded: if a party wishes to be discharged from performing an undertaking, then he must apply to the court to be released from it. Under no circumstances can it be proper to serve on third parties an order made in proceedings which have not been commenced, unless the party has undertaken to the court to issue a claim form immediately (or as the judge may direct), and that party intends to comply with that undertaking.

37. Subject to any order of the court, if parties to a dispute such as the present one have settled their differences, then the claimant must either discontinue the action or proceed with it. Of course, if the claimant discontinues the action, or asks to be released from the undertaking to issue a claim form, then there will be no order of the court to serve on third parties, and any undertaking by the defendant will be contractual only, and not an undertaking to the court. For a claimant there is no third option to discontinuance and continuing with proceedings, subject to any order of the court. As I said in *Terry v Persons Unknown* [2010] 1 FCR 659, [2010] Fam Law 453, [2010] EWHC 119 (QB), [2010] EMLR 16 para [38], a Return Date serves a number of purposes.

THE SUBSTANCE OF THE APPLICATION

38. As to the substance of the application, Miss Addy submitted, and I accept, that the information the subject of the application is clearly within Art 8. As noted above, Miss Addy referred the Judge to authorities where private information had been protected by non-disclosure orders in the past. The Defendant consented to the Order.

39. I have not had to consider further whether the claim is in substance for the protection of the Claimant's private information or for protection of his reputation. The reason I have not had to consider the question of defamation is that that the Defendant does not assert a right to publish the information. In this respect the case is similar to *DFT v TFD* [2010] EWHC 2335 (QB*)* (see para [11]) and *AMM v HXW* [2010] EWHC 2457 (QB) para [4]. In a defamation action the Court will not refuse to grant an injunction simply because the action is one for defamation. It will refuse the application if and when the defendant raises an issue or a defence: see the discussion in Duncan & Neill on Defamation 3rd edn para 24.02.

40. Nor have I had to consider whether this was a case in which I would have continued the injunction, if continuation had been opposed. A claimant is not entitled to any injunction, still less one which interferes with freedom of expression, unless there is a threat to interfere with his own rights such that an injunction is necessary and proportionate. I express no view as to whether or the Defendant would have been successful in opposing the continuation of the injunction, if the Defendant had persisted before me in the stance that there should be no injunction (as was the Defendant's stance when telephoned on the evening of 13 October). I have formed no view as to whether or not the Defendant's explanation for the inconsistent statements is to be believed.

41. Unlike the Judge, I have had the benefit of seeing and hearing from the Defendant. I was able to ask the Defendant questions and to hear his/her submissions. The fact that an injunction may be necessary at the time the out of hours judge considers the matter does not of itself mean that an injunction will still be necessary by the time of the Return Date.

42. In the present case Miss Addy has asked for an order that all further proceedings be stayed except for the purpose of carrying into effect the terms of the order I have made. I have included that provision in the order I have made. An alternative would have been to enter final judgment. That can be done where there is consent or where the requirements of CPR Part 24 are satisfied. The disadvantage of that from a claimant's point of view is that whereas an interim injunction has been held to be binding on third parties, it has been held that a final injunction is not. As Eady J said in *X & Y v Persons Unknown* [2006] EWHC 2783 (QB), [2007] EMLR 290 at para 72:

> "…the *Spycatcher* doctrine [*Attorney-General v Newspaper Publishing Plc* [1988] Ch 333 at 375, 380] would go on inhibiting third parties from publishing the relevant information notionally pending a trial which would never actually take place. The *Spycatcher* doctrine, as a matter of logic, has no application to a permanent injunction since, obviously, there is no longer any need to preserve the status quo pending a trial. This doctrine is directed at preventing a third party from frustrating the court's purpose of holding the ring: see e.g. the discussion in *Att.-Gen. v Punch Ltd* [2003] 1 AC 1046 at [87]-[88] in the Court of Appeal and at [95] in the House of Lords; and *Jockey Club v Buffham* [2003] QB 462 (Gray J)."

43. The fact that I have ordered a stay in the present case should not be taken as authority that that is the right course to take. I have heard not argument on the point.

THE ANONYMITY ORDER AND OTHER DEROGATIONS FROM OPEN JUSTICE

44. As noted above, the question that the Judge had to ask himself, and which I have to ask myself afresh is: is there is sufficient general, public interest in publishing a report of proceedings which identifies either or both parties to justify any resulting curtailment of the right of the party (and members of that party's family) to respect for their private lives?

45. Each of the Claimant and the Defendant submitted that I should grant an anonymity order in respect of both parties, and the further derogations from open justice that I have ordered to apply. But their arguments were different.

46. The Defendant submitted, and I have no hesitation in accepting, that his/her right to private life is engaged by these proceedings. I find that disclosure of the Defendant's identity at this stage would be an unjustifiable interference with the Defendant's private life and that that outweighs the rights of the public under Art 10, and the need for open justice. I recall that the right to private life protected by Art 8 includes the right to reputation. My reasons are as follows.

47. The allegations made against the Defendant are very serious for a person in the Defendant's position. There is no suggestion that the Defendant is anything other than a person of positive good character. On appearing in court before me the Defendant was distressed by the whole matter, and this was plainly sincere distress. For an individual to be brought to court in the circumstances in which this Defendant was brought to court is a very serious matter.

48. If the claims of a claimant are properly made, then the effect upon a defendant of those claims being advanced may be a consequence that a defendant must accept in the interests of justice. But if the claims of a claimant ought not to have been made or pursued, the pursuit of the proceedings may have caused to a defendant distress, and possibly damage to reputation, which may not be remediable.

49. In the present case I can form no view as to whether or not I would have granted the continuation of the injunction the Claimant claims if the Defendant had opposed it (as was his/her stance when speaking to Miss Addy on 13 October). Nothing in this judgment should be taken as casting any doubt upon the Claimant's justification for bringing these proceedings as he has, or of the correctness of the decision of the Judge. But nor do I cast any doubt on the Defendant's stance that no injunction was necessary. Defendants commonly consent to injunctions in order to avoid litigation while asserting that such injunctions are unnecessary.

50. Unless the facts are clear beyond doubt, or are admitted, the court hearing an interim application for an injunction must make no findings of fact. Disclosure, or the threat of disclosure, of confidential or private information may be a serious wrong. But applications for injunctions can also be made oppressively.

51. Since that question will not now be resolved, I find on the evidence before me, including what I heard orally from the Defendant, that it is necessary for the court to protect the Art 8 rights of the Defendant by ordering that the Defendant be not identified.

52. For the reasons given above in relation to the order for anonymity of the Defendant, I also find that it is necessary to order that there be no report of these proceedings or their subject matter of any information which is not included in this judgment.

53. Miss Addy for the Claimant advanced quite different reasons why I should order that the names of both parties be anonymised. The cases Miss Addy cited are well known. But it is to be noted that they were mostly reported cases where the names of both parties were published in the usual way. Lord Rodger noted in *Guardian* para [2], that

"the general impression is that the practice of referring to parties by their initials has increased at all levels in recent years". That observation also applies to applications for injunctions to restrain publication of private information.

54. As Miss Addy submitted, in a claim for misuse of private or confidential information, the public will often infer from the identity of the defendant the nature of the information which the claimant is seeking to protect. She submitted that that will, at least to some extent, defeat the purpose of the order. For example, if the defendant is a financial adviser or healthcare worker or a young man or woman, members of the public may infer (perhaps quite wrongly) that the information is financial, medical or sexual.

55. However, I do not accept that disclosure of the general nature of the information in question does always engage a claimant's private life. Almost everyone has information about their health, financial affairs, sex life and other matters, the details of which are private and confidential. The fact that a claimant has obtained an injunction to prevent disclosure of one or other of such categories of information is not in itself necessarily a matter which should not be published.

56. There is a range of measures open to the court to protect the art 8 rights of the parties. These include a variety of measures to prohibit or prevent disclosure of the information sought to be protected, and an order prohibiting disclosure of the identity of one or both parties. But each measure is cumulative. The fact that one such measure may be necessary is not a reason for concluding that they are all necessary. On the contrary, the measures as a whole must be no more than is necessary and proportionate, and if one measure is adopted, then that may mean that an additional measure is not necessary.

57. In the present case the reason advanced by the Claimant for why his identity should not be disclosed is weak. He refers to the possibility that the media may speculate as to what the information is. But in this connection I remind myself of the approach of the Supreme Court in *Guardian* at para [72]:

> "72 … the possibility of some sectors of the press abusing their freedom to report cannot, of itself, be a sufficient reason for curtailing that freedom for all members of the press. James Madison long ago pointed out that "Some degree of abuse is inseparable from the proper use of everything, and in no instance is this more true than in that of the press": "Report on the Virginia Resolutions" (1800), in *Letters and Other Writings of James Madison* (1865) Vol 4, p 544. … The possibility of abuse is therefore simply one factor to be taken into account when considering whether an anonymity order is a proportionate restriction on press freedom in this situation."

58. At para [59] Lord Rodger considered an argument based on fears about how the matter might he reported if the identity of the individual concerned was disclosed. He said:

> "That argument raises an important point of principle. It really amounts to saying that the press must be prevented from

> printing what is true as a matter of fact, for fear that some of those reading the reports may misinterpret them and act inappropriately. Doubtless, some may indeed draw the unjustified inference that [the applicant] fears. …. Politicians and the press have frequently debated the merits of that approach, the debates presupposing that members of the public, … are more than capable of drawing the distinction between mere suspicion and sufficient evidence to prove guilt. Any other assumption would make public discussion of these and similar serious matters impossible. We therefore see no reason to assume that most members of the … community would be unable to draw the necessary distinction and to respond appropriately to any revelation …"

59. At para [60] he refused to accept that most members of the section of the public under consideration in that case would be unable to respond appropriately to the disclosure of the name of the applicant for anonymity in that case. The possibility that the media might publish articles critical of the applicant cannot normally be a reason why the identity of the applicant should not be disclosed.

60. There are exceptional cases where the court can be satisfied that the media reporting will be so critical as to amount to an interference with the applicant's Convention rights. The rights that may be interfered with may be under Arts 2 and 3, where reporting would be likely to lead to violence against the applicant. Such cases have occurred and were considered by the Supreme Court in *Guardian* para [27]. But there is no suggestion of anything so extreme in the present case.

61. In cases of alleged blackmail, where the defendant does not claim or assert a right to make the threatened publication, anonymity can be given to the claimant on the basis that that is necessary and proportionate for the prevention of crime. This is in accordance with Art 10(2): see eg *AMM v HXW* [2010] EWHC 2457 (QB) paras [24] – [28], [38]-[39]. But as already noted, there is no suggestion of blackmail in the present case.

62. Alternatively, the rights that may be interfered with may be the right of access to the court. A threatened publication may be a contempt of court, or an interference with the course of justice. This may occur where the threatened media reporting will discourage the claimant or a witness from giving evidence. Interference with the administration of justice is a crime. So a measure to prevent that can be necessary, in accordance with Art 10(2). But the threshold is a high one (as appears from para 7 above). There is no sufficient evidence of that in the present case.

63. I conclude that in the present case it is not necessary for there to be a departure from the principle of open justice, or any interference with the public's rights under Art 10, such as would justify me in making an order prohibiting disclosure of the identity of the Claimant.

THE ERRORS THAT HAVE OCCURRED

64. In court Miss Addy took full responsibility for the failure of the Claimant to comply with his undertaking to issue a Claim Form. The failure was remedied immediately

after the hearing. She and Miss Harris have both sent written letters of apology and explanation. I accept that they acted in good faith. The failure was contributed to by the fact that solicitors are in Manchester whereas Miss Addy was in London. Applications such as these do impose great professional pressure on the legal representatives, since they require urgent action, and arise when the representatives may already have other urgent commitments. That is mitigation, not a justification for a failure.

65. Those advising clients on the making of applications for injunctions have a responsibility to read the Practice Direction 25A and to comply with it. That Practice Direction is in plain English and is available on the internet. It requires no specialist expertise to follow it. It was inevitable that an undertaking would have to be given to the court to issue a claim form immediately, and preparations should have been made to do that. See para 25 above. Drafting a claim form is not a complicated task. The claim form as issued reads:

> "The Claimant's claim is for an injunction restraining the Defendant from misusing private information relating to the claimant".

66. Where there has been a breach of an undertaking to the court, or a breach of the legal representatives' duties to see that correct legal procedures and forms are used, there must be an investigation by the court. An explanation must be provided. If the explanation is inadequate, then sanctions must follow. The sanctions open to the Court may be limited, in that the sanction must not itself be a disproportionate interference with the rights of a claimant, in particular the right of access to the Court under Art 6, and the rights under Art 8. In the present case I do not have to consider that matter further.

CONCLUSION

67. It is for the reasons set out above that I made the order on 15 October 2010.