

## Examining anonymity in harassment cases (*Khan (formerly JMO) v Khan (formerly KTA)*)

26/03/2018

**Dispute Resolution analysis: Clara Hamer, barrister at One Brick Court, considers the anonymity aspects of harassment claims in light of the case of *Khan (formerly JMO) v Khan (formerly KTA)*.**

*Khan (formerly JMO) v Khan (formerly KTA)* [\[2018\] EWHC 241 \(QB\)](#)

### What was the background?

This was an application for an interim injunction in a claim for harassment brought by a Spotify investor against his brother. The claimant had given a podcast interview in which he had referred to his criminal conduct around 25 years previously and alleged that his father used to beat him. The defendant contended that the allegation about their father was false, and that the claimant had been less than candid about the extent and seriousness of his criminal convictions. Over the following nine-month period, the defendant sent over 70 emails to the claimant, various individuals at Spotify, and others associated with the claimant. The emails complained about the allegation about their father, stated that Spotify had an obligation to disclose full details about the claimant's background, so people could make an informed decision about whether to invest in the company. Emails suggested that if the claimant or Spotify would not make this disclosure to the market and the regulators then the defendant would.

The claimant asserted that the emails constituted harassment and obtained an order anonymising both parties. The defendant submitted that his allegations were true and said that if Spotify had acknowledged his concerns and genuinely sought to deal with them, he would not have needed to send so many emails. He said this was in reality a defamation claim seeking to protect the claimant's reputation that had been 'dressed up' as a harassment action, as further demonstrated by the fact that the claimant had applied for anonymity.

### What did the court decide in relation to anonymity and hearings in private?

The hearing of the injunction application took place in private, principally because a hearing in open court would have destroyed the anonymity that had been ordered by the master. The claimant argued that anonymity was necessary to protect the private nature of the evidence of his previous convictions, which were now 'spent' under the [Rehabilitation of Offenders Act 1974](#), and certain medical information that was mentioned in evidence and submissions.

Having refused to grant the injunction, the judge discharged the anonymity order for three main reasons. First, through the podcast, the claimant had himself generally made his previous convictions public within the past year. Like most harassment proceedings, which are not usually based upon the protection of private information, this was not a claim where the administration of justice would be frustrated by the claimant being identified and the proceedings taking place in open court. It was not a privacy claim, in which anonymity will often be necessary so the court can more fully explain the case in a public judgment without disclosing the very information sought to be protected. Nor was it a blackmail harassment claim, in which anonymity will often be granted so the court 'does not provide encouragement or assistance to blackmailers and does not deter victims of blackmail from seeking justice from the courts'—as in *ZAM v CFW* [2013] EMLR 27, para [44].

Second, the claimant had to accept being identified as any other litigant would—even public figures and celebrities won't receive 'special treatment' regarding anonymity—as in *JIH v News Group Newspapers Ltd* [\[2011\] 1 WLR 1645](#), para [21(6)].

Third, although limited and targeted derogations from open justice may be justified to protect private or confidential information referred to in the proceedings, in this case the detail of the claimant's previous convictions and the medical information had not been mentioned in open court because the hearing had been in private. The judge had not found it necessary to include the details of the claimant's spent convictions in his judgment in order to explain his decision and had deliberately made no reference to these details.

## **What are the practical implications of this decision regarding anonymity and private hearings?**

This decision does not suggest that anonymity or private hearings can never be ordered in non-blackmail harassment claims, or that claimants are necessarily more likely to achieve this if they frame their claim in privacy instead—the same principles apply across these causes of action and the decisions are always fact-sensitive. It is, however, a robust reminder that blanket anonymisation should be very much a last resort and may be unlikely to be granted in harassment claims which are not based upon the protection of private information. Moreover, just because harassment claims are included in the categories of cases in paragraph 1.5 of the Practice Direction 39A, which will in the first instance automatically be listed in private (although, surprisingly, claims for misuse of private information and breach of confidence are not included), this does not create a presumption—the court must always be satisfied that conducting any hearing in private is strictly necessary. A similar point was made by Floyd J in *North Shore Ventures Ltd v Anstead Holdings Inc (No 2)* [\[2011\] 1 WLR 2265](#), para [22] in the context of hearings to cross-examine a party on their assets, which also fall within this list.

The decision is also a reminder that even if derogations from open justice are ordered at an early stage because of the nature of the information which is likely to be discussed in the proceedings, if the judge later considers it unnecessary to delve into the detail of this information in the judgment, the justification for anonymity may then fall away. This is a variable which may be difficult to predict in advance, as different judges may reasonably take different views on the extent to which they need to refer to the factual matrix of the case in explaining their decision.

*Interviewed by Alex Heshmaty.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*